



- (d) Information regarding the research and development, commercial and business position and plans of Buyer, including budgets, unpublished financial statements, third party arrangements, pricing and cost information;
- (e) The fact that discussions are taking place between Buyer and the Supplier;
- (f) Any information regarding the employees, contractors or other agents of Buyer, its customers, subsidiaries and Affiliated Companies;
- (g) All information obtained by the Supplier from any evaluations carried out under this Agreement, as well as the nature of such evaluations.

2. **Confidentiality and Non Use**

The Supplier undertakes to Buyer, for a period of ten (10) years from the date of receipt of the Confidential Information: -

- 2.1 To keep the Confidential Information secret at all times;
- 2.2 Not to disclose the Confidential Information or allow it to be disclosed in whole or in part to any third party without Buyer's prior written consent;
- 2.3 Not to use the Confidential Information in whole or in part for any purpose except for the Purpose; and
- 2.4 To take proper and all reasonable measures to ensure confidentiality of the Confidential Information.

3. **Exceptions**

The obligations in **Clause 2** shall not apply to any information which: -

- 3.1 Is or becomes known to the public through no fault of the Supplier;
- 3.2 Is known by the Supplier prior to its receipt from Buyer, as shown by prior written records of the Supplier;
- 3.3 Becomes known to the Supplier by disclosure from a third party, who has a lawful right to disclose the information; or
- 3.4 Is subsequently developed by the Supplier independently of the information received from Buyer

4. **Disclosure to Employees**

- 4.1 The Supplier undertakes to permit access to the Confidential Information only to those of its directors and employees who need access to the Confidential Information for the Purpose, and on the conditions that such directors and employees shall have:

- 4.1.1 Entered into legally binding confidentiality obligations to the Supplier on terms equivalent to those set out in this Agreement (and such obligations extend to the Confidential Information);
  - 4.1.2 Been informed of Buyer's interest in the Confidential Information and the terms of this Agreement; and
  - 4.1.3 Been instructed to treat the Confidential Information as secret and confidential in accordance with the provisions of this Agreement.
- 4.2 The Supplier shall be responsible for ensuring that the Supplier's directors and employees comply with the provisions of this Agreement.
5. **Disclosure to Subsidiaries or Affiliated Companies**
- 5.1 The Supplier may disclose the Confidential Information to those of its subsidiaries and/or Affiliated Companies who need access to the Confidential Information for the Purpose on the conditions that such subsidiaries and Affiliated Companies shall have :-
- 5.1.1 Been informed of Buyer's interest in the Confidential Information and the terms of this Agreement;
  - 5.1.2 Been instructed by the Supplier in writing to treat the Confidential Information as secret and confidential in accordance with the provisions of this Agreement;
  - 5.1.3 Agreed in writing to the Supplier to treat the Confidential Information as secret and confidential in accordance with the provisions of this Agreement.
- 5.2 The Supplier shall be responsible for ensuring that its subsidiaries and Affiliated Companies comply with the provisions of this Agreement.
6. **Return of Information and Property**
- 6.1 The Supplier acknowledges and agrees that the property, copyright and any and all intellectual property rights in the Confidential Information disclosed to it by Buyer, including any documents, files and other items containing any Confidential Information, belong to Buyer or to Buyer's subsidiaries, Affiliated Companies or Buyer's customers;
- 6.2 At Buyer's written request, the Supplier shall immediately: -
- 6.2.1 Return to Buyer all Confidential Information which the Supplier has received under this Agreement and which may still be in the Supplier's possession, including any copies made;
  - 6.2.2 Delete or procure the deletion of all electronically stored copies of extracts of the Confidential Information;
  - 6.2.3 Make no further use or disclosure of any of the Confidential Information.
- 6.3 The Supplier acknowledges and agrees that it shall have no general or particular lien over the Confidential Information, and accordingly, the Supplier shall have no rights

to retain the Confidential Information after receipt of a written request from Buyer to return it to Buyer in accordance with **Clause 6.2**

- 6.4 If the Supplier fails to return the Confidential Information to Buyer within 3 days of a written request from Buyer so to do, Buyer shall be entitled to enter upon any premises of the Supplier or any third party where the Confidential Information is stored and repossess the Confidential Information.

**7. No Implied Rights**

- 7.1 This Agreement shall not be construed: -

7.1.1 To grant the Supplier any licence or rights under any intellectual property;

7.1.2 To require Buyer to disclose any Confidential Information to the Supplier;

- 7.2 The Supplier acknowledges and agrees that Buyer gives no warranty or representation, express or implied, as the accuracy, efficacy, completeness, utility, capabilities or safety of any materials or information provided under this Agreement.

**8. Assignment**

- 8.1 The Supplier may not assign, sub contract, sub licence or otherwise dispose of any of its rights under this Agreement, without the prior written consent of Buyer;

- 8.2 Buyer may assign, sub contract, sub licence or otherwise dispose of all or any of its rights under this Agreement and the Supplier consents to all such dealings.

**9. Termination**

- 9.1 Buyer may terminate this Agreement immediately upon written notice to the Supplier.

- 9.2 Termination shall not affect the Supplier's obligations under **Clauses 2, 4, 5, 6, 7 and 10.2** of this Agreement.

**10. General**

- 10.1 No failure or delay by Buyer to exercise any rights, power or remedy will operate as a waiver of it, nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

- 10.2 The Supplier acknowledges and agrees that a breach of any of its obligations contained in this Agreement will result in irreparable injury to Buyer, for which there will be no adequate financial remedy at law, and Buyer shall be entitled, in addition to any remedies available at law, to equitable relief in the event of any breach or threatened breach of this Agreement by the Supplier.

- 10.3 This Agreement represents the entire understanding of the parties with respect to the subject matter of this Agreement, and supercedes any other prior or contemporaneous agreements or understandings, whether written or oral, between the parties in relation to the subject matter.

- 10.4 If any part of any provisions of this Agreement shall be invalid or unenforceable, then the remainder of such provision and all other provisions of this Agreement shall remain valid and enforceable.
- 10.5 No amendment or variation of the terms of this Agreement shall be effective unless it is made or confirmed in a written document signed by both parties.
- 10.6 A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 10.7 All communication relating to this Agreement shall be in writing and delivered by hand or sent by post or facsimile to the party concerned at the relevant address shown at the start of this Agreement (or such other address as may be notified from time to time in accordance with this Clause by the relevant party to the other party). Any such communication shall take effect if delivered, upon delivery; if posted, at the earlier of delivery and, if sent by first class registered post, 10 a.m. on the second business day after posting; and if sent by facsimile, when a complete and legible copy of the communication, whether that sent by facsimile or a hard copy sent by post or delivered by hand, has been received at the appropriate address.
- 10.8 This Agreement shall be governed by the laws of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts to settle any disputes.

**IN WITNESS** whereof, the parties have executed this Agreement on the date set out above.

.....  
Duly authorised signatory for and on behalf of: Nifco UK Limited  
Name of signatory:  
Title: C.F.O./Company Secretary  
Date:

.....  
Duly authorised signatory for and on behalf of:  
  
Name of signatory:  
Title:  
Date: