

Confidentiality Agreements

Guidance Notes

1. Why do we use Confidentiality Agreements?

Croda uses confidentiality agreements to preserve the confidentiality of commercially secret or sensitive information that may be given to third parties. Obligations are imposed on the third party to use the information received from Croda only for the purpose it is given e.g. research, evaluation, testing etc and not to disclose the information to any third party.

Croda also enters into confidentiality agreement obligations where it receives commercially sensitive information from third parties and needs to provide comfort to that third party that Croda will keep such information confidential.

Confidentiality agreements are particularly important where Croda gives out information that is or may at some point be used in a patent application. Croda can only claim patent protection on projects that are genuinely 'secret'. If information is disclosed to third parties it will only be classed as 'secret' and therefore remain potentially patentable if the disclosure is properly made under a valid confidentiality agreement. Disclosures that are not properly made under a valid confidentiality agreement may jeopardise future patents!

2. Types of Confidentiality Agreements

Croda uses two basic standard forms of confidentiality agreement:

- 2.1 a one-way confidentiality agreement where Croda is disclosing confidential information to a third party. NB This agreement can be adapted for use where Croda is receiving information from a third party. In this situation please contact the Legal Department; and
- 2.2 a two-way confidentiality agreement where Croda is **both** giving and receiving confidential information to and from a third party.

We have now developed versions which are applicable to North America (Croda Inc) and as such there are now four versions to choose from depending on which Croda entity is entering the agreement.

NB. If you are proposing to discuss with a third party the potential acquisition/disposal of assets, a business or a company please do not use the standard agreements but contact the Legal Department who will prepare an appropriate confidentiality agreement.

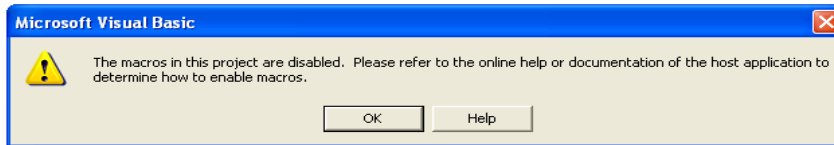
Each of these standard form agreements deals with disclosure of confidential information in any form including without limitation oral disclosures, written disclosures and the provision of sample material.

Always bear in mind that once Croda enters into an obligation of confidentiality with a third party Croda is potentially restricting itself in the market place by agreeing not to use certain information in certain ways. Be vigilant against attempts by third parties to restrict Croda in this way particularly by disclosing general market information, information not related to the project, vague development plans or details already known to Croda under the banner of "confidentiality". If a third party acts in this way Croda must make clear that it does not consider such disclosures to be made in confidence. It is better to address this at the time of the disclosure than argue the point later (possibly in court!).

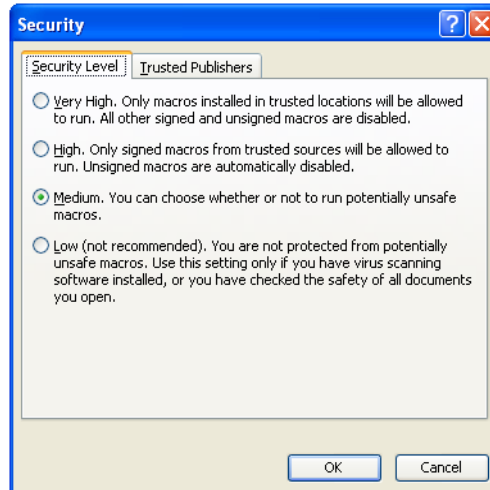
3. Macros

Please note that the documents contain macros. The security settings on your computer may not allow you to launch the documents.

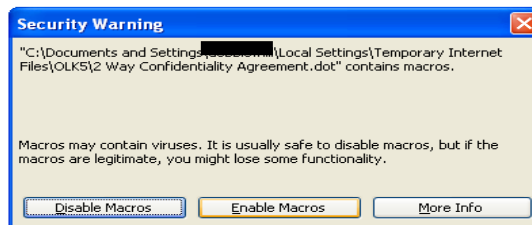
If using **Word 2003** and you encounter the following message whilst attempting to use a document:



Please follow this process:- Click OK
From the top menu in Word select Tools> Macro> Security
Choose Medium security as displayed below



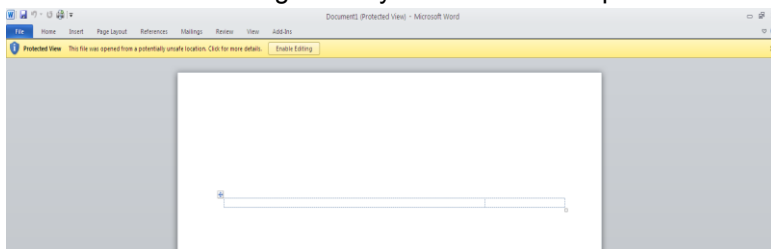
Click OK.
This should apply the new security setting.
Now open the document again and you should see the following window



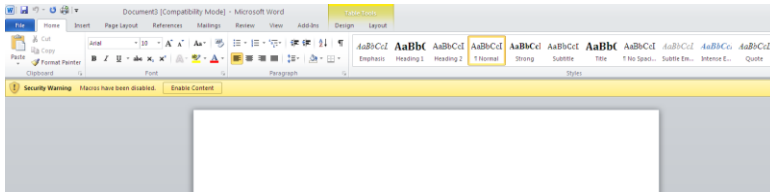
Click on "Enable Macros" and the document should now run as intended.

If using Word 2010, follow this process

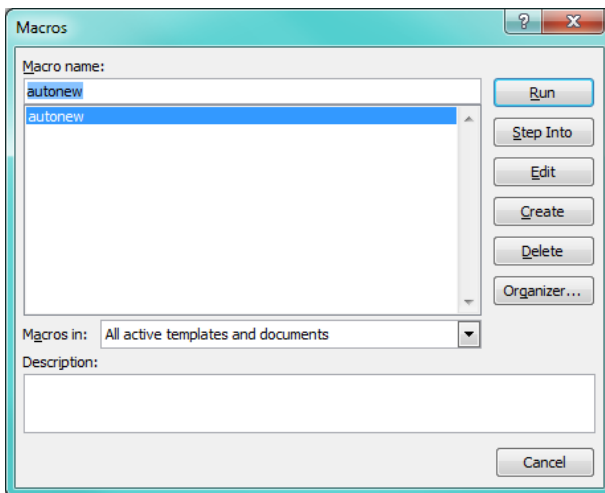
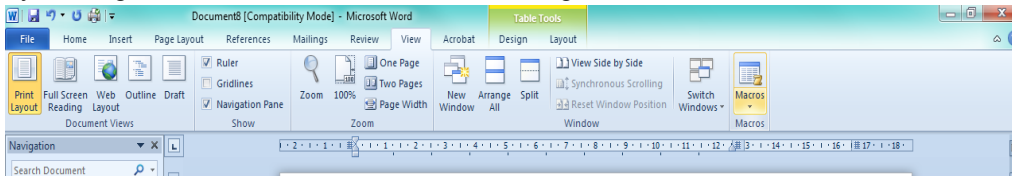
Click on "Enable Editing" in the yellow bar at the top of the document.



Now click on "Enable Content" in the yellow bar at the top of the document.



This will then open the form for you to complete. If not you can enable the macros manually by clicking on “View” in the toolbar and selecting “Macros”.



Select autonew and Run

4. How to use the Confidentiality Agreements

The templates are designed to allow you to produce a Confidentiality Agreement which is ready for signature on behalf of Croda and can be sent to the other party for signing. On opening the document you will be asked to complete a series of fields. Once completed click the “submit” button and your document should be finalised and ready for printing on the appropriate letterhead.

The Fields

Company - Identify the full name of the third party legal entity which will be entering into the Confidentiality Agreement e.g. The Procter and Gamble Company. The agreement should always be addressed to the third party company and not an individual c.f. **From** below. If the third party to the agreement is part of a group, ensure that the right company is joined as a party.

Known as – This is the definition or shortened form of the third party’s name which will be used throughout the agreement e.g. P&G for The Procter and Gamble Company.

Address - The registered office/principal place of business address of the third party.

To – If you have a direct contact at the third party this allows you to mark the agreement for their attention.

From – Choose the Croda entity which is disclosing the confidential information from the drop down list.

Purpose – It is important that the description of the purpose for which the confidential

information is provided is carefully defined as this limits how the information can be used. If the agreement contains a very wide or poorly described definition of purpose then the information disclosed may not be protected. For example, defining the purpose as 'for testing and use commercially' would allow the recipient to use the information for any commercial purpose including manufacturing and selling products. Examples of narrowly defined "purpose" include, 'to test and evaluate the properties of X in Y applications' or 'to evaluate and consider the potential benefits to each party of entering into an agreement to develop/toll/manufacture/jointly exploit/sell/purchase X'.

Samples – Tick this box if you are intending to exchange samples and the template will insert a clause prohibiting analysis and reverse engineering as follows:

“Without prejudice to the generality of this letter, the Recipient shall not analyse the chemical or physical composition or structure of any sample that is disclosed to it by the Discloser, nor reverse engineer or perform any test other than such tests as may be necessary for the Purpose, or as may otherwise be expressly agreed in writing by the Discloser.”

Signatory – Insert the initials and surname of the Croda signatory followed by their job title in the appropriate field.

4. **Signing**

It is good practice to produce 2 copies of the agreement for signing. The Company Secretary, a Vice President, Global Account Director, Managing Director or above are authorised to sign. Both copies should then be signed by the third party and one signed copy retained by Croda.

NB. The date the last party signs is the date of the agreement which is not necessarily the date at the top of the agreement.

The original signed agreement should be sent to Helen Abbott in the Legal Department at Cowick Hall, where it will be logged and stored. An electronic version of the document will be made and will be available to you should it be required. If you have any queries with regard to the document, please contact the Legal Department.

5. **Issues**

Choice of law – The agreements are made subject to English law (or US in the case of the Croda Inc documents). Refer to the Legal Department if the third party insists on another jurisdiction.

Written record of oral disclosures – Some parties argue that in order for oral communications of information to be subject to confidentiality obligations they should be followed up within a certain time limit by a letter confirming that they were confidential. This clearly provides certainty but it also requires a great deal of discipline! In order to agree to this you need to be sure that Croda personnel involved in the project understand what is required and that someone is tasked with writing the required letters. IN ANY EVENT it is good practice to note down what is communicated orally and to make it clear at the outset of meetings, telephone calls and conversations that anything said is to be regarded as confidential.

It is good practice to monitor the communication and receipt of information by keeping a log of the information communicated or received, marking all information communicated in writing and samples as 'confidential' and destroying or returning third party information or requesting the destruction or return of Croda's information at the end of a project.