

Bidder's Compliance on Commercial Terms and Conditions

Name of Bidder : _____ Name of Country: _____

Sl. No.	Commercial Terms & Conditions	Bidder's Compliance (Yes / No)
1.	Duration of Contract:	
	Agreement shall be in force for a period of five years from that date of signing of the agreement. The validity of Agreement shall, however, be subject to the provisions contained in Clauses 2.1 and 2.2 of this RFQ in the matter of termination by notice.	
2	Termination of Contract:	
	2.1 Either party may, at any time, terminate agreement by giving ninety (90) days written notice to the other party. It shall not be necessary to assign cause for such termination.	
	2.2 Either party may terminate the agreement by giving ninety (90) days notice in writing to the other in the event of that other party failing or neglecting to fulfil any of its material obligations hereunder.	
3.	Duties of Agent :	
	3.1 The Agent shall hereby undertake and agree with HAL that, he shall at all the times during the continuance of agreement:	
	a. Use his best endeavours to promote sales and build up market for the products indicated in Schedule - A hereinafter referred to as the products throughout the territory by contacting all potential purchasers and work diligently to secure their orders irrespective of any aid/ grant/subsidy or any such financial assistance from Govt. of India directly or through any organization on behalf of Govt. of India, except for those products and services which are directly dealt with or negotiated at Government level between INDIA and the identified Territory.	
	b. Release / display advertisements in leading newspapers / periodicals within the territory regarding the products. The advertisement matter shall be supplied by HAL. The cost of all such advertisements shall be borne by the Agent	
	c. Utilise only such technical information as is provided or approved by HAL in making representations concerning the products to prospective purchasers thereof.	

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	d. Not to buy, sell, negotiate for the sale of any similar products or take agencyship or otherwise assist in the sale of similar products of any other manufacturers.	
	e. Not to accept orders or make contracts on behalf of HAL except with previous written concurrence of HAL or entertain orders except according to the conditions of sale for the time being prescribed by HAL and not make any promises, representations, warranties or guarantees with reference to the product, except according to the handouts sent out by HAL.	
	f. Take full responsibility and liability for all things done and all representations and warranties made by it which are not expressly authorised by HAL in writing and to indemnify and keep HAL harmless for any loss or damage which HAL may incur, directly or indirectly by reason of any claim, demand or action taken by anyone in consequence thereof.	
	g. Not to quote the price of the product or any sum other than that for the time being fixed by HAL, without obtaining the previous consent in writing from HAL.	
	h. In all correspondence and other dealings relating directly or indirectly to the sale of the products clearly indicate that they are acting only as Agents of HAL.	
	i. Keep a close watch on all tender notices and enquiries pertaining to aircraft, helicopters, avionics and other aeronautical stores and spares floated by the Armed Forces of the GOVERNMENT in the Territory and other Procurement Agencies in the Territory and inform HAL of all such tender notices and enquiries without any loss of time.	
	j. Advise HAL in regard to all commercial aspects including the competitiveness of prices, acceptability of delivery schedules, packaging requirements, and procedures involved in submitting/ negotiating tender formalities to be observed in dealing with the GOVERNMENT Authorities and other Procurement Agencies in respect of Defence/ Aeronautical Stores in the identified Territory.	
	k. Assist the visiting HAL delegations in regard to discussions and negotiations with the authorities and for arranging presentations and demonstrations, if required and also provide the required facilities regarding office accommodation, telex, fax, e-mail, etc during their visit.	

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	l. Arrange for payment of advance by the buyers and other authorities in the Territory in respect of orders placed by them to HAL and also for opening of letters of credit in favour of HAL whenever so stipulated in the contracts.	
	m. Take all necessary follow-up action to recover the amounts due to HAL from the buyers in the Territory and to ensure that the dues are paid or remitted to HAL promptly in accordance with the conditions of sale.	
	n. Appear on behalf of HAL with the Bankers, Exchange control and other authorities and to do all that is necessary to ensure prompt remittance of the dues to HAL.	
	o. Depute, at their own cost, representatives to India to attend Agents' Conference/ review meeting which may be convened by HAL as and when required.	
	3.2 It is hereby made clear that nothing herein contained confers any authority on the Agent to enter into any contracts or commitments by or on behalf of HAL in any manner.	
	3.3 Quotations in response to tender notices shall be sent by HAL to the Government Authorities and other Procurement Agencies in the Territory with a copy to the Agent who shall thereafter take all such necessary actions to obtain business in respect of the same.	
	3.4 All orders for HAL's products shall be subject to acceptance and confirmation in writing by HAL and as per its own terms and conditions and subject to the grant of requisite permission by Government of India. The Agent can only collect orders from intending buyers and forward them to HAL for their consideration	
4.	Agent's Commission:	
	4.1 In Consideration of the services to be rendered by the Agent in accordance with agreement, HAL shall pay to the Agent on Products indicated in Schedule - A on all orders received through Agent from the Territory and accepted and executed by HAL. In case of any order received through Agent from territory for supply of products/services, indicated in Schedule - A, supported by aid/ grant/ subsidy or any such financial assistance (excluding Line of Credit) from Govt. of India, HAL shall pay to the Agent the commission only on the amount net realized from the customer (i.e. not from aid/ grant/ subsidy or any such financial assistance from Government of India.) excluding statutory taxes recoverable from customer for remittance in India.	

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	<p>4.2 Such commissions accrue and become due only after HAL has actually received its dues in full from the customer. In case HAL receives its total dues from the customer in phases or at time intervals as per the agreed payment schedule spreading more than one year, HAL shall pay to the Agent the commission only on reaching the stipulated contract milestones in terms of deliveries/ rendering of service etc. on pro-rata basis out of the amount realized from the customer. In other words, no commission shall be payable to the Agent out of any advance received by HAL from the customer against furnishing of Bank Guarantee or any other form of Guarantee. Further, where the final payment is received by HAL against submission of any Performance Bond/ Guarantee etc., to the customer, Commission in respect of such final payment shall be payable to the Agent after completion of the validity period of the Bond/ Guarantee furnished by HAL.</p> <p>In respect of order/ contract finalized based on India/ EXIM Bank line of credit, the commission payable shall be given by the applicable Rules of the Indian/ EXIM Bank line of credit.</p>	
	<p>4.3 The commission will be payable within three months (3 months) after the end of each calendar quarter upon any and all payments received by HAL during such preceding quarter and shall be deposited in such bank or banks designated by the agent in writing, but subject to the following :</p> <p>a. A claim for this purpose should be preferred by the Agent on HAL, giving the purchase order number, invoices paid, amount of commission due, etc. at the end of each quarter in any case not later than one year of its becoming due to enable HAL to emit the commission.</p> <p>b. For the purpose of determining commissions payable under agreement sale price shall mean ex-works price of the products excluding statutory taxes recoverable from customer for remittance in India. The commission payable for services like overhaul, training, consultancy and turnkey projects, shall be determined on the basis of the invoice prices for such services.</p> <p>c. No commission shall be payable to the Agent if the sums due to HAL, for supplies made, had remained unpaid for more than six months and attributable to the negligence of the agent in taking follow up action as per Clause-3.1 (m) above and are subsequently recovered as a result of HAL's efforts or those of other parties.</p> <p>d. Remittance of commission to the agent shall be with reference to the place of residence of the Agent and as per the rules of the Reserve Bank of India.</p>	

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5.	<p>Payment of Commission After Expiration or Termination:</p> <p>5.1 Upon expiration of Agreement pursuant to Clause-1 or termination pursuant to Clause 2.1 or 2.2 of Agreement, the obligation of the parties shall cease except that the Agent shall be entitled to receive commission on account of orders transmitted to and accepted by HAL prior to expiration or termination of agreement, at the time and in the amount that such commissions would have been payable under the terms in Clause-4 above.</p> <p>No commissions or other compensations shall be due/ payable to the Agent on account of any orders actually received by HAL after the time of expiration or termination of agreement or which had not prior to the time of such expiration been accepted by HAL in the manner provided in agreement whether or not any such or any similar order from the same purchaser is later accepted and the purchase price received by HAL.</p>	
	<p>5.2 As regards orders received and executed during the continuation of the agency in respect of which payment has not been received (or where payment is being made by the purchaser in instalments in respect of which payment of any part of the price has not been received) at the date of the termination of agreement howsoever done, the commissions due to the Agent shall continue to be payable as and when payments are received by HAL subject to Clause-4 above.</p>	
6.	<p>Return of HAL Property:</p> <p>Upon either expiration or termination of agreement, the Agent will execute such documents as may, in the opinion of HAL, be required to transfer to HAL any and all rights, title or interest which the Agent may have acquired by virtue of the agreement or otherwise with regard to any trademarks, trademark rights, trade names or trade rights, samples, patterns or other proprietary interest, now or hereinafter owned or used by HAL.</p>	
7.	<p>Not To Assign Agency:</p> <p>Agreement and any rights, benefits or obligations hereunder shall not be transferred or assigned to in any manner encumbered by the Agent without obtaining the prior written consent of HAL executed by HAL.</p>	

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8.	<p>Collection of Indebtedness: HAL reserves the right to:</p> <p>8.1 Apply for the payment of any amount due to HAL from the Agent, any sum of money or part thereof belonging to the Agent which may be in HAL's possession, and</p> <p>8.2 Deduct any amounts owed by the Agent to HAL from any amounts owed by HAL to the Agent.</p>	
9.	<p>Service of Notice</p> <p>Any notice required to be given by either party to the other hereunder or in connection herewith shall be in writing and delivered personally or by registered mail. Notices to the Agent shall be directed to the Agent's place of business in their registered Head Office. Notice to HAL shall be directed to HINDUSTAN AERONAUTICS LIMITED, 15/1 CUBBON ROAD, BANGALORE - 560 001, INDIA</p>	
10.	<p>Law Applicable</p> <p>Agreement shall be governed in all aspects in accordance with the Laws of India. The jurisdiction of the courts shall be Bangalore, India. The Agent would be responsible for compliance of the laws of the Country for which the agency is granted.</p>	
11.	<p>Arbitration :</p> <p>Any disputes, controversies or differences which may arise between the parties, out of or in connection with agreement shall be finally settled by arbitration under the Indian Arbitration and Conciliation Act, 1996. The arbitration shall be held in Bangalore, India and the decision of the arbitration panel shall be final and binding upon the parties. The language of arbitration shall be English.</p>	
12.	<p>Separability :</p> <p>If any provision of agreement is invalid or unenforceable, Agreement shall be considered divisible as to such provision and the remainder of the Agreement valid and binding as though such provisions were not included herein.</p>	
13.	<p>Variation of Agreement :</p> <p>It is agreed by the parties to Agreement that amendments, alterations or modifications to the Agreement shall be permitted; but no such amendment, alteration or modification shall be valid unless executed in writing and signed personally by both the parties.</p>	

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14.	<p>General:</p> <p>14.1 With successful bidder, the agreement will be executed in two counterparts, each of which constitutes as original.</p> <p>14.2 Subject to the provisions of Clause-12 above, Agreement shall bind the successors and assignees of the parties hereto.</p>	
15.	<p>Non-Exclusive</p> <p>The agency rights granted hereunder are on “non-exclusive” basis and they do not preclude HAL from appointing any other agent in the same Territory if the need for the same arises.</p>	
16.	<p>Agreements Between Governments of India and the Territory</p> <p>The terms and conditions of Agreement shall not apply to the products and services which are directly dealt with or negotiated at Government level between INDIA and the Territory.</p>	
17.	<p>No Contact With Government of India on Agencyship Issues and Immunity to Government of India</p> <p>It is understood and agreed that the Government of India is not a party of agreement and has no liabilities, obligations or rights hereunder. It is expressly understood and agreed that HAL is an independent legal entity with power and authority to enter into Agreement solely in its own behalf under the applicable Laws of India and General Principles of Contract Law. The bidder shall agree, acknowledge and understand that HAL is not an agent, representative or delegate of the Government of India. It is further understood and agreed that the Government of India is not and shall not be liable for any acts, omissions, commissions, breaches or other wrongs arising out of the Agreement. Accordingly, bidder expressly waives releases and foregoes any and all actions or claims against the Government of India arising out of the Agreement, not to sue the Government of India as to any manner, claim, and cause of action or thing whatsoever arising out of or under the agreement.</p> <p>The agent further understands and agrees that he will not approach Government of India or any political parties of India, either directly or through any means, against the decision of HAL Management.</p>	
18.	<p>Relationship of Parties</p> <p>It is understood that each party is an independent party and that all persons engaged in/ work under the Agreement who are supplied by either party shall in no sense be employees of the other party.</p>	

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19.	<p>Confidentiality</p> <p>19.1 Subject to sub-clause (19.2), all information and data made available to any party for the purposes of Agreement shall be kept confidential and shall not be disclosed to any third parties without prior written consent of the other party.</p> <p>19.2 Exceptions to Confidentiality: Sub-clause 19.1 shall not apply to any disclosure:</p> <p>a. To employees of either party for the purpose of performance of the Agreement;</p> <p>b. Required by law; and</p> <p>c. To solicitors, advocates, lawyers or other professional advisers under a general duty of confidentiality.</p> <p>The documents, other than the Agreement itself, handed over by either party to the other party shall remain the property of HAL or the Agent as the case may be and shall be returned to the other, on completion of the performance under the Agreement, if so required.</p> <p>Each party shall promptly inform the other if it becomes aware of any breach of confidence by any person and shall give the other party all reasonable assistance in connection with any negotiations, disputes, actions, claims or proceedings which the other party may be party to, defend or commence against such person.</p> <p>Each party shall establish, maintain and monitor such systems and arrangements (including, without limitation, computer security systems) to ensure that the confidential information is at all times kept secret and secure from being released to any third party not entitled to have access to the same and separate from any other information or services provided by it to or received from any third party for and from whom it provides or receives services.</p> <p>The provisions in this Clause shall survive termination or completion of Agreement.</p>	
20.	<p>Survival of Special Clauses:</p> <p>Clauses dealing with Arbitration, Confidentiality shall survive and continue to have effect after the expiry or termination for any reason whatsoever of Agreement.</p>	

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21.	<p>Indemnities</p> <p>The Agent hereby indemnifies HAL in respect of any costs, claim or liabilities whatsoever arising from death or injuries to employees of the HAL caused due to negligent acts or omissions for such employees in connection with Agreement.</p> <p>The HAL hereby indemnifies the Agent in respect of any costs, claim or liabilities whatsoever arising from death or injuries to employees of the Agent caused due to negligent acts or omissions for such employees in connection with Agreement.</p>	
22.	<p>Bribes and Gifts</p> <p>Any bribe, commission, gift or advantage given, promised or offered by or on behalf of the Agent or any one on his or their behalf to any employee, servant, representative or agent of HAL or any person on his or their behalf in relation to the obtaining or to the execution of this or any other contract with HAL shall in addition to any criminal liability which the Agent may incur, subject the Agent to the cancellation of Agreement with HAL and also for payment of any loss or damage resulting from any such cancellation thereof. Any question or dispute as to the commission of any offence under the present clause shall be settled by HAL in such manner and on such evidence or information as they may think fit and sufficient and their decision shall be final and conclusive.</p>	
23.	<p>Counter Terms</p> <p>When counter terms and conditions are offered by a bidder, HAL shall not be deemed to be governed by such terms and conditions unless specifically written acceptance thereof has been given by HAL. No conditions and terms, notice of which has not been given in this enquiry by bidder submitting quotation, will be considered by HAL, if put forward in subsequent correspondence.</p>	

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24.	Any bidder quoting against this enquiry shall be deemed to have read and understood these terms and conditions fully. The offer shall be deemed to be an admission on the part of bidder that they have fully acquainted themselves with the details and no claim on his part, which may arise on account of non-examination or insufficient examination of the conditions of the RFQ will, in any circumstances, be considered.	

Signature with Date :

Name :

E-mail :

Contact No :

Firm's seal :