

Gough Bros - Southland



MARINE & INDUSTRIAL
POWER

AB Equipment Marine & Industrial Power

Marine Dealer Agreement
2024

AB Equipment Limited - Marine & Industrial Power

Unit 7, 103 Cryers Road, East Tamaki, Auckland 2013

PO Box 23151 Manukau City, Auckland, New Zealand

P: +64 9 299 6019 **E:** marine.service@abequipment.co.nz

marineindustrial.abequipment.co.nz

PARTIES:

- (1) AB Equipment Limited (No. 91825) ("**the Distributer**")
(2) ~~GOUGH BROTHERS LIMITED~~ (No. (7435056)) ("**the Dealer**")

GOUGH BROTHER ENGINEERING (NM9 LTD)

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 definitions).
- 1.2 The **Dealer** wishes to obtain the right to **Sell & Service** the Distributers Product(s).
- 1.3 AB Equipment has agreed to grant to the **Dealer** the non-exclusive right to supply the Products to customers of the **Dealer**.

2. OBJECTIVES

- 2.1 AB Equipment (the "Distributer") and the **Dealer** wish to record the terms and conditions on which the **Dealer** agrees to sell and service the Distributers Product.
- 2.2 AB Equipment as authorised NZ distributor for the Marine Products defined in "Schedule 1" wishes to appoint the **Dealer** to establish sales and service operations in the designated region defined in "Schedule 1" for that purpose.

3. APPOINTMENT

- 3.1 AB Equipment appoints the **Dealer** as a **Sales and Service** agent for **Marine Product(s)** under the terms of this agreement.
- 3.2 The **Dealer** agrees to abide by the terms & conditions of this agreement including all sub clauses, schedules and ANNEX.
- 3.3 The **Dealer** is permitted to describe itself as an **authorised sales and service agent** for the Products in "Schedule 1".
- 3.4 The **Dealer** has the non-exclusive right to purchase Products and Parts from the Distributer at preferential prices.

- 3.5 The **Dealer** is permitted to promote the products with signage, subject to consent regarding design and content by AB Equipment.
- 3.6 The **Dealer** has the right to display the Trade marks of the products, upon approval of conformity to manufacturers Brand standards
- 3.7 The Appointment is personal to the **Dealer**. The **Dealer** may not delegate or sub-contract its obligations or assign 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 **Dealer** 60 days 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 **Dealer** to Promote, Sell or Service the 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 "Distributor" (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 distributor 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. SCOPE OF AGREEMENT

- 5.1 AB Equipment grants to the **Dealer** and the **Dealer** accepts a non-exclusive right to provide **Sales & Service** for the Products and in the region specified in "**Schedule 1**".
- 5.2 All information given by the Distributer to the **Dealer** under this agreement or during the negotiations preceding this agreement are deemed "confidential Information" and may not be disclosed to any person other than;
- a) to employees, legal advisers, auditors and other consultants of the **Dealer** or its Related Corporations who require the information for the purposes of this agreement;
 - b) with the express consent of the distributor.

6. TERM, DURATION & RENEWAL

- 6.1 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 **Dealer** & the Distributer.
- 6.2 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 7. and 8. in their entirety.

6.3 The renewal of this Agreement shall be at the sole discretion of the Distributer and is subject to evaluation of **Dealer** performance during the term of this Agreement.

7. TERMINATION

7.1 Either party may terminate this agreement immediately on written notice **if** the other party;

- a) 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
- b) 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.

7.2 The Distributer may terminate this agreement immediately, upon written notice to the **Dealer**, if:

any conduct by the **Dealer** or any principal officer, 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 the **Dealer** carries out or on its business.

8. DEALER'S OBLIGATIONS

8.1 During the term of this Agreement and following execution of the agreement, the **Dealer** agrees it shall:

- a) at all times use its best endeavours to promote and extend the market for the product to all potential customers;
- b) **not** incur any liability on behalf of AB Equipment Ltd or in any way pledge or purport to pledge AB Equipment credit or purport to make any contract binding upon AB Equipment;

- c) generally, act diligently and in Good faith as **Dealer** of the Products;
- d) products the **Dealer** sells on behalf of the "Distributor" shall be sourced directly from the Distributer exclusively;
- e) **not** promote, stock, or sell any clones, copies or substitutes of the Distributers Products;
- f) actively **promote sales and service** of the Distributer Product and shall co-operate with AB Equipment on appropriate promotional and advertising programmes. Product logos and material used by the **Dealer** must be in the current format and comply with OEM Brand standards and be approved by the Distributer;
- g) use its best endeavours to achieve and meet any sales targets for product and spare parts as provided by the Distributer, if such targets are provided by the Distributer;
- h) commit to purchasing and maintaining a minimum spare parts inventory to support and service the product; detailed under "**Schedule 2**" and "**Critical Spare Parts**" included in this agreement;
- i) be required to make available appropriately skilled staff for **training** purposes by participation in distributor managed programs. The **Dealer** remains liable for all personal expenses, travel & accommodation costs incurred by participation, unless otherwise stated as compensated by the Distributer as a sponsored event;
- j) purchase & maintain necessary **Service Tools** at its expense, such service tools and equipment required to perform operations on the Product that the **Dealer** is appointed to represent. Tooling such as required to complete a repair professionally and diligently to the required standard. The cost of any special tools, reasonably recommended by the AB Equipment technical representative, are to be supplied by the Distributer at its landed cost price to the **Dealer**. The Distributer may or may not contribute to any such tool purchasing at its sole discretion. Specific Service Tool requirements are noted in specific service tool requirements are located in the Dealers web portal.
- k) Provide suitable showroom space in a customer facing location within their premises to display the Distributers Products.

9. DEALER'S INDEMNITY

9.1 The **Dealer** 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 **Dealer**, its agents, employees, or any sub-contractor or of any other person for whose acts or omissions the **Dealer** is vicariously liable and also, against any action, claim or demand by the Dealer's servants, employees or agents or their personal representatives or dependants arising out of the performance of this agreement.

9.2 The **Dealer** indemnifies AB Equipment against all costs and liability arising out of the presence of the Dealer's 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 loss or damage to their personal effects.

10. INSURANCE

10.1 The **Dealer** 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).

10.2 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.

11. TRADING TERMS

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

12. TRADE NAMES, TRADEMARKS & CONFIDENTIAL INFORMATIONS

12.1 The **Dealer** shall not at any time during and after the life of this Agreement, use or employ an imitation of the Trademarks or anything similar thereto. This clause shall survive the termination of this Agreement.

13. WARRANTIES AND LIABILITIES

13.1 **Warranty:**

The **Dealer** accepts and will afford to each Purchaser of a Product full benefit of the Product limited warranty. The **Dealer** will advise its Purchasers of such warranty and will provide them with a written copy of the warranty document where applicable. The **Dealer** 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 Distributors Warranty Document provided.

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

13.3 The Distributer acknowledges and agrees to reimburse cost claims for approved Warranty repairs carried out by the **Dealer**, provided that the repairs are

- i) approved prior to being undertaken
- ii) progressed and completed to the Distributer and/or OEM standards
- iii) charged in accordance with the Distributers OEM Warranty Rates statement
- iv) notified of any replacement parts and the distributor is provided with the initial opportunity to supply or remedy

13.4 Notice of Customer Complaints: The **Dealer** must report all complaints receive by its customers about the Products within 7 days of receiving such complaint.

13.5 This Agreement will be governed by and construed according to the law of New Zealand.

14. GENERAL PROVISIONS

14.1 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.

15. DISCOUNT STRUCTURE

15.1 **Discounts** on **Products, Lubricants** and **Spare Parts** as per "**Schedule 2**".

15.2 Product Discount subject to Clause 16.

16. FURTHER TERMS OF TRADE

16.1 **Discount entitlement:** The **Dealer** 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 **Dealer** and the sale is transacted via the **Dealer** 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 **Dealer**.

16.2 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 **Dealer** or Service Agent region, In the event this occurs the Distributer warrants that the **Dealer** shall be entitled, notwithstanding 16.1 and subject to 16.2 a) and 16.2 b), to **claim payment** from the Distributer in relation to Sales of serialised Products (Spare Parts excluded) as follows;

- a) **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.
- b) **Up to 15%** 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 **Dealer** or Agent 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 Dealer's account, the monetary claim value will be settled by discounting the product in favour of the Dealer's trading account.

This Agreement includes;

Schedule: 1 - 2

Attachments :

- Marine Dealer Critical Spare Parts / Product Warranty Statement / Warranty Reimbursement Rates

Signatories, party to this Agreement;

SIGNED for and on behalf of

NMS LTD

by its authorised signatories in the presence of:



Authorised Person

NICHOLAS MORRIS

Print Name



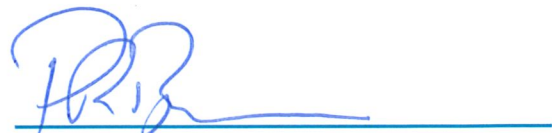
Authorised Person (Witness)

Matthew Crabb

Print Name

EXECUTION


SIGNED for and on behalf of **AB Equipment NZ Ltd** by its authorised signatories in the presence of:



Authorised Person

Perry Bishara

Print Name



Authorised Person (Witness)

Matthew Crabb

Print Name

SCHEDULE 1

TERMS OF AGREEMENT

Legal Name of Dealer: GOUGH BROTHERS LIMITED

Trade Name of Dealer (if any):

Dealers company registration number: (7435056) Registered

Commencement Date of Agreement: Febuary 1st, 2024

Region of Appointment: Southland (* territory as defined by Regional District Council Boundaries)

Product by Brand as relating to the Agreement: 10

1. FPT (Fiat Powertrain Technologies)

2. HD HYUNDAI INFRACORE Engine

3. ZENITH ENGINEERING (Incorporating IPS - ISUZU Power Sysytems)

4. VOLPI TECHNO (Paguro)

5. FLEXBALL ITALIANO

6. ZF (Marine Products)

7. D-I INDUSTRIAL LTD

8. TWIN DISC INC

9. KONRAD MARINE INC

10. GULF Marine

SCHEDULE 2

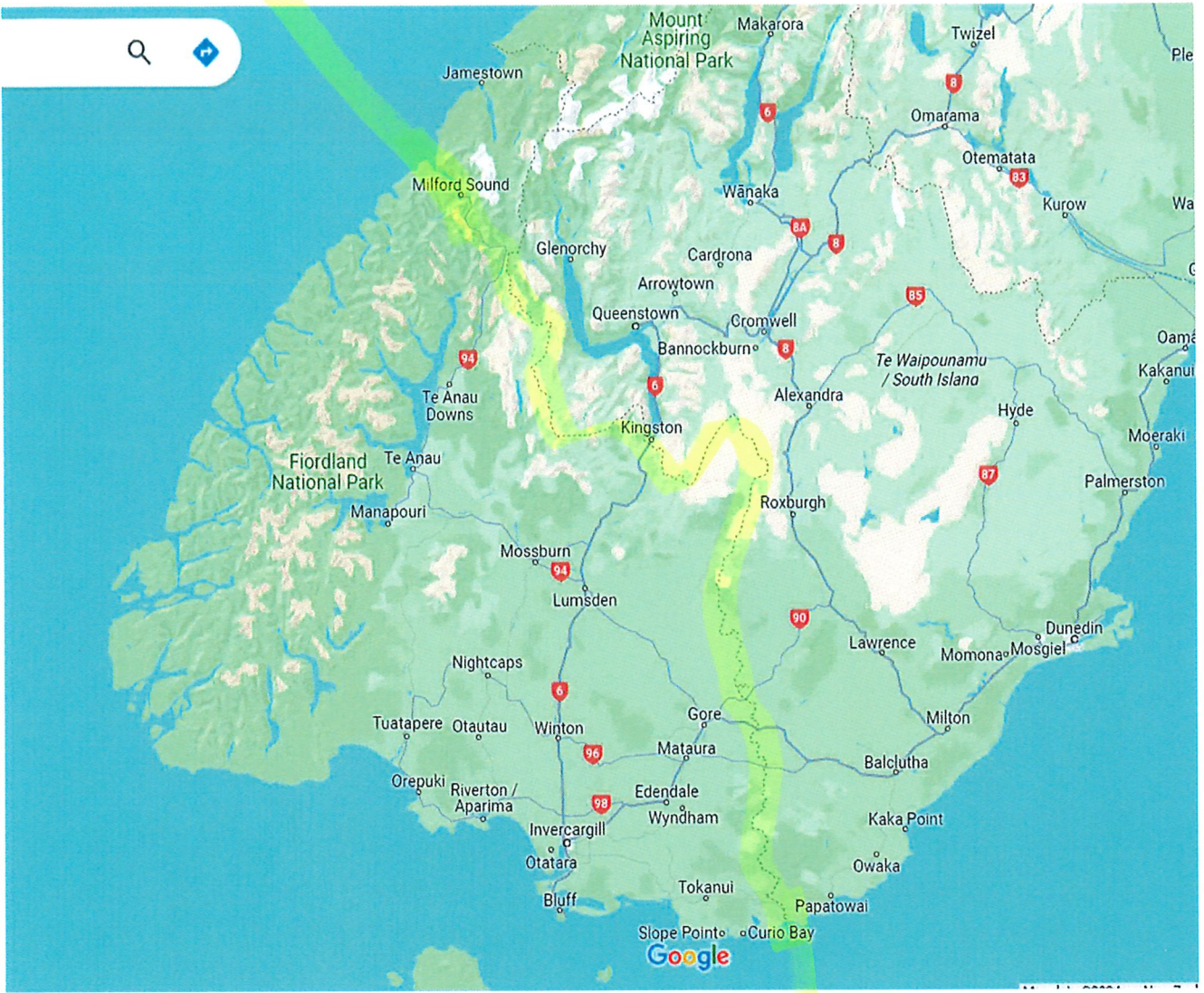
Products: Serialised product listed in Schedule 1 will be supplied to a maximum discount of 15 %

Spare Parts: Spare Parts for product listed in Schedule 1 will be supplied to a maximum discount of 25 %

Lubricants and Coolants: Lubricants and Coolants listed in Schedule 1 will be supplied to maximum discount of 25 %

Example of Authorised Dealer Signage; Service – FPT DEALER





Southland.