

## NON-DISCLOSURE AGREEMENT

### THE UNDERSIGNED:

1. **HOLLAND DREDGING INDUSTRIES B.V.**, a private limited liability company, having its principal place of business at Haarlem and its registered office at A. Hofmanweg 5A, (2031BH) Haarlem, the Netherlands, registered in the Trade Register of the Chamber of Commerce of Amsterdam under number 68638825, referred to below as **"HDI"**, represented for these purposes by Mr J.M.B. Ghurahoo;

and

2. ...., a private limited liability company, having its registered office in ....., and its registered office at A....., presented by ....., referred to below as the **"Company"**;

HDI and the Company each individually also to be called **"Party"** or **"Disclosing Party"** or **"Receiving Party"** and collectively called **"Parties"**, all meaning **'including Affiliates'**.

### WHEREAS:

- (a) HDI is a company that produces wear parts for the dredging industry;
- (b) Parties wish to explore a potential business relationship or cooperation with regard to a new dredging cutter system FF (the **"Purpose"**);
- (c) HDI wishes to make use of the Companies services and the Company is willing to provide the services to HDI;
- (d) For the Purpose as set out under consideration b., certain confidential information of the Parties will be provided to the other Party;
- (e) With respect to the confidential information exchanged between the parties, the parties wish to set out the terms and conditions in this mutual non-disclosure agreement (**"Agreement"**).

**HEREBY AGREE AS FOLLOWS:**

1. **Definitions**

1.1. In this Agreement the following definitions shall have the meaning as set forth below:

**Affiliates**

any entity that, directly or indirectly, controls a Party, is controlled by a Party, or is under common control with a Party. "Control" of an entity means the direct or indirect holding of (i) more than 50% of the nominal value of the issued shares or other equity interests of such entity or (ii) a majority of the voting rights of the shareholders or other holders of equity interests in such entity;

**Confidential Information**

all information exchanged between the Parties related to the Purpose of this Agreement, prior to the execution of this Agreement and/or after the execution of this Agreement, whether oral, in writing, in visual or other tangible form, and any notes, analysis or other material prepared by or for the Receiving Party containing or based in whole or in part upon such information. Confidential Information includes, without limitation, financial data, financial plans, business plans, market information, business policies and topics, security and access information, strategies, all ideas, research, development, discoveries, inventions, software, products, product plans or specifications, trade know-how, manufacturing processes, concepts, methodologies, formulations, applications, systems, components, technologies, technical and non-technical data, personal data, formulas, patterns, compilations, programs, devices, methods, techniques, drawings, processes, designs, prototypes, patent applications, marketing plans and markets served, or lists of actual or potential customers or suppliers, trade secrets or proprietary information, the existence and the terms of this Agreement and the fact that discussions relating to its subject matter are taking place between the parties. Furthermore, all information that the Parties consider to be confidential or from which the Receiving Party knows or can reasonably presume that this information is confidential.

Confidential Information disclosed by any Affiliates of the Disclosing Party or to any Affiliates of the Receiving Party shall be deemed as Confidential Information pursuant to this Agreement;

**Intellectual Property Rights**

all (future and existing) intellectual and intangible property of any kind whatsoever including patents, patent applications, (registered and unregistered) design rights, trademarks, trade or business names, logos, domain names, copyrights, moral rights, know-how, rights to prevent passing off or unfair competition, database rights, rights in designs and all other intellectual property rights in each case whether registered or unregistered and including applications or rights to apply for them, in each case in the Netherlands and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions of any of the foregoing with regard to the Purpose and the Confidential Information;

**Purpose**

the Purpose as set out under consideration (b) of this Agreement, for what Purpose the Confidential will be disclosed; and

**Agreement**

this non-disclosure agreement.

**2. The use of Confidential Information**

2.1 In consideration of the disclosure of Confidential Information by or on behalf of the Disclosing Party, the Receiving Party covenants, agrees and declares that it will:

- i. treat and safeguard the Confidential Information as private and confidential and not use or disclose any of the Confidential Information for any purpose other than as reasonably required for the Purpose and not in any manner give third parties access to or provide them with the Confidential Information;

- ii. take all reasonable measures to protect the secrecy of Confidential Information and to prevent the unauthorized use, dissemination or publication thereof. This shall also include any actions to prevent the Confidential Information against unauthorized access;
- iii. refrain from any disclosure of Confidential Information, including but not limited via social media such as LinkedIn, Facebook and Twitter, or other media;
- iv. immediately notify the Disclosing Party in writing where any unauthorised use or disclosure of any Confidential Information is known to have taken place or the Receiving Party is made aware that such unauthorised use or disclosure may take place, and take such steps as the Disclosing Party may reasonably require in relation to the same.

- 2.2 The Receiving Party's internal disclosure of the Confidential Information shall be only to those officers, directors, employees, suppliers, subcontractors, agents, advisors and other representatives having a need to know such information for the performance of their duties. The Receiving Party warrants and covenants to the Disclosing Party that all such persons receiving Confidential Information pursuant to this Agreement will comply with the confidentiality obligations herein, and the Receiving Party will be directly responsible to the Disclosing Party for any breach of such obligations by all such persons and will take all steps required to remedy any such breach and occurrence.
- 2.3 At the first request of the Disclosing Party, the Receiving Party will cooperate in everything necessary to combat negative effects of the breach of this Agreement. This includes - but is not limited to - issuing a statement to a Patent Office stating that publications of the Confidential Information that are detrimental to novelty in violation of this Agreement are manifest misuse and (therefore) a clear violation of this Agreement.
- 2.4 The Receiving Party may not duplicate, copy, reproduce or otherwise multiply the Confidential Information, on any data carrier whatsoever, or dispatch it otherwise than permitted under this Agreement or an agreement to be concluded in respect of the Purpose, in which case copies, reproductions, multiplications or dispatches must be clearly marked as "Confidential".
- 2.5 The Receiving Party agrees not to reproduce in any form (except as required to accomplish the Purpose of this Agreement), analyse, modify, reverse engineer, decompile, create other works from, or disassemble the Confidential Information disclosed to it or any samples of tangible materials included therein.
- 2.6 Upon the request of the Disclosing Party, the Receiving Party shall return or permanently destroy all Confidential Information received in written or tangible form, including copies, or reproductions or other data containing such Confidential Information, within ten (10) days of such request. The Receiving Party shall provide a written certificate to the Disclosing Party regarding destruction within ten (10) days thereafter.

2.7 The obligations of confidentiality contained in this Agreement do not apply to any information which the Receiving Party can prove:

- i. was in the public domain at the time it was disclosed;
- ii. becomes part of the public domain without such party's breach of this Agreement;
- iii. is disclosed with the written approval of the Disclosing Party;
- iv. was already in the possession of the Receiving Party as evidenced by its pre-existing business records prior to receipt from the Disclosing Party and was not acquired, directly or indirectly, from a third party under an obligation of confidentiality, and only if the Receiving Party reports the existence of such prior information in writing within one week of receipt of the Confidential Information and substantiated with all supporting documents;
- v. is required to be disclosed by law or by judicial order, provided that the Receiving Party subject to such required disclosure shall give the Disclosing Party prompt written notice of such required disclosure and shall reasonably cooperate with the Disclosing Party's efforts to secure a protective order or other legal remedy to prevent the disclosure.

### **3 Intellectual Property**

- 3.1 All Intellectual Property Rights with regard to the Confidential Information are and will remain the exclusive property of the Disclosing Party.
- 3.2 Each Party reserves all rights to its know-how or other Intellectual Property Rights, in particular to the issue of any patent or registration of design.
- 3.3 The disclosure of any information does not include the transfer of title or rights to use such information. The Parties acknowledge that no license, use or other rights to the Confidential Information or the know-how disclosed is granted by the Agreement.
- 3.4 Without limiting the foregoing, the Receiving Party shall not be entitled to use Confidential Information for a patent application or any rights based on prior use and waives any rights and objections regarding prior use and prior art or similar rights and objections.

### **4 Breach/possible breach**

- 5.1 The Receiving Party must immediately inform the Disclosing Party if it becomes aware of a breach or possible breach of an obligation under this Agreement and must give the Disclosing Party all reasonable assistance in taking judicial and other steps regarding the breach or possible breach.

### **5 Liability and penalty**

- 5.1 Each Party acknowledges and agrees that because any breach of this Agreement would cause the Disclosing Party irreparable harm and an award of money damages would be an inadequate remedy, a Party shall be entitled to seek injunctive relief under this Agreement, as well as such further relief as may be granted by a court of competent jurisdiction.



- 5.2 No failure or delay to exercise any right or remedy hereunder shall operate as a waiver of such right or remedy.
- 5.3 In the event of violation of one or more of the articles of this Agreement by a Party, that Party owes the other Party an immediately due and non-deductible fine of EUR 50,000 (in words: fifty thousand euros) per individual violation, and - at the discretion of that party - of EUR 5,000 (in words: five thousand euros) for each full or partial day that (a) violation(s) continues, in all cases without a notice of default or other prior declaration within the meaning of art. 6:80 et seq. of the Dutch Civil Code will be required, and without prejudice to that Party's right to claim full compensation and/or compliance with this Agreement.
- 5.4 If one or more of the provisions of this Agreement are breached by an employee, a hired staff member, an advisor and/or other third party engaged by the Receiving Party, both the party in breach and the Receiving Party are jointly and severally liable towards for the damages and/ or the forfeited penalty.
- 5.5 Neither Disclosing Party warrants that the Confidential Information provided is (i) correct or complete or (ii) free of third-party intellectual property. No warranty of merchantability and fitness for a particular purpose is made. The Parties are not liable for any consequences connected with the use of Confidential Information.

## **6 Term**

- 6.1 This Agreement shall take effect as soon as Confidential Information comes to the Receiving Party's attention, either directly or indirectly, and continue indefinitely, even in the event that the Purpose for disclosing the Confidential Information ceases or no longer exists.
- 6.2 The confidentiality obligations under this Agreement are not affected by bankruptcy, receivership, suspension of payments, legal succession, (share) transfer, assignment, seizure or other legal procedure with regard to any of the Parties, nor by the rejection of any further agreement between Parties, by a trustee of the Receiving Party in bankruptcy, or by the Receiving Party as a debtor-in-possession or the equivalent of any of the foregoing under local law.

## **7 Other Terms**

- 7.1 The provisions of this Agreement do not imply the obligation to disclose Confidential Information. Either Party is free to decide which type of information it wants to disclose to the other Party. Each Party warrants that it has the right to make disclosures under this Agreement.
- 7.2 Neither Party will be entitled to assign, transfer, sub-license or charge any or all of its rights or obligations under this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld.
- 7.3 This Agreement does not create any agency, partnership relationship, joint venture or other form of business association.
- 7.4 This Agreement constitutes the entire understanding of the Parties with respect to disclosure of the Confidential Information. No modification or amendment of this Agreement shall be valid or binding unless executed in writing and duly signed by representatives of both Parties. This shall also apply for the modification of this clause. This Agreement may be signed in counterparts, each of which shall be deemed to be an original and all of which when taken together will constitute the same Agreement. Any signed copy of this Agreement exchanged by photocopy or pdf format shall be considered an original.
- 7.5 This Agreement cannot be terminated by either Party. The Parties hereby waive their right to terminate or have this Agreement terminated and/or annulled in whole or in part for any reason whatsoever.



- 7.6 This Agreement is construed in accordance with and shall be governed exclusively by the laws of the Netherlands.
- 7.7 Any dispute or claim, which may arise between Parties out of, relating to or in connection with this Agreement (including disputes regarding the existence and the applicability of this Agreement), shall only be submitted to the competent court in Amsterdam, The Netherlands.

Agreed, drawn up in ..... copies, consisting of ..... pages, ..... appendixes, and signed

**Holland Dredging Industries B.V.**

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Julien M.B. Ghurahoo

Place: .....

Date: .....

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Place: .....

Date: .....