

Justification for Dealership Agreement with Emtici Engineering Limited

Eimco Elecon (I) Limited (Eimco) has strategies to grow very fast and turnover is expected to increase.

Emtici Engineering Limited (Emtici / Dealer) is in the business of marketing & servicing industry having network all over India and marketing our products since very long period of time and knows our clients very well. Apart from this it has employed a very highly skilled manpower.

Since, Emtici is Related Party of Eimco as per the Companies Act, 2013 and/or as per SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, will require prior approval of Shareholders of Eimco through Ordinary Resolution, if the aggregate value of transaction i.e. Commission amounts to 10% or more of the annual turnover of Eimco as per the last audited financial statements of Eimco. The turnover of the Company varies but the % of Commission payable to the Dealer will not exceed 9.9% of the turnover of the Eimco in any financial year for the term as mentioned in the Draft Agreement given below. Hence, the Board of Directors of Eimco recommends passing of the resolution as set out at Item No.6 of Notice of 44th Annual General Meeting of the Company.

The draft agreement to be entered into between Eimco & Emtici is placed hereunder for the information of the Shareholders.

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DEALERSHIP AGREEMENT

This agreement is made and entered into at Vallabh Vidyanagar, Gujarat as of this ____ day of _____, 2018.

BETWEEN

Eimco Elecon (India) Limited, a Company registered under the Companies Act, 1956 and having its registered office at Anand-Sojitra Road, Vallabh Vidyanagar-388 120, Gujarat, India (hereinafter referred to as `Eimco`);

AND

EMTICI Engineering Limited, a Company registered under the Companies Act, 1956 and having its registered office at Vallabh Vidyanagar, Gujarat, India (hereinafter referred to as `EMTICI / Dealer`);

(The expression “Eimco” & “Dealer” shall, unless repugnant to the context or contrary to the meaning thereof, be deemed to mean and include their respective successors in business and permitted assigns.)

(Eimco and the Dealer shall individually be referred to as “Party” and collectively as “Parties”)

This Agreement is subject to the approval of the Shareholders of the Eimco Elecon (India) Ltd. at the ensuing Annual General Meeting of the Company to be convened on 31st July, 2018.

WHEREAS

- (a) Eimco is engaged in the manufacturing of Products and supplies the Products in India and various other countries.
- (b) The Dealer is, inter alia, in the business of marketing and servicing of Products.
- (c) The Dealer is capable and desires to be appointed as a dealer for the Products in the Territory.
- (d) Eimco has agreed to appoint the EMTICI as the dealer for the Products in the Territory.

AND WHEREAS, in consideration of the mutual covenants, rights and privileges owned by this agreement, the parties have entered into the present agreement.

NOW THIS AGREEMENT IS WITNESSETH AS UNDER:-

1. DEFINITIONS AND INTERPRETATION:-

1.1 Definitions

In this Agreement, unless the context otherwise requires, following terms shall have the meanings ascribed to them hereunder:

- (a) “**Agreement**” shall mean this dealership agreement effective from 1st April, 2018.
- (b) “**Commission**” shall have the meaning ascribed to it in Clause 5.1.
- (c) “**Customer**” shall mean the end user that purchases the Products from Eimco pursuant to the efforts of the Dealer under this Agreement.
- (d) “**Dispute**” shall have the meaning ascribed to it in Clause 12.
- (e) “**Execution Date**” shall mean the date of execution of this Agreement.
- (f) “**Net Sales Price**” shall mean the price of the Products excluding sales tax, VAT, service tax, excise duty, Freight and any other cess or duty that may be levied or leviable in respect of the said Products and also excluding packing, forwarding and delivery charges thereof.
- (g) “**Person**” shall mean any individual, firm, company or other corporate body, authority, joint venture, association, partnership or other entity (whether or not having separate legal personality);
- (h) “**Products**” shall mean the products manufactured by Eimco from time to time and shall include equipments for use in tunneling, mining and related operations.
- (i) “**Sales Service**” shall have the meaning ascribed to it in Clause 3.1.1.
- (j) “**Sale Statement**” shall have the meaning ascribed to it in Clause 6.2.
- (k) “**Territory**” shall mean India and/or such other territories as may be mutually agreed between Eimco and the Dealer.
- (l) “**Term**” shall have the meaning ascribed to it in Clause 10.

1.2 Interpretation

In this Agreement,

- (a) Words importing the singular shall include the plural and vice versa.
- (b) The words “include” and “including” shall be construed without limitation.
- (c) Reference to statutes shall include any modification, re-enactment or extension thereof for the time being in force.
- (d) No word defined in this Agreement shall be construed so as to derogate, or detract, from the intent of this Agreement.
- (e) Headings and bold typeface are only for convenience and shall be ignored for the purpose of interpretation of this Agreement.
- (f) The recitals, and annexure shall constitute an integral part of this Agreement.

2. APPOINTMENT AS A DEALER

- 2.1 Subject to the provisions of this agreement, Eimco herewith appoints the Dealer and the Dealer accepts its appointment as the dealer for the sales and marketing of the Products within the Territory **w.e.f. 1st April, 2018.**
- 2.2 **However, it is hereby clarified that, nothing herein contained shall prevent Eimco from supplying/selling the Products directly to any other Person or appointing any other Person as a dealer for the purposes of sales and/or marketing of the Products in and outside the Territory.**
- 2.3 The Dealer shall use its best endeavors to promote and increase the sales of the Products in the Territory.
- 2.4 Every order procured by the Dealer shall be only in the name of Eimco and shall be passed on to Eimco immediately upon the receipt of the same. Further, in case of big enquiries, the Dealer shall consult the Eimco before procuring such order and such big enquiries shall be dealt in consultation with Eimco. The Dealer may also seek Eimco’s assistance for negotiating and finalizing such orders.
- 2.5 The Dealer shall, on behalf of Eimco, collect all the monies due to Eimco, from the respective Customers, for the Products supplied by the Dealer. .

3. SALES AND SERVICE OBLIGATIONS OF THE DEALER

3.1 The Dealer shall:-

3.1.1 provide after sales service to the Customers (“**Sales Service**”) in the Territory, during the warranty period of the Products.

3.1.2 work diligently towards the development of sales of the Products in the Territory and pursuant thereto maintain adequate trained personnel, sales staff and project engineers who shall devote their best and continual efforts to improve the sales of the Products in the Territory. The Dealer shall ensure that the staff and personnel appointed by the Dealer are capable of negotiating, finalizing and securing orders in favour of Eimco and rendering all commercial services to the Customers.

3.1.3 maintain adequate facilities required to render prompt and efficient service to all the Customers in the Territory, at reasonable cost.

3.1.4 render service reports on the Products serviced by it in accordance with procedures established by Eimco.

3.1.5 make periodic visits to the Customers and potential customers and maintain continuous interaction with them.

3.2 Further, Eimco shall bear all expenses incurred by the Dealer for rendering Sale Service outside the territory of India.

4. MARKETING PROCEDURES

4.1 The Dealer shall use its best endeavors to promote and increase the sale of the Products in the Territory and procure and push the sales of the Products to the Customers and potential Customers in the Territory.

4.2 The Dealer shall use its best efforts to explain and demonstrate the applications and other features of the Products to the Customers and convince them about the technical superiority of the Products. The Dealer shall also endeavor to generate maximum orders in favour of Eimco, at such prices as may be determined and accepted by Eimco.

5. COMMISSION

5.1 Eimco shall pay commission to the Dealer (“**Commission**”) @ 9.90% on net sales price on all products and spares sold to the Customers by the Dealer on behalf of Eimco, excluding export sales. The commission will be exclusive of all taxes.

5.2 It is hereby agreed between the Parties that the above mentioned rates are subject to change upon written notice from Eimco.

- 5.3 Unless otherwise agreed to, in writing, by the Parties, the Commission payable by the Eimco to the Dealer under this Agreement shall be calculated on a monthly basis and appropriate sale invoices shall be issued by Dealer to Eimco upon receipt of the Sale Statement from Eimco. Such invoice shall contain the Commission payable on the Net Sale Price of each Product supplied by the Dealer to the Customer, to which a Letter of Acceptance was issued by Eimco.
- 5.4 The Commission shall accrue and be due and payable only upon issue of such invoices at the end of each month. However, Eimco shall pay the Commission due to the Dealer within 30 days of receipt of the invoice.
- 5.5 Further, it is hereby agreed between the Parties that, in the event of any disagreement in the computation of the Commission payable to the Dealer for any particular period or in respect of any deductions made by the Eimco in the calculation of Commission, the Commission calculated and certified by Eimco's auditor shall be final and binding upon the Parties..
- 5.6 It is hereby agreed that, the commissions and incentives, if any, required to be paid to the Customers, for the purpose of marketing and selling the Products shall be borne by the Dealer and Eimco, as per mutually agreed terms.
- 5.7 The Dealer shall collect the TDS certificates etc. from Customers in relation to the payments made as per terms and conditions of the order and deliver the same to Eimco.

6. OBLIGATIONS OF EIMCO

- 6.1 Eimco may from time to time, at its option and at its own expenses, assign a technical representative to assist the Dealer for the due performance of the Dealer's obligations under this Agreement.
- 6.2 The Eimco shall provide the Dealer, within 10 days of every month from the commencement of the Term, an accounts sale statement setting out the total sales during the preceding month in the Territory ("**Sale Statement**"). The Sale statement shall state the Net Sale Price received or due from each Customer in respect of every such sale and shall state such other information, particularly as may be prescribed or mutually agreed upon between the parties.

7. WARRANTY

- 7.1 Eimco shall provide a warranty on the Products to the Customers in accordance with the standard Eimco warranty in effect at the time of sale of the Products.

8. ADVERTISEMENT

Eimco shall at its own cost and expense supply to the Dealer all articles and material required for the advertisement and promotion of Products within the Territory.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 All Intellectual Property Rights and any labels, user documents, and other marketing and advertising materials in relation to the Products shall remain the sole and exclusive property of Eimco.

9.2 The Dealer shall promptly and fully notify Eimco of any actual, threatened or suspected infringement of, or any actions, claims or demands or proceedings in relation to any of the Intellectual Property Rights of Eimco which may come to its attention and shall render to Eimco, at Eimco's expense all assistance which Eimco may reasonably require in connection therewith, including taking or resisting any proceedings.

10. TERM OF THE AGREEMENT

This agreement shall become binding as between Eimco and the Dealer from 1st day of April, 2018. The term of this Agreement shall be for a **period for 5 years from 1st day of April, 2018 to 31.03.2023** ("Term") unless otherwise agreed to, in writing, by both the Parties.

11. TERMINATION

11.1 Eimco shall have the right to terminate this Agreement by (a) giving a 3 months' notice in writing to the Dealer; and (b) paying a compensation equivalent to the amount of Commission earned by Dealer during the previous 3 months of the Term.

11.2 This Agreement may be terminated by either Party hereto, in the following instances:

- (a) the other Party commits a breach of any of the terms of this Agreement;
- (b) the other Party is dissolved, liquidated or wound-up; or
- (c) The other Party is declared insolvent or bankrupt;

11.2.1 Upon termination of this agreement in accordance with Clauses 11.1 or 11.2 above, the Dealer shall return forthwith (a) all stocks of the Products; (b) all articles, materials etc. if any, in relation to the Products; (c) all documents relating to the transactions and/or booking of orders made by the Dealer on behalf of Eimco; and (d) all pertinent documents (in all originals and copies) and marketing collaterals and all confidential documents supplied by Eimco, which are in the possession of the Dealer.

12. DISPUTE RESOLUTION

In the event, any dispute, controversy or claim arises between the Parties, in connection with the implementation or interpretation of this Agreement, or any breach of the obligations hereunder, termination or invalidity hereof (each a “**Dispute**”), then the Parties shall attempt in the first instance to resolve such dispute through negotiations. If the Dispute is not resolved through negotiations within 30 (thirty) days from the date of commencement of discussions or such longer period as the Parties agree in writing, then the Dispute shall be referred to arbitration by a sole arbitrator to be appointed by EIMCO. The arbitration proceeding shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and amendments thereof. All arbitration proceedings shall be conducted in English language and the venue of arbitration shall be Anand.

13. CONFIDENTIALITY

Each Party acknowledges that in the course of performance of its obligations under this Agreement, it may obtain certain information in relation to the other Party. Each party hereby agrees that all such information communicated to it by the other party, its parent, affiliates, subsidiaries, or Customers, whether before or after the Execution Date, was received in strict confidence and shall be used only for purposes of this Agreement, and shall not be disclosed without the prior written consent of the other party, except as may be necessary by reason of legal, accounting or regulatory requirements beyond either party's reasonable control. The provisions of this section shall survive termination or expiry of this Agreement for any reason for a period of three (3) years after said termination or expiry.

14. MISCELLANEOUS PROVISIONS

14.1 Governing Law and Jurisdiction

This Agreement shall be governed and construed in accordance with the laws of India. Subject to the provisions of Clause 11, the competent courts at Anand shall have exclusive jurisdiction in relation to all matters arising out of this Agreement.

14.2 Assignment

None of the Parties may assign any of their respective rights or obligations under this Agreement nor any of the documents referred to in this Agreement in whole or in part otherwise than in accordance with the provisions and requirements of this Agreement.

14.3 Entire Agreement, Severance and Variation

14.3.1 Each Party to this Agreement confirms that this agreement represents the entire understanding and constitutes the entire agreement to its subject matter, between the parties, superseding all previous agreements, understandings, oral or written, between the parties with respect thereto.

14.3.2 In the event that any part (including any Clause or part thereof) of this Agreement shall be void or unenforceable by reason of any applicable law, it shall be deleted and the remaining parts of this Agreement shall continue in full force and effect and if necessary, both Parties shall use their best endeavors to agree any amendments to the Agreement necessary to give effect to the spirit of this Agreement.

14.3.3 No variation of this Agreement shall be valid or effective unless made by one or more instruments in writing signed by such of the parties hereto, which would be affected by such variation.

14.4 Notices

Unless otherwise stated, any notice, notification, information or request to be given or made to the Dealer or to Eimco shall be in writing. Such notice or request shall be deemed to have been given or made when it is delivered by hand or facsimile or within fourteen days after it is dispatched by registered mail or telegram to the Party to which it is required to be given or made at such Party's address stated below and/or such other address as may be notified by the Party.

(a) Eimco

Anand-Sojitra Road,
Vallabh Vidyanagar-388 120,
Gujarat
Telephone Number – 02692 227812
Fax Number – 02692 227812
Attention - Mr. Nilesh D. Shelat, CFO

(b) The Dealer

Vallabh Vidyanagar,
Gujarat
Telephone Number – 02692 227533
Fax Number – 02692 227529
Attention - Mr. Ravin Shah, Executive Director

14.5 Counterparts

This Agreement may be executed in any number of counterparts and by the each Party on separate counterparts, each of which when executed and delivered shall constitute an original, but all the counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, THE PARTIES HEREUNTO HAVE SET THEIR RESPECTIVE HAND AND SIGNATURE ON THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

For and on behalf of Eimco Elecon (India)
Limited, by its _____
(Designation) _____
(Name) in the presence of _____

For and on behalf of Emtici Engineering
, Limited by its _____
(Designation) _____
(Name) in the presence of _____

Draft