

## **SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into between the California Air Resources Board (CARB), with its principal location at 1001 I Street, Sacramento, California 95814; and Yanmar Power Technology Co., Ltd. (Yanmar), with its principal location at 1-32, Chayamachi, Kita-ku, Osaka, 530-8311, Japan (collectively, the "Parties," or individually, "Party").

### **LEGAL BACKGROUND**

- (1) Purpose. The California Health and Safety Code mandates the reduction of emission of air pollution from off-road engines. (Health & Saf. Code §§ 43013; 43018.)
- (2) Regulation. CARB adopted the "Off-Road Compression-Ignition Engines and Equipment" Regulation (Cal. Code Regs., tit. 13, §§ 2420-2427) (Off-Road CI Regulation) to reduce emissions of, inter alia, oxides of nitrogen (NOx) and hydrocarbons (HC) from these off-road engines.

Further, CARB adopted the "Off-Road Large Spark Ignition Engines" Regulation (Cal. Code Regs., tit. 13, §§ 2430-2439) (LSI Regulation) to reduce emissions of, inter alia, NOx and HC from off-road spark-ignited large spark ignition (LSI) engines above 19 kilowatts, and equipment utilizing such engines.

- (3) Regulatory Provisions. Manufacturers of new off-road compression-ignition (CI) engines that are manufactured for sale, sold, offered for sale, introduced or delivered for introduction into commerce, or imported into California are required to certify these engines and obtain an Executive Order (EO) from CARB. The engines must meet the emission standards (either through a direct standard or through a family engine level or "FEL" under the averaging, banking, and trading or "ABT" program), and the manufacturer must also properly label, provide for defects investigation and reporting, and conduct production engine testing based on the model year (MY) and maximum engine power. Manufacturers may produce equipment and engines that are exempt from meeting current MY emission standards for a portion of their California-directed production volume using flexible allowances but must meet the notification, reporting, and labeling requirements. (Cal. Code Regs., tit. 13, §§ 2420-2427.) The LSI Regulation requires all LSI engines that are manufactured for sale, sold, or offered for sale in California, or introduced, delivered, or imported into California for introduction into commerce to be covered by an Executive Order showing the engine meets the exhaust emission standards as determined; was properly tested following all required test procedures; contains an emission control label; meets all defect warranty requirements; and compliance with the reporting requirements. (Cal. Code Regs., tit. 13, § 2430-2439.)

- (4) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to forty thousand seven hundred twenty-five dollars (\$40,725.00 USD) for each strict liability violation of the Off-Road CI Regulation and the LSI Regulation, respectively, for each noncompliant engine (Health & Saf. Code, § 43016; Cal. Code Regs., tit. 13, § 2420 et seq.; Cal. Code Regs., tit. 13, § 2437).

### **CASE BACKGROUND**

- (5) Corporate Entity. At all relevant times, Yanmar America Corporation, an affiliate of Yanmar Power Technology Co., Ltd., was organized under the laws of Georgia as a stock company and conducted business in the State of California.
- (6) Allegations. CARB alleges that: (a) Yanmar violated the Off-Road CI Regulation by manufacturing for sale, selling, offering for sale, introducing or delivering for introduction into commerce, or importing into California, new off-road compression-ignition engines that failed to comply with the requirements of the Off-Road CI Regulation by failing to adequately disclose an auxiliary emission control device (AECD) in applications for Executive Orders (EOs) for 24 Yanmar engine families encompassing the 2016 through 2022 model years (Cal. Code Regs., tit. 13, § 2423(b)(9)(A)); (b) Yanmar failed to test certain off-road CI engines used in 2013 through 2022 model year transport refrigeration units (TRU) in accordance with the applicable California emission test procedures for TRUs (Code of Federal Regulations, title 40, Part 86 §§ 1039.645(b)(1), (d)(2) and 1039.645(f)(2), as incorporated in the Off-Road CI Regulation in Cal. Code Regs., tit. 13, § 2420 et seq.); and (c) Yanmar violated the LSI Regulation by manufacturing new 2021 and 2022 model year production LSI engines for sale in California that were not identical in emissions system configuration to that for which certification was issued by CARB (Health & Saf. Code, § 43106). These alleged violations are further described in Notices of Violations (NOVs) EPES-2021-C00572 and EPES-2022-C00572, and result in 19,664 total alleged engine violations. CARB alleges that if paragraphs 1 through 6 were proven, civil penalties could be imposed against Yanmar for each and every engine involved in the violations.
- (7) Acknowledgment. Yanmar admits to the facts in paragraphs 1 through 6, but denies the legal assertions and conclusions or any liability resulting from said allegations.
- (8) Consideration. In consideration of the foregoing, and of the promises and facts set forth herein, the Parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed alleged violations and voluntarily agree to resolve this matter by means of this Settlement Agreement. To resolve the alleged

violations described herein, Yanmar has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, CARB accepts this Settlement Agreement in termination and full settlement of this matter.

### **TERMS AND CONDITIONS**

In consideration of CARB not filing a legal action or seeking other relief against Yanmar or any of its affiliates and subsidiaries, including but not limited to Yanmar America Corporation, for the alleged violations referred to above in the Legal Background and Case Background, and Yanmar's agreement to complete all terms and conditions set forth below, CARB and Yanmar agree as follows:

- (9) Settlement Amount. Yanmar shall pay a civil penalty of sixteen million one hundred ninety-six thousand nine hundred twenty dollars (\$16,196,920.00 USD). Yanmar shall make all payments within thirty (30) calendar days from the Notification Date.
- (10) Notification Date. The date upon which CARB notifies Yanmar according to Paragraph 13 (Notices), that the Settlement Agreement is fully executed, or when CARB sends the fully executed Settlement Agreement to Yanmar.
- (11) Civil Penalty Payment Method. Yanmar shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to the "California Air Resources Board," using instructions provided separately by CARB in a Payment Transmittal Form. Yanmar is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. CARB shall deposit the civil penalty amount into the Air Pollution Control Fund for the purpose of carrying out CARB's duties and functions to ensure the integrity of its air pollution control programs. Should payment instructions change, CARB will provide notice to Yanmar in accordance with Paragraph 13 (Notices).
- (12) Documents. Yanmar shall promptly email or mail the signed and dated Settlement Agreement, with copy of proof of payment of the penalty and a copy of the Payment Transmittal Form(s) to the address or email in Paragraph 13 (Notices).
- (13) Notices. Unless otherwise specified in this Settlement Agreement, whenever notifications, submissions, or communications are required by this Settlement Agreement, they shall be submitted in writing to the address or email below:

As to CARB:

California Air Resources Board  
Enforcement Division / Settlement Agreements  
Vehicle, Parts, Consumer Products Enforcement Branch/Engine and  
Parts Enforcement Section  
P.O. Box 2815  
Sacramento, California 95812-2815  
Settlement\_Agreement@arb.ca.gov

As to Yanmar:

Ryan M. Pott, JD, CCEP  
Yanmar America Corporation  
101 International Parkway  
Adairsville, Georgia 30103  
Ryan\_Pott@Yanmar.com

As to Yanmar's Legal Representation:

Jonathan S. Martel  
Arnold & Porter Kaye Scholer LLP  
601 Massachusetts Avenue, NW  
Washington, DC 20001  
Jonathan.Martel@arnoldporter.com

Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above. Notices submitted pursuant to this section shall be deemed submitted upon emailing or mailing.

- (14) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, Yanmar shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (15) Repeat Violations. Yanmar agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (16) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties concerning the Case Background and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning the Case Background hereof. This Settlement Agreement consists of 9 pages and 34 numbered paragraphs.

- (17) Binding Effect. This Settlement Agreement binds Yanmar, and any principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.
- (18) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (19) Modification and Termination. No agreement to modify, amend, extend, supersede, terminate, or discharge this Settlement Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Settlement Agreement.
- (20) Severability. Each provision of this Settlement Agreement is severable, and in the event that any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable in any jurisdiction, the remainder of this Settlement Agreement remains in full force and effect.
- (21) Choice of Law. This Settlement Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice-of-law rules.
- (22) Non-Discharge. It is further agreed that the penalties described in this Settlement Agreement are non-dischargeable under United States Code, title 11, section 523(a)(7), which provides an exception from discharge for any debt to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit.
- (23) Rules of Construction. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Settlement Agreement.
- (24) Non-Waiver. The failure to enforce any provision of this Settlement Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Settlement Agreement. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Settlement Agreement or otherwise provided by law.
- (25) Intent to be Bound. The Parties represent that: They have participated fully in the review and drafting of this Settlement Agreement; understand and accept all terms; enter into this Settlement Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; are fully informed of the terms and

effect of this Settlement Agreement; have agreed to this Settlement Agreement after independent investigation and agree it was not arrived at through fraud, duress, or undue influence; and knowingly and voluntarily intend to be legally bound by this Settlement Agreement.

- (26) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (27) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (28) Release. In consideration of full payment of the civil penalty, CARB hereby releases Yanmar and its principals, officers, receivers, trustees, successors and assignees, and any subsidiary and affiliated companies, from any claims CARB may have based on the circumstances described in Paragraph 6 (Allegations) above and NOVs EPES-2021-C00572 and EPES-2022-C00572.
- (29) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

### **PENALTY BASIS**

- (30) Per Unit Penalty. The maximum per unit or per engine penalty in this case is forty thousand seven hundred twenty-five dollars (\$40,725.00 USD) per action under Health and Safety Code section 43016, for violations of the Off-Road CI Regulation (Cal. Code Regs., tit. 13, §§ 2420 et seq.) and the LSI Regulation (Cal. Code Regs., tit. 13, §§ 2430-2439). The total penalty of \$16,196,920.00 USD includes three categories of alleged violations, as described in Paragraph 6 (Allegations). For failure to disclose an auxiliary emission control device, the penalty is approximately \$1,500.00 USD per noncompliant unit. The remainder of the penalty amount for the remaining two violation categories is approximately \$23.00 USD per noncompliant unit. In total, there are 19,605 noncompliant off-road CI engines and 59 noncompliant LSI engines. The penalty amount was reduced in consideration of the mitigating factors described below in Paragraph 32 (Aggravating and Mitigation Factors).
- (31) Emissions. The provisions cited in Paragraph 6 (Allegations) above prohibit emissions above a specified level. Without information on usage and emission rates, it is not practicable to quantify the excess emissions.
- (32) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors as

described in CARB's Enforcement Policy. CARB considered whether the violator came into compliance quickly and cooperated with the investigation; the extent of harm to public health, safety and welfare; nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative efforts taken; innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods; efforts to attain, or provide for, compliance prior to violation; action taken to mitigate the violation; financial burden to the violator; and voluntary disclosure. The penalties are set at levels sufficient to deter violations, to remove any economic benefit or unfair advantage from noncompliance, to obtain swift compliance, and the potential costs, risks, and uncertainty associated with litigation. Penalties in future cases might be smaller or larger depending on the unique circumstances of the case. Mitigating factors in this case include but are not limited to the following specific examples, one or more of which may apply to each specific issue:

- (a) Yanmar acted transparently and in good faith, including by notifying CARB in 2015 that it was implementing the alleged inadequately disclosed, off-road CI AECD both as a field fix to address a potential emission-related defect and on new production engines affected by it for the 2013 through 2015 model years;
  - (b) Yanmar self-disclosed the LSI engine issue and came into compliance quickly by expeditiously modifying the allegedly non-compliant LSI engines to their certified configuration before the engines were delivered for sale in California;
  - (c) Yanmar fully cooperated with CARB's investigation; and
  - (d) Yanmar's compliance history with CARB.
- (33) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by Yanmar or confidential settlement communications.
- (34) Effect of Settlement/Reservation of Rights. The following shall apply:
- (a) This Settlement Agreement resolves the civil claims of CARB for the violations alleged in this Settlement Agreement and NOVs

EPES-2021-C00572 and EPES-2022-C00572, including any potential claims or orders to require further actions arising out of the alleged violations.

- (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against Yanmar with respect to all matters not expressly resolved in this Settlement Agreement. Notwithstanding any other provision of the Settlement Agreement, CARB reserves all claims, rights, and remedies, whether in law or equity, against Yanmar with respect to:
- (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
  - (ii) Facts that were not disclosed by Yanmar to CARB.
  - (iii) Violation of the California Health and Safety Code and its implementing regulations, or other State laws, regulations, or permit condition(s) not expressly resolved in this Settlement Agreement.
  - (iv) Any imminent and substantial endangerment to the public health, welfare, or the environment in California, whether related to the violations addressed in this Settlement Agreement or otherwise.
  - (v) Any criminal liability.
  - (vi) Any claim(s) of any officer or agency of the United States or California, other than CARB.
- (c) In any subsequent administrative or judicial proceeding initiated by CARB for injunctive relief, civil penalties, or other appropriate relief relating to enforcement of the Settlement Agreement, Yanmar shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by CARB in the subsequent proceeding were or should have been brought in the instant case.
- (d) This Settlement Agreement does not limit or affect the rights of Yanmar or of CARB against any third parties not covered by this Settlement Agreement, nor does it limit the rights of third parties not covered by this Settlement Agreement against Yanmar, except as otherwise provided by law. This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not covered by this Settlement Agreement.

(e) This Settlement Agreement is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Yanmar is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; Yanmar's compliance with this Settlement Agreement shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits. CARB does not, by its execution of this Settlement Agreement, warrant or aver in any manner that Yanmar's compliance with any aspect of this Settlement Agreement will result in compliance with any provisions of federal, State, or local laws, regulations, or permits.

ACKNOWLEDGED AND ACCEPTED BY:

**California Air Resources Board**

Signature: /S/

Name: Steven S. Cliff, Ph.D.

Title: Executive Officer

Date: January 4, 2024

**Yanmar Power Technology Co., Ltd.**

Signature: /S/

Name: Tomohisa Tao

Title: President

Date: December 26, 2023