

Confidentiality Deed

Warpforge Ltd
(the **Warpforge Parties**)

(together the **Recipient**)

Confidentiality Deed

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Details

Date _____

Parties

Name **Warpforge Ltd ACN 611 104 575**
Notice details 9/330 Churchill Avenue, Subiaco 6008 WA, Australia
Email: harman.pabla@warpforge.com
Attention: Harman Pabla

(the **Warpforge Parties**)

Name _____
Notice details _____
Email: _____

Name _____
Notice details _____
Email: _____

(together the **Recipient**)

Background

- A The Warpforge Parties collectively own considerable intellectual property including but not limited to a range of carbon fibre based formulations, manufacturing and applications across many industries.
- B The Warpforge Parties are currently in highly confidential negotiations and business dealings with parties, and are also in the process of advancing the testing, manufacturing and commercialisation of some of their intellectual property.
- C The Recipient is looking at the Business and Intellectual Property with regard to the possibility of investing in or facilitating investment in Warpforge Parties and will be provided with confidential information concerning the intellectual property of the Warpforge Parties in order for them to carry out their own due diligence.
- D The Warpforge Parties wish to provide the Recipient with certain confidential information relating to them but will only do so on the basis the Recipient treat any site visit and the information provided in the strictest confidence.
- E Permitted Purpose is to assess the opportunity with a view to the Recipient investing in and or facilitating investment in the Warpforge Parties.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this deed:

Business Day means:

- (a) for receiving a notice under clause 9, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the notice is received; and
- (b) for all other purposes, a day that is not a Saturday, Sunday, bank holiday or public holiday in Western Australia, Australia.

Business Hours means from 9.00am to 5.00pm on a Business Day.

Corporations Act means the *Corporations Act 2001* (Cth).

Confidential Information of a party means, whether or not in material form:

- (a) all information with respect to the Warpforge Parties, the Recipient or any Related Body Corporate of the Warpforge Parties disclosed (orally, in writing, by electronic or magnetic media, by visual observation or by other means) by the Warpforge Parties to the Recipient including past, current and prospective financial data; customer, vendor or shareholder lists of data; business or marketing plans, projects or competitive strategies; technical or strategic information; economic or commercially sensitive information; trade secrets; drawings, specifications, software or business information; information about a party's employees and any other non-public material or information relating to the business activities, communications, ventures or operations of that party or its Related Bodies Corporate;
- (b) the fact that the parties will have, or are having, the Discussions or have entered into this deed;
- (c) that part of all notes and other records prepared by the Recipient based on or incorporating the information referred to in paragraph (a) of this definition;
- (d) all copies of the information and those parts of the notes and other records referred to in paragraphs (a) and (c) of this definition;
- (e) includes all designs, patents, testing documentation, photos, records or other documents in any way relating to its development of carbon fibre based formulations for use in the manufacture of products; and
- (f) includes the identity of any third party that any Warpforge Party may be having communications and/or discussions with concerning any potential or possible business venture that any Warpforge Party may be contemplating.

Discussions means discussions, correspondence and evaluative testing between the parties with respect to certain potential business opportunities.

Other Party means, in respect of a party, all the other parties or any of them as the case requires.

Permitted Purpose is to assess the opportunity with a view to the Recipient investing in and or facilitating investment in the Warpforge Parties.

Recipient means either collectively or individually (as the case requires) every party to this deed other than the Warpforge Parties.

Related Body Corporate has the meaning given to it by sections 9 and 50 of the Corporations Act.

1.2 Interpretation

In this deed, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this deed, and a reference to this deed includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Western Australia, Australia time;
- (g) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (j) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (k) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (l) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (m) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this deed or any part of it; and
- (n) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

2. Disclosure and use of Confidential Information

2.1 Keep Confidential Information confidential

The Recipient must, at its expense:

- (a) keep Confidential Information of Warpforge Parties confidential, by exercising a degree of care the highest amount reasonably possible;
- (b) establish and maintain effective security measures to safeguard Confidential Information of the Warpforge Parties from access or use not authorised by this deed; and
- (c) keep Confidential Information of the Warpforge Parties under its control and ensure that the Confidential Information is not entered into a computer database or network that is not solely operated and controlled by it.

2.2 Use of Confidential Information

The Recipient may only use Confidential Information of the Warpforge Parties for the Discussions and must ensure that any Confidential Information of the Warpforge Parties is not disclosed to any other person or entity for any purpose whatsoever.

2.3 Copying of Confidential Information

The Recipient must:

- (a) not copy Confidential Information of the Warpforge Parties without the written consent of the Warpforge Parties; and
- (b) ensure that all copies of Confidential Information of the Warpforge Parties is prominently marked **CONFIDENTIAL**.

2.4 Recording of use, copying or disclosure of Confidential Information

The Recipient must:

- (a) maintain complete, accurate and up-to-date records of the use, copying and disclosure of Confidential Information of the Warpforge Parties; and
- (b) produce those records to the Warpforge Parties on request.

2.5 Unauthorised use, copying or disclosure of Confidential Information

The Recipient must:

- (a) immediately give the Warpforge Parties notice if it becomes aware of any suspected or actual unauthorised use, copying or disclosure of Confidential Information of the Warpforge Parties; and
- (b) immediately take all steps to prevent or stop the suspected or actual unauthorised use, copying or disclosure of Confidential Information of the Warpforge Parties.

2.6 Enforcement of this deed

The Recipient must:

- (a) comply with any direction issued by the Warpforge Parties regarding enforcement of this deed or the obligations of confidentiality under this deed (including starting, conducting and settling enforcement proceedings); and
- (b) provide assistance reasonably requested by the Warpforge Parties in relation to any proceedings the Warpforge Parties may take against any person for unauthorised use, copying or disclosure of Confidential Information of the Warpforge Parties.

3. Exclusions

3.1 Permitted disclosures

The obligations of confidentiality under this deed do not extend to information that (whether before or after the date of this deed):

- (a) is rightfully known to, or in the possession or control of, the Recipient and not subject to an obligation of confidentiality on the Recipient;
- (b) is public knowledge (except because of a breach of this deed or the obligations of confidentiality under this deed); or
- (c) the Recipient is required by law to disclose provided that the Recipient complies with clause 3.2.

3.2 Disclosure by law

The Recipient must:

- (a) ensure that it takes any action as a result of which it may be required to make a disclosure under clause 3.1(c);
- (b) inform the Warpforge Parties in writing of any disclosure that is so required before the disclosure is made so that the Warpforge Parties can take such actions to seek to protect its Confidential Information as it deems appropriate;
- (c) consult with the Warpforge Parties and endeavour to agree the content of any announcement that the Warpforge Parties is required to make; and
- (d) take reasonable steps to restrict distribution of the Confidential Information so disclosed.

3.3 Public disclosure

Subject to clause 3.2, there must be no public statement, press release or other communication with respect to any Confidential Information or the Discussions except if it has been authorised in writing by the Warpforge Parties.

4. Acknowledgments and indemnity

4.1 Acknowledgment

The Recipient acknowledges for itself that:

- (a) it is aware that any breach of this deed will result in the Warpforge Parties suffering damage; and
- (b) in the event of a suspected or actual breach of this deed or any obligation of confidentiality under this deed, the Warpforge Parties is entitled, in addition to all other remedies available at law, to seek and obtain injunctive relief without having to prove the inadequacy of other remedies at law.

4.2 Related Bodies Corporate

Each party acknowledges and agrees that if the other party enters into this deed as agent of a Related Body Corporate that each of its Related Bodies Corporate:

- (a) has the same rights under, and benefits of, this deed as has the other party; and
- (b) is entitled to enforce this deed in the same manner as the other party, as if it were itself a signatory to this deed.

4.3 Indemnity

The Recipient indemnifies the Warpforge Parties against all losses, damages, expenses and legal costs that Warpforge Parties may reasonably sustain or incur as a result of any breach by the Recipient.

5. Limitations

5.1 No warranties

In respect of any information (including Confidential Information) directly or indirectly provided by or on behalf of the Warpforge Parties:

- (a) the Warpforge Parties does not make or give any representation or warranty that it is accurate or complete, or that reasonable care has been taken in its preparation; and
- (b) the Recipient must make and rely upon its own evaluation.

5.2 No obligation to provide Confidential Information

The Warpforge Parties are not obliged:

- (a) to disclose any information (including Confidential Information) to the Recipient;
- (b) to update any information disclosed to the Recipient; or
- (c) give the Recipient notice if they become aware of any inaccuracy, incompleteness or change in the information.

5.3 Limitation of liability

Except as and to the extent required by law, the Warpforge Parties is not liable for direct or indirect damage arising in any way out of:

- (a) the use by the Recipient of information (including Confidential Information) directly or indirectly provided by or on behalf of the Warpforge Parties; or
- (b) the termination of this deed.

5.4 Disclaimer

The Recipient acknowledges that:

- (a) the Warpforge Parties is not under any legal obligation, nor will it have any liability to the Recipient of any nature whatsoever, with respect to the Discussions by virtue of this deed;
- (b) the Warpforge Parties may conduct the process that may or may not result in a transaction contemplated by the Discussions in the manner as the Warpforge Parties, in its absolute discretion, determines;
- (c) the Warpforge Parties reserves the right (in its absolute discretion, at any time, and without notice to the Recipient) to deal, to conclude a transaction, or not to deal, with any person or entity, and to refuse or accept any and all proposals, and to change the procedures relating to the Discussions and to stop the Discussions for any reason;
- (d) the Warpforge Parties does not accept any responsibility for any interpretation that the Recipient may place on the disclosing party's Confidential Information or for any opinion or conclusion that the Recipient may form as a result of examining the Confidential Information; and
- (e) any opinions expressed in any Confidential Information are opinions given at the date that the opinion was formed and may have ceased, or may in the future cease, to be appropriate in the light of subsequent knowledge or attitudes.

6. No transfer of intellectual property

6.1 No transfer

This deed does not transfer any interest in any intellectual property.

6.2 Confidential Information property of the Warpforge Parties

The Recipient acknowledges that the Confidential Information of the Warpforge Parties constitutes valuable and proprietary information of the Warpforge Parties and all intellectual property rights in that Confidential Information (including copyright, design and patent rights) are the exclusive property of and will remain the exclusive property of the Warpforge Parties.

7. Restricted actions

7.1 Prohibited activities

The Recipient undertakes to the Warpforge Parties that, except with the prior written consent of the Warpforge Parties, the Recipient will not during the period specified in clause 7.2:

- (a) solicit, canvass, induce or encourage any employee of the Warpforge Parties to leave the employment of the Warpforge Parties;
- (b) make enquiries of, or maintain contact with any client, customer, employee, franchisee, distributor, financier, tenant, landlord, creditor or supplier of the Warpforge Parties (**Contacts**) other than for a bona fide purpose related to business interests of the Recipient unrelated to the receipt of any Confidential Information provided to it by the Warpforge Parties;
- (c) discuss Confidential Information of the Warpforge Parties with any of the Contacts;
- (d) directly or indirectly interfere, or seek to interfere, with any relationship between the Warpforge Parties and any of the Contacts; or
- (e) attempt any direct communication with any employees, customers or suppliers of the Warpforge Parties with respect to the Discussions.

7.2 Duration of prohibitions

The undertakings in clause 7.1 begin on the date of this deed and end on the:

- (a) tenth anniversary of the date of this deed;
- (b) fifth anniversary of the date of this deed;
- (c) third anniversary of the date of this deed;
- (d) second anniversary of the date of this deed; and
- (e) first anniversary of the date of this deed.

8. Termination

8.1 Each party may terminate

Each party may terminate this deed at any time with immediate effect by giving written notice to the other party.

8.2 Consequences on termination

On termination of this deed the Recipient's right to use Confidential Information of the Warpforge Parties ceases.

8.3 Actions on termination

On termination, the Recipient must immediately, at the Warpforge Parties' option:

- (a) return to the Warpforge Parties; or
- (b) destroy and certify in writing to the Warpforge Parties the destruction of, all Confidential Information of the Warpforge Parties in the Recipient's possession or control, including Confidential Information that is in electronic form (subject to reasonable backup overwrite schedules that may be in place).

8.4 Accrued rights and remedies

Termination of this deed does not affect any accrued rights or remedies either may have.

9. Notices and other communications

9.1 Service of notices

A notice, demand, consent, approval or communication under this deed (**Notice**) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post or facsimile to the party's address for Notices specified in the Details, as varied by any Notice given by the Recipient to the sender.

9.2 Effective on receipt

A Notice given in accordance with clause 9.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the Recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

10. Miscellaneous

10.1 Alterations

This deed may be altered only in writing signed by each party.

10.2 Approvals and consents

Except where this deed expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this deed.

10.3 Assignment

A party may only assign this deed or a right under this deed with the prior written consent of each other party.

10.4 Costs

Each party must pay its own costs of negotiating, preparing and executing this deed.

10.5 Survival

Any indemnity or any obligation of confidence under this deed, together with the obligations contained in clause 7.1 is independent and survives termination of this deed. Any other term by its nature intended to survive termination of this deed survives termination of this deed.

10.6 Counterparts

This deed may be executed in counterparts. All executed counterparts constitute one document.

10.7 No merger

The rights and obligations of the parties under this deed do not merge on completion of any transaction contemplated by this deed.

10.8 Entire deed

This deed constitutes the entire deed between the parties in connection with its subject matter and supersedes all previous deeds or understandings between the parties in connection with its subject matter.

10.9 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this deed and any transaction contemplated by it.

10.10 Severability

A term or part of a term of this deed that is illegal or unenforceable may be severed from this deed and the remaining terms or parts of the terms of this deed continue in force.

10.11 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

10.12 Relationship

Except where this deed expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the parties.

10.13 Governing law and jurisdiction

This deed is governed by the law of Western Australia and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia.

Signing page

EXECUTED as a deed.

**Executed by Warpforge Ltd
ACN 611 104 575**

Signature of director



Signature of director/company secretary
(Please delete as applicable)



Name of director (print)

Name of director/company secretary (print)

AND

Option A: Signed as an Individual

Signed by _____
in the presence of

Signature of witness



Signature of Individual



Name of witness (print)

OR

Option B: Signed as a Corporation

Executed by _____

Signature of director



Signature of director/company secretary
(Please delete as applicable)



Name of director (print)

Name of director/company secretary (print)