

Confidentiality and Non Disclosure Agreement



Tower Supplies

and

.....

Agreement Date:

Parties: Tower Supplies having its registered office at
3 Yarrow Road, Poole, Dorset, BH12 4TS.

and

.....

Each party is prepared to disclose or make available to the other party information that it regards as confidential. By signing this Agreement, the parties mutually agree to comply with the terms and conditions set out below.

1. DEFINITIONS

1.1 In this Agreement, the following terms have the following meanings:

“Agreement” means this Agreement

“Confidential Information” means;

- (a) All information about the Discloser and its business, customers, products and technologies, irrespective of whether the information is:
 - i. In tangible or documented form;
 - ii. Marked or identified as owned by the Discloser or under the Disclosers control; or
 - iii. Obtained before, on or after title date of this Agreement
- (b) All notes, records or copies of such information made by the recipient; and
- (c) The fact that discussions are taking place between the parties

“Discloser” means the party to this Agreement to whom or to whose business, products or technologies, the Confidential Information relates;

“Improvement” means any development, modification, improvement or invention made or contributed to by the recipient relating to the Confidential Information

“Permitted Purpose” means, for each party, the purpose specified by the Discloser to the recipient;

“Protective Application” means any application for patents, designs or other intellectual property protection concerning improvements;

“Recipient” means the party receiving Confidential Information under this Agreement; and

“Restricted Person” means any officer, employee, personnel or legal advisor of the recipient, or other person approved by the discloser in writing, who needs to know the confidential information for the permitted purpose.

2. CONFIDENTIALITY OBLIGATIONS

2.1 Obligations: The recipient will;

- (a) Keep confidential all of the Confidential Information;
- (b) Treat the confidential Information as a valuable trade secret of the Discloser;
- (c) Not tell anyone about the Confidential Information, or disclose the Confidential Information to anyone, other than restricted Persons or as permitted under clause 2.4
- (d) Not copy, electronically store, or duplicate any Confidential Information without the Discloser’s written consent;
- (e) Not use any of the Confidential Information for any purpose other than the permitted purpose; and
- (f) Put in place and maintain secure measures to stop any unauthorized person from using or accessing the Confidential Information

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2.2 Restricted Persons: The recipient will not disclose the Confidential Information to any restricted person unless:

- (a) Such restricted person has entered into legally binding confidentiality obligations in favour of the Recipient on terms equivalent to the Recipient's obligations to the Discloser under this Agreement; and
- (b) The obligations of the restricted Person extend to the Confidential Information and remain in force while the Recipient's obligations under this Agreement continue.

The Recipient is responsible to the Discloser for any unauthorized use or disclosure of Confidential Information by any restricted persons as if the use or disclosure were a use or disclosure by the recipient under this Agreement

2.3 Exceptions to Obligations: Nothing in this Agreement applies to any Confidential Information if the recipient can demonstrate that such Confidential Information:

- (a) Was already known to the recipient before the recipient received it under this Agreement;
- (b) Is independently acquired or developed by the recipient without breaching any of its obligations under this Agreement and without using any of the other Confidential information
- (c) Is disclosed to the recipient by another person who was not under the obligations of confidentiality to the discloser; OR
- (d) Is or becomes generally available to the public, other than because the recipient breached this Agreement.

2.4 Disclosure Required: If the recipient is required by law to disclose confidential information to a court of competent jurisdiction, or to any government regulatory agency, financial authority or stock exchange it must:

- (a) Immediately tell the Discloser about the requirement;
- (b) Provide a copy of the relevant Confidential Information to the Discloser;
- (c) Only disclose that part of the Confidential Information reasonably necessary to comply with the requirement;
- (d) Use reasonable efforts to persuade the court, agency or authority to have the information treated in a confidential manner; and
- (e) Follow any reasonable directions of the discloser concerning the disclosure.

2.5 Continuing Obligations: The recipient's obligations under clause 2 will continue until all of the Confidential Information becomes generally available to the public, other than because the recipient breached this Agreement. The discloser's release of part of the Confidential Information will not of itself cause the recipient's obligations under this Agreement to end.

3. DISCLOSER OWNS THE CONFIDENTIAL INFORMATION

3.1 Ownership: The discloser will retain the sole ownership of all Confidential Information and all intellectual property rights in the Confidential Information. The recipient acknowledges and agrees that:

- (a) The recipient has no interest in, license to or right to use any confidential information or any intellectual property rights in the Confidential Information, for its own benefit or for the benefit of any other person except where expressly permitted in this Agreement; and
- (b) The discloser will own all improvements and all intellectual property rights in them.

3.2 Improvements. If for any reason, the recipient or any restricted person becomes the owner of any improvements and the intellectual property rights in them, the recipient or the restricted person will:

- (a) Hold such improvements and intellectual property rights on trust for the discloser; and
- (b) If the discloser requests, but at the recipient's expense, sign all documents necessary to:
 - i) Confirm the discloser's sole ownership of the improvements and intellectual property rights in them; and
 - ii) File a protective application or defend such protective application,

And the recipient will ensure any such restricted person complies with such obligations.

4. RETURN OF CONFIDENTIAL INFORMATION

4.1 Termination: Either party may terminate this Agreement at any time with immediate effect, by written notice to the other. Termination will not in any way affect the rights and obligations of the parties under this Agreement in relation to Confidential Information received by the recipient before or after termination.

4.2 Return:

- (a) Upon termination of this Agreement the recipient will ensure that all Confidential Information is returned to the discloser, destroyed or erased, if requested by the discloser in writing. The recipient must comply with any such written requests without delay. The discloser may elect whether the Confidential Information is to be returned, destroyed or erased.

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(b) The recipient will not be obliged to return any Confidential Information that is required by law to be retained for compliance or audit purposes. Nor will the recipient be obliged to destroy or erase any copies of the Confidential Information automatically saved to the recipient's electronic backup systems, unless those copies can be located and then destroyed or erased without significant time and effort.

4.3 Certificate: Once the recipient has returned, destroyed or erased such Confidential Information, the recipient will give to the discloser a certificate stating that the Confidential Information returned, destroyed or erased comprises all the Confidential Information in the possession or under the control of the recipient and its restricted persons (other than that Confidential Information permitted to be retained under clause 4.2(b)).

5. NO WARRANTY GIVEN

5.1 Nothing in this Agreement requires the discloser to give any Confidential Information to the recipient. The discloser gives the recipient no warranty or representation, express or implied, about the accuracy, efficacy, completeness or capabilities of any materials or information provided under this Agreement. Nothing in this Agreement commits either party to enter into any future business dealings or arrangements.

6. BREACH BY RECIPIENT

6.1 Tell Discloser: The recipient will tell the Discloser as soon as the recipient becomes aware of any potential, threatened or actual breach by the recipient of this Agreement. The recipient will take all necessary steps to prevent or limit such breach, at the recipients cost.

6.2 Remedies: The recipient acknowledges that damages alone may not be an adequate remedy if the recipient breaches this Agreement. In addition to any other remedy that may be available to the discloser in law or equity, the recipient acknowledges that the discloser may be entitled to interlocutory injunctive relief to prevent a breach of this Agreement and to compel specific performance of this Agreement.

7. MISCELLANEOUS PROVISIONS

7.1 No assignment. This Agreement is personal to the parties. Neither party may assign, transfer, subcontract, sublicense or part with any of its rights or obligations under this Agreement, unless the other party agrees otherwise in writing.

7.2 Waiver. A failure or delay by any party in exercising any right, power or privilege under this Agreement is not a waiver of such right, power or privilege. No single or partial exercise by a party of any right, power or privilege will stop any further exercise of that right, power or privilege under this Agreement.

7.3 Entire Agreement. This Agreement contains the entire Agreement and understanding between the parties in relation to the subject matter of this Agreement. This Agreement supersedes any previous written or oral Agreements or understandings between the parties about the Confidential Information,

7.4 Counterparts. The parties may sign this Agreement in any number of counterparts (including facsimile copies), but all counterparts, when taken together will constitute one and the same document. The parties may enter into this Agreement by signing any counterpart.

7.5 Governing Law. New Zealand law governs this Agreement. The parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

8.0 RESTRICTED PERSONS CONSENT

a) [Director full name], being a Director of Limited and a restricted person in terms of this agreement Hereby agrees to be bound by the terms of this agreement pursuant to the provisions of clause 2.2 hereof.

b) [Director full name], being a representative of Limited and a restricted person in terms of this agreement Hereby agrees to be bound by the terms of this agreement pursuant to the provisions of clause 2.2 hereof.

Signature.....

For and on behalf of Tower Supplies

Name:.....

Date:.....

Signature.....

For and on behalf of

Name:.....