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15 Attorneys for Defendant/Counterclaim Plaintiffs

16 UNITED STATES DISTRICT COURT  
 17 EASTERN DISTRICT OF CALIFORNIA  
 18 FRESNO DIVISION

19 INTERVAL EQUIPMENT SOLUTIONS,  
20 INC.,

21 Plaintiff,

22 vs.

23 SANDVIK MINING AND CONSTRUCTION  
24 USA, LLC and DOES 1-10,

25 Defendants.

26 SANDVIK MINING AND CONSTRUCTION  
 27 USA, LLC and SANDVIK INTELLECTUAL  
 28 PROPERTY AB

Counterclaim Plaintiffs,

vs.

INTERVAL EQUIPMENT SOLUTIONS,  
INC.

Counterclaim Defendant.

Case No. 1:16-cv-00512-LJO-SKO

**STIPULATED PROTECTIVE ORDER**

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery in this action are likely to involve production of confidential,  
3 proprietary, or private information. Special protection from public disclosure and use for any  
4 purpose other than prosecuting this litigation may be warranted. Plaintiff/Counterclaim  
5 Defendant Interval Equipment Solutions Inc. (“Interval”), Defendant/Counterclaim Plaintiff  
6 Sandvik Mining and Construction USA LLC, and Counterclaim Plaintiff Sandvik Intellectual  
7 Property AB (collectively, “Sandvik”) have therefore agreed to the terms of the Stipulated  
8 Protective Order (“Order”) as set forth below. Interval and Sandvik (collectively, the “Parties”)  
9 enter into this agreement to protect the confidentiality of materials containing trade secrets and  
10 technical, cost, price, sales, marketing or other commercial information, as contemplated by  
11 Federal Rule of Civil Procedure 26(c). Accordingly, the Parties hereby stipulate to and petition  
12 the Court to enter the following Order. The Parties acknowledge that the Order does not confer  
13 blanket protections on all disclosures or responses to discovery and that the protection it affords  
14 from public disclosure and use extends only to the limited information or items entitled to  
15 confidential treatment under applicable legal principles.

16 As required by Civil Local Rule 141.1(c)(3), the Parties submit that protection should be  
17 addressed by a Court Order, as opposed to a private agreement between or among the Parties.  
18 The nature of the claims involved in this action may require discovery into competitively  
19 sensitive information, including potentially from third parties. A private agreement between the  
20 Parties would be insufficient to alleviate the Parties’ concerns that such information remain  
21 confidential. Good cause exists for entry of a protective order to prevent unauthorized disclosure  
22 and use of trade secrets and confidential commercial information of Parties and Non-Parties  
23 during the litigation and after it has been concluded. A protective order will also facilitate timely  
24 production of material from both Parties and Non-Parties. Given these concerns, the Parties  
25 respectfully request the entry of this Order by the Court.

1     **2.     DEFINITIONS**

2             2.1.     **“CONFIDENTIAL” Information or Items:** Information (regardless of how  
3 generated, stored, or maintained) or tangible things that are treated confidentially by a Party or  
4 Non-Party.

5             2.2.     **Designating Party:** A Party or Non-Party that designates information or items  
6 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY  
7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

8             2.3.     **Disclosure or Discovery Material:** All items or information, regardless of the  
9 medium or manner generated, stored, or maintained (including, among other things, testimony,  
10 transcripts, or tangible things) that are produced or generated in disclosures or responses to  
11 discovery in this matter.

12            2.4.     **Expert:** A person with specialized knowledge or experience in a matter pertinent  
13 to the litigation who has been retained by a Party or its counsel to serve as an expert witness or  
14 consultant in this action and who is not a current employee of a Party or of a competitor of a  
15 Party.

16            2.5.     **“HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information**  
17 **and Items:** Extremely sensitive “CONFIDENTIAL Information or Items,” the disclosure of  
18 which would result in the disclosure of information only known on a “need-to-know basis” and  
19 generally not known by individuals not affiliated with a Party, including sensitive information in  
20 the categories of (1) trade secrets, (2) other competitively sensitive research, (3) development, (4)  
21 production, (5) personnel, (6) commercial, (7) technical, (8) financial, or (9) business information  
22 (with information in these categories including but not limited to proprietary information,  
23 contracts, bids, corporate planning documents, strategic planning documents, documents that  
24 reveal market or customer analyses, competitive strategy, research and development documents,  
25 financial statements, and other financial or budgetary documents). There is a particularized need  
26 for information in each of these categories to be covered by the Order to protect its highly  
27 sensitive and confidential nature, as disclosure could create a substantial risk of harm to the  
28 Designating Party that could not be avoided by less restrictive means.

1           2.6. **Non-Party:** Any person or entity that is not a Party that produces Disclosure or  
2 Discovery Material in this action.

3           2.7. **Outside Counsel:** Attorneys who are not employees of a Party but who are  
4 retained to represent or advise a Party in this action, including their support staff.

5           2.8. **Party:** Any Party to this action, including all of its officers, directors, employees,  
6 consultants, retained experts, general counsel, outside counsel and their support staff.

7           2.9. **Producing Party:** A Party or Non-party that produces Disclosure or Discovery  
8 Material in this action.

9           2.10. **Professional Vendors:** Persons or entities that provide litigation support services  
10 (including but not limited to photocopying, videotaping, translating, preparing exhibits or  
11 demonstrations, organizing, storing, and retrieving data in any form or medium), as well as their  
12 employees and subcontractors.

13           2.11. **Protected Material:** Any Disclosure or Discovery Material that is designated as  
14 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

15           2.12. **Receiving Party:** A Party that receives Disclosure or Discovery Material from a  
16 Producing Party.

### 17 **3. SCOPE**

18           The protections conferred by this Order cover not only Protected Material (as defined  
19 above), but also any information copied or extracted therefrom, as well as all copies, excerpts,  
20 summaries, or compilations thereof, plus testimony, conversations, or presentations by Parties or  
21 Outside Counsel to or in Court proceedings or in other settings that might reveal Protected  
22 Material.

### 23 **4. DURATION**

24           Even after the termination of this litigation, the confidentiality obligations imposed by this  
25 Order shall remain in effect until a Designating Party agrees otherwise in writing or the Court’s  
26 order otherwise directs.

### 27 **5. DESIGNATING PROTECTED MATERIAL**

#### 28 **5.1. Exercise of Restraint and Care in Designating Material for Protection.**

1 Each Producing Party that designates information or items for protection under this Order  
2 must take care to limit any such designation to specific material that qualifies under the  
3 appropriate standards. A Designating Party must take care to designate for protection only those  
4 parts of the material, documents, items, or oral or written communication that qualify so that  
5 other portions of the material, documents, items, or communications for which protection is not  
6 warranted are not swept unjustifiability within the ambit of this Order.

7 If it comes to a Designating Party's attention that information or items that it designated  
8 for protection do not qualify for protection, the Designating Party must promptly notify all other  
9 Parties that it is withdrawing the mistaken designation.

10 5.2. **Manner and Timing of Designations.**

11 Except as otherwise provided in this Order, or as otherwise stipulated or ordered,  
12 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
13 designated before the material is disclosed or produced.

14 Designation in conformity with this Order requires:

15 Information in documentary form (e.g., paper or electronic documents, excluding  
16 transcripts of depositions or other pretrial or trial proceedings): The Producing Party shall affix  
17 the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"  
18 at the top or bottom of each page that contains protected material, in such a manner that will not  
19 interfere with the legibility of the document.

20 Testimony given in deposition or in other pretrial or trial proceedings: The Producing  
21 Party offering or sponsoring the testimony shall identify on the record, before the close of the  
22 deposition, hearing, or other proceeding, all protected testimony. When it is impractical to  
23 identify separately each portion of testimony that is entitled to protection, and when it appears  
24 that substantial portions of the testimony may qualify for protection, the Party or Non-Party that  
25 sponsors, offers, or gives the testimony may invoke on the record (before the deposition or  
26 proceeding is concluded) a right to have up to fourteen (14) days following mailing of the  
27 transcript by the court reporter to identify the specific portions of the testimony as to which  
28 protection is sought. Counsel attending a deposition who inadvertently fail to designate any

1 portion of the transcript as confidential on the record at the deposition shall have fourteen (14)  
2 days following mailing of the transcript by the court reporter to do so. Only those portions of the  
3 testimony that are appropriately designated for protection within the fourteen (14) days following  
4 mailing of the transcript by the court reporter shall be covered by the provisions of this Order.  
5 Until expiration of the aforesaid fourteen (14) day period, all deposition transcripts shall be  
6 considered and treated as confidential material, unless otherwise agreed on the record at the  
7 deposition.

8 Transcript pages containing Protected Material must be separately identified by the court  
9 reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or  
10 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” as instructed by the party or non-  
11 party offering or sponsoring the witness or presenting the testimony.

12 Information produced in some form other than documentary and for any other tangible  
13 items: The Producing Party shall affix, in a prominent place on the exterior of the container or  
14 containers in which the information or item is stored, the legend “CONFIDENTIAL” or  
15 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions of the  
16 information or item warrant protection, the Producing Party, to the extent practicable, shall  
17 identify the protected portions, specifying whether they qualify as “CONFIDENTIAL” or  
18 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

19 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

20 6.1. **Timing of Challenges**: Unless a prompt challenge to Designating Party’s  
21 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary  
22 economic burdens, or a later significant disruption or delay of the litigation, a Party does not  
23 waive its right to challenge a confidentiality designation by electing not to mount a challenge  
24 promptly after the original designation is disclosed.

1           6.2. **Meet and Confer:** A Party that objects to a Designating Party’s confidentiality  
2 designation must do so in good faith and must begin the process of conferring directly (in  
3 voice to voice dialogue or by written communication) with counsel for the Designating Party. In  
4 conferring, the challenging Party must explain the basis for its belief that the confidentiality  
5 designation was improper and must give the Designating Party an opportunity to review the  
6 designated material, to reconsider the circumstances, and, if no change in designation is offered,  
7 to explain the basis for the chosen designation. A challenging Party may proceed to the next  
8 stage of the challenge process only if it has engaged in this meet and confer process first or  
9 establishes that the Designating Party is unwilling to participate in the meet and confer process in  
10 a timely manner.

11           6.3. **Judicial Intervention:** If the Parties cannot reach an agreement regarding the  
12 propriety of a challenged confidentiality designation, the challenging Party shall file and serve a  
13 motion challenging the designation under Civil Local Rule 251 within twenty-one (21) days of  
14 the initial notice of challenge or within fourteen (14) days of the parties agreeing that the meet  
15 and confer process will not resolve their dispute, whichever is earlier.

16           The burden of persuasion in any such challenge proceeding shall be on the Designating  
17 Party. Frivolous challenges and those made for an improper purpose (*e.g.*, to harass or impose  
18 unnecessary expenses and burdens on other parties) may expose the challenging Party to  
19 sanctions. All parties shall continue to afford the material in question the level of protection to  
20 which it is entitled under the Producing Party’s designation until the Court rules on the challenge.

21 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

22           7.1. **Basic Principles:** A Receiving Party may use Protected Material disclosed or  
23 produced by another Party or Non-Party in connection with this case only for prosecuting,  
24 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only  
25 to the categories of persons and under the conditions described in this Order. When the litigation  
26 has been terminated, a Receiving Party must comply with the provisions of Section 13 below.

27           Protected Material must be stored and maintained by a Receiving Party at a location and  
28 in a secure manner that is consistent with the firm’s storage of client files.

1           7.2.    **Disclosure of “CONFIDENTIAL” Information or Items:** Unless otherwise  
2 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may  
3 disclose any information or item designated “CONFIDENTIAL” only to:

4                   (a)    the Receiving Party’s Outside Counsel, as defined in Section 2.6 of this  
5 Order;

6                   (b)    the General Counsel, officers, directors, and employees of the Receiving  
7 Party to whom disclosure is reasonably necessary for this litigation and who have signed the  
8 “Acknowledgment and Agreement to be Bound” attached hereto as Exhibit A;

9                   (c)    Experts (as defined in this Order) of the Receiving Party to whom  
10 disclosure is reasonably necessary and who have signed the “Acknowledgement and Agreement  
11 to be Bound” attached hereto as Exhibit A;

12                   (d)    the Court and its personnel;

13                   (e)    court reporters, their staffs, and Professional Vendors (as defined in this  
14 Order) to whom disclosure is reasonably necessary;

15                   (f)    professional jury or trial consultants, and to whom disclosure is reasonably  
16 necessary for this litigation and who have signed the “Acknowledgment and Agreement to be  
17 Bound” attached hereto as Exhibit A;

18                   (g)    witnesses in the action to whom disclosure is reasonably necessary and  
19 who have signed the “Acknowledgment and Agreement to Be Bound” attached hereto as  
20 Exhibit A;

21                   (h)    the author of the document or the original source of the information; and

22                   (i)    mediators or other ADR professionals retained by the Parties.

23           7.3.    **Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY”**  
24 **Information or Items:** Unless otherwise ordered by the Court or permitted in writing by the  
25 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY  
26 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

27                   (a)    the Receiving Party’s Outside Counsel, as defined in Section 2.6 of this  
28 Order;



1 (b) Experts (as defined in this Order) of the Receiving Party to whom  
2 disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to  
3 be Bound” attached hereto as Exhibit A;

4 (c) the Court and its personnel;

5 (d) Court reporters and their staff, Professional Vendors to whom disclosure is  
6 reasonably necessary;

7 (e) professional jury or trial consultants, and to whom disclosure is reasonably  
8 necessary for this litigation and who have signed the “Acknowledgment and Agreement to be  
9 Bound” attached hereto as Exhibit A;

10 (f) the author or recipient of a document containing the information or a  
11 custodian or other person who otherwise possessed or knew the information as confirmed by  
12 written records; and

13 (g) mediators or other ADR professionals retained by the Parties.

14 **8. PROTECTED MATERIAL SOUGHT IN OTHER LITIGATION**

15 If a Receiving Party is served with a subpoena or an order issued in another litigation that  
16 would compel disclosure of any information or items designated in this action as  
17 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the  
18 Receiving Party must promptly notify the Designating Party, in writing, within sufficient time to  
19 allow the Designating Party to seek relief to stop the production of such Protected Material. Such  
20 notification must include a copy of the subpoena or court order.

21 The purpose of imposing this duty is to afford the Designating Party in this case an  
22 opportunity to try to protect its confidentiality interests in the court from which the subpoena or  
23 order is issued. The Designating Party shall bear the burdens and the expenses of seeking  
24 protection in that court of its confidential material and nothing in these provisions should be  
25 construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful  
26 directive from another court.

1 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
3 Material to any person or in any circumstance not authorized under this Order, the Receiving  
4 Party must immediately (a) notify in writing the Designating Party of the unauthorized  
5 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material,  
6 (c) inform the person(s) to whom unauthorized disclosures were made of all the terms of this  
7 Order, and (d) request such person(s) execute the “Acknowledgment and Agreement to be  
8 Bound” attached hereto as Exhibit A.

9 **10. FILING PROTECTED MATERIAL**

10 Without written permission from the Designating Party or a court order secured after  
11 appropriate notice to all interested persons, a Party may not file in the public record in this action  
12 any Protected Material. Whenever any writing, testimony, information, or material designated as  
13 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” is to be  
14 filed with the Court, the Parties shall follow the procedures for filing records under seal set forth  
15 in Civil Local Rule 141. Protected Material may only be filed under seal pursuant to a court order  
16 authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule  
17 140, where possible, a Party must also seek to publicly file material with the Protected Material  
18 redacted, provided that the Court has also granted the filing of an unredacted copy of the material  
19 under seal.

20 **11. INADVERTENT PRODUCTION OF PROTECTED MATERIAL**

21 Notwithstanding anything contrary herein, if a Party or Non-Party through inadvertence or  
22 mistake produces any Protected Material without designating it with the legend  
23 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the  
24 Producing Party may give written notice to the Receiving Party that the Disclosure or Discovery  
25 Material contains Protected Material and should be treated as such in accordance with the  
26 provisions of this Order. Upon receipt of such notice, the Receiving Party must treat such  
27 Disclosure or Discovery Material as Protected Material. Outside Counsel for the Parties will  
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1 agree on a mutually acceptable manner of labeling or marking the inadvertently produced  
2 materials as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
3 ONLY.” The inadvertent or unintentional disclosure by the Producing Party of Protected  
4 Material, regardless of whether the information was so designated at the time of disclosure, shall  
5 not be deemed a waiver in whole or in part of the Producing Party’s claim of confidentiality  
6 either as to the specific information disclosed, or as to any other information relating thereto or on  
7 the same or related subject matter. The Receiving Party shall not be responsible for the disclosure  
8 or other distribution of belatedly designated Protected Material as to such disclosure or  
9 distribution that may occur before the receipt of such notification of a claim of confidentiality and  
10 such disclosure or distribution shall not be deemed to be a violation of this Order.

11 **12. MISCELLANEOUS**

12 12.1. **Right to Further Relief:** Nothing in this Order abridges the right of any person to  
13 seek its modification by the Court in the future.

14 12.2. **Right to Assert Other Objections:** By stipulating to the entry of this Order, no  
15 Party waives any right it otherwise would have to object to disclosing or producing any  
16 information or item on any ground not addressed in this Order. Similarly, no Party waives any  
17 right to object on any ground to use in evidence any of the material covered by this Order.

18 **13. FINAL DISPOSITION**

19 Within sixty (60) days after the final termination of this action, a Receiving Party shall,  
20 upon written notice from the Designating Party, either return or certify in writing to the Producing  
21 Party that all “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
22 ONLY” information has been destroyed. The written certification shall state that the Receiving  
23 Party has not retained copies of the “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
24 ATTORNEYS’ EYES ONLY” information, except that Outside Counsel are entitled to retain an  
25 archival copy of all pleadings, motions, papers, transcripts, legal memoranda, correspondence, or  
26 attorney work product that may contain such “CONFIDENTIAL” or “HIGHLY  
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information. Archival copies shall, however,  
28 remain subject to this Order, as set forth in Section 4 above.

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**IT IS SO STIPULATED.**

Dated: July 19, 2016

Respectfully submitted,  
MORGAN, LEWIS & BOCKIUS LLP

By /s/ R. Brendan Fee  
R. Brendan Fee  
Brendan E. Radke  
Kevin M. Benedicto

Attorneys for Defendant and Counter-Complainants

LAW OFFICES OF MICHAEL R. BARRETTE

Dated: July 19, 2016

By /s/ Michael R. Barrette  
Michael R. Barrette

Attorney for Plaintiff and Counter Defendant

**IT IS SO ORDERED.**

Dated: July 20, 2016

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, \_\_\_\_\_, declare and say that:

4 1. I am employed as \_\_\_\_\_ by \_\_\_\_\_.

5 2. I have read in its entirety and understand the Stipulated Protective Order that was  
6 issued by the United States District Court for the Eastern District of California on \_\_\_\_\_ in the  
7 case of *Interval Equipment Solutions Inc. v. Sandvik Mining and Construction USA LLC*, Case  
8 No. 1:16-cv-00512-LJO-SKO (“Protective Order”). I hereby agree to comply with and be bound  
9 by all of the terms and conditions of this Protective Order.  
10

11 3. I promise that I will use any and all “CONFIDENTIAL” or “HIGHLY  
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information, as defined in the Protective  
13 Order, given to me only in a manner authorized by the Protective Order, and only to assist  
14 counsel in the litigation of this matter.

15 4. I promise that I will not disclose or discuss such “CONFIDENTIAL” or  
16 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information with anyone other  
17 than the persons authorized in accordance with Section 7.2 and 7.3 of the Protective Order.

18 5. When I have completed by assigned or legal duties relating to this litigation, I will  
19 promptly return or destroy all Protected Material in my possession, or that I have prepared  
20 relating to such Protected Material, to counsel for the Party by whom I am employed or retained.  
21 I acknowledge that such return or the subsequent destruction of such materials shall not relieve  
22 me from any of the continuing obligations imposed on me by the Protective Order.  
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24 6. I acknowledge that, by signing this agreement, I am subjecting myself to the  
25 jurisdiction of the United States District Court for the Eastern District of California with respect  
26 to enforcement of the Protective Order.  
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7. I understand that any disclosure or use of “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in any manner contrary to the provisions of the Protective Order may subject me to sanctions for contempt of court.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2016 at \_\_\_\_\_.

\_\_\_\_\_