

CONFIDENTIALITY AGREEMENT

between

ATLAS GmbH

Atlasstraße 6
D-27777 Ganderkesee

- hereinafter referred to as "ATLAS GMBH" –

and

- hereinafter referred to as "Supplier " –

RECITALS

- (A) ATLAS GmbH is a manufacturer of construction equipment and may wish to discuss with the Supplier from time to time certain planned technology developments and/or other commercial matters relating to the project.
- (B) ATLAS GmbH and the Supplier each acknowledge that to enable such discussions to take place it will be necessary for confidential and commercially sensitive information, as further described below, to be disclosed to the Supplier by ATLAS GmbH.
- (C) This Agreement sets out the basis upon which such confidential and commercially sensitive information may be disclosed.

OPERATIVE PROVISIONS**1. Definitions**

1.1 In this Agreement the following term has the following meaning:

“Affiliate” means entities that control, are controlled by, or are under common control with a party to this Agreement.

2. Confidentiality Obligations

2.1 The Supplier acknowledges:

2.1.1 that it will ensure that all information, data or materials received from ATLAS GmbH or from an Affiliate of ATLAS GmbH or otherwise acquired from ATLAS GmbH which relates to ATLAS GmbH business affairs or to technical matters or to any project (including, without limitation, drawings, sketches, photographs, prototypes, models, computer software, ideas, design, know-how, formulae, processes, copyrights, inventions, techniques, new product details, business plans and such other matters as may reasonably be regarded as confidential by ATLAS GmbH – hereinafter referred to as “Confidential Information” - shall be kept strictly confidential for the term as set forth in paragraph 4.1 below.

2.1.2 Confidential Information shall, in particular:

- (a) be treated as confidential, and in a manner no less restrictive than that applied to the Recipient’s own commercially sensitive information;
- (b) be used for no purpose other than the progression of any relevant discussions [and any subsequent supply programme];
- (c) (save as provided in clause 3) not be disclosed to any third party, save with the prior written approval of the Discloser;
- (d) be disclosed only to such of the Recipient’s employees whose position is such that there is a demonstrable and necessary requirement for the Confidential Information to be disclosed to them for the purposes of progressing any relevant discussions [and/or any subsequent supply programme] and, provided that the Recipient’s employees are made fully aware of the obligation of confidentiality contained within this Agreement and are contractually bound to the Recipient to keep Confidential Information disclosed to them confidential.

2.1.3 The aforementioned obligations also applies to Confidential Information that has been disclosed to the Recipient prior to the signing of this Agreement.

2.2 The mutual covenants set out in Clause 2.1 above shall not apply to the disclosure or use of any Confidential Information which is demonstrated by the Recipient as :

- 2.2.1 being in the public domain at the time of disclosure;
- 2.2.2 being lawfully within the knowledge of the Recipient at the time of disclosure (except through any breach of confidentiality by the Recipient);
- 2.2.3 having entered the public domain subsequent to disclosure as the result of the actions of a bona fide third party freely able to disclose such information;
- 2.2.4 being required to be disclosed in satisfaction of any court order, subpoena, regulation or legislative enactment.

The exclusions set out in sub-clauses 2.2.1, 2.2.2 and 2.2.3 of this Clause 2.2 shall be subject to there being no breach of any of its obligations hereunder by the Recipient. The exclusion set out in sub-clause 2.2.4 of this Clause 2.2 shall be subject to the party proposing to disclose Confidential Information advising the Discloser of the extent and circumstances of such disclosure as soon as reasonably practicable after becoming aware of the need to make such disclosure.

2.3 The Supplier acknowledges that no disclosure of Confidential Information shall vest any interest or licence in such Confidential Information in the Recipient and that ownership of all rights in the Confidential Information shall remain vested in the Discloser.

3. **Affiliates**

3.1 The Supplier may disclose Confidential Information to its Affiliates provided always that the Supplier shall procure that any such Affiliate to which Confidential Information is disclosed under this Clause 3 shall keep the same confidential in accordance with the terms of this Agreement.

4. Duration

4.1 The obligations of confidentiality contained in this Agreement shall in respect of any Confidential Information continue for a period of five years after the date of disclosure of that Confidential Information and shall continue notwithstanding the expiry or termination of any other agreements between the parties.

5. Return of Information

5.1 Any Confidential Information disclosed shall be returned to ATLAS GmbH on request, and any copies of such Confidential Information (except for one archive copy, which the Recipient may keep for evidence purposes only) as well as electronic data containing such Confidential Information shall be destroyed or deleted by the Recipient, provided the destruction or deletion of any such information can be reached by using commercially reasonable efforts.

6. Governing Law

6.1 This Agreement shall be governed by and construed in accordance with the laws of the Federal Republic of Germany. The place of jurisdiction shall – depending of the subject matter – be Delmenhorst.

Signed for and on behalf of

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by:

Authorised signatory