## **SUB-DEALER AGREEMENT**

Dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2021

between

(as the “**Principal**”)

and

(as the “**Sub Dealer**”)

**Drawn By: -**

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**SUB-DEALER AGREEMENT**

**THIS AGREEMENT** is made on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ by and between:

1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ; of care of P. O. Box \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereafter called “**Principal**”) and
2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_; of care of P. O. Box \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereafter called “**Sub Dealer**”).

**WHEREAS:**

1. The Principal is the appointed distributor for the importation and sell of the XXXXXXXX Products listed in Schedule 1 hereto (the “**Products**”);
2. The Sub Dealer desires to purchase the Products from Principal for resale in the territories or geographic areas as defined in Schedule 2 hereto (the “**Territory**”).
3. The Principal desires to appoint Sub Dealer as its exclusive sub-distributor of the Products in the Territory, and Sub Dealer desires such appointment subject to the terms and conditions set forth in this Agreement, including any exhibits or schedules attached hereto.

**NOW, THEREFORE**, in consideration of the premises and covenants herein contained, the parties hereto agree as follows:

# Appointment

* 1. The Principal hereby appoints and grants the Sub Dealer the non-exclusive right to sell and distribute the Products to Customers located in the Territory (the “Customers”) and to render other services as a dealer for the Principal as set forth herein.
  2. The Sub Dealer shall limit its activities with respect to the Products to Customers located within the Territory and refrain from selling or otherwise transferring, directly or indirectly, the Products to any person outside the Territory, without the express written consent of the Principal.

# Effective Date and Duration

* + 1. This agreement shall become effective on the date first above written and shall continue in full force for a period of TWELVE (12) months, and may be extended each time on a further one yearly basis at the sole discretion of the Principal.

# Orders, Price, Terms of Sale & Payment.

* 1. **Orders by Sub Dealer**
     + 1. The Sub Dealer shall make formal orders for the Products with the Principal in writing in the form as may be designated by the Principal
       2. The Principal shall have two (2) business days after its receipt to accept (or reject for a legitimate business reason) any order submitted by Sub Dealer. Should the Principal fail to timely accept or reject an order from the Sub Dealer in accordance with this clause, such order shall be deemed accepted and shall become binding on Company.
       3. All orders shall be fulfilled by the Principal within fourteen (14) business days of order acceptance.
  2. **Prices and Shipment**
     + 1. The Principal agrees to sell, and Sub Dealer agrees to purchase, the Products in accordance with the Prices and Volume, Discount Prices set forth in Schedule A.
       2. Such Prices and Volume Discount Prices shall be subject to change based on the costs of the Principal, provided that the Principal provides the Sub Dealer with at least seven (7) days prior written notice of any such increase. Any such change shall not apply for any order(s) accepted prior to the effective date of the increase.
       3. The Principal shall package the Products for shipment in accordance with the Sub Dealer’s instructions. All shipments of Products for Customers in the Territory, and any freight and shipping costs related thereto, will be Distributor’s responsibility. All shipments will be made EXW Principal’s facility (Incoterms 2010).
  3. **Terms of Sale**
     1. All sales by the Principal shall be in accordance with the terms and conditions of this Agreement.

# Obligation of Sub Dealer

* + 1. Sub Dealer hereby undertakes and agrees with Principal that it will at all times, during the duration of this agreement, observe and perform the terms and conditions set out in this agreement and in particular:
       1. Sub Dealer shall diligently perform the services and obligations detailed in this agreement and shall apply at all times its best endeavors to promote the Products within its territory or specific sectors, within the territory of set out in Schedule B herein.
       2. Sub Dealer shall do its best to meet the target sales starting from the 1st month, stated below;
* 1st Month : …………………………
* 2nd Month: …………………………
* 3rd Month: …………………………
* 4th Month: …………………………
* 5th Month: …………………………
* 6th Month: …………………………
  + - 1. Sub Dealer shall submit all future sales forecasts to the Principal beyond those given in clause 4.1.2 above, covering a period of six (6) months, at least two (2) months in advance to the period in question, and to be agreed with the Principal. Sub Dealer will report to the Principal on a monthly basis, in the format that the Principal requires, the market situation including any circumstances which can affect the business, status of competitors, and other valuable information accessible in the assigned territory.
      2. Sub Dealer shall not represent, promote, market or sell in the territory any complete or knock-down products that are in competition with the Product range, for the entire term of this Agreement.
      3. The Principal shall be responsible for the maintenance, warranty service, and repair of the Products sold by the Sub Dealer in the territory.
      4. Sub Dealer shall provide competitors’ pricing information when the Principal requires.
      5. Sub Dealer must submit the customer and end user details to the Principal for each machine sold at their end.

# Obligation of the Principal

* 1. The Principal hereby undertakes and agrees that it will at all times during the duration of this agreement observe and perform the terms and condition set out in this Agreement and in particular :
     + 1. The Principal shall take responsibility for the warranty support of the Products in accordance with Global Warranty Policy.
       2. The Principal shall apply its best endeavors to safeguard the rights hereby granted to Sub Dealer.
       3. The Principal will ensure product availability to the best of its ability, pre and post delivery process as per guidelines.
       4. The Principal will provide the current Sub Dealer all pricing on its Products and in case of any price revisions will update pricing 15 days in advance.

# Warranty

* 1. The standard warranty from for one year will be applicable on all the Products sold by Sub Dealer.
  2. Sub Dealer duly understands that warranty shall not be covered without completion of required documentation as per guidelines.

# Termination

* 1. Either Party may terminate this Agreement prior to its expiration upon the occurrence of either of the following:
     + 1. the other Party (in this case, the “breaching Party”) fails to perform any of its obligations hereunder and fails to correct such failure within forty five (45) calendar days after receiving written demand therefore from the non-breaching Party, specifying the failure in sufficient detail for the breaching Party to correct such failure; provided, however, that upon a second breach of the same obligation by such Party, the other Party may forthwith terminate this Agreement upon notice to the breaching Party.
       2. the other Party becomes insolvent, or institutes (or there is instituted against it) proceedings in bankruptcy, insolvency, reorganization or dissolution, makes an assignment for the benefit of creditors or becomes nationalized or has any of its material assets confiscated or expropriated; or
       3. the other party fails to fulfil its obligations under this agreement;
       4. the Sub Contractor fails to achieve 80% of the target sales over the period of 6 months.
  2. **Rights of Parties at Termination.**
     + 1. **Obligations after Termination** - In the event that this Agreement is terminated or expires on its own terms, the Principal shall have no further responsibilities to the Sub Dealer except that in the event the Agreement terminates for any reason other than a breach hereof by the Sub Dealer, the Principal shall be obligated to process orders accepted by the Principal prior to the effective date of such termination or expiration.
       2. **Survival** - Notwithstanding anything to the contrary set forth herein, no termination of this Agreement shall relieve any Party from any obligations hereunder which are outstanding on, or relate to matters or claims occurring or arising prior to, the date of such termination or which survive such termination by their own terms or nature.

# Indemnification & Limitation of Liability.

* 1. **Indemnification** - Each Party (“Indemnifying Party”) shall indemnify, hold harmless and defend the other Party (“Indemnified Party”) and its officers, directors, agents, employees, and affiliates, from and against any and all claims, demands, actions, costs, expenses, liabilities, judgments, causes of action, proceedings, suits, losses and damages of any nature, which are threatened or brought against, or are suffered or incurred by, the Indemnified Party or any such person to the extent caused directly by acts or omissions of the Indemnifying Party relating to this Agreement, including without limitation (i) any negligent or tortuous conduct, (ii) any breach of any of the representations, warranties, covenants or conditions of the Indemnifying Party contained in this Agreement, (iii) any violation of applicable laws or regulations, (iv) infringement or violation of any patent, copyright, trade secret, or other proprietary interest of any third party, and (v) any breach of any express or implied warranties relating to the Products, including implied warranties of merchantability and fitness for a particular purpose.
  2. **Limitation of Liability** - In no event shall either party be liable to the other for any special, indirect, exemplary or consequential damages arising out of this agreement or purchase or use of the Products.

# Confidential & Proprietary Information.

* 1. As used herein, the term “**Proprietary Information**” means any information, technical data, or know-how (including, but not limited to, information relating to products, software, services, development, inventions, processes, techniques, customers, pricing, internal procedures, business and marketing plans or strategies, finances, employees and business opportunities) disclosed by one Party (the “**Disclosing Party**”) to the other (the “**Recipient Party**”) either directly or indirectly in any form whatsoever, including, but not limited to, in writing, in machine readable or other tangible form, orally or visually.
  2. Unless otherwise expressly authorized by the Disclosing Party, the Recipient Party agrees that it and any of its personnel receiving Proprietary Information under this Agreement shall treat such Proprietary Information in strict confidence with the same degree of care applied to its own Proprietary Information of like importance, which it does not wish to disclose, publish, or disseminate to third parties.
  3. In no event will the Recipient Party divulge, in whole or in part, such information to any third party without the prior written consent of the Disclosing Party; provided, further, that any third party must also agree in writing to restrictions comparable to those provided in this Section. The Recipient Party may disclose the Proprietary Information to the extent required by a valid order by a court or other governmental body or by applicable law; provided, however, that the Recipient Party will use all reasonable efforts to notify Disclosing Party of the obligation to make such disclosure in advance of the disclosure so that Disclosing Party will have a reasonable opportunity to object to such disclosure.
  4. Notwithstanding any other provisions of this Agreement, each party acknowledges that Proprietary Information shall not include any information that:  (i) is already known to the Recipient Party at the time of disclosure, or becomes publicly known through no wrongful act of the Recipient Party’s part; (ii) is rightfully received by the Recipient Party from a third party without breach of this Agreement; (iii) is independently developed by the Recipient Party without benefit of information received under this Agreement; (iv) is furnished to a third party by the Disclosing Party without a restriction on the third party’s right to disclose it; or (v) is explicitly approved for release by written authorization by the Disclosing Party.
  5. It is understood that all Proprietary Information disclosed under this Agreement, is, and shall remain, the property of the Disclosing Party.  Upon completion of this Agreement, or upon written notice from the Disclosing Party, the Recipient Party agrees to return all Proprietary Information in its possession.
  6. The Recipient Party acknowledges that the Disclosing Party, because of the unique nature of the Proprietary Information, would suffer irreparable harm in the event that the Recipient Party breaches its obligation under this Agreement and that monetary damages would be inadequate to compensate the Disclosing Party for such a breach.  The Parties agree that, in such a circumstance, the Disclosing Party shall be entitled, in addition to such monetary relief as may be applicable, to injunctive relief as may be necessary to restrain any continuing or further breach by the Recipient Party, without showing or proving any actual damages sustained by the Disclosing Party.
  7. The obligations of the Recipient Party under this Section shall survive termination or non-renewal of this Agreement.

# Trademarks.

* + 1. The Sub Dealer shall not dispute or contest for any reason whatsoever, directly or indirectly, during the term of this agreement and thereafter, the validity, ownership or enforceability of any of the trademarks of the Principal, nor directly or indirectly attempt to acquire or damage the value of the goodwill associated with any of the trademarks of the Principal, nor counsel, procure or assist any third party to do any of the foregoing. The Sub Dealer will not institute any proceedings with respect to the trademarks of the Principal either in the Sub Dealer’s own name or on behalf of the Principal without express written permission of the Principal.  The Sub Dealer shall assign to the Principal, without charge, any rights in the trademarks of the Principal that may inure to the benefit of the Sub Dealer pursuant to this agreement or otherwise.  The Sub Dealer shall execute any documents or do any acts that may be required to accomplish the intent of this section.

# Force Majeure

* + 1. Neither Party shall be held liable for any failure to perform either of its obligations under this agreement due to any cause or circumstance beyond the reasonable control of such Party, such as Acts of God, earthquakes, fire, accidents, floods, storms, riots, wars, rebellions, strikes, lockouts or other labour disturbances, national or international emergencies, government rules, regulations, acts, orders, restrictions, or requirements, disease outbreaks, endemics and pandemics, failure to secure materials or equipment from usual sources of supply, failure of carriers to furnish transportation, including without limitation a demand for such Products and other products manufactured by Principal which exceeds the Principal’s ability to supply them.  No such inability to deliver or delay in delivery shall invalidate the remainder of this Agreement.

# Relationship of Parties.

* 1. The Sub Dealer is an independent contractor and is not and shall not be deemed to be an employee, legal representative, dealer, general agent, joint venturer or partner of the Principal for any purpose.
  2. The Sub Dealer acknowledges that the Principal has not granted it any authority to make changes to the Principal’s terms and conditions of sale, grant any warranties in excess of those extended by the Principal or limit its liabilities or remedies less than the Principal limits its liabilities and remedies, sign quotations, incur obligations (expressed or implied), or in general enter into contracts on behalf of the Principal or bind the Principal in any transaction with customers, governmental agencies or third parties.

# Arbitration

* 1. The Parties shall seek to resolve any dispute, controversy or claim arising out of or in connection with this Agreement, including without limitation, any dispute regarding the enforceability of any provision, through good faith negotiations between them within thirty (30) days of any notice of dispute being served or such longer period of time as may be mutually agreed between the Parties.
  2. If the Parties are unable to resolve the dispute within this timeframe, and one or both parties desire to pursue the dispute, the complaining party must submit the dispute to a binding arbitration in accordance with the provisions and regulations of the Arbitration Rules of the Chartered Institute of Arbitrators (CIArb) (Kenyan branch).
  3. The Arbitral Award rendered by the arbitrator(s) shall be final and binding upon both parties.

# General Provisions.

* 1. **Amendments** - This Agreement may be amended only in writing signed by each of the Parties, and any such amendment shall be effective only to the extent specifically set forth in such writing.
  2. **Governing Law** - This Agreement shall be governed by and construed in accordance with the laws of Kenya without regard to its principles of conflicts of laws provisions.
  3. **Assignment** - Neither Party shall assign, pledge or otherwise transfer any of its rights, interest or obligations hereunder, whether by operation of law or otherwise, without the prior express written consent of the other Party.
  4. **Counterparts Execution** - This Agreement may be executed in any number of counterparts, and by each of the Parties on separate counterparts, each of which, when so executed, shall be deemed an original, but all of which shall constitute but one and the same instrument.
  5. **Cumulative Remedies** - The rights and remedies of the Parties hereunder are cumulative and not exclusive of any rights or remedies which the Parties would otherwise have.  No single or partial exercise of any such right or remedy by a Party, and no discontinuance of steps to enforce any such right or remedy, shall preclude any further exercise thereof or of any other right or remedy of such Party.
  6. **Exhibits and Schedules** - The exhibits or schedules attached hereto are an integral part hereof and all references herein to this Agreement shall include such exhibits and schedules.
  7. **Notices** - Unless otherwise specifically provided herein, all notices, consents, requests, demands and other communications required or permitted hereunder: (i) shall be in writing; (ii)) shall be sent by messenger, certified or registered mail, a reliable express delivery service or telecopier (with a copy sent by one of the foregoing means), charges prepaid as applicable, to the appropriate address(es) or number(s) set forth above; and (iii) shall be deemed to have been given on the date of receipt by the addressee, as evidenced by (A) a receipt executed by the addressee (or a responsible person in his or her office), the records of the Person delivering such communication or a notice to the effect that such addressee refused to claim or accept such communication, if sent by messenger, registered mail or express delivery service, or (B) a receipt generated by the sender’s telecopier showing that such communication was sent to the appropriate number on a specified date, if sent by telecopier. All such communications shall be sent to the addresses for each Party as first set forth above, or to such other addresses or numbers as any Party may inform the other party:
  8. **Severability** - Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.
  9. **Successors and Assigns** - This Agreement shall be binding upon and shall inure to the benefit of each of the Parties and their respective successors and permitted assigns.
  10. **Entire Agreement** - This Agreement contains the entire agreement of the Parties with respect to the transactions contemplated hereby and supersedes all prior written and oral agreements, and all contemporaneous oral agreements, relating to such transactions.

**IN WITNESS WHEREOF**, this Agreement was signed by the Parties under the hands of their duly authorised officers and made effective as of the date first written above.

|  |  |
| --- | --- |
| FOR THE PRINCIPAL  ……………………………… LIMITED  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Designation:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature: | FOR THE SUB DEALER  ……………………………… LIMITED  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Designation:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature: |

# Schedule A – The JBC Products

* + All Construction Equipment & Power Generation products including,
  + Spare parts
  + Attachments

**SCHDEULE B – THE TERRITORY**

The territory and geographical area shall mean the entire Republic of Kenya.