

AB Equipment Power Products

Marine Service Provider Agreement
2023

AB Equipment Limited - Power Products (Lees Group Division)

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leesgroup.com

PARTIES:

- (1) AB Equipment Limited (No. 91825) ("**the Distributer**")
(2) _____ (No. _____) ("**the Service Provider**")

1. INTRODUCTION

- 1.1 AB Equipment is the Importer and New Zealand "**Distributer**" in respect of the products, (defined in clause 4.7 & 4.8 terms).
- 1.2 The "**Service Provider**" wishes to obtain the right to **Service & Supply Genuine Parts for** the Distributers Product(s).
- 1.3 AB Equipment has agreed to grant to the "**Service Provider**" the non-exclusive right to supply the products to their customers.

2. OBJECTIVES

- 2.1 The Distributer and the **Service Provider** wish to record the terms and conditions to sell and service the Distributers Product.
- 2.2 AB Equipment as authorised NZ Distributer for the **Marine Products** defined in "Schedule 1" wishes to appoint the **Service Provider** to support sales and provide service operations in the designated region defined in "Schedule 1" for that purpose.

3. APPOINTMENT

- 3.1 AB Equipment appoints the **Service Provider** for service & repair of **Marine Product(s)** under the terms of this agreement.
- 3.2 The **Service Provider** agrees to abide by the terms & conditions of this agreement including all sub clauses and schedules.
- 3.3 The **Service Provider** is permitted to describe itself as an **authorised Service Provider** for the products in "**Schedule 1**".

- 3.4 The **Service Provider** has the non-exclusive right to purchase products and parts from the Distributer at preferential prices.
- 3.5 The **Service Provider** is permitted to promote the products with signage, subject to consented design and content by AB Equipment.
- 3.6 The **Service Provider** is permitted to display product trade marks, upon approval of conformity to manufacturer's brand standards.
- 3.7 The appointment is personal to the **Service Provider** and may be not delegated or reassigned under this agreement.
- 3.8 The appointment is not exclusive. AB Equipment may at its discretion appoint others to provide same or similar operations in any region or location at its sole discretion, however the Distributer must notify the **Service Provider(s)** prior to any such appointment.
- 3.9 AB Equipment reserves the right for any of its branch outlets or subsidiary businesses to provide the same or similar sales and services for the product(s) in clauses 4.7 and 4.8 and further defined in "Schedule 1".
- 3.10 The appointment is region specific, nothing in this agreement grants or asserts the right to the **Service Provider** to promote, sell or service the Distributors Product outside of the "Region of Appointment" stated in "Schedule 1" without the written consent of the Distributor.

4. DEFINITIONS

- 4.1 "Confidential Information" means all information relating to AB Equipment's business, clients, and systems, including but not limited to the financial records, contracts, pricing, margin information, sales, budgets, reports, third party agreements, customer information, customer lists, related computer software, databases, programs, and manuals.
- 4.2 "GST" means Goods and Services Tax imposed under the Goods and Services Tax Act 1985.
- 4.3 "Importer or Distributer" means the contract pursuant to which AB Equipment Ltd, in its capacity as the Distributer has the exclusive, or non-exclusive importation and distribution rights in respect of the product.
- 4.4 "O.E.M" means the Original Equipment Manufacturer of the Product being a serialised item (Engine, Transmission, Generator).

- 4.5 "Technical Information" means all designs, specifications, systems, models, concepts, applications, or other data concerning the products.
- 4.6 "Trademarks" means all product names, registered trademarks, service marks and other marks, printing styles and designs which are " owned by or commonly used by AB Equipment or belonging to the Original Equipment Manufacturer.
- 4.7 "Product" means the unit produced by the O.E.M under its respective brand(s) that is subsequently represented by the "Distributer" (AB Equipment Ltd) in the NZ & South pacific region (if applicable).
- 4.8 "Brand" means the product supplied by the Original Equipment Manufacturer under the Distributer agreements held by AB Equipment specifically defined in relation to this agreement in "Schedule 1".
- 4.9 "Parts" means the Spare Parts components (genuine O.E.M) required to repair or service the engine.
- 4.10 "Agreement" means inclusive of schedule, annex or attachment included and directly referred to as forming a part of this document.

5. TERM, DURATION & RENEWAL

- 5.1 This agreement commences (or is deemed to have commenced) on the date set out in Schedule 1, subject to execution of this agreement by duly authorised persons independently representative of the **Service Provider & the Distributer**.
- 5.2 The commencement date for this agreement is recorded in "Schedule 1" hereto and shall continue in effect for; **12 months** with renewal occurring for the same period **on the anniversary of the agreement**, subject to clause 6.
- 5.3 The renewal of this agreement shall be at the sole discretion of the Distributer and is subject to evaluation of the **Service Provider** performance during the term of this agreement.

6. TERMINATION

- 6.1 Either party may terminate this agreement immediately on written notice **if** the other party;
- has failed to remedy a breach of this agreement within 30 days after having received prior written notice of the breach by the first party
 - becomes bankrupt, insolvent, under administration or an externally administrated body corporate

- c) is convicted of a serious offence
- d) operates its business in a way that endangers public health or safety
- e) is fraudulent in connection with the operation of its business; or
- f) agrees to termination of this agreement.

6.2 The Distributer may terminate this agreement immediately, upon written notice to the **Service Provider**, if:

any conduct by the **Service Provider**, principal shareholder, partner, or manager that in the opinion of the Distributer, adversely acts in such a manner that directly or in-directly affects the reputation or interests of AB Equipment and/or the O.E.M brand represented;

- a) any submission, application or claim for payment or compensation made to the Manufacturer or AB Equipment by the Dealer deemed to be fraudulent, deceptive or materially false;
- b) the Dealer fails to keep its business open for normal operation on not less than 5 business days per week and for the reasonable business hours deemed reasonable within the region in which it carries out or on its business.

7. SERVICE PROVIDER OBLIGATIONS

7.1 Products the **Service Provider** sells on behalf of the **Distributer** are sourced directly from the **Distributer**, **exclusively**.

7.2 **not** promote, stock, or sell any clones, copies or substitutes of the Distributers Products.

7.3 make available appropriately skilled staff for **training** purposes by participation in Distributer Managed Programs at its own expense.

7.4 Purchase any necessary service tools at its own expense, the Distributer may or may not contribute to these expenses at its sole discretion.

8. SERVICE PROVIDERS INDEMNITY

8.1 The **Service Provider** releases and indemnifies AB Equipment, its servants and agents against all actions, claims, and demands (including the cost of defending or settling any action, claim or demand which may be instituted against AB Equipment arising out of the negligence of the **Service Provider**, its agents, employees, or any sub-contractor or of any other person for whose acts or omissions the **Service Provider** is vicariously liable for and also, against any action, claim or demand by the **Service Providers** employees or agents or their personal representatives or dependants arising out of the performance of this agreement.

8.2 The **Service Provider** indemnifies AB Equipment against all costs and liability arising out of the presence of the **Service Providers** representatives on any premises and against all liability for their injury or death whilst carrying out their duties pursuant to this agreement and in respect of all and any loss or damage to their personal effects.

9. INSURANCE

9.1 The **Service Provider** will maintain Insurance cover for full replacement value or such sufficient amount as AB Equipment may agree to for all product (Including but not limited to consignment stock) delivered to the Dealer (irrespective of whether title has passed to the Dealer).

9.2 The Dealer will maintain suitable Insurance cover (without limitation), including professional liability and full replacement value or such other amount as AB Equipment may agree and ensure AB Equipment is noted on any such Insurance Certificate as an interested party.

10. TRADING TERMS

10.1 Shall be as per the terms and conditions of your credit account.

11. WARRANTIES AND LIABILITIES

11.1 Warranty:

The **Service Provider** accepts and will afford to each Purchaser of the Distributer Product the full benefit of the Product limited warranty.

The **Service Provider** will advise its Purchasers of such warranty and will provide them with a written copy of the Warranty Document where applicable. The **Service Provider** has no authority to make, and will not make, any representation or warranty on behalf of AB Equipment in respect of the products other than as set out in the Distributers Warranty Document.

11.2 Warranty Claims:

From time to time the **Service Provider** may be required to provide Product, Services and/or Spare Parts in respect of warranty claims on the Distributers Products regardless of whether the **Service Provider** sold or gained from the original sale of said product. The **Service Provider** acknowledges and agrees it will provide such services.

11.3 The Distributer acknowledges and agrees to reimburse cost claims for approved warranty repairs carried out by the **Service Provider** provided that the repairs are;

- a) approved prior to being undertaken
- b) progressed and completed to the Distributer and/or OEM standards
- c) charged in accordance with the Distributers OEM Warranty Rates statement
- d) notified of any replacement parts and the Distributer is provided with the initial opportunity to supply or remedy.

12. GENERAL PROVISIONS

12.1 This agreement contains all the terms, representations and warranties made between the parties and supersedes all prior discussions and agreements covering the subject matter of this agreement. Except as otherwise expressly provided in this agreement, no amendment to this agreement will be effective.

13. DISCOUNT STRUCTURE

13.1 **Discounts** on **Products** and **Spare Parts** as per "**Schedule 2**".

14. FURTHER TERMS OF TRADE

14.1 Discount: The **Service Provider** shall be entitled to the product discount stated in "Schedule 2" provided that;

- a) The **Origin** and principal **Interaction** with the customer prior to sale is deemed by the Distributer as being exclusively generated by the **Service Provider** and the sale is transacted via the **Service Provider** trading account. The Distributer has sole discretion for this distinction. or;
- b) The Distributer waives this distinction in its capacity under the terms of this agreement, in favour of the **Service Provider**.

14.2 Sales **by Distributer in the "Region of Appointment"**: The Distributer may, for commercial reasons, require trading directly with a customer or group of customers within the **Service Providers** region, In the event this occurs the Distributer warrants that the **Service Agent** shall be entitled, notwithstanding 14.1 in it's entirety, to **claim payment** from the Distributer in relation to Sales of Serialised Product (Spare Parts excluded) as follows;

- 14.3 **Up to 5%** of the Invoiced sale value provided that; the **Origin** and principal **Interaction** with the customer prior to sale is deemed by the Distributer as primarily being **generated** by the Distributer. The Distributer has sole discretion for this distinction. No claim valid until full and final settlement of the sales Invoice.
- 14.4 **Up to 10%** of the Invoiced sale value provided that; the **Origin** and principal **Interaction** with the customer prior to sale is deemed by the Distributer as primarily being a collaboration of **Service Provider** and Distributer involvement. The sales lead may have been **generated** by either party. The Distributer has sole discretion for this distinction. No claim valid until full and settlement of the sales Invoice. In the event the sale is transacted via the **Service Providers** account, the monetary claim value will be settled by discounting the Product in favour of the Dealers trading account.

This Agreement includes;

Schedule: 1 - 2

Attachments:

- Warranty Statement
- Warranty Reimbursement Rates

Signatories, party to this Agreement;

SIGNED for and on behalf of

Authorised Person

by its authorised signatories in the presence of:

Print Name

Authorised Person (Witness)

Print Name

SIGNED for and on behalf of **AB Equipment NZ Ltd**

by its authorised signatories in the presence of:

Authorised Person

Print Name

Authorised Person (Witness)

Print Name

SCHEDULE 1

TERMS OF AGREEMENT

Legal Name of Dealer:

Trade Name of Dealer (if any):

Dealers company registration number:

Commencement Date of Agreement:

Region of Appointment:

Product by Brand as relating to the Agreement:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

SCHEDULE 2

Products: Serialised product listed in Schedule 1 will be supplied to a maximum discount of %

Spare Parts: Spare Parts for product listed in Schedule 1 will be supplied to a maximum discount of %

Lubricants and Coolants: Lubricants and Coolants listed in Schedule 1 will be supplied to maximum discount of %

Example of Authorised Dealer Signage; Service – FPT DEALER

