

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

entered into between

Cee Vee Transport Consultants SA (Pty) Ltd

Registration number 2013/037841/07

Of 5 Sardine Drive, Pennington, 4184, South Africa

(hereinafter referred to as “the **First Disclosing Party**”)

And

Registration number _____

Of _____

(hereinafter referred to as “the **Second Disclosing Party**”)

1. INTERPRETATION

1.1. Unless the context indicates otherwise:

- 1.1.1. “Cee Vee Transport Consultants SA (Pty) Ltd” means Cee Vee Transport (registration number 2013/037841/07), a company duly registered and incorporated with limited liability in accordance with the company laws of South Africa. Any reference in this agreement to “Cee Vee Transport” shall include references to its subsidiaries, associates, joint ventures ad divisions;
- 1.1.2. “signature date” means the date upon which this agreement has been signed by all the parties;
- 1.1.3. :the Business” means all aspects of the businesses operated by each of the parties and/or any business conducted by its subsidiaries, associated companies and/or divisions (“the affiliates”), including, without limitation, the business of manufacturing, processing, marketing, selling and distributing consumer products, foodstuffs and related goods and services in respect of the First Disclosing Party;
- 1.1.4. “Confidential information” means any information, electronic data and/or documents relating to the Protectable Interests which are not readily available to a competitor of the parties in the ordinary and regular course of business;

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- 1.1.5. “the parties” means the First Disclosing Party and the Second Disclosing Party and any of their successors in title;
- 1.1.6. “the Protectable Interests” means collectively each party’s goodwill, its trade secrets, its trade connections, its confidential information and its knowledge and know-how including (without limiting the generality of the foregoing) information, documents and/or data relating to:
 - 1.1.6.1. the names, contact details, product ranges, pricing and discounts of any of the suppliers of products and services of the Business;
 - 1.1.6.2. the names, contract details, product or service specifications, particular requirements and preferences of existing or prospective clients, as well as any discounts given to clients;
 - 1.1.6.3. agreements with clients, business associates, principals or suppliers of the Business and the terms thereof;
 - 1.1.6.4. the business philosophy, methods, systems and techniques of the Business;
 - 1.1.6.5. existing or planned distribution, marketing activities and sales strategies;
 - 1.1.6.6. the financial structure, details, performance, accounting records and/or operating results of the Business;
 - 1.1.6.7. technologies; technological know-how and information systems utilised by the Business;
 - 1.1.6.8. product and service design and plans;
 - 1.1.6.9. specifications including product specifications, recipes, product formulations; manufacturing processes and/or techniques;
 - 1.1.6.10. all knowledge obtained by way of research and development;
 - 1.1.6.11. scientific, business or financial data, know-how, formulae, processes, designs, sketches, photographs, plans, drawings, specifications, sample reports, models, studies, findings, methodologies, know-how and networking techniques, inventions, designs;
 - 1.1.6.12. costs of manufacturing plant, equipment, raw materials and other manufacturing consumables;
 - 1.1.6.13. the strategic planning of the Business, its expansion programmes and its buying, marketing, financial and distribution strategies and policies;
 - 1.1.6.14. business connections in the Republic of South Africa and overseas;
 - 1.1.6.15. business acquisitions, disposal, opportunities and strategies;
 - 1.1.6.16. staff lists, salary levels, employment agreements, training programmes and policies;

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- 1.1.6.17. the existence and content of the discussions between the parties, as well as any other agreement which may be concluded between the parties pursuant to such discussions; and
- 1.1.6.18. All other information in whatsoever form communicated to or acquired by the receiving party during or arising from the discussions between the parties.
- 1.2. Clause headings are not to be referred to in interpreting this agreement.
- 1.3. Unless the context indicates otherwise, a reference to a person includes natural persons, juristic persons, partnerships, and trusts.
- 1.4. Any provision that contemplates performance or observance after the termination or expiry of this agreement or that of necessity must survive termination or expiry shall remain binding and enforceable after termination or expiry.
- 1.5. If any provision in Clause 1 confers rights or imposes obligations on any party, it shall be implemented as if it were a substantive provision in the body of the agreement, notwithstanding, that it is contained in clause 1.

2. INTRODUCTION

- 2.1. The parties wish to present business proposals to each and/or wish to discuss and negotiate a future business relationship to their mutual benefit and that of their clients.
- 2.2. In the course of the above interactions, the parties may disclose their Confidential Information to any unauthorised third party will cause considerable financial loss to the other party.
- 2.3. The parties further acknowledge that each party's Protectable Interests are legitimate proprietary and commercial interests which each party is entitled to protect.
- 2.4. The parties further acknowledge that the disclosure of the Confidential Information to any unauthorised third party will cause considerable financial loss to the other party.
- 2.5. The parties accordingly wish to record their agreement with regard to the non-disclosure of the Confidential Information in writing.

3. NON-DISCLOSURE

- 3.1. In the interest of the protection and maintenance of the Protectable Interests, each party undertakes that it shall not, at any time whatsoever and notwithstanding the termination of the business relationship and/or negotiations between the parties for whatsoever reason, without the prior written consent of the other party:
 - 3.1.1. use, disclose or divulge, whether directly or indirectly, the Confidential Information to any person (whether in the other party's employ or not) or to any person or entity which is not a party to the agreement;
 - 3.1.2. use, exploit, disclose, copy, divulge or in any other manner whatsoever apply the Confidential Information disclosed to it for any purpose for which it is disclosed and otherwise than in accordance with the provisions of this agreement;
 - 3.1.3. derive any benefit, whether directly or indirectly, from the Confidential Information and, without limiting the generality of the foregoing, be engaged, involved, concerned or interest, whether directly or indirectly, in the economic exploitation of the Confidential Information.
- 3.2. The parties shall take all possible steps to prevent the Confidential Information Falling into the hands of unauthorised third parties. In order to give effect to their obligations in terms of the above clause, the parties, prior to making any disclosure, inform every person to whom disclosure of any of the Confidential Information is made in the manner permitted by the above clause of the confidential nature of the information and of the terms imposed by this agreement and shall require them to abide by same. The parties accept full responsibility and vicarious liability for any actions or omissions of any such person insofar as same may result in any disclosure of any of the Confidential Information contrary to the terms of this agreement.
- 3.3. The parties acknowledge that the unauthorized disclosure of the Confidential Information of the other party to a third party may cause irreparable loss, harm and damage to the party to whom the Confidential Information belongs and each party therefore indemnifies and holds the other party harmless against any loss, action, expense, claim, harm or damage, of whatever nature, sustained (whether directly or indirectly) by a party as a result of the party's breach of its obligations in terms of this agreement.
- 3.4. Unless the parties otherwise agree in writing, any documents or records relating to the Confidential Information of the other party which come into the possession of either of them during the existence of this agreement or at any time thereafter:
 - 3.4.1. shall be deemed to form part of the Confidential Information and shall be subject to the terms of this Agreement;
 - 3.4.2. shall not be copied, reproduced, published or circulated by the party receiving the Confidential Information; and
 - 3.4.3. shall be surrendered to the party who divulged the Confidential Information on demand and the receiving party shall not retain any copies or extracts thereof.

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4. CESSION IN THE EVENT OF SALE

Should either party (“the selling party”) sell their business or any part thereof, then the other party hereby agrees that the selling party shall be entitled to cede the transfer to the purchaser of the business all of the selling party’s right, title and interest in and to this agreement and that the purchaser shall be entitled to enforce the terms of the agreement against the other party as if the purchaser were a signatory to this agreement.

5. NOTICES AND DOMICILIA

- 5.1.1. The parties hereby nominate the physical address set out under their names as their *domicilium citandi* et *excecutandi* for the giving of notices, the serving of legal processes and any other purposes arising from this agreement. Each party may change its chosen address in South Africa provided that such change shall only take effect ten days after such party has given written notice of the change to the other party.

6. GOOD FAITH AND CO-OPERATION

- 6.1. In the implementation of this agreement, the parties undertake to observe the utmost good faith and they warrant in their dealings with one another that they shall neither do anything nor refrain from doing anything that might prejudice the rights, assets or interests of the other(s).
- 6.2. Each of the parties undertakes to complete, sign and deliver all documents and to do all things within its powers that are necessary to implement the terms of this agreement.

7. GENERAL

- 7.1. This agreement constitutes the whole agreement between the parties in relation to the subject matter hereof and no party shall be bound by any representations, warranties, undertakings or the like not recorded herein.
- 7.2. No addition to or variation, consensual termination or novation of this agreement, and no waiver of any right arising from this agreement or its breach or termination shall be valid or enforceable unless it is in writing and signed by all the parties or their duly authorised representatives.
- 7.3. No failure to enforce, or delayed or partial enforcement of, a right by any party shall prejudice or derogate from the rights of such party under this agreement, nor shall it constitute a waiver or novation of that party’s rights under this agreement and it shall not estop or otherwise prevent such party from enforcing at any time all its rights arising out of this agreement.
- 7.4. This agreement shall be governed by and interpreted in accordance with South African law.

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DATED ATon thisday of.....(insert month)
.....(insert year)

The First Disclosing Party:

.....
...../ For and on behalf of
CEE VEE TRANSPORT CONSULTANTS SA (PTY) LTD

DATED AT.....on this.....day of.....(insert month)
.....(insert year)

The Second Divulging Party:

.....
...../For and on behalf of