

Confidentiality Agreement



Confidentiality Agreement

This Agreement is executed on

BETWEEN

1. (Disclosing Party)
2. B&C Plastics (Receiving Party)

Background

- (A) The Parties to this Agreement have agreed to disclose and share certain information for the Purpose, and the Receiving Party has agreed to keep that information confidential, on the terms and conditions set out in this Agreement.
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1. Operative provisions

1.1 Definitions

In this document:

Agreement means this agreement together with any schedules or annexures any amendments made in accordance with this agreement;

Confidential Information means all unpatented inventions, ideas, know-how, concepts, trade secrets, processes, techniques, software, products and all other intellectual property, financial and business information and all other commercially valuable information of the Disclosing Party which the Disclosing Party regards as confidential to it and all copies, notes and records and all related information generated by the Receiving Party based on or arising out of any such disclosure. Confidential Information excludes, or as the case requires, ceases to include information which is, or becomes:

- (a) available to the public at the date of its disclosure to the Receiving Party;
- (b) at the date of its disclosure to the Receiving Party, already properly in the possession of the Receiving Party in written form otherwise than by prior confidential disclosure from the Disclosing Party;
- (c) after the date of its disclosure to the Receiving Party, available to the public from sources other than the Receiving Party;
- (d) after the date of its disclosure to the Receiving Party, properly available to the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party;
- (e) demonstrated by the Receiving Party to be independently developed by an employee or agent of the Receiving Party having no knowledge of such information the subject of the disclosure; or
- (f) required to be disclosed by law;

Disclosing Party means the Party which is disclosing information, including Confidential

Information;

Parties means the parties to this Agreement and their respective successors and permitted assigns, and Party means any one of them;

Purpose means discussion towards product development.

Receiving Party means the Party which is receiving information, including Confidential Information;

Representative of a party means a partner, director, officer, employee, related corporation (as defined in the *Corporations Act 2001* (Cth), representative (including financial adviser, legal adviser or accountant) or agent of the party.

2. Disclosure and use of Confidential Information

2.1 In return for the Disclosing Party or any Representative of the Disclosing Party agreeing to disclose or make available any Confidential Information to the Receiving Party, the Receiving Party agrees:

- (a) to use all Confidential Information of the Disclosing Party solely for the Purpose;
- (b) to keep confidential all Confidential Information of the Disclosing Party (subject to disclosure permitted under clause 2.2); and
- (c) otherwise to comply with the terms of this Agreement.

2.2 The Receiving Party may disclose Confidential Information only to those of his Representatives who:

- (a) have a need to know (and only to the extent that each has a need to know) for the Purpose;
- (b) are aware that the Confidential Information must be kept confidential and are subject to appropriate obligations of confidentiality; and
- (c) if requested by the Disclosing Party, have agreed in writing to comply with the terms of this document as if the Representative were a party to this document;

or if required by law to do so.

2.3 The Receiving Party must, at its own expense:

- (a) ensure, at all times, that each Representative to whom Confidential Information has been disclosed under clause 2.2 complies with this document and any agreement contemplated by paragraph 2.2(b) or by paragraph 2.2(c) (a **Confidentiality Agreement**);
- (b) notify the Disclosing Party immediately if it becomes aware of a suspected or actual breach of this document or a Confidentiality Agreement;
- (c) immediately take all steps reasonably required to prevent or stop the suspected or actual breach of this document or a Confidentiality Agreement;
- (d) comply with any direction issued by the Disclosing Party and provide any assistance

- reasonably requested from time to time regarding enforcement of this document or a Confidentiality Agreement; and
- (e) assign any Confidentiality Agreement to the Disclosing Party at its request.
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3. Security and control

3.1 The Receiving Party must:

- (a) establish and maintain effective security measures to safeguard Confidential Information of the Disclosing Party from disclosure, access or use not authorised by this document; and
- (b) keep Confidential Information under its control.
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4. Acknowledgements and indemnity

4.1 The Receiving Party acknowledges that it is aware that any breach by the Receiving Party of any obligation in this document may result in the Disclosing Party suffering damage, and that an award of damages may be insufficient to compensate the Disclosing Party for that breach. Accordingly, in addition to other remedies that may be available, the Disclosing Party (and if applicable any other Representative of the Disclosing Party) may seek and obtain injunctive relief against such a breach or a threatened breach.

4.2 The Receiving Party acknowledges and agrees that the Disclosing Party has executed this document on behalf of itself and other Representatives of the Disclosing Party, and that this document is intended to be for the benefit of the Disclosing Party and its Representatives.

4.3 The Receiving Party indemnifies the Disclosing Party and its Representatives (the "indemnitee") from and against any and all losses, damages, expenses and legal costs (on a solicitor and own client basis and whether incurred by or awarded against the indemnitee) that the indemnitee may sustain or incur as a result, whether directly or indirectly, of any breach by the Receiving Party of any obligation in this document.

4.4 The Receiving Party acknowledges that the Disclosing Party or any of its Representatives:

- (a) makes no representations or warranties as to the accuracy or completeness of the Confidential Information or its usefulness in achieving any purpose; and
- (b) to the extent not excluded by law, disclaims and excludes all liability for all claims, expenses, losses, damages and costs that the Receiving Party may incur as a result of the Confidential Information, for any reason, being inaccurate or incomplete in any way or incapable of achieving any purpose.
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5. Intellectual property rights

The Receiving Party acknowledges that this document does not transfer any interest in any intellectual property, and that the Disclosing Party retains (and does not waive) any rights the Disclosing Party may have in respect of patents, trademarks, copyright, moral rights or other intellectual property or proprietary rights enforceable under the laws of any country.

6. Exclusions

The obligations of confidentiality under this document do not extend to the excluded information.

7. Return of Confidential Information

7.1 The Disclosing Party may at any time require the Receiving Party to cease using its Confidential Information.

7.2 On receiving a notice pursuant to clause 7.1, or upon completion of the Purpose, the Receiving Party's right to possess or use Confidential Information of the Disclosing Party ceases and the Receiving Party must immediately, at the Disclosing Party's discretion:

- (a) return all Confidential Information to the Disclosing Party;
 - (b) destroy and certify in writing to the Disclosing Party the destruction of all Confidential Information;
 - (c) destroy and permit that the Disclosing Party to witness the destruction of all Confidential Information; or
 - (d) destroy all copies, summaries, notes or reproductions of, all Confidential Information of the Disclosing Party in the Receiving Party's possession or control.
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8. Continuing obligations

The obligations of confidentiality under this document continue to apply to the Receiving Party (in addition to any permitted assignee) after assignment or termination of this document or completion of the Purpose.

9. Waiver

The failure of the Disclosing Party at any time to insist on performance of any provision of this document is not a waiver of its right at any later time to insist on performance of that or any other provision of this document.

10. Assignment

The Receiving Party must not assign or otherwise transfer any or all of its obligations arising out of this document without the written consent of the Disclosing Party.

11. Governing law

This document is governed by the laws of, and any dispute will be heard in the courts of, the State of Queensland, Australia.

12. Execution

SIGNED by

on behalf of [Disclosing Party] Pty Ltd in
the presence of:

.....
Signature of authorised representative

SIGNED by

on behalf of the [Receiving Party] in the
presence of:

.....
Signature of authorised representative