



Confidentiality Agreement



Confidentiality Agreement

Mutual exchange of information

This Confidentiality Agreement (“**Agreement**”) is made and entered into this

_____ of _____, _____ between:
Carraro Spa acting on own account and on behalf of all companies of the Carraro Group, an Italian company with registered office in Campodarsego (PD), via Olmo 37; and

_____ with registered office in

_____ (each party shall be also referred to as “**Party**” and, jointly, “**Parties**”).

Background

Each Party wishes to disclose to the other Party Confidential Information in order to evaluate a possible business relationship focused on/regarding

_____ (the “**Purpose**”), and each Party wishes to ensure that the other Party maintains the confidentiality of its Confidential Information.

In consideration of the benefits to the Parties of the disclosure of the Confidential Information it is agreed as follows.

1. Definitions

In this Agreement the following definitions will apply:

1.1 “Confidential Information”: all confidential information (however recorded, preserved or disclosed) which has been, now or at any time after the date of this Agreement, disclosed or made available by the Discloser to the Recipient or to the Recipient’s Group or to any other person at the request of the Recipient, including but not limited to:

- a) the fact that the Discussions are taking place and the status of those Discussions;
- b) the existence of this Agreement and its content;
- c) any information that would be commonly regarded as confidential relating to:
 - I. the business, affairs, customers, clients, suppliers, business plans, intentions or market opportunities of the Discloser or of the Discloser’s Group; and
 - II. the operations, processes, product information, designs, know-how, intellectual property, trade secrets or software of the Discloser or of the Discloser’s Group;
- d) any information that has commercial value to the Discloser and which, if disclosed to a competitor of the Discloser, is likely to cause real or significant damage to the Discloser or to the Discloser’s Group including any trade secrets, intellectual property, know-how, technical information, designs, specifications, drawings and processes used for the manufacture of products and equipment;
- e) any information or analysis derived from Confidential Information, except for any information that:
 - I. is or becomes generally available to the public other than as a result of its disclosure; or

- II. was available to the Recipient free of any restriction as to its use or disclosure prior to it being so disclosed or made available by the Discloser; or

- III. the Recipient is able to prove from its records to have been independently developed by it without reference to any information it has received from the Discloser pursuant to this Agreement; or

- IV. becomes available to the Recipient from a source other than the Discloser, which source is not bound by any obligation of confidentiality in relation to such information;

1.2 “Discloser”: either Party – when it or its Representatives or companies of its Group – discloses or makes available directly or indirectly Confidential Information to the other Party or that other Party’s Representatives or companies of its Group.

1.3 “Discussions”: discussions and negotiations between the Parties relating to the Purpose.

1.4 “Group”: in relation to a Party, any subsidiary and holding company of that Party and any subsidiary of such holding company from time to time.

1.5 “Recipient”: either Party when it – or its Representatives or companies of its Group – receives or obtains directly or indirectly the Confidential Information of the Discloser;

1.6 “Representative”: in relation to any Party, any adviser, director, officer, employee and consultant of that Party or any such person of a company of its Group.

2. Obligations of confidentiality

2.1 The Recipient shall keep the Discloser’s Confidential Information secret and confidential.

2.2 The Recipient may only disclose the Discloser’s Confidential Information to those of its Representatives who need to know this Confidential Information for the Purpose, provided that it informs these Representatives of the confidential nature of the Confidential Information before the disclosure and, at all times, it is responsible for these Representatives’ compliance with the obligations set out in this Agreement.

2.3 The Recipient shall, and shall procure that its Representatives shall:

- a) not use or exploit the Confidential Information in any way except for the Purpose;
- b) not disclose or make available the Confidential Information in whole or in part to any third party, except as expressly permitted by this Agreement;
- c) not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Purpose (and any such copies, reductions to writing and records shall be the property of the Discloser);
- d) establish and maintain adequate security measures (including any reasonable security measures proposed by the Discloser from time to time) to safeguard the Confidential Information from unauthorised access or use;
- e) apply to the Confidential Information at least the same degree of care as the Recipient applies to its own Confidential Information;
- f) shall not file for statutory protection, such as trademark or patent protection, for any intellectual property conceived as a result of using or accessing Confidential Information received from Discloser (“Derived Intellectual Property”) without prior consent from Discloser. In any case the Recipient hereby grants Discloser and Discloser’s Group a perpetual, royalty-free, world-wide, non-exclusive right to make, have made, use,

sell, offer to sell, and import the Derived Intellectual Property..

2.4 All Confidential Information shall remain the property of the Discloser. Each Party reserves all rights in its Confidential Information. No rights, including, but not limited to, intellectual property rights, in respect of a Party's Confidential Information are granted to the other Party and no obligations are imposed on the Discloser other than those expressly stated in this Agreement.

2.5 Neither Party nor any of their respective Representatives make any representation or accept any responsibility or liability whatsoever for the accuracy or completeness of the Confidential Information.

2.6 The disclosure of Confidential Information by the Discloser shall not form any offer by, or representation or commitment on the part of the Discloser to enter into any further agreement in relation to the Purpose.

3. Disclosure required by law

If the Recipient is required to disclose Confidential Information pursuant to the order of any court, police, governmental agency or similar authorities, the Recipient will first notify the Discloser of such order and cooperate with the Discloser to seek a protective order. In any case the Recipient will disclose only the portion of the Confidential Information that it is legally required to and it will exercise all reasonable efforts to obtain reliable assurances that a confidential treatment will be accorded to the remaining Confidential Information.

4. Return of information

At the request of the Discloser, the Recipient shall:

- a) destroy or return to the Discloser all documents and materials (and any copies) containing, reflecting, incorporating, or based on the Discloser's Confidential Information;
- b) erase all the Discloser's Confidential Information from its computer systems or which is stored in electronic form (to the extent possible); and
- c) certify in writing to the Discloser that it has complied with the requirements of this clause, provided that a Recipient may retain documents and materials containing, reflecting, incorporating, or based on the Discloser's Confidential Information to the extent required by law or any applicable governmental or regulatory authority and to the extent reasonable to permit the Recipient to keep evidence that it has performed its obligations under this Agreement. The provisions of this Agreement shall continue to apply to any such documents and materials.

5. Remedies

Without prejudice to any other rights and remedies a Party may have, each Party agrees that the Confidential Information is valuable and that damages may not be an adequate remedy for any breach of this Agreement and the Discloser shall be entitled without proof of special damage to the remedies of an interim injunction or other equitable relief including damages for any actual or threatened breach of this Agreement by the Recipient.

6. Duration

The term of this Agreement shall continue for a period of four (4) years from the date hereof. It remain understood that the non-disclosure and non-use obligations under this Agreement shall survive with respect to the Confidential Information as long as such Confidential Information retains its status of trade secret or is qualified as confidential under applicable law.

7. Miscellanea

7.1 The Discloser warrants that it has the right to disclose its Confidential Information to the Recipient and to authorise the Recipient to use such Confidential Information for the Purpose.

7.2 No failure or delay by either Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof. The provisions of this Agreement shall continue in effect notwithstanding any decision not to proceed with the Discussions or any return or destruction of Confidential Information.

7.3 This Agreement constitutes the whole agreement between the Parties and supersedes all previous agreements between the Parties relating to its subject matter. Nothing in this clause shall limit or exclude any liability for fraud or for fraudulent misrepresentation.

7.4 No variation of this Agreement shall be effective unless it is in writing and signed by each of the Parties.

7.5 This Agreement shall not be construed to create a partnership, joint venture or the relationship of principal and agency between the Parties.

7.6 If any term or provision in this Agreement shall be held to be illegal or unenforceable in whole or in part under any enactment or rule of law, such term or provision shall to that extent be deemed not being part of this Agreement but the enforceability of the remainder of this Agreement shall not be affected.

7.7 This Agreement shall be governed by and construed in accordance with the laws of the Republic of Italy. Should a claim or a dispute not be resolved friendly, such dispute shall be settled by the Court of Padova, Italy, determined without reference to principles of conflict of laws.

Carraro Spa

Signature _____

Name _____

Title _____

Partner

Signature _____

Name _____

Title _____