

**BETWEEN**

**Andersens Floor Coverings Ptd Ltd  
ACN 009 733 617**

**AND**

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# **CONFIDENTIALITY DEED**

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**THIS DEED** dated

**PARTIES:**     **Andersens Floor Coverings PTD LTD ACN 009733617** of 29 Western Drive, Gatton, QLD, 4343 ("**the Discloser**")

and

of

(**'the Recipient'**)

## **INTRODUCTION**

- A.     The Discloser and the Recipient wish to explore certain commercial matters of mutual interest (**'Proposed Transaction'**) and, in connection with the Proposed Transaction, the Discloser and the Recipient may disclose to each other certain Confidential Information which the disclosing party desires the recipient to treat as confidential.

## **IT IS AGREED**

### **1.     INTERPRETATION**

In this Deed:

- (a)     *Business Day* means any day other than a Saturday, Sunday or public holiday on which Australian banks are generally open for business in New South Wales.
- (b)     *Confidential Information* means any information disclosed to the Recipient by the Disclosing Party, either directly or indirectly in writing, orally or by inspection of tangible objects, including without limitation the Disclosing Party's operating plans, financial and business information (including any profit projections, research, diagrams, plans or other documents whatsoever).
- (c)     *Disclosing Party* means a party that discloses Confidential Information to the other party.
- (d)     *Recipient* means the party which receives Confidential Information from the other party.
- (e)     the singular includes the plural and vice versa;
- (f)     a reference to one gender includes a reference to all other genders;
- (g)     headings to clauses are included for the sake of convenience only and shall not affect the interpretation of the clauses to which they relate;
- (h)     references to any statute or statutory provision include that statute or statutory provision as amended, extended, consolidated or replaced by subsequent legislation and any orders, regulations, instruments or other subordinate legislation made under the relevant statute;
- (i)     the word *person* means and includes a natural person, a company, a firm or any other legal entity whether acting as a trustee or not;
- (j)     when a party comprises two or more persons the rights and obligations of such persons pursuant to this Deed shall enure for the benefit of and bind all of them jointly and each of them severally.

## 2. **CONFIDENTIALITY**

In consideration of the Disclosing Party providing the Recipient with access to certain Confidential Information, the Recipient covenants to the Disclosing Party that, subject to clause 3:

- (a) the Recipient will treat the Confidential Information as subject to a duty of confidence and will only use the Confidential Information for the purpose of the Proposed Transaction.
- (b) the Recipient will not use the Confidential Information for any other purpose including competing against the Disclosing Party or acting on behalf of any person competing against the Disclosing Party;
- (c) except as is permitted specifically under this clause, the Recipient will not in any other way use the Confidential Information without the Disclosing Party's prior written consent (which shall not be unreasonably withheld);
- (d) the Recipient will not disclose any Confidential Information to employees of the Recipient, except to those employees who are required to have the Confidential Information in order to evaluate or engage in discussions concerning the Proposed Transaction;
- (e) the Recipient will advise each person to whom the Confidential Information is disclosed that the Recipient is subject to a duty of confidence, and that the Confidential Information is not to be used for any purpose other than the Proposed Transaction;
- (f) the Recipient agrees that it shall take all reasonable measures to protect the secrecy of and avoid disclosure and unauthorised use of the Confidential Information. Without limiting the foregoing, the Recipient shall take at least those measures that the Recipient takes to protect its own confidential information.

## 3. **OBLIGATIONS NOT TO APPLY**

The obligations of the Recipient under clause 2 shall not apply to any of the Confidential Information which:

- (a) the Recipient (or any of its employees or professional advisers) is (or are) required by statute or law (including the Listing Rules of the Australian Stock Exchange Limited) to disclose, reproduce, use or disseminate, subject to reasonable written prior notice being given to the Disclosing Party;
- (b) the Recipient can establish is in or enters the public domain, otherwise than as a result of a breach by the Recipient's duty hereunder or disclosure by any person receiving the Confidential Information from the Recipient;
- (c) the Recipient can establish was publicly known and made generally available in the public domain prior to the time of disclosure to the Recipient by the Disclosing Party; or
- (d) the Recipient can establish is in the possession of the Recipient, without confidentiality restrictions, at the time of disclosure by the Disclosing Party as shown by the Recipient's files and records immediately prior to the time of disclosure.

**4. SAFE KEEPING AND RETURN OF CONFIDENTIAL INFORMATION**

- 4.1. The Recipient will ensure that all written material provided by the Disclosing Party to it to facilitate their discussions is safely and securely stored when not in use, and the Recipient hereby acknowledges that such material including all copies thereof remains the absolute and exclusive property of the Disclosing Party.
- 4.2. Upon written demand by the Disclosing Party, the Recipient shall, within 7 days of receipt of such demand, return to the Disclosing Party all Confidential Information received by it and any copies of the Confidential Information that the Recipient has made.

**5. NO OBLIGATION**

- 5.1. Nothing in this Deed shall obligate the Discloser or the Recipient to proceed with the Proposed Transaction, and each party reserves the right, in its sole discretion, to terminate the discussions and negotiations contemplated by this Deed concerning the Proposed Transaction.

**6. REMEDIES**

- 6.1. The Recipient agrees that any violation or threatened violation of this Deed will cause irreparable injury to the Disclosing Party, entitling the Disclosing Party to obtain injunctive relief in addition to all other legal remedies available to the Disclosing Party.

**7. SEVERABILITY**

- 7.1. Each provision of this Deed is severable and distinct from the other provisions and if at any time one or more of such provisions is or becomes invalid, illegal or unenforceable in any jurisdiction the same will be severed and neither the validity, legality or enforceability of the remaining provisions in that jurisdiction or the validity, legality or enforceability of such provisions in any other jurisdiction will be affected.

**8. PROPER LAW**

- 8.1. This Deed shall be governed and construed in accordance with the laws in force in the State of Queensland.

**9. ENTIRE AGREEMENT**

- 9.1. This Deed contains the entire agreement between the parties with respect to the subject matter hereof.

**10. VARIATIONS**

- 10.1. This Deed may only be varied by a written document signed by or on behalf of the parties.

**11. COUNTERPARTS**

- 11.1. This Deed may be executed in any number of counterparts and all counterparts when executed and taken together will constitute this Deed.

**12. NOTICES**

- 12.1. Service of any notice under or relating to this Deed shall be sufficiently served:

- (a) if delivered personally to the party to be served;
- (b) if left at or sent by pre-paid registered post to:

- (i) the address of the party to be served as set out in the description of that party at the beginning of this Deed;
- (ii) the last known place of abode or business of the party to be served; or
- (iii) the registered office of any party to be served which is a company;

and in the case of posting such notice shall be deemed to have been duly served on the second day after such notice has been posted; or

- (c) if sent by facsimile transmission or electronic mail to the last known facsimile number or email address (as the case may be) of the party to be served and shall be deemed to have been duly served on the date the facsimile machine or computer displays or records confirmation that dispatch has been completed to the party to whom it was sent, unless the record shows a time later than 5.00 pm on that date, in which case service will be deemed to have taken place on the next Business Day.

**EXECUTED** as a Deed.

Executed by an Individual(s)

Name (s) : \_\_\_\_\_

SIGNATURE : \_\_\_\_\_

Executed by a Company / Trust / Partnership

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in accordance with section 127 of the  
*Corporations Act* 2001 in the presence of:

Name

Name

Position

Position