



An ISO 9001  
Company

**Bharat Heavy Electricals Limited**  
(High Pressure Boiler Plant)  
Tiruchirappalli-620 014, Tamil Nadu, India  
Dept: MATERIALS MANAGEMENT/BOI

### Annexure – A- Terms and Conditions

#### **ACCEPTANCE OF TECHNO - COMMERCIAL TERMS AND CONDITIONS BY THE BIDDERS**

**Any deviation to the below mentioned terms shall be stated specifically in the comments column for each term and also in case of acceptance to our terms, it will be construed that the whole term is understood and agreed in totality without any deviation. (If otherwise mentioned).**

<b>BHEL Tender No. &amp; Date</b>	<b>1802200087 dt. 12.05.2022</b>	
<b>Description of the Equipment and Scope of work:</b>	<b>Design, Manufacturing and Supply of FGD ABSORBER AGITATOR along with Mandatory Spares and Supervision of Erection &amp; Commissioning</b>	
<b>Project</b>	<b>NTPL TUTICORIN#1 - 500MW (FG/8207) NTPL TUTICORIN#2 - 500MW (FG/8208)</b>	
<b><i>To be filled by bidder</i></b>		
<b>i)</b>	<b>VENDOR / FIRM NAME</b>	
<b>ii)</b>	<b>BHEL VENDOR CODE (If Any)</b>	
<b>iii)</b>	<b>QUOTATION REFERENCE &amp; DATE</b>	
<b>iv)</b>	<b>CONTACT PERSON NAME</b>	
<b>v)</b>	<b>CONTACT PERSON MOBILE NO</b>	
<b>vi)</b>	<b>CONTACT PERSON MAIL ID</b>	
<b>vii)</b>	<b>FIRM MAIL ID</b>	
<b>viii)</b>	<b>WORKS ADDRESS &amp; TELE NO</b>	
<b>ix)</b>	<b>OFFICE ADDRESS &amp; TELE NO</b>	
<b>x)</b>	<b>PAN NO</b>	
<b>xi)</b>	<b>MSE VENDOR / NON- MSE VENDOR</b>	

Sl. No.	Terms and Conditions	Vendor's confirmation
A	Bidders from the countries sharing land border with India will be eligible for participating in this enquiry as per clause 3 (i) of OM No. F.18/37/2020-PPD Dt:08.02.2021 since the items covered in this enquiry are sub assembly items.	
B	<p><b><u>Preference to Make in India:</u></b></p> <p>For this procurement, the local content to categorize a supplier as a Class I local supplier/ Class II local Supplier/ Non- Local supplier and purchase preference to Class I local supplier, is as defined in Public Procurement (Preference to Make in India), Order 2017 dated 04.06.2020 issued by DPIIT. In case of subsequent orders issued by the nodal ministry, changing the definition of local content for the items of the NIT, the same shall be applicable even if issued after issue of this NIT, but before opening of Part-II bids against this NIT.</p> <p>The local supplier at the time of tender, bidding or solicitation shall be required to provide self-certification that the item offered meets the minimum local content and shall give details of the location(s) at which the local value addition is made.</p>	
C	<p><b>MSE VENDOR:</b></p> <p><i>i. If L1 vendor is an MSE vendor entire project package will be ordered on L1 vendor.</i></p> <p><i>ii. If a Non MSE vendor is coming as L1, then L1 prices will be counteroffered on MSE vendor who is quoting price within the price band L1+15% and if they are agreeing, purchase order will be awarded for full/complete supply of total tendered value to MSE.</i></p> <p><i>iii. Since the items are non-divisible, if more than one MSE vendors are available in the L1+15% price band then lowest of the MSE vendor will be selected for counteroffering. If lowest MSE vendor is not accepting it will be counteroffered to the next MSE vendor in the price band and so on.</i></p> <p><i>iv. Finally if none of the MSE vendor in the price band is accepting, it will be ordered on L1 non MSE vendor.</i></p> <p>Payment for MSE Indigenous vendors will be as per MSMED Act, 2006.</p> <p>MSE suppliers can avail the intended benefits only if they submit along with the offer, attested/notarized copy of <i>Udyam Registration certificate</i>.</p> <p>Non submission of <i>Udyam Registration certificate</i> will lead to consideration of their bid at par with other bidders. No benefit shall be applicable for this enquiry, in case of any deficiency in the <i>Udyam Registration certificate</i>. If the tender is to be submitted through e-procurement portal, then the <i>Udyam Registration certificate</i> is to be uploaded on the portal.</p>	
D	<p><b>REVERSE AUCTION:</b></p> <p><i>“BHEL shall be resorting to Reverse Auction (RA) (Guidelines as available on www.bhel.com) for this tender. RA shall be conducted among all the techno-commercially qualified bidders.</i></p> <p><i>Price bids of all techno-commercially qualified bidders shall be opened and same shall be considered as initial bids of bidders in RA. In case any bidder(s) do(es) not participate in online Reverse Auction, their sealed envelope price bid along with applicable loading, if any, shall be considered for ranking.”</i></p>	
E	<p><b>Offer Validity:</b></p> <p>120 days minimum from techno commercial bid opening ( Part-1).</p>	

1 (a)	<p><b>Technical:</b>  Supply of FGD ABSORBER AGITATOR and Mandatory Spares shall be as per the Specification attached with the enquiry.</p> <ol style="list-style-type: none"> <li>1. Technical specification of FGD absorber agitators (specification no: TRY/PE-BM/FGD/AGITATOR SPEC:001/Rev01 (with Annexure I to VI))</li> <li>2. Annexure-VII - C&amp;I Technical Specification of LT AC Motors, TCI:140, REV.13.</li> <li>3. Annexure-VIII - Indicative MQP for Agitator</li> <li>4. Annexure-X - Pre-Qualification Requirements</li> <li>5. Mandatory Spares for FGD Absorber Agitator (Annexure-XI)</li> <li>6. Technical information for sizing of absorber agitators (Annexure-XIII)</li> </ol>	
1 (b)	<p><b>Pre-qualification requirement (PQR):</b>  Offer shall be considered only if bidder is meeting Tender Prequalification requirement (<b>Annexure-X</b>). Vendor to comply with Pre-Qualification requirement of the tender and submit along with their technical bid, the credentials and other documents as indicated in the PQR in the format prescribed. Otherwise their offer will get rejected.</p>	
1 (c)	<p><b>Evaluation Criteria:</b>  The items are non-divisible in nature. The tender will be evaluated on total package basis inclusive of <b>Supply of FGD ABSORBER AGITATOR, Supervision for E&amp;C and Mandatory Spares of NTPL Tuticorin project unit#1 and Unit#2.</b></p> <p>Evaluation and L1 identification shall be on total landed cost to BHEL including all cost up to destination.</p> <p>Currency of evaluation shall be <b>INR</b>. Rate quoted in Foreign currencies will be converted to INR by multiplying with the Exchange rate (SBI TT Selling rate) as on the technical bid opening date. If the date of opening happens to be a bank holiday, then the forex rate as on previous bank (SBI) working day shall be taken.</p>	
1 (d)	<p>Vendor shall quote as per the enclosed price Schedule format only. Filled up Annexure-XI with details about mandatory spares shall be submitted along with Part-I offer.</p>	
1 (e)	<p><b>Vendor offers will be considered for price bid opening subject to fulfilment of techno commercial suitability and sub vendor approval by end customer. Vendors shall submit supply credentials along with Part-I offer for taking up with customer for approval.</b></p>	
1(f)	<p><b><u>Offer Submission:</u></b></p> <ol style="list-style-type: none"> <li>a. This Tender is hosted in EPS portal &amp; offer to be submitted through EPS portal only. You are requested to submit your 2 parts offer before due date &amp; time of the enquiry through NIC (<a href="https://eprocurebhel.co.in">https://eprocurebhel.co.in</a>) only.</li> <li>b. Offer is to be submitted in TWO part bids system (Technical bid + Price bid) in the E-Procurement NIC PORTAL (<a href="https://eprocurebhel.co.in">https://eprocurebhel.co.in</a>) ONLY.</li> <li>c. Scanned copy of the filled Annexure-B, Tender documents etc., shall be uploaded in the EPS portal.</li> </ol>	

	<p>d. At its option, BHEL may consider extending the due date/s for the tender openings. Sufficient notice would be given by BHEL for such extensions and it will be published as corrigendum in following websites,  <a href="https://eprocurebhel.co.in">https://eprocurebhel.co.in</a>  <a href="http://www.bhel.com/tender/">http://www.bhel.com/tender/</a></p>	
1(g)	<p><b>Authorization for participation in EPS portal through DSC: E-Tender.</b>  <b>Participation requirements:</b>          Either Principal or authorized agent shall register their Digital Signature Certificate (DSC) (Class 3- SHA2- 2048 BIT- SIGNING &amp; ENCRYPTION). Suppliers are advised to go through the FAQ available in the web portal (<a href="https://eprocurebhel.co.in">https://eprocurebhel.co.in</a>). DSC shall be registered for the authorized person and all transaction done using that DSC against our tenders shall be taken as valid communication and shall be binding on principal/agent and is valid legally.</p> <p><b>For foreign Principal</b>          In case of Principal (being foreigner), they may apply for DSC through Indian embassy at their country and can register with us for participating in E-tenders. Details of the applicable procedure is available in the webpage <a href="http://www.cca.gov.in/cca/">http://www.cca.gov.in/cca/</a>.</p> <p><b>For Indian agent</b>          In case of agents participating/registering their DSC (of authorized person), it will be at the sole authorization of principal to their agents to participate on their behalf and all transactions done using that DSC against our tenders shall be known as valid communication and shall binding on principal and is legally valid.</p>	
1(h)	<p><b><u>Pre-bid meeting</u></b>          In order to avoid clarification/ confirmation after opening of bids, Pre-bid conference (online) will be held so as to provide an opportunity to the participating bidders to interact with BHEL with regard to various tender provisions/tender specifications, before the bids are submitted.          Pre bid meeting date: 26.05.2022          Video Conferencing link: <a href="#">Click here to join the meeting</a></p>	
2 (a)	<p><b>Firm Price:</b>          The quoted / finalised rates shall be Firm till execution of the Contract. Offer with PVC clause will not be considered.</p>	
2 (b)	<p>The Tender will be operated in two part bid system. One-part consisting of PQR, Technical bid with Commercial terms &amp; conditions and other part is Price Bid. Based on the PQR compliance, technical suitability and sub vendor approval by end customer, vendors will be short-listed. The price Bid of short listed vendors will be opened on a suitable date with due intimation to vendors. Reverse Auction is applicable for this tender.</p>	
3	<p><b>Delivery term: <u>Indigenous Suppliers:</u></b>          The quote shall be on FOR destination basis as indicated below inclusive of Packing, forwarding, Freight also to yours account. Transit Insurance is under BHEL scope.</p> <p><b><u>Import Supplier:</u></b>          Import vendors to submit offers on CFR (Cost &amp; Freight), Chennai port (LILO – Liner in Liner Out) basis for all the packages. Port of loading should be indicated without fail. Port of discharge should be Chennai.</p>	

	<ul style="list-style-type: none"> <li>• For Main Supply (<i>BOQ Sl. No. 1.01</i>) :- FOR NTPL TUTICORIN Project site.</li> <li>• For Mandatory spares (<i>BOQ Sl. no. 2.01 to 2.06</i>) :- FOR BHEL Trichy stores.</li> </ul>	
4 (a)	<p><b>Delivery Period:</b></p> <ul style="list-style-type: none"> <li>• Delivery Period shall be 4 months from the Manufacturing clearance for Unit#1 and 6 months from the Manufacturing clearance for Unit#2 and Mandatory spares</li> <li>• Manufacturing clearance will be provided unit wise based on Documents approval from Customer /BHEL and site erection schedule.</li> <li>• The delivery dates mentioned above and given in the PO are indicative only. The exact delivery date will be intimated by BHEL while giving dispatch clearance.</li> <li>• The supplier shall keep the manufactured items safely till the dispatch clearance is given by BHEL.</li> <li>• Material shall be dispatched after obtaining dispatch clearance from BHEL.</li> </ul>	
4 (b)	<p><b>Acceptance of materials supplied:</b></p> <ol style="list-style-type: none"> <li>i. The supply shall strictly as per the specifications in the tender /purchase order.</li> <li>ii. Delivery of the ordered items as per the delivery terms in the Purchase Order does not automatically constitute acceptance of the delivered items.</li> <li>iii. The acceptance or otherwise of the delivered items at BHEL / Stores/ Trichy will be separately communicated to the supplier by BHEL either through B2B portal or through e mail within 15 days from the delivery of items or delivery of the required test certificates /other documents whichever is later.</li> <li>iv. In case of rejection of the delivered items at BHEL/Stores/ Trichy, either part or full, the vendor shall replace the rejected items as per the specification in the Purchase order/tender at their cost within specified days/months of communication of rejection to the supplier.</li> <li>v. In case of rejection of the delivered items, either part or full, if the supplier fails to replace the rejected items within the specified days/months of communication of the rejection, the same shall be treated as failure to execute the contract and actions as per the Guidelines for Suspension of Business Dealings with Suppliers/Contractors available in the webpage: <a href="http://www.bhel.com/vender_registration/vender.php">http://www.bhel.com/vender_registration/vender.php</a>. would be taken against such supplier</li> </ol> <p style="text-align: center;">+</p>	

5 (a)	<p><b>Payment terms:</b>  <b>Indigenous Supplier (Non MSE and MSE)</b>  <b><u>For Main Supply:</u></b></p> <p>90% payment will be made directly thru' EFT within 45 days for MSE Vendors and 90 days for Non-MSE vendors from the date of receipt of materials at BHEL Site against site acknowledgement and submission of 10% PBG of Supply value valid for the warranty period.</p> <p>Balance 10% payment will be paid within 45 days from the date of completion of commissioning as recorded in the MOM for MSE /90days for non-MSE on completion of Commissioning as recorded in the MOM.</p> <p>If the site is not ready for 2 years from the date of supply, then this 10% payment for the supply portion will be released with the extension of PBG for another 2 years or till completion of E&amp;C, whichever is earlier.</p> <p><b><u>For Mandatory Spares:</u></b>  100% payment will be made in 45 days for MSE vendors and 90 days for Non-MSE Vendors from the date of receipt and acceptance of materials at BHEL Trichy Stores, against 10% PBG.</p> <p><b>Import Supplier</b></p> <p><b><u>For Main Supply:</u></b></p> <p>BHEL Payment term is 90% payment on CAD basis after 90 days from the date of receipt of documents, specified in PO, at BHEL bank. Respective bank charges to respective account and against 10% PBG of supply value valid for the warranty period.</p> <p>Balance 10% payment will be made in 90 days after completion of Commissioning as recorded in the MOM.</p> <p>If the site is not ready for 2 years from the date of supply, then this 10% payment for the supply portion will be released with the extension of PBG for another 2 years or till completion of E&amp;C, whichever is earlier.</p> <p><b><u>For Mandatory Spares:</u></b>  100% payment will be made in 90 days from the date of receipt and acceptance of material at BHEL Trichy stores against 10% PBG.</p> <p><i>If supplier insists for LC, only Usance LC with 90 days credit will be opened one month prior to material readiness, further loading @ 1.5% on the offered value will be considered. Hence supplier shall intimate the material readiness accordingly for opening of L.C. LC validity period will be 90 days and for any extension, applicable charges will be to supplier's account.</i></p>	
5 (b)	<p>No deviation is permitted in payment term. Bids with any deviation on the above term is liable for rejection.</p>	
5 (c)	<p><b>Performance Bank Guarantee:</b>  BHEL require a performance Bank Guarantee for the due performance of <b>FGD ABSORBER AGITATOR and Mandatory Spares</b> supplied under this contract to a value of 10% of Order value covering the Warranty period. The PBG shall be in BHEL format (Format attached) which is to be opened in any</p>	

	<p>one of the banks mentioned under List of Consortium Banks attachment. All banks charges shall be to vendor account only. Any deviation on PBG leads to rejection of offer. Performance bank guarantee shall have minimum claim period of 3 to 6 months from the date of expiry.</p>	
6 (a)	<p><b>Liquidated damages (LD):</b></p> <ol style="list-style-type: none"> <li>i. Time is the essence of the contract.</li> <li>ii. The ordered items shall be delivered as per the delivery period mentioned in the Purchase Order.</li> <li>iii. In case the supplier supplies the ordered items beyond the delivery period specified, Liquidated Damages -LD - as detailed below shall be levied from the supplier without prejudice to any other relief/compensation available to BHEL, Tiruchirappalli under any other condition of the contract/applicable legal provisions. <ol style="list-style-type: none"> <li>a. Failure to dispatch the materials in the time as per the delivery quoted in our Purchase Order(PO) would make the supplier liable to an <b><i>un-conditional LD at the rate of 0.5% of the undelivered portion per week of the delay or part thereof subject to a maximum of 10% of Purchase order value.</i></b></li> <li>b. Any deviation from the above LD clause, loading will be applied to the extent to which it is not agreed by the bidder (at offered value).  <b>Indigenous:</b> For “FOR Delivery terms”, Lorry way bill date will be taken for LD calculation for cases where E way bill is not mandatory. Wherever E Way Bill is involved, the date of commencement of movement of vehicle as reflected in E way Bill [ the ‘Valid from’ date in the E way Bill] will be taken for LD calculation.  <b>Import:</b> For CFR terms, BL date will be considered for LD calculation.</li> <li>c. Under GST regime, BHEL has to discharge GST liability on LD recovered from suppliers. Hence applicable GST shall also be recoverable from suppliers on LD amount. Debit note will be issued by BHEL for this amount, indicating the respective supply invoice number.</li> </ol> </li> </ol>	
6(b)	<p>Material Supply POs will be released separately for below mentioned items:</p> <ul style="list-style-type: none"> <li>• Main Supply</li> <li>• Mandatory Spares</li> </ul> <p>(I.e. 2 POs in total)</p> <p>In case of PO placements, required documents shall be submitted within the timeline indicated as per Clause no-II (DOCUMENTS TO BE SUBMITTED AFTER CONTRACT) of Specification No: TRY/PE- BM/FGD/AGITATOR SPEC:001/Rev 01 and reply for any further clarification has to be within 7 days. Any delay beyond the above specified period will be considered during LD calculation.</p>	
7 (a)	<p><b>Warranty Period:</b></p> <p>The Warranty Period shall be twenty-four (24) months from the date of Supply or eighteen (18) months from the date of commissioning, whichever first occurs.</p>	
7 (b)	<p><b>Repair &amp; replacements:</b></p> <p>If during the Warranty period any defect should be found in the design, engineering, materials and workmanship of the equipment supplied or of the work executed by the Bidder, the Bidder shall promptly, in consultation and agreement with BHEL regarding appropriate remedying of the defects, and at</p>	

	<p>its cost, repair, replace or otherwise make good (as BHEL shall, at its discretion, determine) such defect as well as any damage to the Facilities caused by such defect.</p> <p>If the supplier fails to replace / rectify the defective/ damaged items on free of cost within a 120 days of reporting from our end, the same shall be treated as failure to execute the contract and actions as per the Guidelines for Suspension of Business Dealings with Suppliers /Contractors available in the webpage: <a href="http://www.bhel.com/vender_registration/vender.php">http://www.bhel.com/vender_registration/vender.php</a>. would be taken against such supplier without prejudice to the other remedies available to BHEL under the contract and law in this regard.</p>	
7 (c)	<p>In case of failure of the equipment to meet the performance criteria as described in the Specification given in the tender, END CUSTOMER/BHEL reserves the right to reject the equipment. However, END CUSTOMER/BHEL reserves the right to use the equipment until new equipment supplied by bidder meets the guaranteed requirement .</p>	
7 (d)	<p><b>Warranty Period:</b> No Deviation is permitted. If still vendor offered any deviation on the warranty period, it may lead to rejection of offer.</p>	
7 (e)	<p><b>SUPERVISION OF ERECTIONAND COMMISSIONING:</b></p> <p>The erection of Agitators will be done by BHEL as per Erection Manual and check List of supplier. However, the bidder shall make visit as per enquiry/PO for the supervision of erection, pre-commissioning &amp; post- commissioning check-up, start-up, testing and trial runs of all the items covered under the scope of supply.</p> <p>Price to be quoted by the bidder in terms of price per man-day for erection and commissioning support.</p> <p>If commissioning engineer is deputed from Indian office, then the payment will be released in INR only. Conversion of foreign currency to INR shall be as per clause1(c).</p> <p>This service will be utilized by BHEL-site through power sector regions based on site readiness. Separate PO will be released by BHEL-Site through power sector region to avail the vendor's supervision service.</p> <p>The bidder will be informed well in advance for the visit at project site. All TA/DA, Site Expenses, Travel charges boarding and lodging shall be borne by the bidder and shall be inclusive in supervision portion. Payment will be made by BHEL-site for supervision of Erection and Commissioning charges within 45 days for MSME /90days for non-MSME on completion of Erection and Commissioning.</p> <p><b>The price calculated for 14 days (7 days per absorber) of Supervision of erection and commissioning or 2 % of the total contract value of Main supply items whichever is lower will be considered for price comparison.</b></p> <p>Depending upon the actual duration of Supervision of erection and commissioning availed, the payment will be paid by BHEL- Power Sector regions based on the vendor quoted amount (price per man-day) with total</p>	

	<p>Erection and Commissioning Supervision charges limited to cap of 2% of the total contract value of Main supply items.</p> <p>In any case, the Charges for Supervision of Erection and Commissioning shall not be paid more than 2% of the total contract value of Main supply items and the supplier shall render the service abiding by the above condition.</p>	
8	<p><b>Documents to be submitted along with technical bid (Part-1)</b></p> <ul style="list-style-type: none"> <li>• As per Clause-1 of Specification No: TRY/PE-BM/FGD/AGITATOR SPEC:001/Rev 01 ((DOCUMENTS TO BE SUBMITTED ALONG WITH THE OFFER).</li> <li>• Filled &amp; Signed Third party non-disclosure agreement</li> <li>• Filled &amp; Signed Integrity Pact</li> <li>• Filled &amp; Signed Annexure-A</li> <li>• Local Content Self Certification</li> <li>• MSE Certificates (if applicable)</li> <li>• No Deviation Certificate</li> <li>• Filled up Annexure-XI with details about mandatory spares</li> <li>• Filled up Annexure-XII</li> </ul> <p><b>Documents are to be submitted along with Price bid (Part-2)</b></p> <p>01. Priced offer on NIC Portal</p> <p><b>Note:</b> All the pages of documents are to be signed and sealed by authorized signatory of the company. Any query during the technical evaluation shall be replied within <b>three</b> days failing which offer may be rejected as non-responsive.</p>	
9	<p><b>Inspection and testing requirements:</b></p> <p>Inspection and testing requirements are to be carried out as per the specification and BHEL/Customer approved Drawing. Quality plan &amp; Inspection and Test Procedure shall be submitted for BHEL/Customer approval in line with Sl. No. 10 (INSPECTION, TESTING AND QUALITY REQUIREMENTS) of specification TRY/PE-BM/FGD/AGITATOR SPEC:001/ Rev 01.</p> <p><b>Inspection notice period:</b></p> <p><b>For Third Party Inspection,</b> Vendor shall raise inspection call to at least three <b>working days</b>, prior to the proposed date of inspection at vendor works.</p> <p><b>For Joint Inspection,</b> Vendor shall raise inspection call to <b>at least 15 working days</b>, prior to the proposed date of inspection at vendor works.</p>	
10	<p><b>Packing Requirements (For Indigenous Vendors):</b></p> <p>Agitator &amp; sub system assembly shall be wrapped in polythene bags &amp; packed in a strong rigid wooden crate. Rain water should not enter into the Agitator internals during storage in the outer yard of power plant.</p> <p><b>Packing Requirements (For Import Vendors):</b></p> <p>All imported supply should be packed as per Sea worthy packing standards PE-TS-888-100-A001. All imported items should have Sea worthy packing. Liberal packing materials and struts shall be provided to arrest rolling and to protect from transit damages.</p> <p>Please refer Clause no-7 of Specification No: TRY/PE-BM/FGD/AGITATOR SPEC:001/Rev 01 for more details on “PACKING AND FORWARDING”.</p>	

11 (a) **Conditions for Import Suppliers**

The preferred shipment mode “**Containerized Cargo or Break Bulk**” shall be specified clearly in the offer.

**FOR CFR INCO TERMS – CONTAINERIZED CARGO**

- For CFR terms, moved through CONTAINERS (Suppliers should clearly specify this in their offer) it would be presumed by BHEL that the freight charges quoted is on LILO (LINER IN LINER OUT) basis including extra charges, if any, like Container Imbalance Charges, Trade Imbalance charges or any other charges payable to the Liner. No other charges other than the quoted Freight rate will be paid by BHEL excepting applicable Terminal Handling Charges, Container cleaning Charges, DO charges to Shipping Liner at Discharge Port. 14 FREE DAYS FOR Container detention shall be provided.
- In case of shipment through Containers on CFR basis, the BL should bear the endorsement that “14 free days for Container Detention is applicable”.

**FOR BREAKBULK CARGO:**

- For CFR terms, moved through BREAK BULK BASIS (Suppliers should clearly specify this in their offer) it would be presumed by BHEL that the freight charges quoted is on LILO (LINER IN LINER OUT) basis.
- The materials will be Custom cleared from Port itself.

**Important Information for Import Suppliers:**

- Indian Customs has imposed a penalty on late filing of Bill of Entries (Air/Sea Shipments) by the importer. Bill of Entry is Required to be Filed Latest by the End of Day Preceding the Day (including Holidays) of Arrival of the Vessel for sea shipments and by the end of same day on arrival of air shipment. Penalty for not filing Bill of Entry within the specified time period is Rs.5000/- per day (for Initial 03 days) & Rs.10000/- per day (thereafter).
- The vendor should submit the Non-Negotiable Documents (Air Way Bill/Bill of Lading, Commercial Invoice, Packing List, Certificate of Origin, etc.) either by email or post/courier to BHEL well before the landing of cargo at final port of discharge, giving sufficient lead time for BHEL to process the procedures that are to be done before arrival of vessel at discharge port.
- Vendor will be held responsible for the penalty arises against the late filing of Bill of entry due to:
  - a. Non availability of Non-Negotiable Documents (NNDs) before the cargo arrival
  - b. Discrepancy in documents
  - c. Short landing of Consignments (For shipments on CFR/CPT/CIF/CIP – Chennai Port)
- For all the shipments of the contracts (POs) finalized on CFR -Chennai Port basis:
  - (i) Delivery Orders involving multiple agencies like liners/freight forwarders are not allowed. There must be a single agency office at the final discharge Port (Chennai) for issuing the Delivery Order to BHEL.
  - (ii) The detention/demurrage charges arising due to the nomination of containers under single BL to different/ multiple CFS by the liner will be deducted from Vendor’s bills only.

	<p>(iii)The detention/demurrage charges arise due to the delay in collection of Delivery Orders from multiple agencies of liner/freight forwarder also whose offices are not at available Chennai, the same amount will be deducted from Vendor’s bills only.</p> <p>(iv)Apart from the normal charges like Terminal Handling Charges, Container cleaning Charges, Delivery Order Charges at final port of discharge no other charges will be borne by BHEL.</p> <p>(v) The liner/freight forwarders should be properly communicated by the Vendor for not to claim such charges for issuing Delivery Order. If the liner/freight forwarder claims such charges in their invoices, the same amount will be deducted from the Vendor bills without any prior intimation in order to avoid the delay in Customs clearance. The likely additional/hidden costs or charges are:</p> <ul style="list-style-type: none"> <li>○ CIC - Container Imbalance Charges/Surcharges</li> <li>○ EIC - Equipment Imbalance Charge/Surcharges</li> <li>○ CAF - Container/Currency Adjustment Factor</li> <li>○ BAF - Bunker Adjustment Factor</li> <li>○ RDS - Rupee Depreciation Surcharge</li> <li>○ CDS - Currency Depreciation Surcharge</li> <li>○ PCS - Port Congestion Surcharge</li> <li>○ LSS - Low Sulphur Surcharge</li> <li>○ Devanning Charges</li> </ul> <p><b><u>Transport Conditions for Import:</u></b></p> <p>The Original Documents (Bill of Lading, Invoice, Packing List, Certificate of Origin &amp; Test Certificate) shall reach BHEL well in advance before the vessel arrival. The soft copies of the above shall be forwarded to BHEL immediately after shipment.</p> <ul style="list-style-type: none"> <li>○ 14 FREE DAYS for Container detention at final port of destination shall be provided and the same to be endorsed in the Bill of Lading. If there is no free day or less than 14 free days provided by the supplier, the actual cost incurred towards detention charges due to non-availability of above said free days will be recovered from the supplier Invoice.</li> <li>○ In the event of delayed submission of documents/ non-submission of documents by the supplier as per the mutually agreed terms, an amount up to 5% of the invoice value will be retained towards detention/ demurrage &amp; other charges and the difference if any between actual charges and recovery will be settled separately through supplementary invoice.</li> <li>○ In such cases, the Supplier shall authorize the Steamer / Shipping agent / transporter to freely release the consignment to BHEL by providing a “Surrender Bill of Lading”.</li> <li>○ Otherwise, No-objection Certificate shall be issued to the Liner, authorizing BHEL to get the Delivery Order without producing the Original Bill of Lading.</li> <li>○ This is required to ensure avoidance of detention/ demurrage at Chennai Sea-port that may arise in case of delayed presentation of documents by the Seller.</li> </ul>	
11(b)	<p><b>Duty benefits for import vendors</b></p> <p>a) Whether PTA/ CEPA or any other agreement/treaty between respective Governments/Countries exists and the same is applicable for your supplies w.r.t this Enquired Items/tender.</p>	YES / NO

	<p>b) If yes, mention the Concessional Customs Duty (Such Duty Benefits) %</p> <p>c) Documentary proof for the applicable Concessional Customs Duty (e.g. PTA/ CEPA or other agreement) shall be submitted along with the Part-1 bid.</p> <p>d) Relevant documents and details to avail the above concessional duty benefits by BHEL shall be submitted by the supplier along with dispatch documents.</p> <p>e) In the event of seller failing to provide appropriate documents along with dispatch documents for purchasers to avail disclosed concessional duty benefits in India, financial loss, so incurred, will be to the seller's account.</p> <p><b>Note:</b> Evaluation of the Price bids will be based on the above details only and unless mentioned/furnished by the vendor, Customs Duty benefit will not be applied for evaluation purposes.</p>	<p>SUBMITTED/NOT SUBMITTED</p> <p>CONFIRMED/NOT CONFIRMED</p> <p>CONFIRMED/NOT CONFIRMED</p>
12(a)	<p><b>Taxes:</b>          GST shall be paid extra as applicable and suitable documents for availing Input tax credit shall be provided.</p> <p>“Recovery / deduction (like TDS/TCS etc.) as applicable as per Direct and Indirect taxes as notified by Govt. Of India from time to time will be made. Information / Tax deduction certificate for such deduction/recoveries shall be provided by BHEL to the vendor”</p>	
12(b)	<b>Kindly indicate the GST No of your Firm</b>	
12(c)	<b>Kindly Indicate the HSN Code for all items</b>	
12(d)	<b>Please indicate the applicable GST %</b>	
12(e)	<p>Response to Tenders for Indigenous supplier will be entertained only if the vendor has a valid GST registration Number (GSTIN) which should be clearly mentioned in the offer. If the dealer is exempted from GST registration, a declaration with due supporting documents need to be furnished for considering</p> <p>the offer. Dealers under composition scheme should declare that he is a composition dealer supported by the screen shot taken from GSTN portal. The dealer has to submit necessary documents if there is any change in status under GST.</p>	
12 (f)	<p>Supplier shall mention their GSTIN in all their invoices (incl. credit Notes, Debit Notes) and invoices shall be in the format as specified/prescribed under GST laws. Invoices shall necessarily contain Invoice number (in case of multiple numbering system is being followed for billing like SAP invoice no, commercial invoice no etc., then the Invoice No. which is linked/uploaded in GSTN network shall be clearly indicated), Billed to party (with GSTIN) &amp; Shipped to party details, item description as per PO, Quantity, Rate, Value, applicable taxes with nomenclature (like IGST, SGST, CGST &amp; UTGST) separately, HSN/ SAC Code, Place of Supply etc. <b>Wherever E-Invoice is applicable, the tax invoice/ CN / DN submitted by the vendor must contain the QR code generated in E-Invoice Portal &amp; IRN.</b></p>	
12(g)	All invoices shall bear the HSN Code for each item separately (Harmonized System of Nomenclature)/ SAC code (Services Accounting Code)	
12(h)	Invoices will be processed only upon completion of statutory requirement and further subject to following:	

	<p>i. Vendor declaring such invoice in their GSTR-1 Return/ IFF</p> <p>ii. Receipt of Goods or Services and Tax invoice by BHEL</p>	
12(i)	<p>As the continuous uploading of tax invoices in GSTN portal (in GSTR-1/ IFF) is available for all (i.e. both Small &amp; Large) tax payers, all invoices raised on BHEL may be uploaded immediately in GST portal on dispatch of material /rendering of services. The supplier shall ensure availability of Invoice in GSTN portal before submission of invoice to BHEL. Invoices will be admitted by BHEL only if the invoices are available in GSTN portal (in BHEL's GSTR-2A/ GSTR-2B).</p>	
12(j)	<p>In case of discrepancy in the data uploaded by the supplier in the GSTN portal or in case of any shortages or rejection in the supply, then BHEL will not be able to avail the tax credit and will notify the supplier of the same. Supplier has to rectify the data discrepancy in the GSTN portal or issue credit note or debit note (details also to be uploaded in GSTN portal) for the shortages or rejections in the supplies or additional claims, within the calendar month informed by BHEL.</p>	
12(k)	<p>In cases where invoice details have been uploaded by the vendor but failed to remit the GST amount to GST Department (Form PMT-08 or Form GST RET-01 to be submitted) within stipulated time, then GST paid on the invoices pertaining to the month for which GST return not filed by the vendor will be recovered from the vendor along with the applicable interest (currently 24% p.a) and all subsequent bills of the vendor will not be processed till filing of the GST return by the vendor</p>	
12(l)	<p>In case GST credit is denied to BHEL due to non-receipt or delayed receipt of goods and/ or tax invoice or expiry of timeline prescribed in GST law for availing such ITC, or any other reasons not attributable to BHEL, GST amount claimed in the invoice shall be disallowed to the vendor.</p>	
12(m)	<p>Where any GST liability arising on BHEL under Reverse Charge (RCM), the vendor has to submit the invoices to BHEL well within the timeline prescribed in GST Law, to enable BHEL to discharge the GST liability. If there is a delay in submission of invoice by the vendor resulting in delayed payment of GST by BHEL along with Interest, then such Interest payable or paid shall be recovered from the vendor.</p>	
12 (n)	<p>Under GST regime, BHEL has to discharge GST liability on LD recovered from suppliers/contracts. Hence applicable GST shall also be recoverable from suppliers/contractors on LD amount. For this Tax Invoice will be issued by BHEL indicating the respective supply invoice number.</p>	
12 (o)	<p>GST TDS will be deducted as per Section 51 of CGST Act 2017 and in line with Notification 50/2018 –</p> <p>Central Tax dated 13.09.2018. GST TDS certificate will be generated in GSTN portal subsequent to vendor accepting the TDS deduction in the GSTN portal &amp; the vendor can directly download the Certificate from the GSTN Portal.</p>	
13	<p><b>Risk purchase clause:</b></p> <p>a. In the event of any successful Tenderer's failure to fulfil any of the tender / Contract obligations including supply of whole or any part of the ordered items as per Contract / Agreement, BHEL has the right to terminate the contract and purchase from elsewhere, at the risk and cost of the defaulted supplier, either the whole of the goods or any part which the supplier has failed to deliver or dispatch</p> <p>within the time stipulated in the contract or if the same were not available, the best and nearest available substitute thereof. The supplier shall be liable for the</p>	

	<p>additional expenditure/difference in Cost, if any, including consequential losses which BHEL may sustain by reason of risk purchase in addition to the applicable LD as per the Purchase order/contract.</p> <p>b) The decision of BHEL with regard to the additional expenditure / difference in cost and consequential losses incurred by BHEL shall be final and binding on the supplier.</p> <p>c) The amount recoverable under risk purchase shall be recovered from the defaulted supplier in all or any of the following manners:</p> <ol style="list-style-type: none"> <li>i. from dues available in the form of Bills payable to defaulted supplier, SD, BGs against the same contract.</li> <li>ii. from the dues payable to defaulted supplier against other contracts in the same Region/Unit /any other region/unit</li> <li>iii. In-case recoveries are not possible with any of the above available options, Legal action shall be initiated for recovery against defaulted supplier.</li> </ol>	
<p>14</p>	<p><b>GST on amount recoverable from vendor under Risk Purchase Clause:</b>  In accordance with Sec. 7 of CGST Act, 2017, read with clause 5(e) of Schedule II to CGST Act, 2017, amount recovered / recoverable by BHEL from vendor / contractor for non-performance of work as per contract shall be treated as “Supply of service” by BHEL and accordingly GST shall be applicable.  GST shall be applicable on amount being recovered / recoverable from such vendor / contractor. In case only the differential cost is being recovered from new vendor / contractor, GST shall be applicable on same.  As per Sec. 13, read with Sec. 31 of CGST Act, 2017, GST shall be applicable when such recovery against non-performance of work has been determined and accordingly accounted for in Books of Accounts.</p>	
<p>15</p>	<p><b>Suspension of Business Dealings:</b>  The offers of the bidders who are under suspension and also the offers of the bidders, who engage the services of the banned firms, shall be rejected. The list of banned firms is available on BHEL web site <a href="http://www.bhel.com">www.bhel.com</a>.  If any bidder/ supplier/ contractor during pre-tendering/ tendering/ post tendering/ award/ execution/ post-execution stage indulges in mal-practices, cheating, bribery, fraud or and other misconduct or formation of cartel so as to influence the bidding process or influence the price or acts or omits in any manner which tantamount to an offence punishable under any provision of the Indian Penal Code, 1860 or any other law in force in India, or does anything which is actionable under the Guidelines for Suspension of Business dealings, action may be taken against such bidder/ supplier/ contractor as per extant guidelines of the company available on <a href="http://www.bhel.com">www. bhel.com</a> and/or under applicable legal provisions.  Abridged version of extant ‘Guidelines for suspension of business dealings with suppliers/ contractors’ has now been uploaded on <a href="http://www.bhel.com">www.bhel.com</a> on “supplier registration page” at the following link:   <a href="http://www.bhel.com/vender_registration/vender.php">http://www.bhel.com/vender_registration/vender.php</a> (Guidelines for suspension of business dealings with suppliers/ contractors).</p>	

16	<p><b><u>Fraud Prevention Policy</u></b> Bidder along with its associate /collaborators /sub-contractors /sub-vendors / consultants / service providers shall strictly adhere to BHEL Fraud Prevention Policy displayed on BHEL website <a href="http://www.bhel.com">http://www.bhel.com</a> and shall immediately bring to the notice of BHEL Management about any fraud or suspected fraud as soon as it comes to their notice.</p>	
17	<p><b><u>Cartel Formation</u></b> The Bidder declares that they will not enter into any illegal or undisclosed agreement or understanding, whether formal or informal with other Bidder(s). This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process. In case, the Bidder is found having indulged in above activities, suitable action shall be taken by BHEL as per extant policies/ guidelines.</p>	
18	<p><b><u>Resolution of Disputes</u></b> The Parties agree that if at any time (whether before, during or after the arbitral or judicial proceedings), any Disputes (which term shall mean and include any dispute, difference, question or disagreement arising in connection with construction, meaning, operation, effect, interpretation or breach of the contract/tender which the Parties are unable to settle mutually), arise inter-se the Parties, the same may, be referred by either party to Conciliation to be conducted through Independent Experts Committee to be appointed by competent authority of BHEL from the BHEL Panel of Conciliators.</p> <p>The proceedings of Conciliation shall broadly be governed by Part-III of the Arbitration and Conciliation Act 1996 or any statutory modification thereof.</p> <p>Notes:</p> <ol style="list-style-type: none"><li>1. No serving or a retired employee of BHEL/Administrative Ministry of BHEL shall be included in the BHEL Panel of Conciliators.</li><li>2. Any other person(s) can be appointed as Conciliator(s) who is/are mutually agreeable to both the parties from outside the BHEL Panel of Conciliators.</li></ol> <p>The proceedings of Conciliation shall broadly be governed by Part-III of the Arbitration and Conciliation Act 1996 or any statutory modification thereof and as provided in <b>Annexure-C</b> to this Terms and conditions.</p> <p>The <b>Annexure-C</b> together with its appendices will be treated as if the same is part and parcel hereof and shall be as effectual as if set out herein in this terms and conditions.</p> <p>Except as provided elsewhere in this Contract, in case amicable settlement is not reached between the parties, in respect of any dispute or difference; arising out of the formation, breach, termination, validity or execution of the Contract; or, the respective rights and liabilities of the Parties; or, in relation to interpretation of any provision of the Contract; or, in any manner touching upon the Contract, then, either Party may, by a notice in writing to other Party refer such dispute or difference to sole arbitration of an arbitrator appointed as per the Arbitration and Conciliation Act, 1996 (India) or statutory modification or re- enactment thereof and the rules made thereunder and for the time being in force.</p> <p>The Arbitrator shall pass a reasoned award and the award of the Arbitrator shall be final and binding upon the parties.</p>	

	<p>Subject as aforesaid, the provision of Arbitration &amp; Conciliation Act 1996 (India) or statutory modification or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceeding under this clause.</p> <p>The seat of arbitration shall be Trichy, Tamil Nadu, India</p> <p>The cost of arbitration shall be borne as per the award of the Arbitrator.</p> <p>Subject to arbitration in terms of clause above, the Courts at Trichy, Tamil Nadu, India shall have exclusive jurisdiction over any matter arising out of or in connection with this Contract.</p> <p>Notwithstanding the existence or any dispute or difference and/or reference for the arbitration, the vendor shall proceed with and continue without hindrance the performance of its obligation under this Contract with due diligence and expedition in a professional manner except where the Contract has been terminated by either Party in terms of this Contract.</p> <p><u>In Case of Contract with Public Sector Enterprise (PSE) or a Government Department, the following shall be applicable:</u></p> <p>In the event of any dispute or difference relating to the interpretation and application of the provisions of commercial contract(s) between Central Public Sector Enterprises (CPSEs)/Port Trusts inter se and also between CPSEs and Government Departments/Organizations (Excluding disputes concerning Railways, Income Tax, Customs &amp; Excise Departments, such dispute or difference shall be taken up by either party for resolution through AMRCD as mentioned in DPE OM No. 4(1)/2013 –DPE (GM)/FTS-1835 dated 22-05-2018.</p>	
19	<p><b><u>Force Majeure clause</u></b></p> <p>a. Notwithstanding the provisions contained in other clauses, the supplier shall not be liable for imposition of any such sanction so long the delay and/or failure of the supplier in fulfilling its obligations under the contract is the result of an event of Force Majeure. For purposes of this clause, Force Majeure means an event beyond the control of the supplier and not involving the supplier’s fault or negligence and which is not foreseeable and not brought about at the instance of the party claiming to be affected by such event and which has caused the non – performance or delay in performance. Such events may include, but are not restricted to, wars or revolutions, hostility, acts of public enemy, civil commotion, sabotage, fires, floods, explosions, epidemics, quarantine restrictions, strikes excluding by its employees, lockouts excluding by its management, freight embargoes and Acts of GOD.</p> <p>b. If a Force Majeure situation arises, the supplier shall promptly notify the Purchaser/Consignee in writing of such conditions and the cause thereof within twenty-one days of occurrence of such event. Unless otherwise directed by the Purchaser/Consignee in writing, the supplier shall continue to perform its obligations under the contract as far as reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.</p> <p>c. If the performance in whole or in part or any obligation under this contract</p>	

	<p>is prevented or delayed by any reason of Force Majeure for a period exceeding sixty days, either party may at its option terminate the contract without any financial repercussion on either side.</p> <p>d. In case due to a Force Majeure event the Purchaser/Consignee is unable to fulfil its contractual commitment and responsibility, the Purchaser/Consignee will notify the supplier accordingly and subsequent actions taken on similar lines described in above sub-paragraphs.</p>	
20	<p><b>Set off :</b> BHEL shall have the right to recover any money which in the sole opinion of BHEL is due from the supplier from any money due to the supplier under this Contract or any other contract or from the Security Deposit/BG furnished by the supplier under this Contract or any other contract.</p>	
<b>Note</b>	<ol style="list-style-type: none"><li>1. In the event of our customer order covering this tender being cancelled /placed on hold /otherwise modified, BHEL would be constrained to accordingly cancel / hold / modify the tender at any stage of execution.</li><li>2. BHEL may negotiate the L1 rate, if not meeting our budget / estimated cost. BHEL may re-float the tender opened, if L1 price is not acceptable to BHEL. Any deviation in specified commercial terms- Annexure-A, will lead to rejection of offer.</li><li>3. Any other Techno -Commercial Terms indicated by the vendor in their offer elsewhere will be ignored. BHEL will proceed with tender evaluation as per Annexure-A only.</li></ol>	

**BRIEF PROCEDURE FOR CONDUCT OF CONCILIATION PROCEEDINGS**

1. The proceedings of Conciliation shall broadly be governed by Part-III of the Arbitration and Conciliation Act 1996 or any statutory modification thereof and as provided herein:
2. The party desirous of resorting to Conciliation shall send an invitation/notice in writing to the other party to conciliate specifying all points of Disputes with details of the amount claimed. The party concerned shall not raise any new issue thereafter. Parties shall also not claim any interest on claims/counter-claims from the date of notice invoking Conciliation till the conclusion of the Conciliation proceedings.
3. The party receiving the invitation/notice for Conciliation shall within 30 days of receipt of the notice of Conciliation intimate its consent for Conciliation along with its counter-claims, if any.
4. The Conciliation in a matter involving claim or counter-claim (whichever is higher) up to Rs 5 crores shall be carried out by sole Conciliator nominated by BHEL while in a matter involving claim or counter-claim (whichever is higher) of more than Rs 5 crores  
Conciliation shall be carried out by 3 Conciliators nominated by BHEL.
5. The Parties shall be represented by only their duly authorized in-house executives/officers and neither Party shall be represented by a Lawyer.
6. The first meeting of the IEC shall be convened by the IEC by sending appropriate communication/notice to both the parties as soon as possible but not later than 30 days from the date of his/their appointment. The hearings in the Conciliation proceeding shall ordinarily be concluded within two (2) months and, in exceptional cases where parties have expressed willingness to settle the matter or there exists possibility of settlement in the matter, the proceedings may be extended by the IEC by a maximum of further 2 months with the consent of the Parties subject to cogent reasons being recorded in writing.

7. The IEC shall thereafter formulate recommendations for settlement of the Disputes supported by reasons at the earliest but in any case within 15 days from the date of conclusion of the last hearing. The recommendations so formulated along with the reasons shall be furnished by the IEC to both the Parties at the earliest but in any case within 1 month from the date of conclusion of the last hearing.
8. Response/modifications/suggestions of the Parties on the recommendations of the IEC are to be submitted to the IEC within time limit stipulated by the IEC but not more than 15 days from the date of receipt of the recommendations from the IEC.
9. In the event, upon consideration, further review of the recommendations is considered necessary, whether by BHEL or by the other Party, then, the matter can be remitted back to the IEC with request to reconsider the same in light of the issues projected by either/both the Parties and to submit its recommendations thereon within the following 15 days from the date of remitting of the case by either of the Parties.
10. Upon the recommendations by the Parties, with or without modifications, as considered necessary, the IEC shall be called upon to draw up the Draft Settlement Agreement in terms of the recommendations.
11. When a consensus can be arrived at between the parties only in regard to any one or some of the issues referred for Conciliation the draft Settlement Agreement shall be accordingly formulated in regard to the said Issue(s), and the said Settlement Agreement, if signed, by the parties, shall be valid only for the said issues. As regards the balance issues not settled, the parties may seek to resolve them further as per terms and conditions provided in the contract.
12. In case no settlement can be reached between the parties, the IEC shall by a written declaration, pronounce that the Conciliation between the parties has failed and is accordingly terminated.
13. Unless the Conciliation proceedings are terminated in terms of para 22 (b), (c) & (d) herein below, the IEC shall forward his/its recommendations as to possible terms of settlement within one (1) month from the date of last hearing. The date of first hearing

of Conciliation shall be the starting date for calculating the period of 2 months.

14. In case of 3 members IEC, 2 members of IEC present will constitute a valid quorum for IEC and meeting can take place to proceed in the matter after seeking consent from the member who is not available. If necessary, videoconferencing may be arranged for facilitating participation of the members. However, the IEC recommendations will be signed by all members. Where there is more than one (1) Conciliator, as a general rule they shall act jointly. In the event of differences between the Members of IEC, the decision/recommendations of the majority of the Members of IEC shall prevail and be construed as the recommendation of the IEC.
15. The Draft Settlement Agreement prepared by the IEC in terms of the consensus arrived at during the Conciliation proceedings between the Parties shall be given by the IEC to both the parties for putting up for approval of their respective Competent Authority.
16. Before submitting the draft settlement agreement to BHEL's Competent Authority viz. the Board Level Committee on Alternative Dispute Resolution (BLCADR) for approval, concurrence of the other party's Competent Authority to the draft settlement agreement shall be obtained by the other party and informed to BHEL within 15 days of receipt of the final draft settlement agreement by it. Upon approval by the Competent Authority, the Settlement Agreement would thereafter be signed by the authorized representatives of both the Parties and authenticated by the members of the IEC.
17. In case the Draft Settlement Agreement is rejected by the Competent Authority of BHEL or the other Party, the Conciliation proceedings would stand terminated.
18. A Settlement Agreement shall contain a statement to the effect that each of the person(s) signing thereto (i) is fully authorized by the respective Party(ies) he/she represents, (ii) has fully understood the contents of the same and (iii) is signing on the same out of complete freewill and consent, without any pressure, undue influence.
19. The Settlement Agreement shall thereafter have the same legal status and effect as an arbitration award on agreed terms on the

substance of the dispute rendered by an arbitral tribunal passed under section 30 of the Arbitration and Conciliation Act, 1996.

20. Acceptance of the Draft Settlement Agreement/ recommendations of the Conciliator and/or signing of the Settlement Agreement by BHEL shall however, be subject to withdrawal/closure of any arbitral and/or judicial proceedings initiated by the concerned Party in regard to such settled issues.
21. Unless otherwise provided for in the agreement, contract or the Memorandum of Understanding, as the case may be, in the event of likelihood of prolonged absence of the Conciliator or any member of IEC, for any reason/incapacity, the Competent Authority/Head of Unit/Division/Region/Business Group of BHEL may substitute the Conciliator or such member at any stage of the proceedings. Upon appointment of the substitute Conciliator(s), such reconstituted IEC may, with the consent of the Parties, proceed with further Conciliation into the matter either de-novo or from the stage already reached by the previous IEC before the substitution.
22. The proceedings of Conciliation under this Scheme may be terminated as follows:
  - a. On the date of signing of the Settlement agreement by the Parties; or,
  - b. By a written declaration of the IEC, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or,
  - c. By a written declaration of the Parties addressed to the IEC to the effect that the Conciliation proceedings are terminated, on the date of the declaration; or,
  - d. By a written declaration of a Party to the other Party and the IEC, if appointed, to the effect that the Conciliation proceedings are terminated, on the date of the declaration.
  - e. On rejection of the Draft Settlement Agreement by the Competent Authority of BHEL or the other Party.

23. The Conciliator(s) shall be entitled to following fees and facilities:

<b>Sl No</b>	<b>Particulars</b>	<b>Amount</b>
1	Sitting fees	Each Member shall be paid a Lump Sum fee of Rs 75,000/- for the whole case payable in terms of paragraph No. 27 herein below.
2	Towards drafting of settlement agreement	In cases involving claim and/or counter-claim of up to Rs 5crores. Rs 50,000/- (Sole Conciliator)

<b>Sl No</b>	<b>Particulars</b>	<b>Amount</b>
		In cases involving claim and/or counter-claim of exceeding Rs 5 crores but less than Rs 10 crores. Rs 75,000 (per Conciliator) In cases involving claim and/or counter-claim of more than Rs 10 crores. Rs 1,00,000/- (per Conciliator) Note: The aforesaid fees for the drafting of the Settlement Agreement shall be paid on Signing of the Settlement Agreement after approval of the Competent Authority or Rejection of the proposed Settlement Agreement by the Competent Authority of BHEL.
3	Secretarial expenses	Rs 10,000/- (one time) for the whole case for Conciliation by a Sole Member IEC.  Where Conciliation is by multi member Conciliators –Rs 30,000/- (one time)- to be paid to the IEC

4	Travel and transportation and stay at outstation i) Retired Senior Officials of other Public Sector Undertakings (pay scale wise equivalent to or more than E-8 level of BHEL)	As per entitlement of the equivalent officer (pay scale wise) in BHEL.
	Others	As per the extant entitlement of whole time Functional Directors in BHEL.
<b>Sl No</b>	<b>Particulars</b>	<b>Amount</b>
		Ordinarily, the IEC Member(s) would be entitled to travel by air Economy Class.
5	Venue for meeting	Unless otherwise agreed in the agreement, contract or the Memorandum of Understanding, as the case may be, the venue/seat of proceedings shall be the location of the concerned Unit / Division / Region / Business Group of BHEL. Without prejudice to the seat/venue of the Conciliation being at the location of concerned BHEL Unit / Division / Region / Business Group, the IEC after consulting the Parties may decide to hold the proceedings at any other place/venue to facilitate the proceedings. Unless, Parties agree to conduct Conciliation at BHEL premises, the venue is to be arranged by either Party alternately.

24. The parties will bear their own costs including cost of presenting their cases/evidence/witness(es)/expert(s) on their behalf. The parties agree to rely upon documentary evidence in support of

their claims and not to bring any oral evidence in IEC proceedings.

25. If any witness(es) or expert(s) is/are, with the consent of the parties, called upon to appear at the instance of the IEC in connection with the matter, then, the costs towards such witness(es)/expert(s) shall be determined by the IEC with the consent of the Parties and the cost so determined shall be borne equally by the Parties.
26. The other expenditures/costs in connection with the Conciliation proceedings as well as the IEC's fees and expenses shall be shared by the Parties equally.
27. Out of the lump sum fees of Rs 75,000/- for Sitting Fees, 50% shall be payable after the first meeting of the IEC and the remaining 50% of the Sitting Fees shall be payable only after termination of the conciliation proceedings in terms of para 22 hereinabove.
28. The travelling, transportation and stay at outstation shall be arranged by concerned Unit as per entitlements as per Serial No. 3 of the Table at para 23 above, and in case such arrangements are not made by the BHEL Unit, the same shall be reimbursed to the IEC on actuals limited to their entitlement as per Serial No. 4 of the Table at Para 23 above against supporting documents. The IEC Member(s) shall submit necessary invoice for claiming the fees/reimbursements.
29. The Parties shall keep confidential all matters relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of its implementation and enforcement or as required by or under a law or as per directions of a Court/Governmental authority/ regulatory body, as the case may be.
30. The Parties shall not rely upon or introduce as evidence in any further arbitral or judicial proceedings, whether or not such proceedings relate to the Disputes that is the subject of the Conciliation proceedings:
  - a. Views expressed or suggestions made by the other party in respect of a possible settlement of the Disputes;
  - b. admissions made by the other party in the course of the Conciliator proceedings;
  - c. proposals made by the Conciliator;

- d. The fact that the other Party had indicated his willingness to accept a proposal for settlement made by the Conciliator.
31. The Parties shall not present the Conciliator(s) as witness in any Alternative Dispute Resolution or Judicial proceedings in respect of a Disputes that is/was the subject of that particular Conciliation proceeding.
32. None of the Conciliators shall act as an arbitrator or as a representative or counsel of a Party in any arbitral or judicial proceeding in respect of a Disputes that is/was the subject of that particular Conciliation proceeding.
33. The Parties shall not initiate, during the Conciliation proceedings, any arbitral or judicial proceedings in respect of a Disputes that is the subject matter of the Conciliation proceedings except that a Party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights including for preventing expiry of period of limitation. Unless terminated as per the provisions of this Scheme, the Conciliation proceedings shall continue notwithstanding the commencement of the arbitral or judicial proceedings and the arbitral or judicial proceedings shall be primarily for the purpose of preserving rights including preventing expiry of period of limitation.
34. The official language of Conciliation proceedings under this Scheme shall be English unless the Parties agree to some other language.

**FORMAT FOR SEEKING CONSENT FOR REFERRING THE DISPUTES  
TO CONCILIATION THROUGH IEC**

To,

M/s. (Stakeholder's name)

**Sub: Resolution of the Disputes through conciliation by Independent  
Expert Committee (IEC).**

Ref: Contract No/MoU/Agreement/LOI/LOA& date \_\_\_\_\_.

Sir,

With reference to above referred Contract/MoU/Agreement/LOI/LOA, you have raised certain Disputes/claims. Vide your letter dated\_\_\_\_ you have requested BHEL to refer the Disputes/claims to IEC for Conciliation.

We are enclosing herewith Format (3) for giving consent and the terms and conditions of BHEL Conciliation Scheme, 2018 governing conciliation through IEC. You are requested to give your unconditional consent to the said terms and conditions of the Scheme by returning the same duly sealed and signed on each page. On receipt of your consent, matter will be put to the Competent Authority for consideration and decision.

Please note that BHEL has also certain claims against you (if applicable). BHEL reserves its right to agree or not to agree conciliation of the said disputes through BHEL and this letter is being issued without prejudice to BHEL's rights and contentions available under the contract and law.

Yours faithfully,

**Representative of BHEL**

**FORMAT FOR GIVING CONSENT BY  
CONTRACTOR/VENDOR/CUSTOMER/COLLABORATOR/CONSORTIUM PARTNERS FOR REFERRING THE DISPUTES TO CONCILIATION  
THROUGH IEC**

To,

BHEL

.....

**Sub: Resolution of Disputes through Conciliation by Independent Expert Committee (IEC).**

Ref: Contract/MoU/Agreement/LOI/LOA No \_\_\_\_\_ & date\_\_\_\_\_

With reference to above referred contract, our following bills/invoices/claims submitted to BHEL are still unpaid giving rise to Disputes:

SL. no.	Claim Description	Bill submitted to BHEL (no. and date)	Amount of the bill/claim	Amount received from BHEL	Outstanding Amount

Accordingly we request you to kindly refer the Disputes in respect of above claims to IEC for Conciliation.

We hereby agree and give our unconditional consent to the terms and conditions of BHEL Conciliation Scheme, 2018 governing conciliation through IEC. We have signed the same on each page and enclosed it for your consideration.

Yours faithfully,

**(Signature with stamp)**

**Authorized Representative of Contractor  
Name, with designation**

**Date**

**Appendix III**

**STATEMENT OF CLAIMS/COUNTER CLAIMS TO BE SUBMITTED TO  
THE IEC BY BOTH THE PARTIES**

1. Chronology of the Disputes
2. Brief of the Contract/MoU/Agreement/LOI/LOA
3. Brief history of the Disputes:
4. Issues:
5. Details of Clam(s)/Counter Claim(s):

<b>SI. No.</b>	<b>Description of claim(s)/Counter Claim</b>	<b>Amount (in INR)Or currency applicable in the contract</b>	<b>Relevant contract clause</b>

6. Basis/Ground of claim(s)/counter claim(s) (along with relevant clause of contract)

**Note**– *The Statement of Claims/Counter Claims may ideally be restricted to maximum limit of 20 pages. Relevant documents may be compiled and submitted along with the statement of Claims/Counter Claims. The statement of Claims/Counter Claims is to be submitted to all IEC members and to the other party by post as well as by email.*