**THIS UNILATERAL NON-DISCLOSURE AGREEMENT**

**(hereinafter referred to as "AGREEMENT")**

BETWEEN:

both of which are singularly referred to as **"PARTY"** and collectively as **"PARTIES".**

(1) **KUBOTA Baumaschinen GmbH**, Steinhauser Str. 100 66482 Zweibrücken

– hereinafter referred to as "KUBOTA" or "DISCLOSING PARTY" –

(2) [Company Name], [Address]

– hereinafter referred to as "[XXX]" or "RECEIVING PARTY –

**PREAMBLE**

WHEREAS, the PARTIES, for their mutual benefit and pursuant to a working relationship which has been or may be established for offer and delivery of excavator and/or wheel loader components (the "PROJECT"); and

WHEREAS, the PARTIES wish to exchange information, discuss the PROJECT in order to negotiate the terms and conditions of subsequent contracts for the PROJECT (altogether the "PURPOSE"); and

WHEREAS, for the achievement of the PURPOSE, the DISCLOSING PARTY may, at its sole discretion, need to disclose certain proprietary and confidential information to the RECEIVING PARTY and wishes to ensure that the same remain confidential; and

WHEREAS, either PARTY acknowledges that the information disclosed by DISCLOSING PARTY to RECEIVING PARTY is of highest commercial value to DISCLOSING PARTY and the disclosure of which to a third party or the public or the use of such information by RECEIVING PARTY for any other purpose than the PURPOSE may cause irreparable harm and damage to DISCLOSING PARTY.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein and for the protection of such information and interests of DISCLOSING PARTY, the PARTIES hereto agree by this AGREEMENT as follows:

1. **CONFIDENTIAL INFORMATION**
   1. "CONFIDENTIAL INFORMATION" shall mean any technical, commercial, business and/or other information or know-how (regardless whether it is written, oral, electronic or any other form) including, but not limited to computer programs and codes, designs, discoveries, documentation, drawings, inquiries, inventions, materials, operating conditions, patents, production and processing know-how, purchase orders, samples, simulations, specifications, studies and budgetary, corporate planning, corporate strategy, financial, logistics and marketing information, which is made available or disclosed to RECEIVING PARTY by or on behalf of DISCLOSING PARTY or that may be learned, derived or obtained by RECEIVING PARTY during any examination of said information or during any discussions with regard to the PURPOSE.
   2. It shall also be irrespective of whether the information is provided expressly or indirectly, marked or designated as confidential or not, deemed as confidential or is confidential due to its nature.
2. **CONFIDENTIALITY AND NON-DISCLOSURE**
   1. RECEIVING PARTY shall strictly keep secret and confidential and shall not disclose to any third party, any CONFIDENTIAL INFORMATION without the prior written consent of the DISCLOSING PARTY, and then only provided that the third party has signed a confidentiality agreement with RECEIVING PARTY containing provisions not less stringent than those accepted by RECEIVING PARTY under this AGREEMENT. In the event that such third party is in breach of its obligations under or in connection with the confidentiality agreement with RECEIVING PARTY, RECEIVING PARTY shall – upon request by the DISCLOSING PARTY – assign its claims, rights, demands associated with such breach to DISCLOSING PARTY to the extent pertaining to such DISCLOSING PARTY's CONFIDENTIAL INFORMATION. The PARTIES will take all reasonable precautions to prevent access to CONFIDENTIAL INFORMATION by third parties including all necessary precautions and measures to protect data against the third parties' access.
   2. RECEIVING PARTY shall use the CONFIDENTIAL INFORMATION only for the PURPOSE and for no other purposes, unless otherwise agreed in writing by the DISCLOSING PARTY.
   3. Notwithstanding the provisions of Section 2.1, RECEIVING PARTY shall have the right to disclose the CONFIDENTIAL INFORMATION received from the DISCLOSING PARTY only to those of its own officers, executive managers, employees, accountants and consultants (including financial, legal and tax counsels), who need to know such CONFIDENTIAL INFORMATION in furtherance of the PURPOSE and who are bound to obligations of confidentiality, non-disclosure and restriction of use – for as long as legally permissible – not less stringent than those accepted by the RECEIVING PARTIES under this AGREEMENT.
   4. Notwithstanding the provisions of Section 2.1, RECEIVING PARTY shall have the right to disclose the CONFIDENTIAL INFORMATION to XXX [If needed please add the name and address of third parties including affiliates who need to be involved for the PURPOSE, otherwise this Section 2.4 is to be deleted], provided that such party, prior to such disclosure, is bound to obligations of confidentiality, non-disclosure and restriction of use not less stringent than those accepted by RECEIVING PARTY under this AGREEMENT.
3. **EXCEPTIONS**
   1. The obligations under this AGREEMENT shall not apply to CONFIDENTIAL INFORMATION, which

a) at the time of disclosure is already in the public domain;

b) was rightfully disclosed to the RECEIVING PARTY by a third party without violation of a non-disclosure obligation;

c) was already in RECEIVING PARTY’s rightful possession without an obligation to confidentiality, non-disclosure and/or restriction of use at the time of the disclosure by the DISCLOSING PARTY and without having received the CONFIDENTIAL INFORMATION, whether directly or indirectly, from such DISCLOSING PARTY;

d) is developed by RECEIVING PARTY independently of the CONFIDENTIAL INFORMATION;

e) after disclosure by DISCLOSING PARTY to RECEIVING PARTY becomes part of the public domain through no fault of RECEIVING PARTY; or

f) was expressly approved for publication beforehand in writing by the DISCLOSING PARTY.

The burden of proof for the exceptions according to Section 3.1 a) through f) above shall lie with RECEIVING PARTY.

* 1. In case RECEIVING PARTY must disclose CONFIDENTIAL INFORMATION according to a governmental or judicial process or as acquired by the applicable laws, RECEIVING PARTY will promptly provide DISCLOSING PARTY with written notice of such request and prior to the disclosure, so that DISCLOSING PARTY may seek a protective order or other appropriate remedy. In the event that such protective order or other remedy is not obtained, or that the respective DISCLOSING PARTY waives compliance with the provisions of this AGREEMENT, RECEIVING PARTY will furnish only that portion of the CONFIDENTIAL INFORMATION, which RECEIVING PARTY is legally required to disclose. RECEIVING PARTY will exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to the CONFIDENTIAL INFORMATION.

1. **LICENSES AND INVENTIONS**
   1. Nothing in this AGREEMENT shall in any way affect the rights of the DISCLOSING PARTY under the laws of any country relating to patents, copyright, registered designs or other industrial or intellectual property rights or any law protecting information that has been disclosed in confidence. No license or immunity is granted by this AGREEMENT by DISCLOSING PARTY to RECEIVING PARTY, either directly or by implication or otherwise, under any patents, copyrights, trademarks, trade secrets, know-how or other intellectual property rights, nor does this AGREEMENT grant RECEIVING PARTY any right in or to any DISCLOSING PARTY's CONFIDENTIAL INFORMATION, except to the limited right to use and disclose such CONFIDENTIAL INFORMATION in connection with the PURPOSE and only subject to the terms and conditions of this AGREEMENT.
   2. RECEIVING PARTY acknowledges and will ensure that CONFIDENTIAL INFORMATION disclosed by or on behalf of DISCLOSING PARTY will not become part of patent applications or other rights RECEIVING PARTY may apply for, without the prior written consent of the respective DISCLOSING PARTY.
2. **NO WARRANTY FOR CONFIDENTIAL INFORMATION, LIMITATION AND EXCLUSION OF LIABILITY**
   1. CONFIDENTIAL INFORMATION is made available "as is". The DISCLOSING PARTY shall not warrant accuracy; correctness; completeness; merchantability; non-infringement of third party rights or fitness for any purpose or use in general and specifically for the PURPOSE. Each PARTY shall solely be responsible for determining how to use the CONFIDENTIAL INFORMATION in their evaluation.
   2. The DISCLOSING PARTY is not liable for damages, unless these are based on an intentional or grossly negligent breach of contract by the DISCLOSING PARTY, its legal representatives or vicarious agents or a culpable injury of life, body or health.
   3. This limitation of liability applies equally to tortious claims or claims for compensation for futile expenditure instead of performance.
   4. Liability for loss of profit or other purely financial losses is excluded.
3. **TERM AND TERMINATION**
   1. This AGREEMENT shall be effective as of YY.ZZ.20AA.
   2. The obligations pursuant to this AGREEMENT shall continue to be in full force and effect for a period of five (5) years following the effective date.
4. **ACKNOWLEDGEMENTS**

Each PARTY hereby acknowledges that:

* 1. nothing in this AGREEMENT implies any partnership or joint venture between PARTIES or is to be construed as making one PARTY the agent or fiduciary of the other PARTY with respect to the PURPOSE;
  2. nothing in this AGREEMENT will constitute an offer by or on behalf of either PARTY and neither PARTY will be under any obligation to accept an offer or proposal which may be made by the other PARTY or on its behalf; and,
  3. nothing in this AGREEMENT or the CONFIDENTIAL INFORMATION will form the basis of any agreement. Any agreement will only be constituted by any final agreement to be negotiated and entered into between PARTIES.

1. **RETURN OF CONFIDENTIAL INFORMATION**

Any CONFIDENTIAL INFORMATION shall be kept in safe custody by RECEIVING PARTY and shall be (i) returned to DISCLOSING PARTY within thirty (30) business days or (ii) promptly destroyed, at any time following the written request of the DISCLOSING PARTY. Such return or destruction shall be confirmed in writing by RECEIVING PARTY. Notwithstanding the above, RECEIVING PARTY shall not be required to destroy copies of any computer records or files containing CONFIDENTIAL INFORMATION which have been created pursuant to automatic archiving or back-up procedures on secured central storage servers and which cannot reasonably be deleted, for no longer than the normal automatic archiving period for similar records or files. In the event that any CONFIDENTIAL INFORMATION is retained pursuant to this provision, the terms and conditions of this AGREEMENT shall remain in full force and effect with respect to the CONFIDENTIAL INFORMATION so retained for as long as it is retained.

1. **MISCELLANEOUS**
   1. This AGREEMENT constitutes the entire agreement between the PARTIES with respect to its subject matter.
   2. Any modification or amendment to this AGREEMENT may not be made orally, but only in written form and signed by the PARTIES hereto. This requirement shall also apply to the amendment or revocation of this written form clause.
   3. The rights under this AGREEMENT shall be cumulative to any rights under law or equity and may be exercised at any time and from time to time. No failure by DISCLOSING PARTY to exercise, and no delay in exercising any rights shall be construed or deemed to be a waiver.
   4. No PARTY shall be allowed to transfer this AGREEMENT or any rights or obligations out of this AGREEMENT to any third party, unless otherwise agreed upon in writing by the PARTIES hereto.
   5. Should any provisions of this AGREEMENT be or become void or ineffective in whole or in part, the effectiveness of the remaining provisions shall not be affected. The statutory provisions shall apply in place of any general terms and conditions (Allgemeine Geschäftsbedingungen) that are not included or are ineffective (sec 306 para. 2 of the German Civil Code). Otherwise, the PARTIES shall replace the void or ineffective provision with an effective provision that comes as close as possible to the economic purpose of the void or ineffective provision, provided that no supplementary interpretation of the AGREEMENT has legal priority or is possible.
2. **APPLICABLE LAW AND JURISDICTION**
   1. This AGREEMENT shall be governed by and construed in accordance with the laws of the Federal Republic of Germany excluding their conflict of law provisions.
   2. RECEIVING PARTY acknowledges that the breach of this AGREEMENT may cause irreparable harm or damage to DISCLOSING PARTY, which injury will be inadequately compensable in damages, and that without prejudice to Section 10.3 hereof and any other rights and remedies that the DISCLOSING PARTY may have at law or in equity, the DISCLOSING PARTY shall be entitled to the remedies of injunction, specific performance and other equitable relief in respect of any actual breach or threatened breach of the provisions of this AGREEMENT awarded by any court of competent jurisdiction.
   3. All disputes or claims arising out of or in connection with this AGREEMENT shall exclusively and finally be settled by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with the said Rules. The arbitration shall be held in Düsseldorf. The arbitral tribunal shall have the competence to decide whether the PARTIES entered into a valid and enforceable arbitration agreement. The language of the arbitration shall be English. The arbitration award shall be final, binding and enforceable by any court having jurisdiction for that purpose.
3. **EXECUTION**

This AGREEMENT shall be executed in two (2) counterparts, each of which shall be deemed an original but which nonetheless shall constitute one and the same document.

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| Kubota Baumaschinen GmbH |  | XXX |
| Place: Zweibrücken |  | Place: XXXX |
| Date: XX.XX.XXXX |  | Date: XX.XX.XXXX |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature |
| Name: : Toshitaka Matsuo / Michael Gorges |  | Name: XXXX |
| Position / Title: President / Head of Purchasing,  Logistics, Production Control |  | Position / Title: XXXX |