
CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

Between

Ngale Africa Exports CC t/a Ngale Africa
(Registration Nr. 1999/032279/23)

And

_____)
(Registration Nr. _____)

Both **Ngale Africa Exports CC** and _____ hereinafter
individually or collectively referred to as the "Party" or the "Parties".

1. PARTIES

The Parties to this Agreement are:

1.1 **Ngale Africa Exports CC**, a company duly registered in terms of the laws of the Republic of South Africa, Registration Number: **1999/32279/23**; with its principal place of business at **74 Disseldoring Street, Roodekrans View Ext.6, Roodepoort, Gauteng, South Africa**; Telephone Number: **+27 86 111 5124**; Facsimile Number: **+27 86 590 6746**; hereinafter referred to as "**Ngale Africa**" and

1.2 _____, a company duly registered in terms of the laws of the _____, Registration Number: _____; with its principal place of business at _____; Telephone Number: _____; Facsimile Number: _____; hereinafter referred to as "_____"

2. INTRODUCTION

The Parties record that they intend to exchange, with each other, intellectual property, proprietary and trade secret information concerning Information Technology and business practices which each Party considers proprietary information. Such exchanges shall be covered by the terms of this Agreement.

3. HEADS OF AGREEMENT

The Parties agree that:

3.1 all information of whatever kind or nature which the receiving Party obtains from the disclosing Party and which is recorded in visible form (or communicated orally) shall be regarded and treated as confidential and the property of the disclosing Party by the receiving Party and shall, for the purpose of this Agreement, be referred to as "proprietary information".

3.2 for a period of 5 (five) years from the date of disclosure of any proprietary information in terms of this Agreement or any other agreement between the same Parties which may in future replace this Agreement (including similar confidentiality provisions concerning

proprietary information which shall also apply to the proprietary information exchanged under this Agreement) whichever is the sooner, the parties each undertake:

- 3.2.1 to keep the other party's proprietary information confidential;
- 3.2.2 not to make any disclosure of the disclosing Party's proprietary information except solely for the purpose contemplated in this Agreement unless such further disclosure or use of proprietary information is specifically authorised in writing by the disclosing Party;
- 3.2.3 to protect the disclosing Party's proprietary information whether in storage or in use with the same degree of care as the receiving Party uses to protect its own proprietary information against public disclosure but in no case with any less degree than reasonable care; and
- 3.2.4 not to disclose the disclosing Party's proprietary information to any personnel of the receiving Party other than those for whom such knowledge is essential for the purpose contemplated in this Agreement and such disclosure to them shall be made only on conditions of strict confidentiality

3.3 the obligations of this Agreement shall not apply to proprietary information which:

- 3.3.1 was in the public domain at the time it was disclosed; or
- 3.3.2 becomes part of the public domain without breach of this Agreement; or
- 3.3.3 is disclosed with the written approval of the disclosing Party; or
- 3.3.4 is disclosed after 5 (five) years from receipt of the information; or
- 3.3.5 was independently developed by the receiving Party; or
- 3.3.6 is or was disclosed by the disclosing Party to a third party without restriction; or
- 3.3.7 is lawfully obtained by the receiving Party from a third party with full rights of disclosure; or
- 3.3.8 is disclosed pursuant to the provisions of a court order.

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- 3.4 except as expressly herein provided, this Agreement shall not be construed as granting or confirming, either expressly or impliedly any rights, licences or relationships by the furnishing of proprietary information pursuant to this Agreement.
- 3.5 All information including, sales prospects, sales techniques, demonstration materials, methodologies, procedures, software, documentation, drawings, specifications, assembly drawings, procurement data packs and other documents submitted by the disclosing party to the receiving party shall remain the property of the disclosing party. If either party elects not to pursue the business contemplated by this Agreement each party shall return to the other such information and all copies thereof containing the proprietary information.
- 3.6 the return of the documentation under clause 3.5 above shall not be deemed to release either Party from its obligations contained in this clause 3.
- 3.7 each Party shall use every reasonable endeavour to ensure that its personnel and any other persons to whom disclosure has been specifically authorised in accordance with the provisions of clause 3.2 above, shall observe the obligations contained herein in respect of proprietary information disclosed to them as if such personnel and others persons were a party to this Agreement.
- 3.8 this Agreement shall, for all intents and purposes, be governed by, executed and interpreted in accordance with the laws of the Republic of South Africa and the Parties respectively consent to the jurisdiction of the Supreme Court of South Africa (Gauteng Provincial Division) for all and any proceedings arising out or in connection with this Agreement.
- 3.9 nothing contained in this Agreement shall, by express grant, implication, estoppel or otherwise, create in either Party any right, title, interest, or license in or to the inventions, patents, technical data, computer software, software documentation, sales prospects, sales techniques, demonstration materials, methodologies, procedures, drawings, specifications, assembly drawings, procurement data packs and other documents of the other Party.
- 3.10 nothing contained in this Agreement shall grant to either Party the right to make commitments of any kind for or on behalf of the other Party without the prior written consent of the other Party.
- 3.11 should either Party commit a breach of its obligations in terms of this Agreement and fail to remedy such breach within 14 (fourteen) days from the date of receipt of written

notice calling upon it to remedy such breach, then and in such event, the aggrieved Party may cancel this Agreement or claim specific performance by the other party of all its obligations in terms of this Agreement in either case without prejudice to the aggrieved Party's rights to claim damages. In addition the aggrieved Party may apply to Court for an interdict restraining the other Party and any associated company of such party from using, disclosing or exploiting the proprietary information of the aggrieved Party and claim such damages as it may sustain as a result of such disclosure. The Parties record and agree, however, that the aggrieved Party shall be entitled to claim such actual damages as it may suffer but which damages shall not include consequential losses or damages.

3.12 The Parties respectively choose domicilia citandi et executandi for all purposes hereunder at:

3.12.1 **Ngale Africa:**

P O Box 21316, Helderkruin, 1733

Tel : +27 86 111 5124

Fax : +27 86 590 6746

3.12.2 _____ :

Tel : _____

Fax : _____

3.12.3 Any notice required to be given in terms of this Agreement shall be validly given if delivered by hand to the addressee's domicilium address or if sent by prepaid registered mail to the addressee's domicilium address in which event it shall be deemed to have been received by the addressee 10 (ten) days after having so been posted or if sent by facsimile, it shall be deemed to have been received by the addressee on the date of transmission of such facsimile, Saturdays, Sundays and Public Holidays excluded. All legal notices shall be sent by prepaid registered mail.

4. GENERAL TERMS AND CONDITIONS

4.1 This Agreement contains the entire agreement between the Parties and no variation or consensual cancellation thereof shall be of any force or effect unless reduced to writing and signed by both Parties.

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- 4.2 No indulgence granted by any Party (the "Grantor") or failure to exercise such Party's rights shall constitute a novation or waiver of the Grantor's right nor prevent the Grantor from insisting on strict compliance by the other Party with its obligations in terms of this Agreement.
- 4.3 In the event of any term or condition contained in this Agreement being or becoming invalid or unenforceable for whatsoever reason such offending term or condition shall be severed from this Agreement and the remaining terms and conditions shall be binding on the Parties hereto.
- 4.4 The rights and obligations of the Parties in terms of this Agreement shall not be ceded, nor assigned to any third party without the prior written consent of the other Party to this Agreement.
- 4.5 In the event of cancellation or termination of this Agreement for any reason whatsoever, the stipulations of clause 3.2 shall survive such cancellation or termination.
- 4.6 The Parties agree that certain Memoranda of Understanding for specific sales opportunities may be concluded and that the terms and conditions of this Agreement shall govern any exchange of information and shall supercede any confidentiality term or condition in all Memoranda of Understanding concluded between the Parties, except where the Parties agree otherwise in writing.

5. SIGNATURES

Signed at _____ On this _____ day of _____ 20 _____

Designation **Signature** **Date**

(Company Name)
Authorisation Name &
Surname

Witness – Name and **Designation** **Signature** **Date**
Surname

For and on behalf of _____, being duly authorised thereto

Signed at _____ On this _____ day of _____ 20 _____

Ngale Africa **Designation** **Signature** **Date**
Authorisation Name &
Surname

Witness – Name and **Designation** **Signature** **Date**
Surname

For and on behalf of **Ngale Africa**, being duly authorised thereto