

**SAGE AUTOMATION PTY LTD**

and

**COMBINED TECHNOLOGIES LTD**

**MEMORANDUM OF UNDERSTANDING**

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**BETWEEN SAGE AUTOMATION PTY LTD** ABN 59 104 119 833 of 34 Bennett Avenue,  
Melrose Park South Australia 5039 ("**SAGE**")

**AND COMBINED TECHNOLOGIES LTD** of Level 3, 16 Clarence Street (PO Box  
9244 WMC) Hamilton New Zealand 3240 ("**CTEK**")

jointly "the Parties".

**BACKGROUND**

- A. SAGE is a control systems automation and integration company and has expertise in the design, manufacture, installation and maintenance of industrial and commercial process automation systems. SAGE also has experience in manufacturing execution systems (MES), industrial safety systems and training applications. The majority (but not all) of its business is in Australia.
- B. CTEK is a control systems automation and integration company and has expertise in the design, manufacture, installation and maintenance of industrial and commercial process automation systems. CTEK also specialises in ERP and MES applications, recipe, batch, and track and trace to ANSI/ISA-88 standard. The majority (but not all) of its business is in New Zealand.
- C. The Parties each have skilled staff with experience in their respective areas of expertise and the companies respectively own valuable intellectual property rights, confidential information and trade secrets. They recognise that each company provides goods and services similar to the other but they also have areas which are complementary.
- D. The Parties each have strong customer relationships with many of their respective customers.
- E. The Parties have agreed that there are mutual advantages to them in establishing a cooperative relationship between them with the objective of creating opportunities to provide services to customers which may not be available otherwise.
- F. The Parties intent is to build a "best friends" cooperative relationship. They do not intend to establish, and this MOU does not constitute, a formal partnership, joint venture, profit sharing or other legally enforceable relationship between them, except for clauses 4.4 (Confidential Information), 6 (Mutual Commitments), 8 (Dispute Resolution), 9 (Termination) and 11 (Costs) which clauses are binding and enforceable.
- G. This MOU is executed by the Parties in order to document their understandings about how the cooperative relationship between them will operate.
- H. Any Services provided by a Party as a subcontractor to the other will be the subject of a separate subcontract between the Parties for the provision of those services.

## **BUSINESS RELATIONSHIP**

### **1. Definitions**

**Commencement Date** means the date in Schedule 1;

**Confidential Information** means confidential information, trade secrets, know how, intellectual property, technical information, designs and expertise.

**Geographic Region** means the region defined in Schedule 1;

**Industry** includes, but not exclusively so, the industry defined in Schedule 1, and any other industry agreed by the Parties;

**Introduction Party** means the party with a pre-existing relationship to a potential customer who introduces the other party to that customer;

**Introduced Party** means the party introduced to a potential customer by the Introduction Party which had a pre-existing relationship with the client.

**Services** includes, but not exclusively so, the services defined in Schedule 1, and any other services agreed by the Parties.

### **2. General Intention**

- 2.1 The Parties intend to cooperate in the provision of the Services in the Geographic Region during the term of this Memorandum of Understanding.
- 2.2 The objective of the relationship is to cooperate for the mutual benefit of the Parties as well as to generate financial opportunities which would not be possible without the cooperation of the Parties.

### **3. Nature of Relationship**

- 3.1 There is no relationship of partnership, joint venture, employment, principal and agent or contractor or any form of profit sharing arrangement between the Parties. Each Party will be responsible, independently of the other, for its own management, marketing, contractual risk, revenue, costs and taxes unless they otherwise agree in writing on a case by case basis.
- 3.2 Any Services provided by a Party as a subcontractor to the other, will be the subject of a separate subcontract between the Parties for the provision of those Services.

### **4. Areas of Cooperation**

The Parties expect to cooperate in the following areas, but these are not exclusive. Their intention is to enhance cooperation, rather than to limit it.

#### 4.1 *Customer Introductions*

Where appropriate, each Party will introduce its customers and potential work opportunity leads to the other Party. However, one Party will not circumvent the other or set out to take work away from the other. For example, if the Introduction Party introduces a customer to the Introduced Party in respect of a particular opportunity or generally, the Introduced Party will not subsequently try to obtain from that customer work which it could reasonably assess could likely have been won by the Introduction Party.

Where the Introduction Party has introduced a customer to the Introduced Party and a work opportunity from that customer arises which either Party could pursue, the Parties will first discuss and commit to agreeing which Party will provide any Services to that customer.

#### 4.2 *Cross Promotion*

The Parties will work to cross promote their services, and their respective skill sets, where appropriate. This may occur for example by the Parties bidding on a job together or one Party engaging the other in a sub-contractor arrangement. However, neither Party is bound in any way to take up an opportunity presented to it by the other Party.

#### 4.3 *No Introduction Fees*

If the Introduction Party introduces a customer to the Introduced Party and the customer agrees with the Introduced Party that that Party will provide Services to the customer, the Introduced Party will not be liable to the Introduction Party for any "introduction fee" or commission unless they have otherwise agreed.

The Introduced Party will be fully liable for the performance of its contract with the customer, to the exclusion of the Introduction Party.

#### 4.4 *Confidential Information*

The Parties intend to share Confidential Information but neither Party is required to disclose any of its Confidential Information to the other. If one of the companies does disclose its Confidential Information to the other Party, the other Party will only use that Confidential Information for the purpose for which it was disclosed and not otherwise. The receiving Party will guard that Confidential Information at least as if it was its own valuable Confidential Information. For the avoidance of doubt, Confidential Information disclosed by one Party to the other is not intended for use within the recipient Party's own business.

Confidential Information does not include information which is in the public domain other than as a result of a breach of this obligation of confidentiality by a party.

Nothing in this MOU authorises one Party to infringe or otherwise misuse or permit to be infringed or misused the Confidential Information of the other.

The disclosing Party may require payment of a fee, royalty or other consideration for the disclosure or use of its Confidential Information.

Unless the Parties agree in writing, nothing in this MOU is taken to authorise or constitute a transfer or relinquishment (however described) of a company's rights in its Confidential Information to or in favour of the other Party.

Nothing in this clause 4.4 limits or prevents disclosure of Confidential Information to the extent required by law.

#### **4.5     *Staff***

4.5.1     The Parties may provide staff to each other on a temporary or secondment basis, on terms they agree on a case by case basis. This includes, where the Parties agree, offering temporary placement of a company's staff in the other's business. To avoid doubt, clause 4.4 would apply regarding any Confidential Information belonging to one Party disclosed by that staff member to the other Party.

4.5.2     Each party will actively assist their own graduates through suitable training programmes.

4.5.3     Except for any staff sharing arrangement entered into pursuant to this clause 4.5, neither Party will attempt to poach, either temporarily or permanently, the staff of the other.

#### **4.6     *Work Opportunity Issues***

If one Party offers a work opportunity to the other Party but is not satisfied with the terms upon which the other Party proposes to carry out the work (whether as to price, resourcing, timing or otherwise) the first Party will discuss the matter with the second Party. In good faith, the Parties will negotiate regarding the particulars of the work opportunity before the first Party withdraws the opportunity or offers the opportunity to a third party.

### **5.     Marketing**

5.1     Each of the Parties will actively promote their "best friends" co-operative relationship (referred to in this Memorandum of Understanding) with the other Party, and will meet all costs it incurs in that promotion.

### **6.     Mutual Commitments**

6.1     In consideration of their mutual commitments made under this MOU, each Party agrees with the other that during the continuance of this MOU, it will not directly or indirectly solicit, entertain or encourage other enquiries or proposals or enter into any agreement or negotiate with any potential competitor of the other Party with respect to the matters referred to in this MOU in Australia or New Zealand.

- 6.2 Where appropriate each Party will make the other aware, as soon as is practicable after the first Party becomes aware of the proposed tender, of any proposed tenders which will be or are likely to be of interest to that other Party.
- 6.3 The Parties will each use reasonable commercial endeavours to ensure that they do not submit competing tenders in respect of the same work opportunity. It is envisaged that generally SAGE will be the lead tenderer for Australian based assignments and that CTEK will be the lead tenderer for New Zealand based assignments.
- 6.4 Each Party will promptly inform the other if:
- i. that first mentioned Party is proposing to sell its business; or
  - ii. in excess of 75% of the shares in that Party are to be sold; or
  - iii. there is a change of management of that Party; or
  - iv. anything occurs in relation to that Party that the other Party would reasonably consider it should know of as part of a "best friends" cooperative relationship.
- 6.5 Each Party will ensure it has all appropriate insurance cover in place for its business.
- 6.6 Where agreed on a case by case basis each Party will allow reasonable use of its offices by engineers employed by the other Party, when working on a project for that other Party and other Staff.

## **7. Meetings**

Representatives of the Parties will meet as agreed. The agenda for such meetings shall include:

- Update on current business opportunities;
- New business opportunities;
- Revenues generated from the MOU;
- Employee development

## **8. Dispute Resolution**

- 8.1 Any dispute by one Party arising from this MOU between the Parties must be brought to the attention of the other Party as soon as practicable.
- 8.2 The Parties confirm that before either commences dispute resolution proceedings against the other, senior representatives of each Party will endeavour in good faith to resolve any disputes by discussion and negotiation.

**9. Termination**

- 9.1 This MOU will continue until terminated by agreement or by one Party giving reasonable written notice (at least 30 days) to the other.
- 9.2 Clause 4.4 is binding upon the Parties and survives termination of this Agreement for as long as Confidential Information disclosed by one Party to the other remains confidential or secret or is protected by law.
- 9.3 Termination of this MOU will not affect rights or obligations of either Party under any separate agreement between them.

**10. Replacement**

This MOU replaces the earlier MOU signed by the Parties.


**11. Costs**

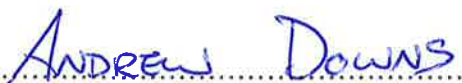
Each Party will bear its own costs in relation to the preparation, negotiation and execution of this MOU.


**12. Legal Effect**


This Memorandum of Understanding does not constitute a formal partnership, joint venture, profit sharing or other legally enforceable relationship or agreement between the parties except for clauses 4.4 (Confidential Information), 6 (Mutual Commitments), 8 (Dispute Resolution), 9 (Termination) and 11 (Costs) which clauses are binding and enforceable.

**SIGNED** for and on behalf of **SAGE AUTOMATION PTY LTD** by

  
.....  
Signature

  
.....  
Print Full Name

  
.....  
Director / ~~Secretary~~

  
.....  
Signature

  
.....  
Print Full Name

  
.....  
Director / Secretary



**SIGNED** for and on behalf of **COMBINED TECHNOLOGIES LTD** by

Signature

Print Full Name

Director / Secretary

Signature

Print Full Name

Director / Secretary

### SCHEDULE 1

COMMENCEMENT DATE

1 July 2010

GEOGRAPHIC REGION

Australia and New Zealand

SERVICES

Design, implementation and support of batch, track and trace automation solutions to ANSI/ISA-88 standard

INDUSTRY

Food and Beverage sectors