

CONFIDENTIALITY AGREEMENT
(Mutual exchange of technical and commercial information)

THIS AGREEMENT is made the [insert] day of [insert] 20[insert]

BETWEEN

- (1) **A&P Group LIMITED** a company registered in England and Wales (Company Number 05832836) whose place of business is at Wagonway Road, Hebburn, Tyne & Wear, NE31 1SP (“the COMPANY”); and
- (2) **[insert name]**, a company registered in [insert] (Company Number [insert]) and whose place of business is at [insert] (“the COUNTERPARTY”).

WHEREAS:

The PARTIES require access to certain information from each other and each has agreed to make the INFORMATION available to the other for the PERMITTED PURPOSE in accordance with the terms of this Agreement.

NOW IT IS AGREED as follows:

1. DEFINITIONS

“the COMPANY” means A&P Group Limited and its subsidiaries from time to time.

“AFFILIATE” means any subsidiary or holding company of the RECIPIENT or any other subsidiary of such holding company and “holding company” and “subsidiary” shall have the meanings given to them in Section 1159 of the Companies Act 2006;

“INFORMATION” means the terms and existence of this Agreement, the PERMITTED PURPOSE, any data, interpretations, presentations, documentation, correspondence, drawings, specifications, formulae, techniques, methods, records, reports, manuals and any and all information of whatever nature, whether of a commercial, technical, financial, operational, administrative, marketing or other nature relating to or in connection with the PROVIDER’S business and its interests made available to the RECIPIENT, whether written, unwritten or recorded in any medium (including those stored or generated electronically), for the PERMITTED PURPOSE; and

“PARTY” means the COMPANY or the COUNTERPARTY and “PARTIES” means both of them.

“PERMITTED PURPOSE” means the utilisation of the INFORMATION by the RECIPIENT for the purpose specified in Schedule 1 of this Agreement.

“PROVIDER” means the PARTY providing the INFORMATION or on whose behalf the INFORMATION is provided.

“RECIPIENT” means the PARTY receiving the INFORMATION.

2. USE OF INFORMATION

2.1 In consideration of the PROVIDER disclosing the INFORMATION to the RECIPIENT, the RECIPIENT agrees to keep the INFORMATION confidential and not at any time, for any reason whatsoever, to disclose the same or permit the same to be disclosed to a third party without the written consent of an authorised representative of the PROVIDER and such consent shall be restricted to the PERMITTED PURPOSE.

2.2 The confidentiality obligation in Clause 2.1 above shall not apply to INFORMATION which:

2.2.1 is already lawfully known to the RECIPIENT at the time of its disclosure by the PROVIDER; or

Review date: 21/05/2021			Document No: AP(Pol)014	PAGE: Page 1 of 5
ISSUED BY: HSEQ Department	APPROVED BY: HSEQ Department	DATE: 21/05/2018	Revision No: 1	This document is no longer controlled when copied from the network

- 2.2.2 is in the public domain; or
 - 2.2.3 becomes available to the RECIPIENT through a third party, otherwise than in breach of an obligation of confidence; or
 - 2.2.4 is required to be disclosed by the RECIPIENT to comply with any applicable law or the regulations of any recognised stock exchange.
- 2.3 Clause 2.2 above shall not relieve the RECIPIENT of the obligation to keep INFORMATION confidential merely because such INFORMATION is embraced by more general information in the public domain, or in the possession of the RECIPIENT; or because a combination of items of INFORMATION embrace individual items of INFORMATION that are in the public domain, or in the possession of the RECIPIENT, unless the combination itself and the principles derived there from are in the public domain or in the possession of the RECIPIENT.
- 2.4 The RECIPIENT may disclose the INFORMATION for the PERMITTED PURPOSE to:
- 2.4.1 its employees, in-house contractors (being members of the RECIPIENT’s staff not falling within the legal definition of “employees”), directors and officers and those of its AFFILIATES and potential sub-contractors; or
 - 2.4.2 a professional adviser; or
 - 2.4.3 a bank or financial institution which the RECIPIENT intends to involve in financing the PERMITTED PURPOSE.
- 2.5 Before disclosing any of the INFORMATION to any person under the provisions of Clause 2.4 above, the RECIPIENT shall obtain from that party an undertaking of confidentiality on the same terms mutatis mutandis as are contained in this Agreement. [The RECIPIENT shall give to the PROVIDER a list of those to whom disclosure has been made.] The RECIPIENT shall be liable to the PROVIDER for any and all loss or damage of whatever nature suffered by the PROVIDER as a result of or arising out of or in connection with the disclosure of the INFORMATION by any person to whom it has been disclosed directly or indirectly by the RECIPIENT.
- 2.6 The PROVIDER warrants that it is entitled to make the INFORMATION available to the RECIPIENT but unless expressly stated makes no representation and gives no warranty as to the quality, accuracy or completeness of the INFORMATION.
- 2.7 The RECIPIENT undertakes only to make copies of the INFORMATION to the extent necessary for the PERMITTED PURPOSE.
- 2.8 This Agreement shall not impose upon either PARTY any obligation to provide information (confidential or otherwise) to the other PARTY.
- 2.9 The RECIPIENT shall indemnify and hold harmless the PROVIDER from and against any action, claim or proceeding and any loss, damage, costs, expenses or liabilities arising out of any such action, claim or proceeding, brought by any third party pursuant to any unauthorized disclosure or use of any Confidential Information by the RECIPIENT or by any person for whom the RECIPIENT is responsible under this Agreement, or pursuant to any breach of any undertaking, warranty or representation contained in this Agreement.

3. NOTICE OF UNAUTHORIZED DISCLOSURE

The RECIPIENT shall immediately notify the PROVIDER of any actual, threatened or likely disclosure of the INFORMATION (not expressly permitted by this Agreement) by it, any of its employees (past or present), any of its AFFILIATES (past or present), any of its AFFILIATES’ employees (past or present), or any other person which (to the RECIPIENT’s knowledge) obtained the INFORMATION directly or indirectly from or through the RECIPIENT.

Review date: 21/05/2021			Document No: AP(Pol)014	PAGE: Page 2 of 5
ISSUED BY: HSEQ Department	APPROVED BY: HSEQ Department	DATE: 21/05/2018	Revision No: 1	This document is no longer controlled when copied from the network

4. DUTY TO RETURN INFORMATION

The INFORMATION shall remain the property of the PROVIDER. On the demand of the PROVIDER, or on the completion, or earlier termination of the PERMITTED PURPOSE, the RECIPIENT shall return forthwith to the PROVIDER, without limitation, all documents, drawings, records, data and all other materials containing INFORMATION and all copies thereof and the RECIPIENT shall destroy all material containing data derived from the INFORMATION and erase permanently all such data from all computer media.

5. INJUNCTIVE RELIEF

The RECIPIENT acknowledges that damages are not a sufficient remedy for any breach of this Agreement and the PROVIDER is entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the RECIPIENT, in addition to any other remedies available to the PROVIDER at law.

6. TERMINATION

This Agreement shall terminate on the expiry of six (6) years from the date hereof.

7. WAIVER

No failure or delay on the part of either PARTY hereto to exercise any right or remedy under this Agreement shall be constitute a waiver of such terms and conditions.

8. ASSIGNMENT

Neither PARTY may assign any rights or obligations under this Agreement without the prior written consent of the other PARTY, such consent not to be unreasonably withheld or delayed. This Agreement shall be binding upon and enure to the benefit of the PARTIES and their respective successors and permitted assigns.

9. SEVERABILITY

If individual provisions of this Agreement are determined by an authority with due jurisdiction to be legally invalid, void or unenforceable, such shall not affect the validity or enforceability of the remaining provisions of this Agreement. The PARTIES agree to replace the invalid, void or unenforceable provision with a valid and enforceable provision which comes as close as possible to the original provision as regards its commercial intent.

10. AMENDMENT AND VARIATION

This Agreement shall not be amended, modified, varied or supplemented except in writing and signed by the duly authorised representatives of the PARTIES.

11. GOVERNING LAW

This Agreement shall be governed by and construed and take effect in accordance with laws of England and Wales and both PARTIES hereby submit to the exclusive jurisdiction of the English Courts.

Review date: 21/05/2021			Document No: AP(Pol)014	PAGE: Page 3 of 5
ISSUED BY: HSEQ Department	APPROVED BY: HSEQ Department	DATE: 21/05/2018	Revision No: 1	This document is no longer controlled when copied from the network



IN WITNESS WHEREOF this Agreement has been executed on the day and year first above written.

For and on behalf of

A&P GROUP LIMITED

_____ (Signature)
_____ (Name in block capitals)
_____ (Title)
_____ (Date)

For and on behalf of

[INSERT NAME]

_____ (Signature)
_____ (Name in block capitals)
_____ (Title)
_____ (Date)

Review date: 21/05/2021			Document No: AP(Pol)014	PAGE: Page 4 of 5
ISSUED BY: HSEQ Department	APPROVED BY: HSEQ Department	DATE: 21/05/2018	Revision No: 1	This document is no longer controlled when copied from the network



SCHEDULE 1

The PERMITTED PURPOSE is as follows:-

[INSERT]

Review date: 21/05/2021			Document No: AP(Pol)014	PAGE: Page 5 of 5
ISSUED BY: HSEQ Department	APPROVED BY: HSEQ Department	DATE: 21/05/2018	Revision No: 1	This document is no longer controlled when copied from the network