

NON DISCLOSURE AGREEMENT

A “non-disclosure” or “confidentiality” agreement is a low cost way of protecting business ideas. It is a contract with a third party to whom information is to be disclosed to protect against unauthorised disclosure to others or abuse.

For example, there may be business idea or product design which it is desired to explore with third parties or a business may wish to give a sneak preview or to advise their suppliers, resellers, employees etc. The non disclosure agreement protects against such the recipients making unauthorised disclosure and taking advantage of the intellectual property.

A non disclosure agreement is a legal contract with a third party not to disclose specific information which is shared for a particular purpose. This could relate to intellectual property, a trading relationship, a customer relationship etc. A non disclosure agreement can cover trade secrets, technical drawings, business plans, consumer prospects list etc.

Information may qualify as a trade secret or as protectable confidential information when it is not known in the public domain and is valuable only so long as it remains secret.

Employees are under an implied duty not to use trade secrets in a manner that will harm business. However, for various reasons it is best to get this implied duty in a more tangible and enforceable form with specific limits in an employee contract.

Confidentiality agreements will often be used in respect of mergers and acquisitions negotiations or in the context of a commercial relationship. A two way confidentiality agreement may apply where parties are entering into a joint venture or other agreement.

Terms typically covered will include the following:

- the principle to keep certain specified information confidential
- details of the owner of the intellectual property/information
- details of the parties who are restricted. This will typically be the recipient and persons under its control, employees, etc

It is possible to insert a compensation clause for specified loss in the event of breach

The agreement should specify how the information can be used and should specify restrictions on use e.g. preventing copying. Provisions may be included regarding keeping data physically secure and restrictions on whom it may be shared with.

The agreement should be carefully adapted for the situation. If it is properly constructed it may be possible to obtain a Court injunction to restrict disclosure. It may also be possible to obtain damages for breach.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.