

DISTRIBUTORSHIP AGREEMENT

between

BEML LIMITED

and

BEML LIMITED

(International Business Division)

BEML Soudha, 23/1,
4th Main, S.R.Nagar,
Bangalore 560027

Phone: +91 80 22963229

Email: office@export.beml.co.in



PS4482239

DISTRIBUTORSHIP AGREEMENT

This Distributorship Agreement (Hereinafter referred to as the "Agreement") is made and executed on this.....day of by and BETWEEN

M/S BEML LIMITED, a Government of India Undertaking under the administrative control of Ministry of Defence and a Company incorporated in accordance with the Laws of Republic India, having its Corporate Office at 'BEML SOUDHA', 23/1, 4th Main Road, Sampangirama Nagar , Bengaluru – 560 027, Karnataka, India, through its International Business Division represented by itsMr.....

(Hereafter referred to as **COMPANY/BEML** which expression, unless repugnant to the context, shall mean and include its successors and permitted assigns) of the First Part ;

AND

M/sa.....incorporated under the laws of having its.....Office at..... represented by itsMr..... (Hereafter referred to as **DISTRIBUTOR** which expression, unless repugnant to the context, shall mean and include its successors and permitted assigns) of the Other Part

Hereinafter the 'Distributor' and 'company/BEML' individually be referred to as the "party" and collectively as the "parties"

WHEREAS, BEML is a multi-technology heavy engineering industry, engaged in the business of design, development, manufacture and marketing of varieties of Equipment and spare parts and aggregates required for Mining & Construction, Rail and Metro, Defence and Aerospace, etc

Whereas Distributor is engaged in the business of
.....

Whereas BEML is interested in marketing its products as defined hereafter in the territory of

Whereas, the Distributor, having interest for becoming a Distributor to BEML for the aforesaid products in the territory, has submitted its credentials and agreed to comply with the conditions stipulated by BEML.

Whereas, BEML , based on the said credentials , is willing to appoint the Distributor as its Authorized Distributor for the aforesaid products in the territory and the Distributor is

desirous of becoming the Distributor to BEML Products and has expressed its willingness for the same. The Distributor has agreed to abide by the terms and conditions of BEML with respect to the Distributorship.

Whereas, in the premises the Parties decided to reduce the terms and conditions of the appointment of Distributor under this Agreement as under

WITNESSETH:

The Company hereby appoints the Distributor as its authorized Distributor for marketing the products as defined herein in the territory as per the terms and conditions mentioned herein.

ARTICLE 1: DEFINITIONS

For the purpose of this Agreement, the expressions set forth herein shall mean the following:

- i. **"Customer"** means a Potential Customer located in the Territory having an intention to Purchase the Products through the Distributor..
- ii. **"Contract"** means the contract signed or to be signed/entered into between the Distributor and the Customer for the sale of the Products.
- iii. **"Contract value"** means the value of the Product, including the value of Tools and other manuals and literatures attached to the Product.
- iv. **"Effective Date"** shall mean the date of signing the Agreement by the Parties.
- v. **"Products"** shall mean the equipment meant for mining & construction , Defence Railway & Metro products or any other products introduced by BEML from time to time, including its spare parts, aggregates and components manufactured by the Company intending to Market in the Territory through the Distributor.
- vi. **"Territory"** shall mean the geographical area of _____
- vii. **"Terms of Trade"** shall mean FOB/CIF as per INCOTERMS
- viii. **"Price"** shall mean the price for the Product, spare parts and service, if any determined by mutual agreement between the parties from time to time keeping in mind the competition and the type of products that need to be marketed in the territory

ARTICLE 2: SCOPE OF PARTIES

2.1. SCOPE OF BEML

- 2.1.1. BEML will supply the Products on Non exclusive basis to the Distributor against specific Purchase Orders raised by the Distributor .
- 2.1.2. In the event of purchases made by Government / Semi Government and large institutions directly from BEML , BEML may engage the distributor for liasoning to generate business and providing after sales support on mutually agreed terms. In such cases, separate Agreements will be entered into between the parties on each cases.
- 2.1.3. BEML shall provide Technical support and assist the Distributor in promoting BEML products and services.
- 2.1.4. BEML shall assist Distributor in setting up of service facility and spare parts depot. While the cost of establishing Service facilities is Distributor's responsibility, BEML shall assist Distributor by giving Layout plan, list of Special tools and other facilities required.
- 2.1.5. BEML shall provide full cooperation in streamlining existing workshop & sales facilities, impart in-plant training to the DISTRIBUTOR'S Sales and Service engineers at the cost of DISTRIBUTOR.
- 2.1.6. BEML shall provide Training of Customers' staff and Distributor's staff in India for specific skill training, subject to mutual agreement on cost and the period of deputation.
- 2.1.7. BEML shall depute Service Engineer(s) (Specialist in Equipment and Aggregates/ system such as, Engine, Hydraulics, Electrical etc) to support Distributor's team in the initial years of contracts.
- 2.1.8. BEML shall provide special tools for Engine, Hydraulics and Transmission at the cost of the Distributor.

2.2. SCOPE OF DISTRIBUTOR

a) Generation of Business for equipment and spare parts:

The Distributor shall:

- 2.2.1. Liaise with customers, Government departments and Ministries, large institutions, etc. who are in need of products to generate business for BEML Products.
- 2.2.2. Keep a close watch on upcoming tenders, obtain tender documents for BEML products from Government and non Government institutions and forward the same to BEML from time to time.
- 2.2.3. Submit tenders within the due date and attend the tender opening.
- 2.2.4. Place Purchase Order for the products and spare parts on the Company upon receipt of order from the Customers.

b) After sales and service support:

- 2.2.5. The Distributor shall provide after sales and service support as per **Annexure-1**.

c) Other support:

- 2.2.6. Provide local logistic and transport support to BEML personnel deputed for providing After Sales Service.
- 2.2.7. Provide local logistic support in the territory and to arrange co-ordination of all import activities including customs clearance at the port of entry.
- 2.2.8. Liaise with the shipping agent, local transportation authorities and ensure safe transportation of products to the customer site by taking necessary approvals, accommodate in distributor's warehouse/storage facilities if needed.
- 2.2.9. Support BEML in any issue which may arise in due course during the execution of the Agreement and wherever BEML seeks support.

ARTICLE 3 : MINIMUM PURCHASE GUARANTEE :

The DISTRIBUTOR shall put in all efforts to market the Products in consideration of the right herewith granted for the territory mentioned. The DISTRIBUTOR guarantees to purchase minimum business of USD 500,000 worth of Products.

ARTICLE 6 : TERMS OF PAYMENT

- 6.1 . The DISTRIBUTOR shall make 100% of contract value through confirmed, Irrevocable sight LC . The LC should be from a recognized first class bank acceptable to BEML and negotiable with any Bank in India or Advance Payment
- 6.2. BEML shall be obliged to ship the products against Purchase Orders placed by the Distributor for the products only on receipt of confirmed irrevocable sight LC established by the Distributor favoring BEML as stated above at Article 6.1.

ARTICLE 7 : WARRANTY:

The warranty period in general for the Products supplied under this Agreement will be 2000 hours of operation or 15 months from the date of commissioning, whichever occurs earlier. However on case to case basis it will be decided depending on the customer requirement and market conditions.

ARTICLE 8 : SPARE PARTS:

The COMPANY shall have adequate stocks of consumables / spare parts and shall deliver the same by agreed means of transport, in case of emergencies. However, the DISTRIBUTOR shall maintain a minimum inventory of consumables / spare parts as recommended by the COMPANY.

ARTICLE 9: VALIDITY:

This Agreement shall come into force on the effective date and shall be valid for a period of Years and can be extended for a further period, at the discretion of BEML based on the satisfactory performance of the DISTRIBUTOR.

ARTICLE 10: POST SALES SERVICE GUARANTEE

Distributor shall establish bank guarantee for 1% value of the procurement towards the post sales service guarantee.

ARTICLE 11 : TERMINATION:

Either Party can terminate this agreement at any time by serving a 3 months prior notice for reasons whatsoever.. This agreement is also liable to be terminated forthwith:

i) in the event of breach of agreement , by giving 30days notice in writing to the party in breach and the Party in breach is failed to rectify the breach within the said notice period ;or ii) either party becoming insolvent or bankrupt..

The termination shall be without prejudice to any rights or obligation that has arisen prior to the effective date of termination of this Agreement.

ARTICLE 12 : ARBITRATION:

Any disputes and differences that may arise in connection with this agreement shall be settled by the parties in an amicable way by mutual discussions. In case it is not possible to settle the disputes mutually, the same shall be referred to a sole Arbitrator appointed by the parties on mutual agreement. The proceedings of the Arbitration shall be in accordance with the provisions of Arbitration and Conciliation Act, 1996 and Rules framed therein as may be amended form time to time. The Arbitration proceedings shall be conducted in English language and the venue shall be at Bangalore (India).

ARTICLE 13 : JURISDICTION AND APPLICABLE LAW :

The Courts at Bangalore, India shall alone have jurisdiction to try any matter related to this Agreement or the Arbitration stated above. This Agreement shall be governed by the Laws of Republic of India.

ARTICLE 14 : INDEMNIFICATION:

The Distributor acknowledges that the brand “BEML” of Company is supreme and the Distributor shall not use the same without prior written consent or do any act detrimental to the brand or affecting the reputation of the company. Further, the Distributor shall not misuse the brand/name of the Company. The distributor undertakes and agrees to indemnify BEML for all such losses, including but not limited to reputational loss, caused to the Company by reason of such act/s or misuse by the Distributor.

ARTICLE 15: CONFIDENTIALITY:

All Proprietary Data, documents or information, user manuals, etc. exchanged by BEML to the Distributor in pursuant to the Agreement shall be the property of BEML and shall be

considered as Confidential by the Distributor ; and the Distributor shall not divulge such Proprietary Data/ information/documents to any third party without the written consent of the Disclosing Party. PARTIES shall use the information exclusively for the purpose for which the information has been disclosed. This rule is obligatory for each Party irrespective of the expiry or early termination of this Agreement for a period of ten years from the date of disclosure.

ARTICLE 16 : NOTICES:

All notices, demands, consents, waivers or requests permitted or required pursuant to this Agreement, will be in writing and will be deemed served if sent by Registered Air mail to the following addresses :

In case of the **COMPANY**

M/S BEML Limited,
INTERNATIONAL BUSINESS DIVISION,
"BEML SOUDHA"
23/1, 4TH MAIN, S.R. NAGAR,
BANGALORE – 560 027
INDIA.
TEL : + 91 80 222 22730
FAX : +91 80 222 24874

In case of the **DISTRIBUTOR:**

XXXXX
XXXXXXX

Or to the last known address of either party. In case of any change of address the respective party is obliged to inform the other accordingly without delay.

ARTICLE 17: RELATIONSHIP BETWEEN THE PARTIES

The relationship between Parties is in the nature of strategic alliance and nothing contained in this Agreement shall be construed, so as to constitute a Joint Venture/Partnership between the Parties and both the Parties carry their own responsibilities and liabilities without any recourse to other Party.

ARTICLE 18 : AMENDMENTS

No modifications/amendments to this Agreement and waiver of any of the terms and conditions hereof shall be valid and binding unless the same is in writing and signed by the Parties.

ARTICLE 19 : ASSIGNMENT

Neither party shall assign or transfer the responsibilities or obligations under this Agreement to any third party without the prior written consent of the other, which approval shall not be unreasonably withheld.

ARTICLE 20 : SEVERABILITY

If any provision of this Agreement is found to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable

The parties shall comply with all the applicable Laws with respect to performance of this Agreement and shall inform the other the Laws of that Country which are to be complied by the other.

This agreement is solely between the distributor and company and Govt of India is not a party

IN WITNESS WHEREOF, the Parties hereto have set their respective hands to this in the presence of witnesses.

DISTRIBUTOR

For XXXX

COMPANY

For BEML Limited.

ANNEXURE-1

AFTER SALES SERVICE SUPPORT

Sl. No	Description	Requirement	Status
(a)	Sales Engineer	1 (Min)	
(b)	SERVICE SUPPORT (i) Man Power Skilled Persons Semi Skilled (ii) Logistic Support (iii) Special Tools	2 (Min) 2 (Min) Independent to move men and material To be maintained with respect to equipment models as per the BEML recommendation	
(c)	PARTS SUPPORT <u>Spare Parts</u> (a) Maintenance spares (b) Ware house and Bonded ware house facility	Maintenance Spares to be stocked during warranty Period plus 2 years after warranty period. Required spares, other than warranty to be planned and stocked to ensure availability.	
(d)	WORK SHOP	Facilities covering oil storage, welding & gas set, air compressor, grinding, washing, repair and battery charging facilities	
BEML LIMITED Name : Authorized Signature: Date :		BEML Limited "BEML Soudha", 23/1, 4th Main, S.R. Nagar Bangalore 560 027, India Ph : +91 80 22963 229 Fax : +91 80 2222 4874 Email: office@export.beml.co.in	DISTRIBUTOR Name : Country : Authorized Signature: Date :