

NON-CIRCUMVENTION AND NON-DISCLOSURE AGREEMENT

(NCNDA)

This Agreement is made on the date of the last signature below (the “Effective Date”) between:

- (1) the Seller, identified in the signature block below (the “Seller”);
- (2) the Intermediary or Intermediaries identified in the signature blocks below (together the “Intermediaries” and each an “Intermediary”); and
- (3) the Buyer, identified in the signature block below (the “Buyer”),

together the “Parties” and each a “Party”. Each Party shall procure that its Affiliates, directors, officers, employees, agents and representatives comply with this Agreement as if they were a party to it, and is liable for their acts and omissions. “Affiliate” means an entity that controls, is controlled by, or is under common control with a Party. “Business Day” means a day other than a Saturday, Sunday or public holiday in England.

BACKGROUND

The Intermediaries have introduced the Buyer to an opportunity to purchase branded surplus stock (footwear, apparel and accessories) offered by the Seller (the “Transaction”). Commercial terms, including product detail, quantities and pricing, will be set out in separate offer and contract documents issued after signature of this Agreement, and the Intermediaries’ remuneration is or will be set out in one or more separate fee agreements or, failing that, in the Default Commission Rate stated on the signature page. This Agreement protects the confidential information exchanged and the business introductions made in connection with the Transaction.

IT IS AGREED

1. Confidentiality. No Party shall disclose to any third party any Confidential Information received from another Party without that Party’s prior written consent, and each Party shall use Confidential Information solely for the purpose of evaluating and implementing the Transaction and any related transaction under this Agreement, and for no other purpose. “Confidential Information” means all non-public information disclosed in connection with the Transaction, including the identity and contact details of the Seller, the Buyer, suppliers, brands, sources and other contacts; pricing, quantities, commissions and payment terms; and the existence and content of the Parties’ discussions.
2. Exclusions. Confidential Information does not include information which: (a) is or becomes public other than through breach of this Agreement; (b) the receiving Party can show it lawfully held before disclosure; or (c) the receiving Party develops independently without use of the disclosing Party’s information. A Party may share Confidential Information with its professional advisers bound by a duty of confidence, and may disclose it where required by law, a court or a regulator, provided it gives the disclosing Party prompt written notice where lawful to do so.
3. Non-circumvention. No Party shall, directly or indirectly, contact, deal with, or enter into any transaction with any person or entity introduced to it by another Party in connection with the Transaction — whether the introduction occurred before or after the Effective Date — except through the introducing Party, and shall not take any step intended to avoid or reduce any fee or commission payable to an Intermediary. In particular, the Buyer shall deal with the Seller, and the Seller shall deal with the Buyer, only through the Intermediaries, unless each Intermediary gives prior written consent to direct dealing. This clause does not restrict dealings within an active trading relationship in goods of the same category which the restricted Party can demonstrate by written records of transactions predating the Effective Date.
4. Related transactions. Clause 3 applies to the Transaction and to any further purchase, sale or supply between the Buyer (or its Affiliates) and the Seller (or its Affiliates) entered into during the Term or within two (2) years after its expiry, where the relationship arose from the Intermediaries’ introduction, whether or not the goods are of the same brand or category.

5. Notification. If a Party is approached, other than through the introducing Party, by any person or entity introduced to it under this Agreement, it shall notify the introducing Party in writing within five (5) Business Days, giving reasonable detail of the approach.
6. Term. This Agreement takes effect on the Effective Date and continues for three (3) years (the "Term"). Obligations relating to introductions made or Confidential Information disclosed during the Term survive its expiry for a further two (2) years, and confidentiality obligations in respect of information constituting a trade secret continue for so long as it remains one.
7. Remedies. If a Party breaches clause 3 (including as extended by clause 4), it shall pay, as a debt, an amount equal to the aggregate commission or fee that would have been payable to the Intermediaries on the circumvented transaction, being the amount agreed in any applicable fee agreement or, if none, the Default Commission Rate stated on the signature page applied to the gross value of the circumvented transaction, apportioned between the Intermediaries as agreed between them or otherwise equally, together with interest at 4% per annum above the Bank of England base rate from the date the debt falls due until payment, and the reasonable costs of recovery (including legal costs). Payment of the aggregate amount discharges the breaching Party's liability under this clause in respect of that transaction. The Parties agree this is a genuine pre-estimate of loss and not a penalty. Where the Seller knowingly participates in a transaction that circumvents an Intermediary, the Seller and the Buyer are jointly and severally liable for that amount. Damages alone may not be an adequate remedy for breach of this Agreement, and the affected Party may seek injunctive or other equitable relief in addition to damages.
8. Return of information. On written request, or on expiry of the Term, each Party shall return or destroy the Confidential Information of the requesting Party, save for copies required by law or by bona fide internal compliance policy, which remain subject to clause 1.
9. Compliance. Each Party warrants that it complies, and will comply in performing this Agreement, with all laws applicable to it, including anti-bribery, anti-money-laundering and trade sanctions laws.
10. No obligation; no partnership. This Agreement does not oblige any Party to enter into the Transaction or any other transaction, and does not create any partnership, agency or joint venture between the Parties. Nothing in this Agreement excludes liability for fraud.
11. Notices. Notices under this Agreement shall be in writing and sent by email to the address in the recipient's signature block (or any replacement address notified in writing), and are deemed received on the next Business Day after sending, absent a delivery failure notification.
12. General. This Agreement is the entire agreement between the Parties on its subject matter and supersedes all prior discussions on it, provided that nothing in this Agreement supersedes, varies or limits any separate fee or commission agreement between any of the Parties, which remains in full force according to its terms. This Agreement may be varied only in writing signed by all Parties. If any provision is held unenforceable, the remainder continues in full force; and if any restriction in this Agreement is held to exceed what is reasonable to protect the legitimate interests of the Parties but would be valid if reduced in scope or duration, it applies with the minimum reduction necessary to make it enforceable. No Party may assign this Agreement without the written consent of the others. A person who is not a Party has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This Agreement may be signed in counterparts, and signatures exchanged by email or other electronic means are binding.
13. Governing law and jurisdiction. This Agreement and any dispute or claim arising out of or in connection with it (including non-contractual disputes) are governed by the laws of England and Wales, and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

SIGNED by the Parties on the dates set out below.

THE SELLER

Company name (or full name, if an individual):	
Company registration no (if applicable):	
Signatory name:	
Position:	
Registered address:	
Email (for notices):	
Signature:	
Date:	

INTERMEDIARY 1

Full Name:	
Signature:	
Date:	

INTERMEDIARY 2

Full Name:	
Signature:	
Date:	

THE BUYER

Company name (or full name, if an individual):	
Company registration no (if applicable):	
Signatory name:	
Position:	
Registered address:	
Email (for notices):	
Signature:	
Date:	