

TERMS AND CONDITIONS OF SALE

FOR THE FOUR (4) BELL 212 HELICOPTERS, INCLUDING BELL 212 AND BELL 214ST SPARE PARTS IN STOCK AND ASSOCIATED ROLE AND GROUND SUPPORT EQUIPMENT, TOOLS AND INSTRUMENTS

1. DEFINITIONS

1.1. In this Terms and Conditions, unless the context otherwise requires, the following definitions shall apply :

Bid	means the price of the Items offered or proposed by the Buyer;
Buyer(s)	means (a) the buyer(s) who are interested to purchase the Items; or (b) the buyer(s) who purchased the Items;
Certificate of Handing Over	means the certificate to be signed by both parties upon handing over of the Items by the Seller to the Buyer after receipt of full payment by the Seller;
Closing Date	means the date and time specified for the submission of the Buyer's reply;
Day(s)	means a calendar day;
Industry Day	means the days on which the Buyer is invited by the Seller in relation to the purpose specified in Section 4.3 of this Terms and Conditions, at the Royal Brunei Air Force, Rimba Air Base, Rimba Link Highway, BB 3510, Brunei Darussalam;
Interested Items	means the items intended to be purchased by the Buyer as described in Section 2.3 ;
Item(s)	means the following items: <ul style="list-style-type: none">(a) Quantity of four (4) Bell 212 Helicopters (Date of Manufacture: between 1978 - 1982)(b) Bell 212 Helicopters spare parts in stock(c) Bell 214ST Helicopters spare parts in stock(d) Bell 212 Helicopters Role & Ground Support Equipment, Tools and Instruments(e) Bell 214ST Helicopters Role & Ground Support Equipment, Tools and Instruments

(N.B: the full list of the Items is included herein as set out in **Annexes A to L of Schedule 1**);

MINDEF Premises	means the premises of the Seller situated at the Royal Brunei Air Force, Rimba Air Base , Rimba Link Highway, BB 3510, Brunei Darussalam;
MRO Facility	means a certified Maintenance, Repair, Overhaul Facility;
OEM	means the Original Equipment Manufacturer;
Parties	means the Buyer and the Seller;
Point of Contact	means the Point of Contact to be provided by the Buyer as per in Schedule 2 ;
Sale	means the sale of the Items;
Schedule 1	means Schedule 1 of this Terms and Conditions which set out the full list of the Items and available at http://www.mindef.gov.bn/sitepages/bell212sales.aspx ;
Schedule 2	means Schedule 2 of this Terms and Conditions which set out the background of the Buyers and available at http://www.mindef.gov.bn/sitepages/bell212sales.aspx ;
Seller	means the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam, represented by the Ministry of Defence, Brunei Darussalam and/or Royal Brunei Air Force;

2. GENERAL

- 2.1. The Buyer agrees to the Terms and Conditions outlined herein.
- 2.2. The Buyer shall provide the Seller with a letter expressing their interest as in accordance with **Section 3**.
- 2.3. The Buyer shall provide the Bid for the Interested Items.
- 2.4. In any circumstances, there shall be no collusion amongst the Buyers which may directly or indirectly influence the Sale process in anyone's favour. Buyer who enters into any form of collusion, shall, at MINDEF's sole discretion be removed or disqualified from further participation in the Sale process.
- 2.5. Any queries, notice and other communication required to be given to the Seller in connection with the Sale shall be delivered or sent to the following:

Email Address : bell212sales.general@mindef.gov.bn

Fax No. : +6732386808

3. SUBMISSION RULES OF BUYER'S REPLY

- 3.1. The Buyer shall reply to the Seller's advertisement with a letter expressing their interest to purchase the Items or any of the Items and the detailed information relating to the background of the Buyers as per **Schedule 2** within two (2) weeks from the date of the advertisement [**Closing Date for submission: 5th November 2015**]. The Seller may, at its options, have the right to extend the deadline under any circumstances and for any reason whatsoever.
- 3.2. The Buyer's reply shall be written in English with pages numbered, signed and stamped with the Buyer's company seal. The Buyer's reply shall be scanned and submitted via email no later than 0900 hours Brunei Darussalam time on the **5th November 2015** ("Closing Date"). The email shall be titled "**SALE OF BELL 212 HELICOPTERS**".
- 3.3. The hard copies of the original set of the reply are required to be submitted in an envelope marked as "**REPLY TO TERMS AND CONDITIONS OF SALE FOR THE BELL 212 HELICOPTERS**".
- 3.4. The Buyer's reply shall be sent to the following address:
Address : Directorate of Finance and Acquisition, Ministry of Defence,
Bolkiah Garrison BB3510, Brunei Darussalam
Telephone No. : +673 2386035
Fax No. : +673 2383775
Email Address : bell212sales@mindef.gov.bn
For the attention of : Director of Finance and Acquisition

4. PROCESS OF SALE

Industry Day

- 4.1. An Industry Day will be organised in Brunei Darussalam. The Seller shall inform the Buyer in relation to the venue, proposed dates and time of the Industry Day.
- 4.2. The Buyer will be invited to the Industry Day. The Buyer shall bear all costs or expenses incurred in connection with the visit to MINDEF Premises for the Industry Day.
- 4.3. The Seller shall allocate at least three (3) days for the Industry Day. The purpose of the Industry Day is to provide advice, clarification, briefing and inspection of the Items to all the Buyers.
- 4.4. The Buyer is allowed to send up to 2 personnel for the Industry Day. For the avoidance of doubt, the Buyer shall not send a third party to the Industry Day.
- 4.5. The Buyer shall provide the following details to the Seller for security clearance one (1) week before the Industry Day by email and/or fax as specified in **Section 2.5**.
 - (a) Name as in Passport
 - (b) Nationality
 - (c) Passport Number
 - (d) Copy of Passport
 - (e) Position within the company.
- 4.6. A notice or other written communication required to be given to the Buyer in connection with this Industry Day shall be sent by email and/or fax to the Point of Contact.

Submission of the Bid

- 4.7. After the Industry Day, the Buyer shall submit the Bid for the Item(s) they intend to purchase including the total Bid of the Items. The Bid shall be in United States Dollars.
- 4.8. The Bid must be submitted by email to bell212sales@mindef.gov.bn no later than 0900 hours Brunei Darussalam time within fourteen (14) days after the Industry Day and the email shall be titled as **"THE BID FOR THE BELL 212 HELICOPTERS"**. The hard copies of the original set of the Bid are required to be submitted in an envelope marked as **"THE BID FOR THE BELL 212 HELICOPTERS"** at the address specified at **Section 3.4**.
- 4.9 The Seller shall have the right to select and award the Sale to one or several Buyers. The Seller reserves the right not to disclose any reasons for the decision in electing and awarding the Sale to the Buyer.

Award of Sale

4.10 In the event that the Buyer is awarded with the Sale, the Seller and the Buyer shall obtain all necessary clearances and approval from the United States Government for the process of the third party transfer.

4.11 Both parties agree that the length of time for the United States Government approval shall be subject to the process required by the United States Government.

Sale and Purchase Agreement

4.12 Subject to **Section 4.10 and Section 4.11**, the Sale and Purchase Agreement shall be signed by both parties.

4.13 The Sale and Purchase Agreement constitutes the entire agreement between the Parties and supersedes this Terms and Conditions.

5. EXPENSE OF THE BUYER

In submitting the reply and the Bid, the Buyer will be deemed to have acknowledged and agreed that it will bear all the expenses and cost it incurs in preparing its reply and the Bid. The Buyer is not entitled to seek any compensation or reimbursement of those costs from the Seller.

6. WARRANTY

There shall be no warranties provided by the Seller to the Buyer as the Items are sold on an 'As Is' basis. Any warranty requirements shall be solely arranged between the Buyer and the OEM or the last MRO Facility.

7. PAYMENT TERMS

7.1 All payments shall be made in United States Dollars and via telegraphic transfer to the Seller's bank account.

7.2 Payments shall be made as follows:-

7.2.1 Deposit of 10% of the sale price to be made within fourteen (14) days after the award of the Sale.

7.2.2 Balance of 90% shall be made within thirty (30) days after signing of the Sale and Purchase Agreement.

7.2.3 If the Buyer fails to make payment in accordance with **Section 7**, the Seller shall have the right not to proceed further with the Sale and be entitled to retain the deposit paid by the Buyer.

8. TITLE AND RISK OF THE ITEMS

The title and risk of the purchased Items shall pass to the Buyer after full payment are received by the Seller and the purchased Items are handed over to the Buyer upon signing of the Certificate of Handing Over at MINDEF Premises.

9. PACKAGING, TRANSPORTATION AND INSURANCE

9.1. Upon full payment of the purchased Items as set forth in **Section 7**, the Seller shall inform the Buyer to prepare for the packaging and transportation of the purchased Items.

9.2. The Buyer shall, at its own costs and expenses, be responsible for the packaging, transportation and insurance of the purchased Items from MINDEF Premises to their facility.

9.3 The Buyer shall ensure that the purchased Items are removed from MINDEF Premises within thirty (30) days after the signing of the Certificate of Handing Over; failing which, the Buyer will be required to pay for the storage at a rate to be set by the Seller.

10. INSPECTION

The Buyer hereby acknowledges that it has inspected the purchased Items during the Industry Day and prior to delivery from MINDEF Premises to their facility. The inspection carried out by the Buyer shall not give any rights to the Buyer to cancel their Bid.

11. HANDING OVER OF THE PURCHASED ITEMS

11.1. The handing over of the purchased Items to the Buyer shall take place at MINDEF Premises.

11.2. Upon the signing of the Sale and Purchase Agreement and the receipt of full payment, a Certificate of Handing Over shall be executed by both Parties to formally record the handing over of the Items to the Buyer.

12. REPAIR AND MAINTENANCE

The Buyer agrees that the Seller is not obligated to do any repair, modifications or maintenance work upon the purchased Items.

13. TAXES AND DUTIES

The Buyer shall be entirely liable and responsible for all taxes, duties and/or levies imposed or payable in respect of the Items whether imposed or payable inside or outside Brunei Darussalam.

14. INTELLECTUAL PROPERTY RIGHTS

- 14.1. The intellectual property rights and copyright inherent in the production of the Items shall remain the property of the OEM unless agreed otherwise.
- 14.2. The Buyer shall indemnify the Seller and keep the Seller fully and effectively indemnified on demand against all costs, claims, demands, expenses and liabilities of whatsoever nature arising out of or in connection with any claim that the normal use or possession of the Items infringes the intellectual property rights (including without limitation any patent, copyright, registered design, design right or trademark) of any third party.

15. INDEMNITY AND LIABILITY

- 15.1 The Buyer shall indemnify the Seller and keep the Seller fully and effectively indemnified on demand against all costs, claims, demands, expenses and liabilities of whatsoever nature arising out of or in connection with any claim for any personal injury or death cause by the negligent act or omissions of its employees, agents and sub-contractors in connection with the performance of its duties and obligations under this Terms and Conditions.
- 15.2 In the event of any claims whatsoever against the Seller (including for this purpose every officer and department thereof) at any time, by an agent of or any workman or employee employed by the Buyer in and for the performance of this Terms and Conditions, the Buyer shall indemnify the Seller, its officers or department against such claims, and any damages, costs, charges and expenses in respect thereof.
- 15.3 The Seller shall have no liability under this Terms and Conditions and/or in relation to the Sale.

16. FORCE MAJEURE

- 16.1 Notwithstanding anything else contained in this Terms and Conditions, neither party shall be liable for any delay in performing its obligations hereunder if such delay is caused by a Force Majeure event. For the purposes of this Terms and Conditions, a Force Majeure event means any event beyond the reasonable control of a party including but not limited to acts of God; war, acts of terrorism, hostilities, riot, insurrection or civil commotion, malicious damage, blockades, embargoes, strikes, lockouts and industrial disputes affecting such performance; and flood, fire, rainstorms and other natural physical disasters, plague or other epidemics.
- 16.2 Subject to the party so delaying promptly notifying the other party in writing of the reasons for the delay (and the likely duration of the delay), the performance of such party's obligations shall be suspended during the period that the Force Majeure event persists and such party shall be granted an extension which shall be mutually agreed by the Parties.

- 16.3 Either party may, if such delay continues for more than three (3) weeks, terminate this Sale forthwith on giving notice in writing to the other.
- 16.4 A statement in writing by a competent authoritative body such as the local Chamber of Commerce, confirming the veracity of a Force Majeure event claimed by either party shall be accepted as conclusive evidence thereof.

17. GIFTS AND CORRUPTIONS

The Seller shall be entitled to terminate the Sale and recover from the Buyer the amount of any loss resulting from such termination, if the Buyer shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this Terms and Conditions with the Seller, or for showing or forbearing to show favour or disfavour to any person in relation to this Terms and Conditions or any other agreement with the Seller or the like acts shall have been done by any person employed by the Buyer or acting on its behalf (with or without the knowledge of the Buyer), or if, in relation to this Terms and Conditions or any other agreement with the Seller, the Buyer or any person employed by the Buyer or acting on its behalf shall have committed or abetted in the commission of an offence under the Prevention of Corruption Act (Cap. 131) or section 161, 162, 163, 164 and 165 or 213, 214 and 215 of the Penal Code (Cap. 22).

18. CONFIDENTIALITY

- 18.1. The Buyer agrees and undertakes to keep confidential all information, whether written or verbal, relating to this Terms and Conditions or concerning the business affairs of MINDEF that it may obtain or receive as a result of or in the course of the discussions leading up to the execution of this Terms and Conditions and/or the performance of its obligations under this Terms and Conditions, save insofar as such information is already in the public domain.
- 18.2. The Buyer agrees and undertakes to disclose such confidential information to only such of its employees, agents and/or sub-contractors who have a reasonable need to know of the same to enable the Buyer to perform its obligations under this Terms and Conditions, or if required by any applicable laws or regulations.
- 18.3. The Buyer further agrees and undertakes to take all such steps as are necessary to ensure that all of its employees, agents and/or sub-contractors to whom such confidential information is disclosed are made aware of the confidential nature thereof and keep the same confidential at all times.

19. DISPUTE RESOLUTION

- 19.1 The Parties shall make every effort to amicably resolve, by direct informal negotiation, any dispute arising between them pursuant to or in connection with this Terms and Conditions.
- 19.2 If the Parties are unable to amicably resolve any dispute within thirty (30) days from the date when such dispute arose, either party shall require that the dispute be referred for resolution by arbitration in accordance with the provisions of the Arbitration Order, 2009.
- 19.3 The Arbitration Tribunal shall consist of a single arbitrator, such person to be agreed between the Parties, or failing agreement, to be nominated in accordance with the Arbitration Order, 2009. The applicable rules of Arbitration shall be the UNCITRAL Rules of Arbitration.
- 19.4 The seat and place of arbitration shall be Brunei Darussalam and the language of arbitration shall be English.
- 19.5 All rights and obligations of the Parties under this Terms and Conditions shall continue in full force and effect pending the final outcome of such arbitration.
- 19.6 Any reference to arbitration under this section shall be a submission to arbitration within the meaning of the Arbitration Order, 2009 for the time being in force in Brunei Darussalam.
- 19.7 The application of Part II of the International Arbitration Order, 2009 and the Model Law referred thereto, to this Terms and Conditions is hereby excluded.

20. GOVERNING LAW

This Terms and Conditions shall be governed by and construed in accordance with the laws of Brunei Darussalam.