

Confidentiality Agreement Terms and Conditions

- A. The Recipient has requested Confidential Information relating to the vendor for the purpose of investigating the possible purchase of the Vendor's business by the Recipient ("the Purpose").
- B. The Recipient has agreed to keep confidential all Confidential Information disclosed to it by the Vendor's Agent.

OPERATIVE PART

1. DEFINITIONS

1.1 In this Deed:

"Confidential Information" means all information concerning the Vendor or the Vendor's business (including by way of example only development plans, designs, inventions, know-how, procedures, formulas, recipes, trade secrets, marketing plans, technical and manufacturing specifications, instructions, technical data, financial position and performance information, accounting records and projections) of any nature and in any form, whether oral, digital or written or howsoever expressed, supplied at any time to or for the benefit of the Recipient by the Vendor or the Vendor's Agent.

"Representative" means any employee or agent or adviser of the Recipient, or a representative of any of the Recipient's advisers, to whom Confidential Information is disclosed.

2. DISCLOSURE AND USE OF CONFIDENTIAL INFORMATION

2.1 In consideration of disclosing Confidential Information to the Recipient and/or its Representatives the Recipient agrees:

- (a) To use all Confidential Information solely for the Purpose; and
- (b) To keep strictly confidential all Confidential Information (subject to disclosure permitted under clause 2.2).

2.2 The Recipient may disclose Confidential Information only to those Representatives who:

- (a) Have a need to know (and only to the extent that each has a need to know) vis-a-vis the Purpose; and
- (b) Are aware that the Confidential Information must be kept strictly confidential; and
- (c) Have been approved in writing by the Vendor's Agent (with such approval being at the Company's sole and absolute discretion).

2.3 The Recipient is responsible at all times for the acts or omissions of its Representatives, and where applicable, all references in this Deed to a Recipient include its Representatives.

3. SECURITY AND CONTROL

3.1 The Recipient must:

- (a) Keep Confidential Information under the Recipient's control (except as permitted with respect to a Representative); and
- (b) Immediately notify the Vendor's Agency of any suspected or actual unauthorised use, copying or disclosure of Confidential Information.

3.2 The Recipient must provide assistance, reasonably requested by the Vendor's Agent, in relation to any proceedings the Company may take against any person for unauthorised use, copying or disclosure of Confidential Information.

4. DISCLAIMER & EXCLUSION OF LIABILITY

4.1 The Recipient acknowledges that:

- (a) The Vendor's Agent does not, make any representation or warranty as to the suitability, accuracy or completeness of the Confidential Information or any other information disclosed to the Recipient by the Company, whether as to the Purpose or otherwise; and
- (b) The Vendor's Agent has no liability whatsoever for any claims, expenses, losses, damages and costs the Recipient may incur as a result of use of the Confidential Information or the Confidential Information being unsuitable, inaccurate or incomplete in any way, for any reason.

5. ACKNOWLEDGEMENT AND INDEMNITY

- 5.1 The Recipient acknowledges that it is aware that any breach of this Deed may result in the Vendor or Vendor's Agent suffering damage.
- 5.2 The Recipient indemnifies each of the Vendor, Agent and advisors against all losses, damages, expenses and legal costs (on a solicitor and own client basis and whether incurred by or awarded against the Vendor or Vendor's Agent) that they may sustain or incur as a result, whether directly or indirectly, of any breach by the Recipient or any Representative of this Deed.

6. TERMINATION

- 6.1 The Vendor or Vendors's Agent may terminate this Agreement at any time with immediate effect by giving written notice to the Recipient.
- 6.2 On termination of this Agreement, or on completion of the Purpose, the Recipient's right to use Confidential Information ceases and the Recipient must immediately, at the Vendor's Agents' option:
 - (a) Return the Confidential Information to the Vendor's Agent;
 - (b) Permit the Vendor's Agent to take all reasonable lawful steps (including the entry onto property and into premises, vessels and vehicles) for the purpose of recovering Confidential Information.
 - (c) Destroy and permit the Vendor's Agent to witness the destruction of all Confidential Information in the Recipient's possession or control.

7. PRIVACY

- 7.1 The Recipient acknowledges that, in addition to the Vendor's Agent, this Deed is executed for the benefit of the Vendor pursuant to the Contracts (Privity) Act 1982.

8. MISCELLANEOUS

- 8.1 The obligations of confidentiality under this Agreement continue to apply to the parties to the Agreement (in addition to any permitted assignee) after termination of this Agreement.
- 8.2 The failure or delay of the Vendor's Agent at any time to insist on performance of any provision of this Agreement is not a waiver of their rights at any later time to insist on performance of that or any other provision of this Agreement.
- 8.3 This Agreement is governed by the laws of New Zealand and is subject to the exclusive jurisdiction of the Courts of New Zealand.
- 8.4 If any part of this Agreement is held by any Court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Agreement, which are to remain in full force.
- 8.5 Each party acknowledges that the undertakings and agreements on its part set out in this Agreement are in addition to and do not detract from either the duties of confidentiality which are imposed on it by law or in equity or any other rights, protections or defences or counterclaims otherwise available to the other party to this Agreement.