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**STRICTLY PRIVATE AND CONFIDENTIAL**

**CONFIDENTIALITY AGREEMENT**

To:

[COMPANY NAME] Limited (registered in England with number [NUMBER])

[COMPANY TRADING/REGISTERED OFFICE ADDRESS]

(the “**Company**”)

[DATE]

Dear [NAME],

We understand that the Company is interested in discussing with Ideal Boilers Limited (registered in England with number 00322137) (“**Ideal Boilers**”) and/or Gledhill Building Products Ltd (registered in England with number 04784515)(“**Gledhill**”) certain business opportunities concerning the supply of goods and/or services (the “**Business** **Opportunity**”) and to evaluate or establish a potential business relationship with Ideal Boilers and/or Gledhill relating to this Business Opportunity (the “**Purpose**”).

In order for Ideal Boilers and/or Gledhill (as appropriate, referred to in this confidentiality agreement as “**We**”, “**Us**” or “**Our**”) and the Company (each a “**Party**” and together the “**Parties**”) to discuss the Business Opportunity and the Purpose, it is necessary for Us to disclose to the Company certain valuable confidential or proprietary financial and business data (“**Confidential** **Information**”, as defined further below). Any such disclosure of Confidential Information made by Us or on Our behalf shall be subject to and on the terms of this confidentiality agreement (the “**Agreement**”).

In connection with the foregoing, We and the Company hereby agree as follows:

1. **Confidential Information, definitions & interpretation**
   1. “**Confidential Information**” shall in this Agreement mean all confidential information relating directly or indirectly to the Business Opportunity and/or the Purpose which We (or any of Our Representatives) or any of Our Group Companies (or their Representatives) directly or indirectly discloses, or makes available, to the Company (or its Representatives) or any of its Group Companies (or their Representatives) before, on or after the date of this Agreement. This includes:
      1. the existence of the Business Opportunity, the existence and terms of this Agreement and of the negotiations and discussions between the Parties and the status of the same; and
      2. all confidential or proprietary information relating to:

(i) Our or any of Our Group Companies’ business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities; and

(ii) Our or any of Our Group Companies’ operations, processes, product information, know-how, technical information, designs, trade secrets or software;

* + 1. any information, findings, data or analysis derived from Confidential Information; and
    2. any other information that is identified as being of a confidential or proprietary nature;

BUT EXCLUDING any information which:

* + 1. at the time of disclosure is in the public domain, or thereafter enters the public domain, other than as a direct or indirect result of the information being disclosed by the Company (or its Representatives) or by any of the Company's Group Companies (or their Representatives) in breach of this Agreement; or
    2. is in the lawful possession of the Company at the date of this Agreement; or
    3. is acquired by the Company from a third party on a non-confidential basis provided such third party is not, to the knowledge of the Company thereby breaching an obligation of confidence in respect of that information; or
    4. the Company can show, to Our reasonable satisfaction, was acquired by the Company through its own independent research/development; or
    5. the Parties agree in writing is not confidential.
  1. **Other definitions**: For the purposes of this Agreement:
     1. “**Group**” means in relation to a company, that company, any subsidiary or any holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company (and “**Group Company**” means in relation to a company, any member of its Group);
     2. “**Representatives**” means the directors, officers, employees and professional advisers of the relevant Party or of the relevant Party’s Group Companies (as appropriate); and
     3. “**Intellectual Property**” means patents, utility models, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), semiconductor topography rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
  2. **Interpretation**. In this Agreement:
     1. a reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
     2. any words following the terms “**including**”, “**include**”, “**in particular**”, “**for example**” or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
     3. a reference to “**writing**” or “**written**” includes email;
     4. a reference to a “**company**” shall include any company, corporation or other body corporate, wherever and however incorporated or established;
     5. a reference to a “**holding company**” or a “**subsidiary**” means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006; and
     6. any obligation on a Party not to do something includes an obligation not to allow that thing to be done.

1. **Confidentiality** 
   1. Subject to paragraph 3 of this Agreement, in return for Us or Our Representatives, (or Our Group Companies or their Representatives) making Confidential Information available to the Company, the Company shall:
      1. treat and keep all Confidential Information it receives as secret and confidential;
      2. take all necessary and reasonable steps to maintain the confidentiality and secrecy of the Confidential Information;
      3. not directly or indirectly announce, communicate, disclose or make available (whether in writing or orally or in any other manner) any Confidential Information to any other person;
      4. not use or exploit the Confidential Information in any way except for the Purpose; and
      5. not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Purpose. Any such copies, reductions to writing and records shall be Our property.
   2. The Company shall establish and maintain adequate security measures (which shall be consistent with good commercial practice and which shall be no less extensive than the Company applies to its own sensitive confidential information) to safeguard the Confidential Information made available from unauthorised access or use.
2. **Exceptions**
   1. The restrictions contained in paragraph 2.1(c) of this Agreement shall not apply to the disclosure of Confidential Information:
      1. by the Company to any of its Representatives, Group Companies or their Representatives (“**Authorised Persons**”) who have a reasonable need to receive and consider Confidential Information for the Purpose, provided that the Company will ensure that those Authorised Persons to whom any Confidential Information is disclosed are informed of the provisions of this Agreement and shall procure that they each comply with the obligations in paragraph 2 as if they were the Company; or
      2. by the Company to the extent required by any court, tribunal, administrative agency, other governmental body, or applicable regulatory organisation in any jurisdiction (but subject to paragraph 3.3).
   2. The Company shall be liable for the actions or omissions of all Authorised Persons in relation to the Confidential Information as if they were the actions or omissions of the Company.
   3. If the Company is requested or required to disclose Confidential Information as permitted by paragraph 3.1(b), the Company shall, insofar as it is lawful to do so, provide Us with as much prior notice as possible of such request or requirement with the intent that We may seek any appropriate means to prevent or minimise the disclosure. If the Company is unable to inform Us before Confidential Information is disclosed, the Company shall, insofar as it is lawful to do so, inform Us immediately after the disclosure of the full circumstances of the disclosure and the information that has been disclosed.
3. **Return / destruction of Confidential Information**
   1. If requested by Us at any time by notice in writing to the Company, and in any event if the Company ceases to be interested in the Purpose, the Company shall (and shall procure that all Authorised Persons shall):
      1. destroy or return to Us (at Our option) all documents (which shall include any document, electronic file, note, extract, analysis, study, plan, compilation or any other way of representing or recording or recalling information, together “**Documents**”) containing, reflecting, incorporating or based on any Confidential Information;
      2. to the fullest extent technically practicable, erase all Confidential Information from its computer and communications systems and devices used by it, or which is stored in electronic form, and from systems and data storage services provided by third parties; and
      3. certify in writing to Us that it has complied with the requirements of this paragraph 4.1.
   2. The obligation in paragraph 4.1 to return or destroy Confidential Information shall not include an obligation to return or destroy any:
      1. Confidential Information that is required to be maintained by applicable law, or to satisfy the requirements of a regulatory authority or body of competent jurisdiction or the rules of any applicable listing authority or stock exchange; or
      2. Documents that contain insignificant extracts from, or references to, Confidential Information.
   3. Any Document which is retained pursuant to paragraph 4.2 or which has not, for any other reason, been returned or destroyed shall, subject to paragraph 5.3, remain confidential after this Agreement has terminated and the Company agrees that (except as required under paragraph 4.2) no step will be taken to access or recover such Confidential Information from any computer, communications system, storage or device containing such information.
4. **Ending discussions and duration of confidentiality obligations**
   1. The Agreement starts on the date of this Agreement and continues for 3 (three) years from this date, subject to 5.2.
   2. For the avoidance of doubt, either Party shall be free to terminate discussions with the other in relation to the Purpose at any time by notifying the other Party in writing of the termination of this Agreement.
   3. Subject to any other express term of this Agreement, the obligations undertaken by the Parties under this Agreement shall continue for the duration of the Agreement and for 7 (seven) years from the date of termination this Agreement.
   4. The end of discussions relating to the Purpose shall not affect any accrued rights or remedies to which either Party is entitled.
5. **Reservation of Intellectual Property and other rights** 
   1. We reserve all rights in the Confidential Information. The disclosure of Confidential Information by Us or on our behalf does not give the Company, its Group Companies or or any other person any licence or other right in respect of any Confidential Information beyond the rights expressly set out in this Agreement.
   2. Without prejudice to the generality of paragraph 6.1, the Company acknowledges that We (and where appropriate Our Group Companies) retain ownership and full title to any Intellectual Property that may vest in our or their existing business and/or existing products, and that no rights, licences or authorisations in respect of that Intellectual Property are granted as a result of this Agreement or as a result of the use of the Confidential Information under this Agreement. The Company acknowledges that all such Intellectual Property rights are reserved for Us (and where appropriate Our Group Companies) which has the benefit of such rights as at the date of this Agreement.
6. **Acknowledgement regarding Representations**
   1. The Company is responsible for making its own decisions based on the Confidential Information. The Company acknowledges that We do not make any representation or warranty (express or implied) about the accuracy or completeness of, and will have no liability for the use by the Company, its Group Companies or any other person of the Confidential Information.
   2. The disclosure of Confidential Information shall not form any offer by, or representation or warranty on Our part to enter into any further agreement with the Company in relation to the Purpose.
7. **No obligation to disclose or continue discussions**

Nothing in this Agreement shall impose an obligation on either Party to continue discussions or negotiations in connection with the Purpose, or any obligation on Us, or any of Our Group Companies, to disclose any information (whether Confidential Information or otherwise) to the Company.

1. **Remedies & inadequacy of damages** 
   1. Without affecting any other rights or remedies that We or Our Group Companies may have, the Parties acknowledge and agree that damages alone would not be an adequate remedy for any breach by the Company of any of the provisions of this Agreement and/or breach of confidence. Accordingly, We and each member of Our Group and Representatives will be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and no proof of special damages will be necessary for the enforcement of such remedies. Furthermore, the Company acknowledges and agrees that it will not raise any objection to the application by Us or any of Our Group Companies or Our Representatives for any such remedies.
   2. The rights, powers and remedies provided in this Agreement are cumulative and are in addition to any rights, powers and remedies provided by law.
2. **Our rights and liability**
   1. Unless expressly provided otherwise, the liability of each of Ideal Boilers and Gledhill for their obligations under this Agreement shall be several and extend only to any loss or damage arising out of their own breaches.
   2. Each of Ideal Boilers and/or Gledhill shall be entitled to enforce any of Our rights and remedies arising under the terms of this Agreement.
3. **General**
   1. **Assignment and other dealings**. Neither Party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.
   2. **No partnership or agency**. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any Party the agent of the other Party, or authorise a Party to make or enter into any commitments for or on behalf of the other Party. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.
   3. **Entire agreement**
      1. This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
      2. Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
   4. **Variation**. No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).
   5. **Waiver**. No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
   6. **Severance** 
      1. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
      2. If any provision of part-provision of this Agreement is deemed deleted under paragraph 11.6(a), the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
   7. **Notices**
      1. Any notice given to a Party under or in connection with this Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
      2. Any notice shall be deemed to have been received (i) if delivered by hand, on signature of a delivery receipt; or (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting or at the time recorded by the delivery service.
      3. This paragraph does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
      4. A notice given under this Agreement is not valid if sent by fax or email.
   8. **Third Party rights** 
      1. Unless it expressly states otherwise, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
      2. The rights of the Parties to rescind or vary this Agreement are not subject to the consent of any other person.
   9. **Counterparts**. This Agreement may be executed in any number of counterparts, and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall together constitute but one and the same instrument.
   10. **Governing law**. This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
   11. **Jurisdiction**. Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

Please countersign the enclosed copy of this Agreement, and return this to us.

Yours sincerely

…Claire Scrivens…………………………………….

Duly authorised, for and on behalf of

**IDEAL BOILERS LIMITED** and **GLEDHILL BUILDING PRODUCTS LIMITED**

Date:

Accepted and agreed.

…………………………………………………………….

Duly authorised, for and on behalf of

[COMPANY NAME] **LIMITED**

Date: [INSERT DATE]