

Volume-IC

GENERAL CONDITIONS OF CONTRACTS (GCC)

**BHARAT HEAVY ELECTRICALS LIMITED
POWER SECTOR - HEAD QUARTERS
CENTRAL PROCUREMENT CELL (CPC)**





**CENTRAL PROCUREMENT
CELL (CPC)**
PURCHASE DEPARTMENT

**GENERAL CONDITIONS OF
CONTRACT (GCC)**

GENERAL CONDITIONS OF CONTRACTS (GCC)

1. INSTRUCTIONS TO BIDDERS
2. GENERAL COMMERCIAL TERMS & CONDITIONS
3. ANNEXURES

**BHARAT HEAVY ELECTRICALS LIMITED
POWER SECTOR-HEAD QUARTERS
CENTRAL PROCUREMENT CELL**

BHEL SADAN, 8TH FLOOR
PLOT NO. 25, SECTOR – 16A
NOIDA – 201301 (U.P.)

Not for Publication

For Official Use

	CENTRAL PROCUREMENT CELL (CPC) <i>PURCHASE DEPARTMENT</i>	GENERAL CONDITIONS OF CONTRACT (GCC)	TABLE OF CONTENTS
--	---	---	------------------------------

TABLE OF CONTENTS

SL. NO.	DESCRIPTION
Chapter-1.0: INSTRUCTIONS TO BIDDERS	
1.1	GENERAL INSTRUCTIONS
1.2	PROCEDURE FOR SUBMISSION & OPENING OF TENDERS
1.3	CLARIFICATIONS REQUIRED BY BIDDERS
1.4	DEVIATIONS - LISTING
1.5	METRIC SYSTEM
1.6	ETHICS IN BUSINESS DEALINGS/ SUSPENSION OF BUSINESS DEALINGS
1.7	INTEGRITY COMMITMENT
1.8	INTEGRITY PACT (IP)
1.9	EVALUATION OF BIDS
1.10	MICRO AND SMALL ENTERPRISE (MSE)
1.11	LANGUAGE & CORRECTIONS
1.12	PRICE DISCREPANCY
1.13	PUBLIC PROCUREMENT (PREFERENCE TO MAKE IN INDIA)
1.14	CONFLICT OF INTEREST
Chapter-2.0: GENERAL COMMERCIAL TERMS & CONDITIONS	
2.1	DEFINITION OF TERMS
2.2	PRICES
2.3	INSPECTION
2.4	MATERIAL DESPATCH CLEARANCE CERTIFICATE (MDCC)
2.5	INSURANCE
2.6	PACKING AND MARKING
2.7	DELIVERY
2.8	REJECTION
2.9	SHORTAGE/ DAMAGES
2.10	TRANSPORTATION & FREIGHT CHARGES

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	TABLE OF CONTENTS
--	--	---	------------------------------

SL. NO.	DESCRIPTION
2.11	TERMS OF PAYMENT
2.12	EARNEST MONEY DEPOSIT (EMD)
2.13	PERFORMANCE SECURITY
2.14	GUARANTEE/ WARRANTY FOR EQUIPMENT/STORES
2.15	RECOVERY OF OUTSTANDING AMOUNT
2.16	INDEMNIFICATION
2.17	DELAY/ TIME EXTENSION
2.18	LIQUIDATED DAMAGES (LD)
2.19	TERMINATION
2.20	TRANSFER, SUB-LETTING /ASIGNMENT/SUB-CONTRACTING
2.21	FORCE MAJEURE
2.22	SETTLEMENT OF DISPUTES
2.23	ARBITRATION & CONCILIATION
2.24	LAWS GOVERNING THE CONTRACT
2.25	JURISDICTION OF COURT
2.26	BREACH OF CONTRACT, REMEDIES AND TERMINATION
Chapter-3.0: ANNEXURES	
3.1	ANNEXURE – I: OFFER SUBMISSION AS PER NIT
3.2	ANNEXURE – II: CHECK LIST
3.3	ANNEXURE – III: FORMAT FOR CLARIFICATION
3.4	ANNEXURE – IV: NO DEVIATION CERTIFICATE
3.5	ANNEXURE – V: LOADING CRITERIA
3.6	ANNEXURE – VI: REVERSE AUCTION (RA) FORMAT
3.7	ANNEXURE – VII: REVERSE AUCTION PROCESS COMPLIANCE FORM
3.8	ANNEXURE – VIII: RA PRICE CONFIRMATION AND BREAKUP

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	TABLE OF CONTENTS
--	--	---	------------------------------

SL. NO.	DESCRIPTION
3.9	ANNEXURE – IX: NON-DISCLOSURE CERTIFICATE
3.10	ANNEXURE – X: DECLARATION REGARDING INSOLVENCY/ LIQUIDATION/ BANKRUPTCY PROCEEDINGS
3.11	ANNEXURE – XI: DECLARATION BY AUTHORIZED SIGNATORY
3.12	ANNEXURE – XII: POWER OF ATTORNEY FOR SUBMISSION OF TENDER
3.13	ANNEXURE – XIII: DECLARATION BY AUTHORIZED SIGNATORY REGARDING AUTHENTICITY
3.14	ANNEXURE – XIV: INTEGRITY PACT
3.15	ANNEXURE – XV: DECLARATION FOR KNOWLEDGE ABOUT SITE CONDITIONS
3.16	ANNEXURE – XVI: DECLARATION FOR RELATED FIRMS & THEIR AREAS OF ACTIVITIES
3.17	ANNEXURE – XVII: DECLARATION FOR RELATION IN BHEL
3.18	ANNEXURE – XVIII: DECLARATION REGARDING MINIMUM LOCAL CONTENT IN LINE WITH REVISED PUBLIC PROCUREMENT (PREFERENCE TO MAKE IN INDIA), ORDER 2017 DATED 04TH JUNE, 2020 AND SUBSEQUENT ORDER(S)
3.19	ANNEXURE – XIX: DECLARATION REGARDING COMPLIANCE TO RESTRICTIONS UNDER RULE 144 (xi) OF GFR 2017
3.20	ANNEXURE – XX: BANK ACCOUNT DETAILS FOR E-PAYMENT
3.21	ANNEXURE – XXI: PROFORMA OF BANK GUARANTEE FOR EARNEST MONEY
3.22	ANNEXURE – XXII: PROFORMA OF INSURANCE SURETY BOND TOWARDS EARNEST MONEY DEPOSIT
3.23	ANNEXURE – XXIII: BANK GUARANTEE FOR PERFORMANCE SECURITY
3.24	ANNEXURE – XXIV: PROFORMA OF INSURANCE SURETY BOND TOWARDS PERFORMNCE SECURITY
3.25	ANNEXURE – XXV: PROFORMA OF BANK GUARANTEE (in lieu of RETENTION AMOUNT)

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	TABLE OF CONTENTS
--	--	---	------------------------------

SL. NO.	DESCRIPTION
3.26	ANNEXURE – XXVI: PROFORMA OF INSURANCE SURETY BOND TOWARDS RETENTION AMOUNT
3.27	ANNEXURE – XXVII: BANK GUARANTEE FOR INTEREST BEARING REFUNDABLE ADVANCE
3.28	ANNEXURE – XXVIII: LIST OF CONSORTIUM BANK
3.29	ANNEXURE – XXIX: PROCEDURE FOR CONDUCT OF CONCILIATION PROCEEDINGS
3.29.1	FORMAT – 1: STATEMENT OF CLAIMS/COUNTER CLAIMS TO BE SUBMITTED TO THE IEC BY BOTH THE PARTIES
3.29.2	FORMAT – 2: FORMAT FOR NOTICE INVOKING CONCILIATION CLAUSE BY BHEL FOR REFERRING THE DISPUTES TO CONCILIATION THROUGH IEC
3.29.3	FORMAT – 3: FORMAT FOR NOTICE INVOKING CONCILIATION CLAUSE BY A STAKEHOLDER FOR REFERRING THE DISPUTES TO CONCILIATION THROUGH IEC
3.29.4	FORMAT – 4: FORMAT FOR INTIMATION TO THE STAKEHOLDER ABOUT APPOINTMENT OF CONCILIATOR/IEC

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	INSTRUCTIONS TO BIDDER
--	--	---	-----------------------------------

1.1 **GENERAL INSTRUCTIONS:**

- 1.1.1** The General Conditions of Contract form part of the Tender specifications. For this tender, bidders shall use electronic Signature Viz. Digital Signature Certificate while uploading the tender documents on the e-procurement portal. The information furnished shall be complete by itself. The tenderer is required to furnish all the details and other documents as required in the following pages.
- 1.1.2** Tenderers are advised to study all the tender documents carefully. Any submission of tender by the tenderer shall deemed to have been done only after careful study and examination of the tender documents and with the full understanding of the implications thereof. The specifications and terms and conditions shall deemed to have been accepted unless otherwise specifically commented upon in the deviation sheets by the tenderer in his offer. Non-compliance with any of the requirements and instructions of the Tender Enquiry may result in the rejection of the tender.
- 1.1.3** All commercial terms and conditions except price should be submitted as part of techno- commercial offer (Part-I) which may be opened first. The price part (Part-II) is to be submitted in price bid section separately.
- 1.1.4** Price bids of only those bidders will be opened who will qualify for the subject job on the basis of evaluation of Techno-commercial bids / Pre – Qualification criteria and as considered suitable by BHEL. BHEL shall have sole discretion to adopt its own method for evaluation of Techno-commercial bids/ Pre - Qualification Criteria.
- 1.1.5** No revision of price will be entertained after tenders are opened, unless mentioned in our enquiry/ asked so by BHEL.
- 1.1.6** BHEL reserves the right to split, accept or reject any or all tenders without assigning any reason what so ever.
- 1.1.7** BHEL reserves the right to reduce the tendered item and/or quantity, while awarding the order, without assigning any reason what so ever.
- 1.1.8** In case supplier fails to execute the Purchase Order (PO) as per terms and conditions of PO, BHEL shall have the right to arrange/procure the material from alternate sources as deemed appropriate by BHEL in line with Clause no. 2.26 of GCC.

1.2 **PROCEDURE FOR SUBMISSION & OPENING OF TENDERS:**

- 1.2.1** The tenderers must submit their tenders to Officer inviting tender as per instructions in the NIT. E-Tenders shall be submitted through E-Procurement portal (<https://eprocurebhel.co.in>) as per instruction in NIT. Tenderers to upload offers well in advance in order to avoid last minute congestion in e-procurement website. However, after submission of the tender, the tenderer can re-submit revised tender but before due date and time of submission of tender as notified.
- 1.2.2** PART-I (techno-commercial bid) shall be opened on the due date and time as specified in the NIT. Tenderers or their authorized representatives may witness the event online through BHEL E-Procurement site (<https://eprocurebhel.co.in>).

NOTE: In case the due date of opening of tender becomes a non-working day, then the due date & time of offer submission and opening of tenders get extended to the next working day.

- 1.2.3** Tenderers whose bids are found techno commercially qualified shall be informed the date and time of opening of the Price Bid through system generated email from BHEL E-Procurement system. Tenderers or their authorized representatives may witness the event online through BHEL E-Procurement site (<https://eprocurebhel.co.in>).
- 1.2.4** No correspondence shall be entertained from the tenderers after the opening of Part-II (Price bid) of the tender.

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	INSTRUCTIONS TO BIDDER
--	---	---	-----------------------------------

1.2.5 Purchaser may negotiate the tender, if the quoted rates/terms are found to be unreasonable or in the unacceptable range.

1.2.6 In case wherever scope comprises of supply and services, the tenderers are advised to inspect the site of work and the environments and be well acquainted with the actual working and other prevalent conditions, facilities available, position of material and labour, means of transport and access to Site, accommodation etc before submission of Offer. No claim will be entertained later on the grounds of lack of knowledge of any of these conditions.

The tenderer may get aware about weather conditions, contingencies & other circumstances which may influence or affect their tender prices. Invariable of inspection by the tenderer, the tenderer shall be considered deemed acquainted with all site conditions such as rain patterns, hazardous conditions, soil patterns, local factors etc. Tenderer to have satisfied himself in all respect before quoting his rates and no claim will be entertained later on the grounds of lack of knowledge of any of these conditions.

1.3 CLARIFICATIONS REQUIRED BY BIDDERS:

Technical and Commercial clarifications required, if any, before submission of tender, should be addressed (on or before the date as specified in sl. no. 1. ix of Salient Features of NIT to the official inviting the tenders.

1.4 DEVIATIONS – LISTING:

Tenders shall be submitted strictly in accordance with the requirements of tender documents. Deviations (Technical and Commercial), if any, shall be listed out separately. Technical deviations and Commercial deviations shall be furnished in separate sheets under headings “**TECHNICAL DEVIATIONS**” and “**COMMERCIAL DEVIATIONS**” respectively, along with reasons for taking such deviations. Deviations mentioned elsewhere but not included in the above sheet as above shall not be accepted.

1.5 METRIC SYSTEM:

Suppliers are requested to give metric measurements while quoting.

1.6 ETHICS IN BUSINESS DEALINGS/ SUSPENSION OF BUSINESS DEALINGS WITH SUPPLIERS / CONTRACTORS:

BHEL reserves the right to take action against Contractors who either fail to perform or Tenderers/Contractor who indulge in malpractices, by suspending business dealings with them in line with BHEL guidelines issued from time to time.

The offers of the bidders who are under suspension as also the offers of the bidders, who engage the services of the banned firms / principal / agents, shall be rejected. The list of banned firms is available on BHEL web site www.bhel.com.

If any bidder / supplier / contractor during pre-tendering / tendering / post tendering / award / execution / post-execution stage indulges in any act, including but not limited to, 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 tampers the tendering process or acts or omits in any manner which tantamount to an offence punishable under any provision of the Indian Penal Code, 1860(Bhartiya Nyaya Samhita 2023) 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 www.bhel.com and / or under applicable legal provisions. Guidelines for suspension of business dealings is available in the webpage:

http://www.bhel.com/vender_registration/vender.php

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	INSTRUCTIONS TO BIDDER
--	---	---	-----------------------------------

The abridged version of extant 'Guidelines for suspension of business dealings with suppliers/ vendors' is available on www.bhel.com on "supplier registration page" i.e., <https://www.bhel.com/guidelines-suspension-business-dealings-supplierscontractors> Bidders should get themselves acquainted with these guidelines.

Fraud Prevention Policy: 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 <http://www.bhel.com> and shall immediately bring to the notice of BHEL Management about any fraud or suspected fraud as soon as it comes to their notice.

1.7 INTEGRITY COMMITMENT:

The offers of the bidders who are on the debarred list and also the offer of the bidders, who engage the services of the debarred firms, shall be rejected. The list of debarred firms is available on BHEL web site www.bhel.com on <supplier registration page i.e., <<https://www.bhel.com/list-debarred-firms>>.

1.7.1 Integrity commitment, performance of the contract and punitive action thereof:

1.7.1.1 Commitment by BHEL:

BHEL commits to take all measures necessary to prevent corruption in connection with the tender Process and execution of the contract. BHEL will during the tender process treat all Bidder(s) in a transparent and fair manner, and with equity.

1.7.1.2 Commitment by Bidder/ Supplier:

1.7.1.2.1 The bidder/ supplier commit to take all measures to prevent corruption and will not directly or indirectly influence any decision or benefit which he is not legally entitled to nor will act or omit 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.

1.7.1.2.2 The bidder/ supplier will, when presenting his bid, disclose any and all payments he has made, and is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract and shall adhere to relevant guidelines issued from time to time by Govt. of India/ BHEL.

1.7.1.2.3 The bidder/ supplier will perform/ execute the contract as per the contract terms & conditions and will not default without any reasonable cause, which causes loss of business/ money/ reputation, to BHEL.

If any bidder/ supplier/ vendor 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 prices 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, then, action may be taken against such bidder/ supplier/ vendor as per extent guidelines of the company available on www.bhel.com and / or under applicable legal provisions.

1.8 INTEGRITY PACT (IP):

Bidders shall submit Integrity Pact Agreement (Duly signed by authorized signatory who signs in the offer) along with techno-commercial bid, if applicable (as given at Clause no. 1 (xi), Salient Features of NIT). This pact shall be considered as a preliminary qualification for further participation. The names and other details of Independent External Monitor (IEM) for the subject tender is as given below:

	CENTRAL PROCUREMENT CELL (CPC) <i>PURCHASE DEPARTMENT</i>	GENERAL CONDITIONS OF CONTRACT (GCC)	INSTRUCTIONS TO BIDDER
--	---	---	-----------------------------------

- a) IP is a tool to ensure that activities and transactions between the Company and its Bidders/ Supplier / Vendor s are handled in a fair, transparent and corruption free manner. Following Independent External Monitors (IEMs) on the present panel have been appointed by BHEL with the approval of CVC to oversee implementation of IP in BHEL.

Sl. No.	IEM	Email
1.	Shri Otem Dai, IAS (Retd.)	iem1@bhel.in
2.	Shri Bishwamitra Pandey, IRAS (Retd.)	iem2@bhel.in
3.	Shri Mukesh Mittal, IRS (Retd.)	iem3@bhel.in

- b) The IP as enclosed with the tender is to be submitted (duly signed by authorized signatory) along with techno-commercial bid (Part-I, in case of two/ three part bid). Only those bidders who have entered into such an IP with BHEL would be competent to participate in the bidding. In other words, entering into this Pact would be a preliminary qualification.
- c) Please refer Section-8 of IP for Role and Responsibilities of IEMs. In case of any complaint arising out of the tendering process, the matter may be referred to any of the above IEM(s). All correspondence with the IEMs shall be done through email only.

Note:

No routine correspondence shall be addressed to the IEM (phone/ post/ email) regarding the clarifications, time extensions or any other administrative queries, etc. on the tender issued. All such clarification/ issues shall be addressed directly to the tender issuing (procurement) department's officials whose contact details are as per SCC of tender.

(Please submit the Integrity Pact Format as per Annexure – XIV).

1.9 EVALUATION OF BIDS:

- 1.9.1** Techno-commercial evaluation shall be carried out on the basis of technical specifications, commercial terms and conditions and PQR (if applicable) specified in the tender documents and changes/clarifications thereof, if any.
- 1.9.2** Bidders (other than cases of single part bids) shall be given an opportunity to withdraw the deviations/ furnish clarifications/submit documents by appropriate cut-off date by authorized purchase executive. If the bidder does not withdraw its deviation(s) and the deviation(s) is/are acceptable to BHEL, loading of offers shall be done as per the loading criteria. Loading details in respect to deviations in Payment Terms, LD, Guarantee/ Warranty & PBG will be as indicated in Annexure-IV. If no loading criteria is defined for any deviation, it will be derived and communicated to the Bidder. **IF THE BIDDER DOES NOT WITHDRAW ITS DEVIATION(S) AND THE DEVIATION(S) IS/ARE NOT ACCEPTABLE TO BHEL, THE BID WILL BE LIABLE TO BE REJECTED.**
- 1.9.3** In case of changes in scope and/or technical specification and/or commercial terms & conditions, having price implications, techno-commercially acceptable bidders shall be asked to submit the impact (either positive or negative, as decided by BHEL) of such changes on their price bid on or before the cut-off date. If the bidder submits impact opposite of the asked for (positive or negative), the impact will be considered as ZERO for evaluation as well as ordering. If BHEL does not specify the type of impact (positive or negative), bidders shall be free to quote the impact in positive or negative. Bidder's query/correspondence etc. with respect to this tender shall not be entertained after opening of Price bid, except from L1 bidder. The offers of the bidders who are under suspension by BHEL and also the offers of the bidders, who engage the services of the banned firms, shall be rejected. The list of firms is available on BHEL web site www.bhel.com.

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	INSTRUCTIONS TO BIDDER
---	---	---	-----------------------------------

1.9.4 Price Bids of shortlisted bidders shall only be opened through the electronic price bid opening with/without Reverse Auction, at the discretion of BHEL, unless specified otherwise in the tender.

1.10 MICRO & SMALL SCALE ENTERPRISES (MSE):

1.10.1 Any Bidder falling under MSE category, shall furnish the following details & submit documentary evidence/ Govt. Certificate etc. in support of the same along with their Techno-commercial offer;

Type under MSE	SC/ST owned	Women owned	Others (excluding SC/ST & Women)
Micro			
Small			

NOTE: - *If the bidder does not furnish the above, offer shall be processed construing that the bidder is not falling under MSE category.*

1.10.2 MSE suppliers can avail the intended benefits in respect of the procurements related to the Goods and Services only (Definition of Goods and Services as enumerated by Govt. of India vide Office Memorandum F. No. 21(8)/2011-MA dtd. 09/11/2016 office of AS & DC, MSME) only if they submit along with the offer, attested copies of either Udyam Registration Certificate. If the tender is to be submitted through e-procurement portal, then the above required documents are to be uploaded on the portal. Documents should be notarized or attested by a Gazetted officer. Documents submitted by the bidder may be verified by BHEL for rendering the applicable benefits.

1.10.3 MSEs shall be exempted from payment of earnest money at the time of tender deposit.

1.10.4 MSEs shall not be exempted from payment of Performance Security deposit submission.

For this procurement, purchase preference to MSE shall be in line with Office Order No. F. No. DPE/3(3)/10-Fin dated 29.05.2023 forwarded by Department of Public Enterprises against Department of Expenditure O M No. F.1/4/2021-PPD dated 18.05.2023. In case of subsequent orders issued by the nodal ministry, changing the definition of MSE, the same shall be applicable even if issued after issue of this NIT, but before opening of Part-II bids against this NIT.

1.11 LANGUAGE & CORRECTIONS:

- The Bid shall be in English language. All correspondence and documents relating to the bid exchanged between the bidder and the purchaser shall also be in ENGLISH language. However, any technical document/ literature etc. printed in a language other than English shall be accompanied by its true English translation duly signed for its correctness. Any document submitted with the bid but not in English language shall not be treated as part of the bid document. The responsibility for the correctness of the translations if any solely rests on the bidder and purchaser shall not be responsible for any loss/likely loss arising out of error in translation whatsoever. In such cases, for the purpose of interpretation of the bid, the English translation shall prevail.
- Tenderer shall quote the rates in English language and Indo-Arabic numerals only. These rates shall be entered in figures as well as in words. For the purpose of tender, metric system of units shall be used.
- All entries in the tender shall either be typed or written legibly in ink. Cancellations, insertions, erasement, over-writing (if unavoidable) shall be authenticated with signature and seal by the bidder.
- Tenderer's offer, remarks and deviations shall be with reference to sections and clause numbers given in the tender documents.

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	INSTRUCTIONS TO BIDDER
--	---	---	-----------------------------------

1.12 PRICE DISCREPANCY:

Following shall be considered for evaluation and ordering for non-conformities/errors/ discrepancies in price bid:

- a) If, in the price structure quoted for the required goods/ services/~~works~~, there is discrepancy between the unit price and the total price (which is obtained by multiplying the unit price by the quantity), the unit price shall prevail and the total price corrected accordingly, unless in the opinion of the Purchaser there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price corrected accordingly.
- b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected.
- c) If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject of (a) and (b) above.
- d) Taxes and duties if not specified clearly as extra shall be considered as included in the basic price and, therefore, shall not be reimbursed. Shall prevail subject of (a) and (b) above.
- e) Bid should be free from correction, overwriting, using corrective fluid, etc. Any interlineation, cutting, erasure or overwriting shall be valid only if they are attested under full signature(s) of person(s) signing the bid else bid shall be liable for rejection.

1.13 PUBLIC PROCUREMENT (PREFERENCE TO MAKE IN INDIA):

For this procurement, the local content to categorize a supplier/Vendor as a Class I local supplier/ Class II local Supplier/Non-Local Supplier and purchase preferences 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.

1.13.1 Compliance to Restrictions under Rule 144 (xi) of GFR 2017

- I. Any bidder from a country which shares a land border with India will be eligible to bid in this tender only if the bidder is registered with the Competent Authority. The Competent Authority for the purpose of this Clause shall be the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT).
- II. "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.
- III. "Bidder from a country which shares a land border with India" for the purpose of this Clause means:-
 - a) An entity incorporated established or registered in such a country; or
 - b) A subsidiary of an entity incorporated established or registered in such a country; or
 - c) An entity substantially controlled through entities incorporated, established or registered in such a country; or
 - d) An entity whose beneficial owner is situated in such a country; or
 - e) An Indian (or other) agent of such an entity; or
 - f) A natural person who is a citizen of such a country; or

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	INSTRUCTIONS TO BIDDER
---	---	---	-----------------------------------

g) A consortium or joint venture where any member of the consortium or joint venture falls under any of the above.

IV. The beneficial owner for the purpose of (III) above will be as under:

1. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.

Explanation-

a. "Controlling ownership interest" means ownership of or entitlement to more than twenty-five per cent of shares or capital or profits of the company.

b. "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements.

2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership.

3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person has ownership of or entitlement to more than fifteen percent of the property or capital or profits of the such association or body of individuals.

4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

V. An Agent is a person employed to do any act for another, or to represent another in dealings with third person.

Note:

i. The bidder shall provide undertaking for their compliance to this Clause, in the format provided in Annexure-13.

ii. Registration of the bidder with Competent Authority should be valid at the time of submission of bids and at the time of acceptance of the bids.

1.14 CONFLICT OF INTEREST:

A bidder shall not have conflict of interest with other bidders. Such conflict of interest can lead to anti-competitive practices to the detriment of Procuring Entity's interests. The bidder found to have a conflict of interest shall be disqualified. A bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if:

- a) they have controlling partner (s) in common; or
- b) they receive or have received any direct or indirect subsidy/ financial stake from any of them; or
- c) they have the same legal representative/agent for purposes of this bid; or
- d) they have relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder; or
- e) Bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all bids in which the parties are involved. However, this does not limit the inclusion of the components/ sub-assembly/ Assemblies from one bidding manufacturer in more than one bid: or

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	INSTRUCTIONS TO BIDDER
--	--	---	-----------------------------------

- f) In cases of agents quoting in offshore procurements, on behalf of their principal manufacturers, one agent cannot represent two manufacturers or quote on their behalf in a particular tender enquiry. One manufacturer can also authorize only one agent/dealer. There can be only one bid from the following:
- i. The principal manufacturer directly or through one Indian agent on his behalf, and
 - ii. Indian/foreign agent on behalf of only one principal;
- or
- g) A Bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the contract that is the subject of the Bid; or
- h) In case of a holding company having more than one independently manufacturing units, or more than one unit having common business ownership/management, only one unit should quote. Similar restrictions would apply to closely related sister companies. Bidders must proactively declare such sister/ common business/ management units in same/ similar line of business."

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	GENERAL COMMERCIAL TERMS & CONDITIONS
--	---	---	--

2.1 DEFINITION OF TERMS:

- 2.1.1 PURCHASER / BUYER** shall mean Bharat Heavy Electricals Limited, a company registered under Indian Companies Act 1956, with its Registered Office at BHEL HOUSE, SIRI FORT, NEW DELHI – 110049, or its CPC (Central Procurement Cell) -PSHQ (inviting tenders) or its Power Sector Regional Offices or its Authorized Officers or its Site Engineers or other employees authorized to deal with any matters with which these persons are concerned on its behalf.
- 2.1.2 TENDERER/ BIDDER** shall mean the Firm/ Company/ Organisation who quotes against the Tender Enquiry issued by Purchaser.
- 2.1.3 SUPPLIER/ VENDOR / CONTRACTOR** shall mean the successful bidder with whom the Order/ Contract is made.
- 2.1.4 “ENGINEER” or “ENGINEER IN CHARGE”** shall mean an Officer of BHEL as may be duly appointed and authorized by BHEL to act as “Engineer” on his behalf for the purpose of the Contract, to perform the duty set forth in this General Conditions of Contract and other Contract documents. The term also includes “CONSTRUCTION MANAGER” or “SITE INCHARGE” as well as Officers at Site or at the Headquarters of the respective Power Sector Regions.
- 2.1.5 GCC** means General Conditions of Contract.
- 2.1.6 GOODS/ STORE / SUPPLIES** means all the items, materials, equipment and/or machinery, which the supplier is required to supply to the purchaser in terms of a contract.
- 2.1.7 SERVICES** means the services ancillary to the supply of the goods, such as transportation and insurance and as any other incidental services, such as installation, commissioning, provision of technical assistance, training and other such obligation of the supplier covered under a contract.
- 2.1.8 CONSIGNEE** means the individual or body to whom the contracted goods are required to be delivered as per the terms and conditions incorporated in a contract.
- 2.1.9 DAY** means calendar day of the Gregorian calendar.
- 2.1.10 MONTH** means calendar month of the Gregorian calendar.

2.2 PRICES:

Prices shall be for the entire scope of supply / services in line with all instructions, specifications, terms & conditions specified in the tender documents and subsequent clarifications/ confirmations till completion of contract.

2.3 INSPECTION:

Inspection for the stores will be carried out at the Supplier / Vendor’s works/ Purchaser’s Destinations/ Sites by the Purchaser’s authorized inspecting officer. Wherever preliminary or stage Inspection is to be carried out at the Supplier / Vendor’s works the same will be subject to final acceptance/after receipt of the stores at the Purchaser’s works / Destinations/ Site as the case may be and the decision of the purchaser shall be final.

BHEL reserves the right to inspect the material during/after manufacturing at supplier’s works and/or at BHEL Site and also to get tested the material under dispatch from third party. The test results of third-party test shall be final and binding on the Supplier/Vendor.

Rejected goods will be returned to the supplier at his cost including freight on original shipment. Supplier/Vendor shall be liable to replace the materials at his own cost.

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	GENERAL COMMERCIAL TERMS & CONDITIONS
--	---	---	--

2.4 MATERIAL DESPATCH CLEARANCE CERTIFICATE (MDCC):

- 2.4.1** When the inspection have been satisfactorily completed at Supplier/Vendors' works, the Inspection Agency /BHEL shall issue an inspection report that effect within Ten (10) days after completion of the inspection. If the inspections were waived by Purchaser, the material acceptance report would be issued within Ten (10) days after receipt of the test certificates by the Purchaser.
- 2.4.2** Purchaser will issue MDCC to the Supplier/Vendor within Ten (10) days based on inspection report/ test certificates/Certificate of Conformance, to be completed in all aspects, as applicable.
In case of delay in issuance of MDCC beyond 10 days stipulated time (i.e. from the date of successful inspection report), by BHEL arising due to reasons not attributable to vendor, BHEL will extend the delivery period for such delay in issuing MDCC.
- 2.4.3** MATERIAL DISPATCH CLEARANCE CERTIFICATE (MDCC): MDCC shall be issued by BHEL. No material shall be dispatched by supplier unless and until Material Dispatch Clearance Certificate (MDCC) issued by BHEL Site. In case any material is dispatched without MDCC and any loss is incurred by Supplier/Vendor for any reason whatsoever, BHEL shall not be responsible in any manner to compensate the supplier in this regard.
- 2.4.4** Satisfactory completion of tests or issue of MDCC shall not absolve the responsibilities of Supplier/Vendor from the contract.

2.5 INSURANCE:

- 2.5.1** Wherever Transit insurance is under Vendor's Scope, the Vendor will insure at his cost the goods for all transit risks.
- 2.5.2** In all other cases, Vendors shall inform to Underwriters (appointed/ nominated by BHEL/ Purchaser) regarding the details of despatches under intimation to BHEL such as LR No. and date, Truck No., P.O. No., project and value. The details of underwriter shall be collected by the Vendor before dispatch of material from their works. Failure to do this will make the Vendor responsible for making goods any loss which might have otherwise been recovered from insurers.

2.6 PACKING AND MARKING:

Packing shall be in conformity with specifications and shall be such as to ensure prevention of damages, corrosion, deterioration, shortages, pilferage and loss in transit or storage. In case of shipment by sea, the packing shall be sea-worthy and of international standards. If any damage, deterioration or loss is sustained when the carrier or underwriter attributed to improper/defective packing the Supplier / Vendor shall be liable to replace the stores at his cost or reimburse the value of the loss to the purchaser notwithstanding whether the insurance is arranged by him or not.

The following marking shall be made on each package in Black bold capital letters;

- i. Name & Address of Consignee
- ii. Dimension of Package
- iii. Weight details (Gross & Net)

These markings should be stencilled or written in bold letters on the package. Should the package be small, suitable cards/ metal tags giving these details may be tagged or nailed to such package.

2.7 DELIVERY:

Supply of plant/ equipment/ stores shall not be considered complete until they have been inspected and accepted at the place and destination specified for delivery by the time stipulated under the terms & conditions of the Order/ Contract. **Supplier/Vendor shall not dispatch any material before issuance of MDCC by Purchaser.** Mere payment by itself shall not constitute acceptance of the goods or materials in any manner, whatsoever.

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	GENERAL COMMERCIAL TERMS & CONDITIONS
--	--	---	--

2.8 REJECTION:

The Supplier / Vendor shall intimate the purchaser in writing, within 15 days after the receipt of rejection advice, regarding disposal of the rejected plant/ equipment/ material /stores. If no advice is received within aforesaid period the purchaser shall be at liberty to return the stores at the cost of the Supplier / Vendor after recovering the cost, if any paid by the purchaser including inward freight and other incidental charges. The purchaser will not be responsible for rejected stores thereafter and no claim whatsoever will rest on the purchaser.

2.9 SHORTAGES / DAMAGES:

If there are any shortages/damages in Equipment/ Stores found during receipt of material at Destination/ site, vendor shall supply replacements for same, as early as possible, at the old contractual rates upon intimation to vendor within one (1) months of receipted LR. Decision of BHEL regarding shortages/damages shall be final and binding. LD shall be applicable as per original delivery schedule of P.O.

2.10 TRANSPORTATION & FREIGHT CHARGES:

All dispatches shall be through road / rail / air carriers on freight pre-paid basis, unless otherwise specified in the tender. E-way bill, if required, will be arranged by Supplier.

2.11 TERMS OF PAYMENT: Payment terms shall be as mentioned below, unless otherwise specified in the Technical Conditions of Contract (TCC).

2.11.1 FOR SUPPLY PACKAGES WITHOUT INSTALLATION/ COMMISSIONING/ DEMONSTRATION TEST:

2.11.1.1 Ninety percent (90%) of Ex-works price of materials supplied along with applicable 100% taxes and duties, insurance & freight (if in vendor scope) shall be paid after the receipt of material at site, physical verification and submission of billing documents on pro-rata basis.

2.11.1.2 Ten percent (10%) of Ex-works price of materials supplied will be released on pro-rata basis after submission of SRV duly certified by BHEL.

2.11.2 FOR SUPPLY PACKAGES WITH INSTALLATION/ COMMISSIONING/ DEMONSTRATION TEST AT SITE (FOR BHEL USES AT SITE):

2.11.2.1 FOR SUPPLY PORTION:

2.11.2.1.1 Ninety percent (90%) of Ex-works price of materials supplied along with applicable 100% taxes and duties, insurance & freight (if in vendor scope) shall be paid after the receipt of material at site, physical verification and submission of billing documents on pro-rata basis.

2.11.2.1.2 Ten percent (10%) of Ex-works price of materials supplied will be released on pro-rata basis after submission of SRV duly certified by BHEL.

2.11.2.2 FOR INSTALLATION/ COMMISSIONING/ DEMONSTRATION PORTION:

100% Payment will be released after successful completion of the activity on pro-rata basis and submission of Installation/ Commissioning/ Demonstration Certificate duly certified by BHEL site Engineer.

2.11.3 FOR SUPPLY OF SPARES PARTS:

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	GENERAL COMMERCIAL TERMS & CONDITIONS
--	---	---	--

2.11.3.1 ~~Ninety percent (90%) of Ex works price of materials supplied along with applicable 100% taxes and duties, insurance & freight (if in vendor scope) shall be paid after the receipt of material at site, physical verification and submission of billing documents on pro-rata basis.~~

2.11.3.2 ~~Ten percent (10%) of Ex works price of materials supplied will be released on pro-rata basis after submission of SRV duly certified by BHEL. from BHEL site Engineer.~~

2.11.4 RELEASE OF PAYMENT:

~~Vendors shall submit billing documents as per clause no. 2.11.5 for payment, directly to BHEL Payment Authority (Bill To/Ship To) as specified in TCC. Payment will be released within 90 days (45 days for vendors qualified and registered as Micro or Small and 60 Days for vendors qualified and registered as Medium as per MSMED Act) after receipt of billing documents as per clause no. 2.11.3 or as specified in order / contract.~~

~~a). FOR NON MSME Bidders, 100% payment shall be released within 90 days from the date of acknowledged receipt & acceptance of material at site and submission of billing documents as per clause no. 2.11.3 or as specified in order / contract.~~

~~b). FOR MSE Bidders, 100% payment shall be released within 45 days from the date of acknowledged receipt & acceptance of material at site and submission of billing documents as per clause no. 2.11.3 or as specified in order / contract.~~

~~c). FOR MEDIUM ENTERPRISES Bidders, 100% payment shall be released within 60 days upon receipt & acceptance of material at site and submission of billing documents as per clause no. 2.11.3 or as specified in order / contract.~~

~~However, GST amount shall be reimbursed in line with compliance to clause of Taxes & Duties as per TCC.~~

2.11.5 BILLING DOCUMENTS (Original + 1 copy) TO BE SUBMITTED BY VENDOR:

2.11.5.1 FOR SUPPLY PACKAGES WITHOUT INSTALLATION/ COMMISSIONING/ DEMONSTRATION TEST

- ~~i. GST compliant invoice~~
- ~~ii. Copy of receipted LR (signed & stamped by BHEL official)~~
- ~~iii. Test Certificate~~
- ~~iv. Guarantee Certificate (if applicable)~~
- ~~v. Copy of MDCC / Inspection Report (if applicable)~~

2.11.5.2 FOR SUPPLY PACKAGES WITH INSTALLATION/ COMMISSIONING/ DEMONSTRATION TEST AT SITE (FOR BHEL USES AT SITE):

- ~~i. GST compliant invoice~~
- ~~ii. Copy of receipted LR (signed & stamped by BHEL official)~~
- ~~iii. Test Certificate along with Calibration Certificate.~~
- ~~iv. Inspection Report (if applicable) / Copy of MDCC~~
- ~~v. Warranty Certificate (if applicable).~~
- ~~vi. O&M Manuals.~~
- ~~vii. Performance Security~~

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	GENERAL COMMERCIAL TERMS & CONDITIONS
--	--	---	--

2.11.5.3 FOR SUPPLY OF SPARES PARTS

- i. ~~GST compliant invoice~~
- ii. ~~Copy of receipted LR (signed & stamped by BHEL official)~~
- iii. ~~Guarantee Certificate (if applicable)~~
- iv. ~~Copy of SRV duly certified by BHEL.~~

2.11.6 MODE OF PAYMENT:

Payments shall be made directly to the Supplier / Vendor by E-transfer. Supplier / Vendor will provide necessary information for the same as per format mentioned in GCC to the Purchaser.

2.11.7 NO INTEREST PAYABLE TO SUPPLIER / VENDOR: No interest shall be payable by the Purchaser to the Supplier / Vendor on any money or balances including but not limited to the Performance security amount, EMD, any bills or any amount withheld which may become due owing to difference or misunderstanding or any dispute between the Purchaser and the Supplier / Vendor, or any delay on the part of Purchaser in making periodical or final payment or any other aspects incidental thereto.

2.12 Earnest Money Deposit (EMD):

2.12.1 Every tender must be accompanied by the prescribed amount of Earnest Money Deposit (EMD) in the manner described herein.

- i. EMD shall be furnished before tender opening / along with the offer in full as per the amount indicated in the NIT.
- ii. The EMD up to an amount of Rs. 2 Lakh is to be paid only in the following forms:
 - a) Electronic Fund Transfer credited in BHEL account (before tender opening).
 - b) Banker's cheque/ Pay order/ Demand draft, in favour of 'Bharat Heavy Electricals Limited' and payable at Regional HQ issuing the tender (along with offer).
 - c) Fixed Deposit Receipt (FDR) issued by Scheduled Banks/ Public Financial Institutions as defined in the Companies Act (FDR should be in the name of the Contractor, a/c BHEL marking lien in favour of BHEL) (along with offer). The Fixed Deposit in such cases shall be valid for a period of 45 (forty-five) days beyond the final bid validity period.
 - d) Bank Guarantee from any of the Scheduled Banks. In such cases shall be valid for a period of 45 (forty-five) days beyond the final bid validity period.
 - e) Insurance Surety Bonds.

In case, the EMD is more than Rs. Two lakh and in case of foreign bidders, it may be in the form of a bank guarantee (in equivalent Foreign Exchange amount, in case of foreign bidders) issued/ confirmed from any of the scheduled commercial bank in India in the prescribed format. The EMD shall remain valid for a period of 45 (forty-five) days beyond the final bid validity period.

iii. No other form of EMD remittance shall be acceptable to BHEL.

2.12.2 EMD by the Tenderer will be forfeited as per NIT conditions, if:

- i. The bidder withdraws or amends its/his tender or impairs or derogates from the tender in any respect within the period of validity of the tender or if the successful bidder fails to furnish the required performance security within the specified period mentioned in the Tender.

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	GENERAL COMMERCIAL TERMS & CONDITIONS
--	---	---	--

- ii. EMD by the Bidder shall be withheld in case any action on the tenderer is envisaged under the provisions of extant “Guidelines on Suspension of business dealings with suppliers/ contractors” and shall be forfeited in case of suspension.

2.12.3 Subject to cl. no. 2.12.2 above, EMD of the unsuccessful bidders shall be returned at the earliest after expiry of the final bid validity period and latest by the 30th day after the award of the contract. However, in case of two packet or two stage bidding, EMD of unsuccessful bidders during first stage i.e., technical evaluation etc. shall be returned within 30 days of declaration of result of first stage i.e. technical evaluation etc.

2.12.4 EMD of successful bidder shall be refunded on conclusion of the order/ receipt of a performance security as mentioned in NIT.

2.12.5 EMD shall not carry any interest.

2.12.6 Micro and Small Enterprises (MSEs) or Startups as recognized by Department for Promotion of Industry and Internal Trade (DPIIT) shall be exempted from payment of EMD.

2.13 PERFORMANCE SECURITY:

2.13.1 Successful bidder awarded the contract should deposit performance security, as mentioned in TCC, towards fulfilment of all contractual obligations, including warranty obligations.

2.13.2 Performance Security is to be furnished within 14 days after issuance of Contract/PO and should remain valid for a period of 60 (sixty) days beyond the date of completion of all contractual obligations of the supplier/Vendor, including warranty obligations.

2.13.3 Modes of deposit:

a) Performance security may be furnished in the following forms:

- i. Local cheques of Scheduled Banks (subject to realization)/ Pay Order/Demand Draft/ Electronic Fund Transfer in favour of ‘Bharat Heavy Electricals Limited’ and payable at Regional HQ
- ii. Bank Guarantee from Scheduled Banks / Public Financial Institutions as defined in the Companies Act. The Bank Guarantee should be in the prescribed format of BHEL.
- iii. Fixed Deposit Receipt (FDR) issued by Scheduled Banks / Public Financial Institutions as defined in the Companies Act (FDR should be in the name of the Supplier / Vendor, a/c BHEL).
- iv. Securities available from Indian Post offices such as National Savings Certificates, Kisan Vikas Patras etc. (held in the name of Supplier / Vendor furnishing the security and duly endorsed/ hypothecated/ pledged, as applicable, in favour of BHEL).
- v. Insurance Surety Bond.

Note: BHEL will not be liable or responsible in any manner for the collection of interest or renewal of the documents or in any other matter connected therewith.

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	GENERAL COMMERCIAL TERMS & CONDITIONS
--	---	---	--

- b) In case of GTE tenders, the performance security should be in the same currency as the contract and must conform to Uniform Rules for Demand Guarantees (URDG 758) - an international convention regulating international securities.

2.13.4 The performance security will be forfeited and credited to BHEL's account in the event of a breach of contract by the supplier/Vendor as provided herein or elsewhere in the Contract/PO.

2.13.5 Performance Security shall be refunded to the Supplier / Vendor without interest, after the Supplier / Vendor duly performs and completes the contract in all respects but not later than 60(sixty) days of completion of all such obligations including the warranty under the contract.

2.13.6 The Performance Security shall not carry any interest.

2.13.7 There is no exemption of Performance security deposit submission for MSE Vendors.

Note:

- i. Performance Security shall be from list of Consortium Bank as per **Annexure –XXVIII**. In case of bank guarantee from any other bank, BHEL shall get confirmation from the consortium bank, for which the confirmation charges will be borne by the vendor. Bank guarantees from co-operative banks/ non-scheduled banks are not acceptable.
- ii. In case of private sector banks, a clause to be incorporated in the text of BG that it can be enforceable by being presented at any branch of the bank.

2.14 GUARANTEE / WARRANTY FOR EQUIPMENT/ STORES:

2.14.1 Supplier / Vendor shall warrant that the stores supplied shall be free from all defects and faults in design & engineering, material, workmanship & manufacture and shall be of the highest grade and consistent with the established and generally accepted standards and in full conformity with the Order/ Contract specifications, drawing or samples, if any.

2.14.2 Unless otherwise specified in the TCC, Guarantee / Warranty shall be as mentioned below:

- a) Guarantee / Warranty period for Supply package with Commissioning / Demonstration test at site in Vendor's scope shall be, 18 (Eighteen) calendar months from the date of last dispatch or 12 (Twelve) calendar months from the date of satisfactory Commissioning or Demonstration of the package, whichever is later.
- b) Guarantee / Warranty period for **Supply of Spare Parts** shall be 12 (Twelve) calendar months from the date of last dispatch.

2.14.3 Rectification / replacement required during the Guarantee / Warranty period shall be arranged by the supplier free of cost including to and fro transport charges, import duty/excise duty/other taxes/insurance etc. payable on the items rectified and/or replaced.

2.15 RECOVERY OF OUTSTANDING AMOUNT:

In event of any amount of money being outstanding at any point of time against the Supplier / Vendor due to excess payment or any other reason whatsoever, in the present order/ contract or any other order/ contract from any BHEL Unit, the outstanding amount shall be recovered from the payments due to the

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	GENERAL COMMERCIAL TERMS & CONDITIONS
--	---	---	--

Supplier / Vendor at any appropriate time and manner/ mode as deemed fit by the Purchaser from this or any other order/ contract of any BHEL unit at its sole discretion.

2.16 INDEMNIFICATION:

Supplier / Vendor shall fully indemnify and keep indemnified the Purchaser against all claims /losses/damages/demands/expenses of whatsoever nature arising during the course and out of the execution of this Order/Contract.

2.17 DELAY/ TIME EXTENSION:

The Supplier shall timely dispatch/ deliver and complete other schedules as stipulated in Order/ Contract. If the Supplier / Vendor fails to complete the dispatch/ delivery and other schedules within the time period stipulated in Order/ Contract, or within any extension of time granted by Purchaser, it shall be lawful for Purchaser to recover damages for the breach of Order/ Contract without prejudice to any other rights and/ or remedies provided for, in the Order/ Contract and hereunder. For any delay not attributable to the Supplier / Vendor, the Supplier / Vendor must report the same to the Purchaser immediately in writing only.

2.18 LIQUIDATED DAMAGES: As per TCC

Liquidated Damages, wherever referred under this Tender/Agreement, shall mean and refer to the damages, not in the nature of penalty, which the contractor agrees to pay in the event of delay in delivery of supplies, breach of contract etc. as the case may be.

Liquidated Damages leviable upon the Supplier/Vendor is a sum which is agreed by the parties as a reasonable and genuine pre-estimate of damages which will be suffered by BHEL on account of delay/breach on the part of the Supplier/Vendor.

If the Seller/Service Provider fails to deliver any or all of the Goods/Services within the original/re-fixed delivery period(s) specified in the contract/PO, the Buyer/BHEL will be entitled to deduct/recover the Liquidated Damages for the delay, unless covered under Force Majeure conditions aforesaid, @ 0.5% of the contract value of delayed quantity per week or part of the week of delayed period as pre-estimated damages not exceeding 10% of the contract value of delayed quantity without any controversy/dispute of any sort whatsoever.

2.19 TERMINATION:

2.19.1 The Purchaser, without prejudice to any other rights or remedies it may possess, may terminate the Contract in the following circumstances:

- a) If the Supplier / Vendor becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Supplier / Vendor is a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Supplier / Vendor being an individual or if a firm on a partnership thereof, is adjudged insolvent or has a receiving order for administration of his estate made against him or takes any proceeding for composition under any Insolvency Act for the time being in force or if the Supplier / Vendor takes or suffers any other analogous action in consequence of debt.
- b) If the Supplier / Vendor assigns or transfers the Contract or any right or interest therein in violation of the provision of Clause 17 (Assignment).

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	GENERAL COMMERCIAL TERMS & CONDITIONS
--	--	--	---

- c) If the Supplier / Vendor, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this Sub-Clause :

"**Corrupt practice**" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.

"**Fraudulent practice**" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Purchaser and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Purchaser of the benefits of free and open competition.

- d) If the Supplier / Vendor has abandoned or repudiated the Contract without assigning any reason.
- e) If the Supplier / Vendor has without valid reason failed to commence work on the contract promptly or has suspended the progress of Contract performance for more than 07 (seven) days after receiving a written instruction from the Purchaser to proceed.
- f) If the Supplier / Vendor persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause.
- g) If the Supplier / Vendor refuses or is unable to provide sufficient goods or materials or any instalment thereof in the manner specified and within the Time specified in the contract.

2.19.2 Purchaser shall have the right to cancel Order/ Contract, wholly or in part, in case they are constrained to do so on account of any decline, diminution, curtailment or stoppage of their business. In such eventuality, the Supplier / Vendor shall make compensation claim in writing upon the purchaser. Thereafter, both the parties shall arrive at mutually acceptable compensation to be accorded to the Supplier / Vendor. The mutually acceptable compensation shall be final and binding upon both the parties.

2.19.3 In case either the Supplier / Vendor himself or any of his representative or agent is found to have been an employee of the Purchaser or has within a period of two years of his retirement accepted the employment of the Supplier / Vendor either as a Supplier / Vendor or as an employee without having obtained prior permission of Purchaser, the Purchaser shall have the right to cancel order/ contract under the provision of Breach of Contract (Clause no. 2.26).

2.19.4 In case of cancellation of main supply order/ contract, all other associated orders/ contracts like mandatory spares/ recommended spares/ E&C/ supervision of E&C shall stand cancelled.

2.19.5 Subject to Sub-Clause 2.19.6, the Supplier / Vendor shall be entitled to be paid the Contract Price attributable to the materials supplied as on the date of termination. Any sums due to the Purchaser from the Supplier / Vendor accruing prior to the date of termination shall be deducted from the amount to be paid to the Supplier / Vendor under this Contract.

2.19.6 In case the Purchaser so desires, may procure upon such terms and in such manner as deemed appropriate, stores not so delivered or others of similar description where stores exactly complying with particulars are not, in the opinion of the Purchaser, which shall be final, readily procurable, at the cost of the Supplier plus overheads. Supplier shall be liable to the Purchaser for any excess costs provided that the Supplier shall continue the performance of the Order/ Contract to the extent not cancelled under the provisions of this clause. The Supplier shall on no

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	GENERAL COMMERCIAL TERMS & CONDITIONS
--	---	---	--

account be entitled to any gain on such repurchases. Cost of the purchases made by Purchaser at the cost of Supplier / Vendor shall be worked out as follows:

"Excess cost (difference in values of new Awarded Contract/Purchase Order and old Awarded Contract/Purchase Order) plus 5% of Excess cost as overheads (Departmental charges) along with Liquidated Damages as applicable".

2.20 TRANSFER, SUB-LETTING/ ASSIGNMENT SUB-CONTRACTING:

Supplier / Vendor shall not sublet, transfer or assign order/ contract or any part thereof or interest therein or benefit or advantage thereof save with the prior consent in writing of Purchaser. In the event Supplier / Vendor sub-lets, transfers or assigns order/ contract or any part thereof or interest therein or benefit or advantage thereof without such permission, the Purchaser shall be entitled to cancel the Order/ Contract and to purchase the stores from elsewhere at the costs of Supplier / Vendor, under the provision of Breach of Contract (Clause no. 2.26). In such eventuality, the Supplier / Vendor shall be liable for any loss or damage which Purchaser may sustain in consequence of or arising out of such risk purchase.

2.21 FORCE MAJEURE:

2.21.1 "Force Majeure" shall mean circumstance which is:

- a) beyond control of either of the parties to contract,
 - b) either of the parties could not reasonably have provided against the event before entering into the contract,
 - c) having arisen, either of the parties could not reasonably have avoided or overcome, and
 - d) is not substantially attributable to either of the parties
- And

Prevents the performance of the contract,

Such circumstances include but shall not be limited to:

- i. War, hostilities, invasion, act of foreign enemies.
- ii. Rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war.
- iii. Riot, commotion or disorder by persons other than the contractor's personnel and other employees of the contractor and sub-contractors.
- iv. Strike or lockout not solely involving the contractor's personnel and other employees of the contractor and sub-contractors.
- v. Encountering munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, except as may be attributable to the contractor's use of such munitions, explosives, radiation or radio- activity.
- vi. Natural catastrophes such as earthquake, tsunami, volcanic activity, hurricane or typhoon, flood, fire, cyclones etc.
- vii. Epidemic, pandemic etc.

2.21.2 The following events are explicitly excluded from Force Majeure and are solely the responsibilities of the non-performing party: a) any strike, work-to-rule action, go-slow or similar labour difficulty (b) late delivery of equipment or material (unless caused by Force Majeure event) and (c) economic hardship.

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	GENERAL COMMERCIAL TERMS & CONDITIONS
--	---	---	--

- 2.21.3** If either party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within 15 (fifteen) days after the occurrence of such event.
- 2.21.4** The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered or delayed. The Time for Completion shall be extended by a period of time equal to period of delay caused due to such Force Majeure event.
- 2.21.5** Delay or non-performance by either party hereto caused by the occurrence of any event of Force Majeure shall not
- (a) Constitute a default or breach of the Contract.
 - (b) Give rise to any claim for damages or additional cost expense occasioned thereby, if and to the extent that such delay or non-performance is caused by the occurrence of an event of Force Majeure.
- 2.21.6** BHEL at its discretion may consider short closure of contract after 1 year of imposition of Force Majeure in line with extant guidelines. In any case, Supplier/Vendor cannot consider deemed short-closure after 1 year of imposition of Force Majeure.

2.22 SETTLEMENT OF DISPUTES:

If any dispute or difference of any kind whatsoever shall arise between BHEL and the Supplier/Vendor, arising out of the contract for the performance of the work whether during the progress of contract termination, abandonment or breach of the contract, it shall in the first place referred to Designated Engineer for amicable resolution by the parties. Designated Engineer (to be nominated by BHEL for settlement of disputes arising out of the contract) who within 60 days after being requested shall give written notice of his decision to the contractor. Save as hereinafter provided, such decision in respect of every matter so referred shall forthwith be given effect to by the Supplier/Vendor who shall proceed with the work with all due diligence, whether he or BHEL desires to resolve the dispute as hereinafter provided or not.

If after the Designated Engineer has given written notice of this decision to the party and no intention to pursue the dispute has been communicated to him by the affected party within 30 days from the receipt of such notice, the said decision shall become final and binding on the parties. In the event the Supplier/Vendor being dissatisfied with any such decision or if amicable settlement cannot be reached then all such disputed issues shall be resolved through conciliation in terms of the BHEL Conciliation Scheme 2018 as per Clause 2.23.3

2.23 ARBITRATION & CONCILIATION:

2.23.1 ARBITRATION:

- 2.23.1.1** Except as provided elsewhere in this Contract, in case Parties are unable to reach amicable settlement (whether by Conciliation to be conducted as provided in Clause 21.1 herein above or otherwise) 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 (hereinafter

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	GENERAL COMMERCIAL TERMS & CONDITIONS
--	---	---	--

referred to as the 'Dispute'), then, either Party may, refer the disputes to Arbitral Institution (to be identified by the contract issuing agency (eg. "IIAC" (India International Arbitration Centre) for Delhi/NCR offices) and such dispute to be adjudicated by Sole Arbitrator appointed in accordance with the Rules of said Arbitral Institution.

- 2.23.1.2** A party willing to commence arbitration proceeding shall invoke Arbitration Clause by giving notice to the other party in terms of section 21 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the 'Notice') before referring the matter to arbitral institution. The Notice shall be addressed to the Head of the Region, Power Sector/ Unit, BHEL, executing the Contract and shall contain the particulars of all claims to be referred to arbitration with sufficient detail and shall also indicate the monetary amount of such claim including interest, if any.
- 2.23.1.3** After expiry of 30 days from the date of receipt of aforesaid notice, the party invoking the Arbitration shall submit that dispute to the Arbitral Institutions..... (to be identified by the contract issuing agency) and that dispute shall be adjudicated in accordance with their respective Arbitration Rules. The matter shall be adjudicated by a Sole Arbitrator who shall necessarily be a Retd Judge having considerable experience in commercial matters to be appointed/nominated by the respective institution. The cost/expenses pertaining to the said Arbitration shall also be governed in accordance with the Rules of the respective Arbitral Institution. The decision of the party invoking the Arbitration for reference of dispute to a specific Arbitral institution for adjudication of that dispute shall be final and binding on both the parties and shall not be subject to any change thereafter. The institution once selected at the time of invocation of dispute shall remain unchanged.
- 2.23.1.4** The fee and expenses shall be borne by the parties as per the Arbitral Institutional rules.
- 2.23.1.5** The Arbitration proceedings shall be in English language and the seat and venue of Arbitration shall be (to be identified by the contract issuing agency)(i.e. New Delhi for Delhi/NCR based Units).
- 2.23.1.6** Subject to the above, the provisions of Arbitration & Conciliation Act 1996 and any amendment thereof shall be applicable. All matters relating to this Contract and arising out of invocation of Arbitration clause are subject to the exclusive jurisdiction of the Court(s) situated at..... (i. e., New Delhi for Delhi/NCR based Units).
- 2.23.1.7** Notwithstanding any reference to the Designated Engineer or Conciliation or Arbitration herein, a. the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree. Settlement of Dispute clause cannot be invoked by the Contractor, if the Contract has been mutually closed or 'No Demand Certificate' has been furnished by the Contractor or any Settlement Agreement has been signed between the Employer and the Contractor.
- 2.23.1.8** It is agreed that Mechanism of resolution of disputes through arbitration shall be available only in the cases where the value of the dispute is less than Rs. 10 Crores.
- 2.23.1.9** In case the disputed amount (Claim, Counter claim including interest is Rs. 10 crores and above, the parties shall be within their rights to take recourse to remedies other than Arbitration, as may be available to them under the applicable laws after prior intimation to the other party. Subject to the aforesaid conditions, provisions of the Arbitration and

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	GENERAL COMMERCIAL TERMS & CONDITIONS
--	--	---	--

Conciliation Act, 1996 and any statutory modifications or re-enactment thereof as amended from time to time, shall apply to the arbitration proceedings under this clause.

2.23.1.10 In case, multiple arbitrations are invoked (whether sub-judice or arbitral award passed) by any party to under this contract, then the cumulative value of claims (including interest claimed or awarded) in all such arbitrations shall be taken in account while arriving at the total claim in dispute for the subject contract for the purpose of clause 2.23.1.9. Disputes having cumulative value of less than 10 crores shall be resolved through arbitration and any additional dispute shall be adjudicated by the court of competent jurisdiction.

2.23.2 In case of Contract with Public Sector Enterprise (PSE) or a Government Department, the following shall be applicable:

2.23.2.1 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 & Excise Departments), such dispute or difference shall be taken up by either party for resolution through AMRCD (Administrative Mechanism for Resolution of CPSEs Disputes) as mentioned in DPE OM No. 05/0003/2019-FTS-10937 dated 14-12-2022 as amended from time to time.

2.23.3 CONCILIATION:

Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure as per BHEL Conciliation Scheme 2018. 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 - "Procedure for conduct of conciliation proceedings" (as available in www.bhel.com)).

Note: Ministry of Finance has issued OM reference No. 1/2/24 dated 03.06.2024 regarding "Guidelines for Arbitration and Mediation in Contracts of Domestic Public Procurement. In the said OM it has been recommended that Government departments/Entities/agencies are to encourage mediation under the Mediation Act, 2023. The said Act has not yet been notified by the Government. Therefore, the clause "Settlement of Disputes" shall be modified accordingly as and when the Mediation Act 2023 gets notified.

2.24 GOVERNING LAWS:

The contract shall be governed by the Law for the time being in force in the Republic of India.

2.25 JURISDICTION OF COURT:

This contract shall be governed by the Law for the time being in force in the Republic of India. Subject to clause 2.23.1 of this contract, the Civil Court having original Civil Jurisdiction (to be decided by the Unit e.g. Delhi for PSNR, Kolkata for PSER, Nagpur for PSWR, Chennai for PSSR etc.,) shall alone have exclusive jurisdiction in regard to all matters in respect of the Contract.

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	GENERAL COMMERCIAL TERMS & CONDITIONS
--	--	---	--

2.26 BREACH OF CONTRACT, REMEDIES AND TERMINATION:

2.26.1 The following shall amount to breach of contract:

- i. Non-supply of material/ non-completion of work by the Supplier/Vendor within scheduled delivery/ completion period as per contract or as extended from time to time.
- ii. The Supplier/Vendor fails to perform as per the activity schedule and there are sufficient reasons even before expiry of the delivery/ completion period to justify that supplies shall be inordinately delayed beyond contractual delivery/ completion period.
- iii. The Supplier/Vendor delivers equipment/ material not of the contracted quality.
- iv. The Supplier/Vendor fails to replace the defective equipment/ material/ component as per guarantee clause.
- v. Withdrawal from or abandonment of the work by the Supplier/Vendor before completion as per contract.
- vi. Assignment, transfer, subletting of Contract by the Supplier/Vendor without BHEL's written permission resulting in termination of Contract or part thereof by BHEL.
- vii. Non-compliance to any contractual condition or any other default attributable to Supplier/Vendor.
- viii. Any other reason(s) attributable to Vendor towards failure of performance of contract. In case of breach of contract, BHEL shall have the right to terminate the Purchase Order/ Contract either in whole or in part thereof without any compensation to the Supplier/Vendor.
- ix. Any of the declarations furnished by the contractor at the time of bidding and/ or entering into the contract for supply are found untruthful and such declarations were of a nature that could have resulted in non-award of contract to the contractor or could expose BHEL and/ or Owner to adverse consequences, financial or otherwise.
- x. Supplier/Vendor is convicted of any offence involving corrupt business practices, antinational activities or any such offence that compromises the business ethics of BHEL, in violation of the Integrity Pact entered into with BHEL has the potential to harm the overall business of BHEL/ Owner.

Note- Once BHEL considers that a breach of contract has occurred on the part of Supplier/Vendor, BHEL shall notify the Supplier/Vendor by way of notice in this regard. Contractor shall be given an opportunity to rectify the reasons causing the breach of contract within a period of 14 days.

In case the contractor fails to remedy the breach, as mentioned in the notice, to the satisfaction of BHEL, BHEL shall have the right to take recourse to any of the remedial actions available to it under the relevant provisions of contract.

LD against delay in executed work/supply in case of Termination of Contract:

LD against delay in executed supply shall be calculated in line with LD clause no. 2.18 of GCC, for the delay attributable to Vendor/supplier. For limiting the maximum value of LD, contract value shall be taken as Executed Value of supply till termination of contract.

Method for calculation of "LD against delay in executed supply in case of termination of contract" is given below.

- i). Let the time period from scheduled date of start of supply till termination of contract excluding the period of Hold (if any) not attributable to Supplier / Vendor = T1
- ii). Let the value of executed supply till the time of termination of contract = X
- iii). Let the Total Executable Value of supply for which inputs/fronts were made available to Vendor / supplier and were planned for execution till termination of contract = Y
- iv). Delay in executed supply attributable to Supplier / Vendor i.e. $T2 = [1 - (X/Y)] \times T1$

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	GENERAL COMMERCIAL TERMS & CONDITIONS
--	---	---	--

v). LD shall be calculated in line with LD clause (clause 2.18) of the Contract for the delay attributable to Vendor / supplier taking "X" as Contract Value and "T2" as period of delay attributable to Vendor / supplier.

2.26.2 Remedies in case of Breach of Contract:

i) Wherein the period as stipulated in the notice issued under clause 2.26.1 has expired and Supplier/Vendor has failed to remedy the breach, BHEL will have the right to terminate the contract on the ground of "Breach of Contract" without any further notice to contractor.

ii) Upon termination of contract, BHEL shall be entitled to recover an amount equivalent to 10% of the Contract Value for the damages on account of breach of contract committed by the Supplier/Vendor. This amount shall be recovered by way of encashing the security instruments like performance bank guarantee etc available with BHEL against the said contract. In case the value of the security instruments available is less than 10% of the contract value, the balance amount shall be recovered from other financial remedies (i.e. available bills of the Supplier/Vendor, retention amount, from the money due to the Supplier/Vendor etc. with BHEL) or the other legal remedies shall be pursued.

iii) wherever the value of security instruments like performance bank guarantee available with BHEL against the said contract is 10% of the contract value or more, such security instruments to the extent of 10% contract value will be encashed. In case no security instruments are available or the value of the security instruments available is less than 10% of the contract value, the 10% of the contract value or the balance amount, as the case may be, will be recovered in all or any of the following manners:

iv) In case the amount recovered under sub clause above is not sufficient to fulfil the amount recoverable then; a demand notice to deposit the balance amount within 30 days shall be issued to Supplier/Vendor.

v) If Supplier/Vendor fails to deposit the balance amount within the period as prescribed in demand notice, following action shall be taken for recovery of the balance amount:

a) from dues available in the form of Bills payable to defaulted Supplier/Vendor against the same contract.

b) If it is not possible to recover the dues available from the same contract or dues are insufficient to meet the recoverable amount, balance amount shall be recovered from any money(s) payable to Supplier/Vendor under any contract with other Units of BHEL including recovery from security deposits or any other deposit available in the form of security instruments of any kind against Security deposit or EMD.

vi) In-case recoveries are not possible with any of the above available options, Legal action shall be initiated for recovery against defaulted supplier/Vendor.

vii) It is an agreed term of contract that this amount shall be a genuine pre-estimate of damages that BHEL would incur in completion of balance contractual obligation of the contract through any other agency and BHEL will not be required to furnish any other evidence to the Supplier/Vendor for the purpose of estimation of damages.

viii) In addition to the above, imposition of liquidated damages, debarment, termination, de-scoping, short-closure, etc., shall be applied as per provisions of the contract.

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	GENERAL COMMERCIAL TERMS & CONDITIONS
--	---	---	--

Note:

1) The defaulting Supplier/Vendor shall not be eligible for participation in any of the future enquiries floated by BHEL to complete the balance work. The defaulting Supplier/Vendor shall mean and include:

- a) In case defaulted Supplier/Vendor is the Sole Proprietorship Firm, any Sole Proprietorship Firm owned by same Sole Proprietor.
- b) In case defaulted Supplier/Vendor is The Partnership Firm, any firm comprising of same partners/ some of the same partners; or sole proprietorship firm owned by any partner(s) as a sole proprietor.

2.27 ADVANCE:

INTEREST BEARING RECOVERABLE ADVANCE: With due justification, need-based Interest-Bearing Recoverable Advance, limited to a maximum of 5% of the Contract Value, against Security Amount at the request of the Contractor for resource augmentation towards expediting work for project implementation.

i) The Security amount towards the Interest-Bearing Recoverable Advance shall be at least 110% of the value of advance amount, so as to enable recovery of not only principle amount but also the interest portion, if so required.

ii) The Security amount shall be in either Bank Guarantee (BG) or Insurance Surety Bond (ISB) strictly as per the prescribed formats and shall be valid for at least one year or the recovery duration whichever is earlier. In case the recovery of dues does not get completed within the aforesaid BG/ISB Validity period, the contractor shall renew the BG/ISB or submit fresh BG/ISB for the outstanding amount, valid for at least one year or the remaining recovery duration whichever is earlier. For each advance, the Contractor will be allowed to submit more than one BG/ISB so that the BG/ISB can be returned progressively based on recovered amount. In case, the Contractor prefers to submit single BG/ISB against an advance, the amount of the BG/ISB may be progressively reduced by the amount repaid by the Contractor.

iii) Payment and recovery of Interest-Bearing Recoverable advance shall be at the sole discretion of BHEL and shall not be a subject matter of arbitration.

iv) The rate of interest applicable for the above advances shall be the repo rate prevailing on the date of release of advance plus 4%, and such rate will remain fixed till the total advance/instalment amount is recovered.

v) Recovery rate per month shall be the sum of:

- Not less than 10% of Running Bill amount
- Simple interest up to the date of due Bill on the outstanding Principle amount/amounts

vi) In any case, Interest Bearing Advance shall be fully recovered by the time the contractor's billing reaches 90% of contract value either from Running Bills or by the Contractor directly depositing the amount. If the Contractor fails to deposit the total amount by the stipulated date, the recovery shall be made by encashing the BG/ISB/Securities available with BHEL for the balance amount along with interest.

vii) BHEL is entitled to make recovery of the entire outstanding advance amount in case the contractor fails to comply with the contract requirement / commitment made during seeking the Advance.

.....



**CENTRAL
PROCUREMENT CELL
(CPC)
PURCHASE DEPARTMENT**

**GENERAL CONDITIONS OF
CONTRACT (GCC)**

ANNEXURES

ANNEXURE - I

OFFER SUBMISSION AS PER NIT

(To be typed and submitted in the Letter Head of the Company/Firm of Bidder)

Offer Reference No:

Date:

To,

_____ (Write Name and Designation of Officer of BHEL inviting the Tender);

Bharat Heavy Electricals Limited,
Central Procurement Cell (CPC), 8th Floor, BHEL SADAN,
Plot No. 25, Sector-16A, Noida, U.P.-201301

Dear Sir,

Sub: Submission of Offer against Tender Enquiry No: **BHEL/CPC/KOD/BOILER_FAB_STR/25/083**

Having examined the tender documents against your tender Enquiry No. _____ dated _____ and having understood the provisions of the said tender documents and having thoroughly studied the requirements of BHEL related to the work tendered for, in connection with _____ (name of work & project site), we hereby submit our offer for the proposed work in accordance with terms and conditions mentioned in the tender documents, at the prices quoted by us and as per the indicated delivery schedule.

Should our offer be accepted by BHEL for Award, I/we further agree to furnish 'Performance Security' for the work as provided for in the Tender Conditions within the stipulated time as may be indicated by BHEL.

I/We further agree to execute all the works referred to in the said Tender documents upon the terms and conditions contained or referred to therein and as detailed in the appendices annexed thereto.

I/We have deposited/depositing herewith the requisite Earnest Money Deposit (EMD) as per details furnished in the Check List.

Authorised Representative of Bidder

Signature:

Name:

Address:

Place:

Date:

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

ANNEXURE - II
CHECK LIST

NOTE: - Suppliers are required to fill in the following details in their Letterhead and no column should be left blank

A	Name and Address of the Supplier		
B	GSTN No. the Supplier (Place of Execution of Contract / Purchase Order)		
C	Details of Contact person for this Tender	Name : Mr./Ms. Designation: Telephone No: Mobile No: Email ID:	
D	Details of alternate Contact person for this Tender	Name : Mr./Ms. Designation: Telephone No: Mobile No: Email ID:	
E	EMD Details		
F	DESCRIPTION	APPLICABILITY (BY BHEL)	BIDDER'S CONFIRMATION (YES/ NO)
1	Whether Pre - Qualification Criteria (Annexure-1 of NIT) is understood and provided proper supporting documents.	Applicable	YES / NO
2	For EMD submitted in the form of Bank Guarantee (BG),	Applicable	
	a) Copy of SFMS (Structured Financial Message System) to be attached along with the bank guarantee towards verification of authenticity of BG. - or -		YES / NO
	b) Declaration by contractor / vendor with list of their banks along with a confirmation that none of their banks are SFMS compliant and Paper Bank Guarantee sent to BHEL directly by the issuing bank under Registered Post (A.D.) / Speed Post/ Courier/ By Hand along with a covering letter.		YES / NO
3	Whether all pages of the Tender documents including annexures, appendices etc are read and understood.	Applicable	YES / NO

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

4	Submission of Technical specifications/ write-ups / Catalogues, literature & drawings/data sheets / Quality plans/ all other details & documents as required in tender documents.	Applicable	YES / NO
5	Recommended list of spare parts for three years operation as applicable.	Applicable	YES / NO
6	Audited Balance Sheet and profit & Loss Account for the last three years as mentioned in Financial QR.	Applicable	YES / NO
7	Copy of PAN Card & GST registration	Applicable	YES / NO
8	Submission of MSE certificate as specified in Tender	Applicable	YES / NO
9	Submission of format for Clarification / Deviation as per Annexure – III	Applicable	YES / NO
10	Submission of Certificate of No Deviation as per Annexure – IV	Applicable	YES / NO
11	Loading Criteria as per Annexure – V	Applicable	YES / NO
12	Submission of Reverse Auction Format as per Annexure – VI	Applicable	YES / NO
13	Submission of Reverse Auction Process Compliance Form as per Annexure - VII	Applicable	YES / NO
14	Submission of Reverse Auction price confirmation and breakup as per Annexure - VIII	Applicable	YES / NO
15	Submission of Non-Disclosure Certificate as per Annexure - IX	Applicable	YES / NO
16	Declaration regarding Insolvency/ Liquidation/ Bankruptcy Proceedings as per Annexure – X	Applicable	YES / NO
17	Declaration by Authorized Signatory as per Annexure – XI	Applicable	YES / NO
18	Submission of Power of Attorney as per Annexure – XII	Applicable	YES / NO
19	Declaration by Authorized Signatory regarding Authenticity of submitted Documents as per Annexure – XIII	Applicable	YES / NO
20	Submission of Integrity Pact as specified in Tender as per Annexure – XIV	Applicable	YES / NO
21	Declaration confirming knowledge about Site Conditions as per Annexure – XV	Applicable	YES / NO
22	Declaration reg. Related Firms & their areas of Activities as per Annexure – XVI	Applicable	YES / NO
23	Declaration for relation in BHEL as per Annexure – XVII	Applicable	YES / NO
24	Declaration reg. minimum local content in line with revised public procurement as per Annexure – XVIII	Applicable	YES / NO
25	Declaration regarding compliance to Restrictions under Rule 144 (xi) of GFR 2017 as per Annexure – XIX	Applicable	YES / NO

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

26	Bank Account Details for E-Payment as per Annexure – XX	Applicable	YES / NO
27	Submission of Unprice Format as specified in Tender	Applicable	YES / NO
28	Submission of Signed Tender Documents (NIT, TCC & GCC)	Applicable	YES / NO

NOTE: TENDER NOT ACCOMPANIED BY THE PRESCRIBED ABOVE APPLICABLE DOCUMENTS ARE LIABLE TO BE SUMMARILY REJECTED.

Date:

(Signatures of the Bidder with Name, Designation & Company's Seal)

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

ANNEXURE- III
FORMAT FOR CLARIFICATION

(To be Typed & submitted in the Letter Head of the Company/Firm of Bidder)

To,

_____ (Write Name and Designation of Officer of BHEL inviting the Tender);

Bharat Heavy Electricals Limited,
Central Procurement Cell (CPC), 8th Floor, BHEL SADAN,
Plot No. 25, Sector-16A, Noida, U.P.-201301

Dear Sir,

Subject: **Request for Clarification**

Ref: 1) NIT/Tender Enquiry No: **BHEL/CPC/KOD/BOILER_FAB_STR/25/083**

2) All other pertinent issues till date

Sl. No.	Reference Clause of Tender Document	Existing provision of Tender Document	Bidder's Queries / Clarification	Reason for Queries / Clarification

Note:

1. All bidders have to list out all their Clarification / Deviations (if any) in detail in the above format.
2. Any deviation not mentioned above and shown separately or found hidden in offer, will not be taken cognizance of.
3. The final decision for acceptance / rejection of the deviations quoted by the bidder shall be at discretion of the Purchaser.

Yours faithfully,

(Signature, date & seal of authorized representative of the bidder)

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

ANNEXURE- IV
CERTIFICATE OF NO DEVIATION

(To be Typed & submitted in the Letter Head of the Company/Firm of Bidder)

To,

_____ (Write Name and Designation of Officer of BHEL inviting the Tender);

Bharat Heavy Electricals Limited,
Central Procurement Cell (CPC), 8th Floor, BHEL SADAN,
Plot No. 25, Sector-16A, Noida, U.P.-201301

Dear Sir,

Subject : **No Deviation Certificate**

Ref: 1) NIT/Tender Enquiry No: **BHEL/CPC/KOD/BOILER_FAB_STR/25/083**

2) All other pertinent issues till date

We hereby confirm that we have not changed/ modified/materially altered any of the tender documents as downloaded from the website/ issued by BHEL and in case of such observance at any stage, it shall be treated as null and void.

We also hereby confirm that we have neither set any Terms and Conditions and nor have we taken any deviation from the Tender conditions together with other references applicable for the above referred NIT/Tender Enquiry.

We further confirm our unqualified acceptance to all Terms and Conditions, unqualified compliance to Tender Conditions.

We confirm to have submitted offer in accordance with tender instructions and as per aforesaid references.

Thanking you,

Yours faithfully,

**(Signature, date & seal of authorized
representative of the bidder)**

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

ANNEXURE – V

LOADING CRITERIA

No deviation in Tender terms & conditions are generally acceptable and bids with deviation are liable to be rejected. However exceptional circumstances, BHEL may accept the deviations with loadings as given below;

1. PAYMENT TERMS:

Loading of any deviation in the Payment terms w.r.t NIT terms shall be as follows;

“Base rate of SBI (as applicable on the date of bid opening; Techno-commercial bid opening in case of two part bids) + 6%, shall be considered for loading for the period of relaxation sought by Bidder.”

2. LIQUIDATED DAMAGES/ PENALTY:

Any Loading on LD clause shall be to the extent to which it is not agreed to by the Bidder (at offered value).

3. GUARANTEE/ WARRANTY PERIOD:

No deviation is permitted

4. PERFORMANCE SECURITY:

No deviation is permitted

NOTE: Any new Loading factor/s arising out of Techno-commercial clarifications / discussions stage shall be intimated to all eligible Tenderers before opening of Price bid.

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

ANNEXURE- VI

REVERSE AUCTION (RA) FORMAT

Authorization of representative who will participate in the on-line Reverse Auction Process:-

1	Name of the Bidder	
2	Name & Designation of Official	
3	Postal address (complete)	
4	Telephone nos. (land line & mobile both)	
5	E-mail address	
6	Name of place/ state/country, wherefrom s/he will participate in the reverse auction	

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

ANNEXURE – VII

REVERSE AUCTION PROCESS COMPLIANCE FORM

(The bidders are required to print this on their company's letterhead and sign, stamp before RA)

To

~~M/s. {Service provider
Postal address}~~

Sub: Agreement to the Process related Terms and Conditions

Dear Sir,

This has reference to the Terms & Conditions for the Reverse Auction mentioned in the RFQ document for {Items} against BHEL enquiry/ RFQ no. { **BHEL/CPC/KOD/BOILER_FAB_STR/25/083** } dtd {.....}

This letter is to confirm that:

- ~~1. The undersigned is authorized official/ representative of the company to participate in RA and to sign the related documents.~~
- ~~2. We have studied the Reverse Auction guidelines (as available on www.bhel.com), and the Business rules governing the Reverse Auction as mentioned in your letter and confirm our agreement to them.~~
- ~~3. We also confirm that we have taken the training on the auction tool and have understood the functionality of the same thoroughly.~~
- ~~4. We also confirm that, in case we become L1 bidder, we will FAX/ email the price confirmation & break up of our quoted price as per Annexure VIII within **two** working days (of BHEL) after completion of RA event, besides sending the same by registered post/ courier both to M/s. BHEL and M/s. {Service provider.}~~

We, hereby confirm that we will honor the Bids placed by us during the auction process.

With regards

Signature with company seal

Name:

Company / Organization:

Designation within Company / Organization:

Address of Company / Organization:

Sign this document and FAX/ email it to M/s {Service provider} at {.....} prior to start of the Event.

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

ANNEXURE – VIII

RA PRICE CONFIRMATION AND BREAKUP

(To be submitted by L1 bidder after completion of RA)

To

~~M/s. Service provider~~

~~Postal address~~

CC: M/s BHEL

~~{Unit-~~

~~Address-}~~

Sub: **Final price quoted during Reverse Auction and price breakup**

Dear Sir,

We confirm that we have quoted.

Rs. {_____ in value & in words _____} for item(s) covered under tender enquiry No.

{.....} Dtd. {.....}

Total price of the items covered under above cited enquiries is inclusive of ~~{Packing & forwarding, GST freight and insurance charges up to {.....} District, {.....} State and Type Test Charges etc., other as per NIT}~~

as our final landed prices as quoted during the Reverse Auction conducted today {date} which will be valid for a period of {_____ in nos. & in words _____} days.

The price break-up is as given below.

_____ Total – Rs. **in value & in words**

Yours sincerely,

For _____

Name:

Company:

Date:

Seal:

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

ANNEXURE- IX

NON-DISCLOSURE CERTIFICATE

(To be Typed & submitted in the Letter Head of the Company/Firm of Bidder)

I/We understand that BHEL, Central Procurement Cell (CPC) is committed to Information Security Management System as per their Information Security Policy.

Hence, I/We M/sWho are submitting offer for providing services to BHEL against Tender Enquiry No. **BHEL/CPC/KOD/BOILER_FAB_STR/25/083** hereby undertake to comply with the following in line with Information Security Policy of BHEL.

☐ To maintain confidentiality of documents & information which shall be used during the execution of the Contract.

☐ The documents & information shall not be revealed to or shared with third party which shall not be in the business interest of BHEL, Central Procurement Cell (CPC).

Date:

**(Signatures of the Bidder with Name,
Designation & Company's Seal)**

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

ANNEXURE – X

DECLARATION REGARDING INSOLVENCY/ LIQUIDATION/ BANKRUPTCY PROCEEDINGS

(To be typed and submitted in the Letter Head of the Company/Firm of Bidder)

To,

_____ (Write Name and Designation of Officer of BHEL inviting the Tender);

Bharat Heavy Electricals Limited,
Central Procurement Cell (CPC), 8th Floor, BHEL SADAN,
Plot No. 25, Sector-16A, Noida, U.P.-201301

Dear Sir/Madam,

Sub: DECLARATION REGARDING INSOLVENCY/ LIQUIDATION/ BANKRUPTCY PROCEEDINGS

Ref: NIT/Tender Specification No: **BHEL/CPC/KOD/BOILER_FAB_STR/25/083**

I/We, _____ declare that, I/We
am/are not admitted under insolvency resolution process or liquidation under Insolvency and Bankruptcy Code, 2016,
as amended from time to time or under any other law as on date, by NCLT or any adjudicating authority/authorities.

**Sign. of the AUTHORISED SIGNATORY
(With Name, Designation and Company seal)**

Place:

Date:

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

ANNEXURE – XI

DECLARATION BY AUTHORISED SIGNATORY OF BIDDER

(To be typed and submitted in the Letter Head of the Company/Firm of Bidder)

To,

_____ (Write Name and Designation of Officer of BHEL inviting the Tender);

Bharat Heavy Electricals Limited,
Central Procurement Cell (CPC), 8th Floor, BHEL SADAN,
Plot No. 25, Sector-16A, Noida, U.P.-201301

Dear Sir,

Sub: **Declaration by Authorised Signatory**

Ref: 1) NIT/Tender Specification No: **BHEL/CPC/KOD/BOILER_FAB_STR/25/083**

2) All other pertinent issues till date

I/We, hereby certify that all the information and data furnished by me with regard to the above Tender Specification are true and complete to the best of my knowledge. I have gone through the specifications, conditions, stipulations and all other pertinent issues till date, and agree to comply with the requirements and Intent of the specification.

I further certify that I am authorised to represent on behalf of my Company/Firm for the above mentioned tender and a valid Power of Attorney to this effect is likewise enclosed.

Yours faithfully,

(Signature, Date & Seal of Authorized
Signatory of the Bidder)

Date:

Enclosed: Power of Attorney

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

ANNEXURE – XII

POWER OF ATTORNEY for SUBMISSION OF TENDER

(To be typed on non-judicial stamp paper of minimum Rs. 100/- and Notarized)

KNOW ALL MEN BY THESE PRESENTS, that I/We do hereby make, nominate, constitute and appoint Mr., whose signature given below herewith to be true and lawful Attorney of M/s..... hereinafter called 'Company', for submitting Tender/entering into Contract and inter alia, sign, execute all papers and to do necessary lawful acts on behalf of Company with M/s Bharat Heavy Electricals Ltd, Central Procurement Cell (CPC), in connection with.....

..... vide Tender Specification No: **BHEL/CPC/KOD/BOILER_FAB_STR/25/083**, dated

And the Company do hereby agree to ratify and confirm all acts, deeds, things or proceedings as may be lawfully done by the said attorney and by or on behalf of the company and in the name of the company, by virtue of the powers conferred herein and the same shall be binding on the company and shall have full force and effect.

IN WITNESS WHEREOF, the common seal of the company has been hereunto affixed in the manner hereinafter appearing on the document.

Dated at _____, this _____ day of _____

Director/CMD/Partner/Proprietor

Signature of Mr. (Attorney)

Attested by: Director/CMD/Partner/Proprietor

Witness

Notary Public

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

ANNEXURE – XIII

DECLARATION BY AUTHORISED SIGNATORY OF BIDDER

(To be typed and submitted in the Letter Head of the Company/Firm of Bidder)

To,

_____ (Write Name and Designation of Officer of BHEL inviting the Tender);
 Bharat Heavy Electricals Limited,
 Central Procurement Cell (CPC), 8th Floor, BHEL SADAN,
 Plot No. 25, Sector-16A, Noida, U.P.-201301

Dear Sir,

Sub : **Declaration by Authorised Signatory regarding Authenticity of submitted documents.**

Ref : 1) NIT/Tender Enquiry No. & Date: **BHEL/CPC/KOD/BOILER_FAB_STR/25/083 Dated:**
 2) All other pertinent issues till date

I/We, hereby certify that all the documents submitted by us in support of possession of “Qualifying Requirements” are true copies of the original and are fully compliant required for qualifying / applying in the bid and shall produce the original of same as and when required by Bharat Heavy Electricals Limited.

I / We hereby further confirm that no tampering is done with documents submitted in support of our qualification as bidder. I / We understand that at any stage (during bidding process or while executing the awarded works) if it is found that fake / false / forged bid qualifying / supporting documents / certificates were submitted, it would lead to summarily rejection of our bid / termination of contract. BHEL shall be at liberty to initiate other appropriate actions as per the terms of the Bid / Contract and other extant policies of Bharat Heavy Electricals Limited.

Yours faithfully,

**(Signature, Date & Seal of Authorized
Signatory of the Bidder)**

Date:

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

ANNEXURE – XIV

INTEGRITY PACT

Between

Bharat Heavy Electricals Ltd. (BHEL), a company registered under the Companies Act 1956 and having its registered office at "BHEL House", Siri Fort, New Delhi - 110049 (India) hereinafter referred to as "The Principal", which expression unless repugnant to the context or meaning hereof shall include its successors or assigns of the ONE PART

and

_____, (description of the party along with address), hereinafter referred to as "The Bidder/ Contractor" which expression unless repugnant to the context or meaning hereof shall include its successors or assigns of the OTHER PART

Preamble

The Principal intends to award, under laid-down organizational procedures, contract/s for **Tender Enquiry No: BHEL/CPC/KOD/BOILER FAB STR/25/083 for Supply of Factory Finished Fabricated Structure of Boiler (Columns (Plus, Plus-I and Box etc.), Bracings, Wall beams, Floor Beams, Trusses etc.) up-to Project Site, based on input design & detailed drawing, Quality Work Instructions (QWIs) and Technical Specification as provided by BHEL for Unit#1 and Unit#2 of 2X800 MW Koderma Project.** The Principal values full compliance with all relevant laws of the land, rules and regulations, and the principles of economic use of resources, and of fairness and transparency in its relations with its Bidder(s)/ Contractor(s).

In order to achieve these goals, the Principal will appoint Independent External Monitor(s), who will monitor the tender process and the execution of the contract for compliance with the principles mentioned above.

Supplier / Vendor

Section 1- Commitments of the Principal

- 1.1 The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles:-
 - 1.1.1 No employee of the Principal, personally or through family members, will in connection with the tender for, or the execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.
 - 1.1.2 The Principal will, during the tender process treat all Bidder(s) with equity and reason. The Principal will in particular, before and during the tender process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential/ additional information through which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

1.1.3 The Principal will exclude from the process all known prejudiced persons.

1.2 If the Principal obtains information on the conduct of any of its employees which is a penal offence under the Indian Penal Code 1860 and Prevention of Corruption Act 1988 or any other statutory penal enactment, or if there be a substantive suspicion in this regard, the Principal will inform its Vigilance Office and in addition can initiate disciplinary actions.

Section 2 - Commitments of the Bidder(s)/ Contractor(s)

2.1 The Bidder(s)/ Contractor(s) commit himself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the contract execution.

2.1.1 The Bidder(s)/ Contractor(s) will not, directly or through any other person or firm, offer, promise or give to the Principal or to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material, immaterial or any other benefit which he/ she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the execution of the contract.

2.1.2 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.

2.1.3 The Bidder(s)/ Contractor(s) will not commit any penal offence under the relevant Indian Penal Code (IPC) and Prevention of Corruption Act; further the Bidder(s)/ Contractor(s) will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.

2.1.4 Foreign Bidder(s)/ Contractor(s) shall disclose the name and address of agents and representatives in India and Indian Bidder(s)/ Contractor(s) to disclose their foreign principals or associates. The Bidder(s)/ Contractor(s) will, when presenting his bid, disclose any and all payments he has made, and is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.

2.2 The Bidder(s)/ Contractor(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.

2.3 The Bidder(s)/ Contractor(s) shall not approach the Courts while representing the matters to IEMs and will await their decision in the matter.

Section 3 - Disqualification from tender process and exclusion from future contracts

If the Bidder(s)/ Contractor(s), before award or during execution has committed a transgression through a violation of Section 2 above, or acts in any other manner such as to put his reliability or credibility in question, the Principal is

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	---	---	------------------

entitled to disqualify the Bidder(s)/ Contractor(s) from the tender process or take action as per the separate "Guidelines on Banning of Business dealings with Suppliers/ Contractors", framed by the Principal.

Section 4 - Compensation for Damages

- 4.1 If the Principal has disqualified the Bidder from the tender process prior to the award according to Section 3, the Principal is entitled to demand and recover the damages equivalent Earnest Money Deposit/ Bid Security.
- 4.2 If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract according to section 3, the Principal shall be entitled to demand and recover from the Contractor liquidated damages equivalent to 5% of the contract value or the amount equivalent to Security Deposit/ Performance Bank Guarantee, whichever is higher.

Section 5 - Previous Transgression

- 5.1 The Bidder declares that no previous transgressions occurred in the last 3 years with any other company in any country conforming to the anti-corruption approach or with any other Public Sector Enterprise in India that could justify his exclusion from the tender process.
- 5.2 If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

Section 6 - Equal treatment of all Bidders/ Contractors / Sub-contractors

- 6.1 The Principal will enter into agreements with identical conditions as this one with all Bidders and Contractors. In case of sub-contracting, the Principal contractor shall be responsible for the adoption of IP by his sub-contractors and shall continue to remain responsible for any default by his sub-contractors.
- 6.2 The Principal will disqualify from the tender process all bidders who do not sign this pact or violate its provisions.

Section 7 - Criminal Charges against violating Bidders/ Contractors /Subcontractors

If the Principal obtains knowledge of conduct of a Bidder, Contractor or Subcontractor, or of an employee or a representative or an associate of a Bidder, Contractor or Subcontractor which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal will inform the Vigilance Office.

Section 8 -Independent External Monitor(s)

- 8.1 The Principal appoints competent and credible Independent External Monitor for this Pact. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
- 8.2 The Monitor is not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. He reports to the CMD, BHEL.

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	--	---

- 8.3 The Bidder(s)/ Contractor(s) accepts that the Monitor has the right to access without restriction to all contract documentation of the Principal including that provided by the Bidder(s)/ Contractor(s). The Bidder(s)/ Contractor(s) will grant the monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his contract documentation. The same is applicable to Sub-contractor(s). The Monitor is under contractual obligation to treat the information and documents of the Bidder(s)/ Contractor(s) / Sub-contractor(s) with confidentiality in line with Non- disclosure agreement.
- 8.4 The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the contract provided such meetings could have an impact on the contractual relations between the Principal and the Contractor. The parties offer to the Monitor the option to participate in such meetings.
- 8.5 The role of IEMs is advisory, would not be legally binding and it is restricted to resolving issues raised by an intending bidder regarding any aspect of the tender which allegedly restricts competition or bias towards some bidders. At the same time, it must be understood that IEMs are not consultants to the Management. Their role is independent in nature and the advice once tendered would not be subject to review at the request of the organization.
- 8.6 For ensuring the desired transparency and objectivity in dealing with the complaints arising out of any tendering process, the matter should be examined by the full panel of IEMs jointly as far as possible, who would look into the records, conduct an investigation, and submit their joint recommendations to the Management.
- 8.7 The IEMs would examine all complaints received by them and give their recommendations/ views to CMD, BHEL, at the earliest. They may also send their report directly to the CVO and the Commission, in case of suspicion of serious irregularities requiring legal/ administrative action. IEMs will tender their advice on the complaints within 10 days as far as possible.
- 8.8 The CMD, BHEL shall decide the compensation to be paid to the Monitor and its terms and conditions.
- 8.9 IEM should examine the process integrity; they are not expected to concern themselves with fixing of responsibility of officers. Complaints alleging mala fide on the part of any officer of the organization should be looked into by the CVO of the concerned organisation.
- 8.10 If the Monitor has reported to the CMD, BHEL, a substantiated suspicion of an offence under relevant Indian Penal Code/ Prevention of Corruption Act, and the CMD, BHEL has not, within reasonable time, taken visible action to proceed against such offence or reported it to the Vigilance Office, the Monitor may also transmit this information directly to the Central Vigilance Commissioner, Government of India.
- 8.11 The number of Independent External Monitor(s) shall be decided by the CMD, BHEL.
- 8.12 The word 'Monitor' would include both singular and plural.

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

Section 9 - Pact Duration

9.1 This Pact shall be operative from the date IP is signed by both the parties till the final completion of contract for successful bidder and for all other bidders 6 months after the contract has been awarded. Issues like warranty / guarantee etc. should be outside the purview of IEMs.

9.2 If any claim is made/ lodged during currency of IP, the same shall be binding and continue to be valid despite the lapse of this pact as specified above, unless it is discharged/ determined by the CMD, BHEL.

Section 10 - Other Provisions

10.1 This agreement is subject to Indian Laws and jurisdiction shall be registered office of the Principal, i.e. New Delhi.

10.2 Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.

10.3 If the Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members.

10.4 Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

10.5 Only those bidders / contractors who have entered into this agreement with the Principal would be competent to participate in the bidding. In other words, entering into this agreement would be a preliminary qualification.

For & On behalf of the Principal

(Office Seal)

Place-----

Date-----

Witness: _____

(Name & Address) _____

For & On behalf of the Bidder/ Contractor

(Office Seal)

Witness: _____

(Name & Address) _____

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

ANNEXURE – XV

DECLARATION CONFIRMING KNOWLEDGE ABOUT SITE CONDITIONS

(To be typed and submitted in the Letter Head of the Company/Firm of Bidder)

To,

_____ (Write Name and Designation of Officer of BHEL inviting the Tender);

Bharat Heavy Electricals Limited,
Central Procurement Cell (CPC), 8th Floor, BHEL SADAN,
Plot No. 25, Sector-16A, Noida, U.P.-201301

Dear Sir,

Sub: Declaration confirming knowledge about Site conditions

Ref: 1) NIT/Tender Specification No: **BHEL/CPC/KOD/BOILER_FAB_STR/25/083**

2) All other pertinent issues till date

I/We, _____ hereby declare and confirm that we have visited the Project Site as referred in BHEL Tender Specifications and acquired full knowledge and information about the Site conditions including Wage structure, Industrial Climate, the Law & Order and other conditions prevalent at and around the Site. We further confirm that the above information is true and correct and we shall not raise any claim of any nature due to lack of knowledge of Site conditions.

I/We, hereby offer to carry out work as detailed in above mentioned Tender Specification, in accordance with Terms & Conditions thereof.

Yours faithfully,

(Signature, Date & Seal of Authorized
Representative of the Bidder)

Date :

Place:

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

ANNEXURE – XVI
DECLARATION

Date: _____

To,

(Write Name and Designation of Officer of BHEL inviting the Tender);

Bharat Heavy Electricals Limited,
Central Procurement Cell (CPC), 8th Floor, BHEL SADAN,
Plot No. 25, Sector-16A, Noida, U.P.-201301

Sub: Details of related firms and their area of activities

Dear Sir/ Madam,

Please find below details of firms owned by our family members that are doing business/ registered for same item with BHEL, _____ (NA, if not applicable)

1	Material Category/ Work Description	
	Name of Firm	
	Address of Firm	
	Nature of Business	
	Name of Family Member	
	Relationship	
2	Material Category/ Work Description	
	Name of Firm	
	Address of Firm	
	Nature of Business	
	Name of Family Member	
	Relationship	
...		

Note: I certify that the above information is true and I agree for penal action from BHEL in case any of the above information furnished is found to be false.

Regards,

(_____)

From: M/s _____
Supplier Code: _____
Address: _____

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

ANNEXURE – XVII

DECLARATION FOR RELATION IN BHEL

(To be typed and submitted in the Letter Head of the Company/Firm of Bidder failing which the offer of Bidder is liable to be summarily rejected)

To,

_____ (Write Name and Designation of Officer of BHEL inviting the Tender);

Bharat Heavy Electricals Limited,
Central Procurement Cell (CPC), 8th Floor, BHEL SADAN,
Plot No. 25, Sector-16A, Noida, U.P.-201301

Dear Sir,

Sub: **Declaration for relation in BHEL**

Ref: 1) NIT/Tender Specification No: **BHEL/CPC/KOD/BOILER_FAB_STR/25/083**

I/We hereby submit the following information pertaining to relation/relatives of Proprieter/Partner(s)/ Director(s) employed in BHEL

Tick (✓) any one as applicable:

1. The Proprieter, Partner(s), Director(s) of our Company/Firm DO NOT have any relation or relatives employed in BHEL

OR

2. The Proprieter, Partner(s), or Director(s) of our Company/Firm HAVE relation/relatives employed in BHEL and their particulars are as below:

i.

ii.

**(Signature, Date & Seal of Authorized
Signatory of the Bidder)**

Note:

1. Attach separate sheet, if necessary.
2. If BHEL Management comes to know at a later date that the information furnished by the Bidder is false, BHEL reserves the right to take suitable against the Bidder/Supplier / Vendor.

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

ANNEXURE – XVIII

**DECLARATION REGARDING MINIMUM LOCAL CONTENT IN LINE WITH
REVISED PUBLIC PROCUREMENT (PREFERENCE TO MAKE IN INDIA), ORDER 2017 DATED 04TH
JUNE, 2020 AND SUBSEQUENT ORDER(S)**

(To be typed and submitted in the Letter Head of the Entity/Firm providing certificate as applicable)

To,

_____ (Write Name and Designation of Officer of BHEL inviting the Tender);

Bharat Heavy Electricals Limited,
Central Procurement Cell (CPC), 8th Floor, BHEL SADAN,
Plot No. 25, Sector-16A, Noida, U.P.-201301

Dear Sir,

Sub: Declaration reg. minimum local content in line with Public Procurement (Preference to Make in India), Order 2017-Revision, dated 04th June, 2020 and subsequent order(s).

Ref : 1) NIT/Tender Specification No: **BHEL/CPC/KOD/BOILER_FAB_STR/25/083**

2) All other pertinent issues till date

We hereby certify that the items/works/services offered by..... (specify the name of the organization here) has a local content of _____ % and this meets the local content requirement for '**Class-I local supplier**' / '**Class II local supplier**' ** as defined in Public Procurement (Preference to Make in India), Order 2017-Revision dated 04.06.2020 issued by DPIIT and subsequent order(s).

The details of the location(s) at which the local value addition is made are as follows:

- | | |
|----------|----------|
| 1. _____ | 2. _____ |
| 3. _____ | 4. _____ |

Thanking you,
Yours faithfully,

**(Signature, Date & Seal of
Authorized Signatory of the Bidder)**

**** - Strike out whichever is not applicable.**

Note:

1. Bidders to note that above format, duly filled & signed by authorized signatory, shall be submitted along with the techno-commercial offer.
2. In case the bidder's quoted value is in excess of Rs. 10 crores, the authorized signatory for this declaration shall necessarily be the statutory auditor or cost auditor of the company (in the case of companies) or a practising cost accountant or practicing chartered accountant (in respect of suppliers other than companies).
3. In the event of false declaration, actions as per the above order and as per BHEL Guidelines shall be initiated against the bidder.

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

ANNEXURE – XIX

**DECLARATION REGARDING COMPLIANCE TO RESTRICTIONS UNDER RULE 144 (xi) OF
GFR 2017**

(To be typed and submitted in the Letter Head of the Entity/ Firm providing certificate as applicable)

To,

_____ (Write Name and Designation of Officer of BHEL inviting the Tender);
Bharat Heavy Electricals Limited,
Central Procurement Cell (CPC), 8th Floor, BHEL SADAN,
Plot No. 25, Sector-16A, Noida, U.P.-201301

Dear Sir,

Sub: Declaration regarding compliance to Restrictions under Rule 144 (xi) of GFR 2017

Ref: 1) NIT/Tender Specification No: **BHEL/CPC/KOD/BOILER_FAB_STR/25/083**
2) All other pertinent issues till date

I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India. I certify that _____ (**SPECIFY THE NAME OF THE ORGANIZATION HERE**), is not from such a country/ has been registered with the Competent Authority (*attach valid registration by the Competent Authority, i.e., the Registration Committee constituted by the Dept. for Promotion of Industry and Internal Trade (DPIIT).*)

I hereby certify that we fulfil all requirements in this regard and is eligible to be considered.

Thanking you,
Yours faithfully,

**(Signature, Date & Seal of
Authorized Signatory of the Bidder)**

Note: Bidders to note that in case above certification given by a bidder, whose bid is accepted, is found to be false, then this would be a ground for immediate termination and for taking further action in accordance with law and as per BHEL guidelines

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	---	---	------------------

ANNEXURE – XX

BANK ACCOUNT DETAILS FOR E-PAYMENT

(To be given on Letter head of the Company /Firm of Bidder, and **ENDORSED (SIGNED & STAMPED) BY THE BANK** to enable BHEL release payments through Electronic Fund Transfer (EFT/RTGS)

1. Beneficiary Name :
2. Beneficiary Account No. :
3. Bank Name & Branch :
4. City/Place :
5. 9 digit M ICR Code of Bank Branch :
6. IFSC Code of Bank Branch :
7. Beneficiary E-mail ID :
(for payment confirmation)

NOTE: In case Bank endorsed certificate regarding above has already been submitted earlier, kindly submit photocopy of the same

NOTE:

- THE DETAILS MAY EITHER BE ATTESTED BY YOUR BANKERS OR ACCOMPANIED BY A CANCELLED CHEQUE LEAF WITH IFSC CODE & A/C NO.PRINTED ON IT.
- UNDERTAKING TO REPORT IMMEDIATELY ANY CHANGES IN THE ABOVE TO BE SUBMITTED ON THE COMPANY'S LETTER HEAD

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	---	---	------------------

ANNEXURE – XXI

PROFORMA OF BANK GUARANTEE FOR EARNEST MONEY

(On non-Judicial paper of appropriate value)

Bank Guarantee No.....

Date.....

To

BHARAT HEAVY ELECTRICALS LIMITED

CPC, 8th Floor, BHEL Sadan,

PS-HQ, Noida-201301

Dear Sirs,

In accordance with the terms and conditions of Invitation for Bids/Notice Inviting Tender No.....¹(Tender Conditions), M/s. having its registered office at² (hereinafter referred to as the 'Tenderer'), is submitting its bid for the work of.....³ invited by M/s Bharat Heavy Electricals Limited (A Govt. of India Undertaking) a company incorporated under the Companies Act, 1956, having its registered office at BHEL House, Siri Fort, Asiad, New Delhi – 110049 through its Unit at Bharat Heavy Electricals Limited, CPC, 8th Floor, BHEL Sadan, PS-HQ, Noida-201301.

The Tender Conditions provide that the Tenderer shall pay a sum of Rs as Earnest Money Deposit in the form therein mentioned. The form of payment of Earnest Money Deposit includes Bank Guarantee executed by a Scheduled Bank.

In lieu of the stipulations contained in the aforesaid Tender Conditions that an irrevocable and unconditional Bank Guarantee against Earnest Money Deposit for an amount of⁵ is required to be submitted by the Tenderer as a condition precedent for participation in the said Tender and the Tenderer having approached us for giving the said Guarantee,

we, the[Name & address of the Bank]

..... having our Registered Office at

.....(hereinafter referred to as the Bank) being the Guarantor under this

Guarantee, hereby irrevocably and unconditionally undertake to forthwith and immediately pay to the Employer without any demur, merely on your first demand any sum or sums of Rs.

.....⁵ (in words Rupees.....) without any reservation, protest, and recourse and without the beneficiary needing to prove or demonstrate reasons for its such demand.

Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs.

_____.

We undertake to pay to the Employer any money so demanded notwithstanding any dispute or disputes raised by the Vendor/Contractor in any suit or proceeding pending before any Court or Tribunal, Arbitrator or any other authority, our liability under this present being absolute and unequivocal.

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	--	---

The payment so made by us under this Guarantee shall be a valid discharge of our liability for payment hereunder and the Tenderer shall have no claim against us for making such payment.

We Bank further agree that the Employer shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Tender or to extend the time of submission of from time to time or to postpone for any time or from time to time any of the powers exercisable by the Employer against the said Tenderer and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Tenderer or for any forbearance, act or omission on the part of the Employer or any indulgence by the Employer to the said Tenderer or by any such matter or thing whatsoever which under the law relating to sureties would but for this provision have effect of so relieving us.

The Bank also agrees that the Employer at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Tenderer and notwithstanding any security or other guarantee that the Employer may have in relation to the Tenderer's liabilities.

This Guarantee shall be irrevocable and shall remain in force upto and including.....⁶ and shall be extended from time to time for such period as may be desired by the Employer.

This Guarantee shall not be determined or affected by liquidation or winding up, dissolution or change of constitution or insolvency of the Tenderer but shall in all respects and for all purposes be binding and operative until payment of all money payable to the Employer in terms hereof. However, unless a demand or claim under this Guarantee is made on us in writing on or before the⁷ we shall be discharged from all liabilities under this Guarantee.

This Bank Guarantee shall be governed, construed and interpreted in accordance with the laws of India.

⁸Courts at shall alone have exclusive jurisdiction over any matter arising out of or in connection with this Bank Guarantee.

We, Bank lastly undertake not to revoke this guarantee during its currency except with the previous consent of the Employer in writing.

Notwithstanding anything to the contrary contained hereinabove:

- a. The liability of the Bank under this Guarantee shall not exceed.....⁵.....
- b. This Guarantee shall be valid up to⁶
- c. Unless the Bank is served a written claim or demand on or before⁷ all rights under this guarantee shall be forfeited and the Bank shall be relieved and discharged from all liabilities under this guarantee irrespective of whether or not the original bank guarantee is returned to the Bank

We, Bank, have power to issue this Guarantee under law and the undersigned as a duly authorized person has full powers to sign this Guarantee on behalf of the Bank.

For and on behalf of
(Name of the Bank)

Date.....

Place of Issue.....

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	---	---	------------------

¹ Details of the Invitation to Bid/Notice Inviting Tender

² Name and Address of the Tenderer

³ Details of the Work

⁴ Name of the Employer

⁵ BG Amount in words and Figures

⁶ Validity Date

⁷ Date of Expiry of Claim Period

⁸ Jurisdiction @

Notes:

1. Units are advised that expiry of claim period may be kept 3-6 months after validity date. It may be ensured that the same is in line with the agreement/ contract entered with the Vendor.
2. The BG should be on Non-Judicial Stamp paper/e-stamp paper of appropriate value as per Stamp Act prevailing in the State(s) where the BG is submitted or is to be acted upon or the rate prevailing in the State where the BG was executed, whichever is higher. The Stamp Paper/e-stamp paper shall be purchased in the name of Contractor/sub-contractor /vendor/ Bank issuing the guarantee.
3. In line with the GCC, SCC or contractual terms, Unit may carry out minor modifications in the Standard BG Formats. If required, such modifications may be carried out after taking up appropriately with the Unit/Region's Law Deptt.
4. **In Case of Bank Guarantees submitted by Foreign Vendors-**
 - a. **From Nationalized/Public Sector / Private Sector/ Foreign Banks (BG issued by Branches in India)** can be accepted subject to the condition that the Bank Guarantee should be enforceable in the town/city or at nearest branch where the Unit is located i.e., Demand can be presented at the Branch located in the town/city or at nearest branch where the Unit is located.
 - b. **From Foreign Banks (wherein Foreign Vendors intend to provide BG from local branch of the Vendor country's Bank)**
 - b.1** In such cases, in the Tender Enquiry/ Contract itself, it may be clearly specified that Bank Guarantee issued by **any of the Consortium Banks only** will be accepted by BHEL. As such, Foreign Vendor needs to make necessary arrangements for issuance of Counter- Guarantee by Foreign Bank in favour of the Indian Bank's (BHEL's Consortium Bank) branch in India. It is advisable that all charges for issuance of Bank Guarantee/ counter- Guarantee should be borne by the Foreign Vendor. The tender stipulation should clearly specify these requirements.
 - b.2** In case, **Foreign Vendors intend to provide BG from Overseas Branch** of our Consortium Bank (e.g. if a BG is to be issued by SBI Frankfurt), the same is acceptable. However, the procedure at **sl.no. b.1** will required to be followed.
 - b.3** The BG issued may preferably be subject to Uniform Rules for Demand Guarantees (URDG) 758 (as amended from time to time). The BG Format provided to them should clearly specify the same.

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

ANNEXURE – XXII

PROFORMA OF INSURANCE SURETY BOND TOWARDS EARNEST MONEY DEPOSIT

(To be stamped in accordance with Stamp Act of India)

Insurance Surety Bond No.

Date.....

To

**Bharat Heavy Electricals Limited,
Central Procurement Cell (CPC), 8th Floor, BHEL SADAN,
Plot No. 25, Sector-16A, Noida, U.P.-201301**

Dear Sirs,

In accordance with Invitation for Bids under your Tender Ref. No., M/s..... [Bidder's Name] having its Registered/Head Office at (hereinafter called the 'Bidder') wish to participate in the said bid for [Name of Package] as an irrevocable

Insurance Surety Bond against Earnest Money Deposit for an amount of(*) valid for(**) days from(***) required to be submitted by the Bidder as a condition precedent for participation in the said bid which amount is liable to be forfeited on the happening of any contingencies as mentioned under the Bidding Documents.

We, the [Name & address of the Insurer] having our Head Office at(#) guarantee and undertake to pay immediately on demand by **Bharat Heavy Electricals Limited** (hereinafter called the 'Employer') the amount of(*) without any reservation, protest, demand and recourse. Any such demand made by the 'Employer' shall be conclusive and binding on us irrespective of any dispute or difference raised by the Bidder and/or any right/remedy available to the bidder in terms thereof.

This Insurance Surety Bond shall be unconditional as well as irrevocable and remain in full force for a period of(**) days from the latest due date of bid opening and a claim period of(@)days. If any further extension

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	---	---	------------------

of this Insurance Surety Bond is required, the same shall be extended to such required period (not exceeding one year) on receiving instructions from M/s [Bidder's Name] on whose behalf this Insurance Surety Bond is issued.

In witness where of the Insurer, through its authorized officer, has set its hand and stamp on this.....day of..... 20..... at

(Signature)

(Name)

(Designation with Insurer Stamp)

Authorised Vide Power of Attorney

No.....

Date.....

WITNESS:

1.(Signature)
.....(Name)
.....(Official Address)

2.(Signature)
.....(Name)
.....(Official Address)

NOTE:

- (*) The amount as specified in the Notice inviting Tender (NIT).
(**) This shall be the duration of Offer Validity Date.
(***) This shall be the latest date of opening of Techno-Commercial bids.
(#) Complete mailing address of the Head Office of the Insurer to be given.
(@) This date shall be expiry of claim period & may be kept 3-6 months beyond the validity date
- The Insurance Surety Bond shall be from an Insurer as per guidelines issued by Insurance Regulatory and Development Authority of India (IRDAI) as amended from time to time.
- The Employer shall be the Creditor, the Bidder shall be the Principal debtor and the Insurance company/Insurer shall be the Surety in respect of the Insurance Surety Bond to be issued by the Insurer.
- The Insurance Surety Bond should be on Non-Judicial stamp paper/e-stamp paper of appropriate value as per Stamp Act prevailing in the state (s) where the Insurance Surety Bond is submitted or is to be acted upon or the rate prevailing in State where the Insurance Surety Bond is executed, whichever is higher. The Stamp Paper/e-stamp paper shall be purchased in the name of Bidder/Insurer issuing the Insurance Surety Bond.
- While getting the Insurance Surety Bond issued, Bidders are required to ensure compliance to the points

	CENTRAL PROCUREMENT CELL (CPC) <i>PURCHASE DEPARTMENT</i>	GENERAL CONDITIONS OF CONTRACT (GCC)	<i>ANNEXURES</i>
--	--	---	--

mentioned in Form of Bank Guarantee/Insurance Surety Bond Verification Check List enclosed in this Section of Bidding Documents. Further, Bidders are required to fill up this Form and enclose the same with the Insurance Surety Bond.

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

ANNEXURE – XXIII

BANK GUARANTEE FOR PERFORMANCE SECURITY

Bank Guarantee No:

Date:

To

NAME

& ADDRESSES OF THE BENEFICIARY

Dear Sirs,

In consideration of Bharat Heavy Electricals Limited (hereinafter referred to as the 'Employer' which expression shall unless repugnant to the context or meaning thereof, include its successors and permitted assigns) incorporated under the Companies Act, 1956 and having its registered office at BHEL House, Siri Fort, Asiad, New Delhi – 110049 ¹ through its Unit at PS-NR, Noida. (name of the Unit) having awarded to (Name of the Vendor / Contractor / Supplier) with its registered office at _____² hereinafter referred to as the 'Vendor / Contractor / Supplier', which expression shall unless repugnant to the context or meaning thereof, include its successors and permitted assigns), a contract Ref No.....dated³ valued at Rs.....⁴ (Rupees -----) / FC.....(in words.....) for⁵ (hereinafter called the 'Contract') and the Vendor / Contractor / Supplier having agreed to provide a Contract Performance Bank Guarantee, equivalent to% (.... Percent) of the said value of the Contract to the Employer for the faithful performance of the Contract,

We,, (hereinafter referred to as the Bank), having registered/Head office at and inter alia a branch at being the Guarantor under this Guarantee, hereby, irrevocably and unconditionally undertake to forthwith and immediately pay to the Employer any sum or sums upto a maximum amount of Rs -----⁶ (Rupees -----) without any demur, immediately on first demand from the Employer and without any reservation, protest, and recourse and without the Employer needing to prove or demonstrate reasons for its such demand.

Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs. _____.

We undertake to pay to the Employer any money so demanded notwithstanding any dispute or disputes raised by the Vendor / Contractor / Supplier in any suit or proceeding pending before any Court or Tribunal, Arbitrator or any other authority, our liability under this present being absolute and unequivocal.

The payment so made by us under this Guarantee shall be a valid discharge of our liability for payment thereunder and the Vendor / Contractor / Supplier shall have no claim against us for making such payment.

We thebank further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said Contract/ satisfactory completion of the performance guarantee period as per the terms of the Contract and that it shall continue to be enforceable till all the dues of the Employer under or by virtue of the said Contract have been fully paid and its claims satisfied or discharged.

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	--	---

WeBANK further agree with the Employer that the Employer shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Contract or to extend time of performance by the said Vendor / Contractor / Supplier from time to time or to postpone for any time or from time to time any of the powers exercisable by the Employer against the said Vendor / Contractor / Supplier and to forbear or enforce any of the terms and conditions relating to the said Contract and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Vendor / Contractor / Supplier or for any forbearance, act or omission on the part of the Employer or any indulgence by the Employer to the said Vendor / Contractor / Supplier or by any such matter or thing whatsoever which under the law relating to sureties would but for this provision have effect of so relieving us.

The Bank also agrees that the Employer at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Vendor / Contractor / Supplier and notwithstanding any security or other guarantee that the Employer may have in relation to the Vendor / Contractor / Supplier's liabilities.

This Guarantee shall remain in force upto and including.....⁷ and shall be extended from time to time for such period as may be desired by Employer.

This Bank Guarantee shall be governed, construed and interpreted in accordance with the laws of India.

⁸Courts at Delhi shall alone have exclusive jurisdiction over any matter arising out of or in connection with this Bank Guarantee.

This Guarantee shall not be determined or affected by liquidation or winding up, dissolution or change of constitution or insolvency of the Vendor / Contractor / Supplier but shall in all respects and for all purposes be binding and operative until payment of all money payable to the Employer in terms thereof.

Unless a demand or claim under this guarantee is made on us in writing on or before the⁹ we shall be discharged from all liabilities under this guarantee thereafter.

We, BANK lastly undertake not to revoke this guarantee during its currency except with the previous consent of the Employer in writing.

Notwithstanding anything to the contrary contained hereinabove:

- a. The liability of the Bank under this Guarantee shall not exceed.....⁶
- b. This Guarantee shall be valid up to⁷
- c. Unless the Bank is served a written claim or demand on or before⁸ all rights under this guarantee shall be forfeited and the Bank shall be relieved and discharged from all liabilities under this guarantee irrespective of whether or not the original bank guarantee is returned to the Bank.

We, Bank, have power to issue this Guarantee under law and the undersigned as a duly authorized person has full powers to sign this Guarantee on behalf of the Bank.

For and on behalf of
(Name of the Bank)

Dated.....

Place of Issue.....

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

¹ NAME AND ADDRESS OF EMPLOYER i.e., Bharat Heavy Electricals Limited

² NAME AND ADDRESS OF THE VENDOR /CONTRACTOR / SUPPLIER.

³ DETAILS ABOUT THE NOTICE OF AWARD/CONTRACT REFERENCE

⁴ CONTRACT VALUE

⁵ PROJECT/SUPPLY DETAILS

⁶ BG AMOUNT IN FIGURES AND WORDS

⁷ VALIDITY DATE

⁸ Jurisdiction@

⁹ DATE OF EXPIRY OF CLAIM PERIOD

Note:

1. Units are advised that expiry of claim period may be kept 3-6 months after validity date. It may be ensured that the same is in line with the agreement/ contract entered with the Vendor.
2. The BG should be on Non-Judicial Stamp paper/e-stamp paper of appropriate value as per Stamp Act prevailing in the State(s) where the BG is submitted or is to be acted upon or the rate prevailing in the State where the BG was executed, whichever is higher. The Stamp Paper/e-stamp paper shall be purchased in the name of Vendor/Contractor/Supplier /Bank issuing the guarantee.
3. In line with the GCC, SCC or contractual terms, Unit may carry out minor modifications in the Standard BG Formats. If required, such modifications may be carried out after taking up appropriately with the Unit/Region's Law Deptt.
4. **In Case of Bank Guarantees submitted by Foreign Vendors-**
 - a. **From Nationalized/Public Sector / Private Sector/ Foreign Banks (BG issued by Branches in India)** can be accepted subject to the condition that the Bank Guarantee should be enforceable in the town/city or at nearest branch where the Unit is located i.e. Demand can be presented at the Branch located in the town/city or at nearest branch where the Unit is located.
 - b. **From Foreign Banks (wherein Foreign Vendors intend to provide BG from local branch of the Vendor country's Bank)**
 - b.1** In such cases, in the Tender Enquiry/ Contract itself, it may be clearly specified that Bank Guarantee issued by **any of the Consortium Banks only** will be accepted by BHEL. As such, Foreign Vendor needs to make necessary arrangements for issuance of Counter- Guarantee by Foreign Bank in favour of the Indian Bank's (BHEL's Consortium Bank) branch in India. It is advisable that all charges for issuance of Bank Guarantee/ counter- Guarantee should be borne by the Foreign Vendor. The tender stipulation should clearly specify these requirements.
 - b.2** In case, Foreign Vendors intend to provide BG from Overseas Branch of our Consortium Bank (e.g. if a BG is to be issued by SBI Frankfurt), the same is acceptable. However, the procedure at **sl.no. b.1** will required to be followed.
 - b.3** The BG issued may preferably be subject to Uniform Rules for Demand Guarantees (URDG) 758 (as amended from time to time). The BG Format provided to them should clearly specify the same.

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

ANNEXURE – XXIV

PROFORMA OF INSURANCE SURETY BOND TOWARDS PERFORMNCE SECURITY

(To be stamped in accordance with Stamp Act of India)

Insurance Surety Bond No.....

Date.....

To,
Bharat Heavy Electricals Limited,
Power Sector Eastern Region,
DJ-9/1, Sector – II, Salt Lake,
Kolkata (W.B.)– 700091

Dear Sirs,

In consideration, to **Bharat Heavy Electricals Limited** (Hereinafter referred to as the 'Employer' which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators and assigns), for having awarded, **M/s ... (Contractor's name)** ... having its Registered /Head Office at ... (Address) ... (Hereinafter referred to as the 'Contractor', which expression shall unless repugnant to the context or meaning thereof, include its successors administrators, executors and assigns), a Contract by issue of Letter of Award No. **dated ...dd/mm/yyyy...** and the same having been unequivocally accepted by the contractor, valued at **Rs. (Rupees only)** and the Contractor having agreed to provide Security Deposit towards fulfilment of any obligations in terms of the provisions of the contract equivalent to% (percent) of the said value of the Contract to the Employer amounting **Rs. (Rupees Only).**

We **[Name & Address of the Insurer]** having its Head Office at (hereinafter referred to as the 'Insurer', which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns) do hereby guarantee and undertake to pay the Employer, on demand any and all amount payable by the Contractor in terms of the agreement to provide Security Deposit, to the extent of **Rs (Rupees Only)** as aforesaid at any time up to **...dd/mm/yyyy... [#]** without any condition, demur, reservation, contest, recourse or protest and/or without any reference to the Contractor. Any such demand made by the Employer on the Insurer shall be conclusive and binding notwithstanding any difference between the Employer and the Contractor or the Insurer and the Contractor or any dispute pending before any Court, Tribunal, Arbitrator or any other authority. The Insurer undertakes not to revoke this Insurance Surety Bond during its currency and or any period extended under the

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	---	---	------------------

contract, without prior consent of the Employer and further agrees that the guarantee herein contained shall be enforceable till ...dd/mm/yyyy... [@].

The Employer shall have the fullest liberty, without affecting in any way the liability of the Insurer under this Insurance Surety Bond, from time to time to extend the performance of the Contract by the Contractor for the purpose of which, the Insurer shall be liable to extend the validity of the present Insurance Surety Bond without any demur, condition, protest and the Insurer shall at no point in time have an option of revoking the same, The Employer shall have the fullest liberty, without affecting this Insurance Surety Bond, to postpone from time to time the exercise of any powers vested in them or of any right which they might have against the Contractor, and to exercise the same at any time in any manner, and either to enforce or to forbear to enforce any covenants, contained or implied, in the Contract between the Employer and the Contractor or any other course or remedy or security available to the Employer. The Insurer shall not be released of its obligations under these presents by any exercise by the Employer of its liberty with reference to the aforesaid or any of them or by reason of any other act or forbearance or other acts of omission or commission on the part of the Employer or any other indulgence shown by the Employer or by any other matter or thing whatsoever which under law would, but for this provision, have the effect of relieving the Insurer.

The Insurer also agrees and undertakes that the Employer at its option shall be entitled to enforce this Insurance Surety Bond against the Insurer as a Surety, in the first instance without proceeding against the Contractor and notwithstanding any security or other guarantee that the Employer may have in relation to the Contractor's liabilities.

Notwithstanding anything contained herein above our liability under this Insurance Surety Bond is restricted to **Rs.** **(Rupees Only)** and it shall remain in force up to and including ...dd/mm/yyyy... [#] and shall be extended from time to time for such period, as may be desired by **M/s** ...(Contractor's name)... on whose behalf this Insurance Surety Bond has been given.

Dated this..... day of..... 20 at.....

(Signature)

(Name)

(Designation with Insurer Stamp)

Authorised Vide Power of Attorney

No.....

Date.....

WITNESS :

1.(Signature)

.....(Name)

.....(Official Address)

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

2.(Signature)
.....(Name)
.....(Official Address)

Notes:

- 1) **# Validity date:** The validity of Insurance Surety Bond towards Security Deposit shall be till actual completion work (Contract period) + Guarantee Period + 3 months.
- 2) **@ Date of Expiry of Claim Period:** The Claim period may be kept 3 to 6 months beyond the validity date.
- 3) The Insurance Surety Bond shall be from an Insurer as per guidelines issued by Insurance Regulatory and Development Authority of India (IRDAI).
- 4) The Employer shall be the Creditor, the Contractor shall be the Principal debtor and the Insurance company/Insurer shall be the Surety in respect of the Insurance Surety Bond to be issued by the Insurer.
- 5) The Insurance Surety Bond should be on Non-Judicial stamp paper/e-stamp paper of appropriate value as per Stamp Act prevailing in the state(s) where the Insurance Surety Bond is executed, whichever is higher. The Stamp Paper/e-stamp paper shall be purchased in the name of Bidder/Insurer issuing the Insurance Surety Bond.

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

ANNEXURE – XXV

PROFORMA OF BANK GUARANTEE (in lieu of RETENTION AMOUNT)

(To be stamped in accordance with Stamp Act of India)

Bank Guarantee No:

Date:

To

**Bharat Heavy Electricals Limited,
Power Sector Eastern Region,
DJ-9/1, Sector – II, Salt Lake,
Kolkata (W.B.)– 700091**

Dear Sirs,

In consideration of Bharat Heavy Electricals Limited (hereinafter referred to as the 'Employer' which expression shall unless repugnant to the context or meaning thereof, include its successors and permitted assigns) incorporated under the Companies Act, 1956 and having its registered office at BHEL House, Siri Fort, Asiad, New Delhi – 110049 ¹ through its Unit at Bharat Heavy Electricals Limited, Power Sector Eastern Region, DJ-9/1, Sector – II, Salt Lake, Kolkata (W.B.) – 700091, having agreed to exempt (Name of the Vendor / Contractor / Supplier) with its registered office at _____ ² (hereinafter called the said "Contractor" which term includes supplier), from demand under the terms and conditions of the Contract reference No. _____ dated _____ ³ valued at Rs. ⁴ (Rupees -----) ⁴ (hereinafter called the said Contract), of Retention Amount for the due fulfilment by the said Contractor of the terms and conditions contained in the said Contract, on production of a Bank Guarantee for Rs. _____ ⁵ (Rupees _____ only)

⁵.

We _____ (indicate the name and address of the Bank) having its Head Office at _____ (address of the head Office) (hereinafter referred to as the Bank), at the request of _____ [Contractor(s)], being the Guarantor under this Guarantee, do hereby irrevocably and unconditionally undertake to forthwith and immediately pay to the Employer, an amount not exceeding Rs. _____ without any demur, immediately on demand from the Employer and without any reservation, protest, and recourse and without the Employer needing to prove or demonstrate reasons for its such demand.

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	--	---

Any such demand made on the bank, shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs._____.

We undertake to pay to the Employer any money so demanded notwithstanding any dispute or disputes raised by the Contractor(s) in any suit or proceeding pending before any Court or Tribunal or Arbitrator or any other authority, our liability under this present being absolute and unequivocal.

The payment so made by us under this guarantee shall be a valid discharge of our liability for payment hereunder and the Contractor(s) shall have no claim against us for making such payment.

We, further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said Contract and that it shall continue to be enforceable till all the dues of the Employer under or by virtue of the said Contract have been fully paid and its claims satisfied & the Employer certifies that the terms and conditions of the said Contract have been fully and properly carried out by the said contractor(s) or acceptance of the final bill or discharge of this guarantee by the Employer, whichever is earlier. This guarantee shall initially remain in force upto and including _____⁶ and shall be extended from time to time for such period as may be desired by the Employer. Unless a demand or claim under this guarantee is made on us in writing on or before the _____⁷, we shall be discharged from all the liability under this guarantee thereafter.

We, ____ (indicate the name of the Bank) ____ further agree with the Employer that the Employer shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Contract or to extend time of performance by the said contractor(s) from time to time or to postpone for any time or from time to time any of the powers exercisable by the Employer against the said contractor(s) and to forbear or enforce any of the terms and conditions relating to the said Contract and we shall not be relieved from our liability by any reason of any such variation or extension being granted to the said contractor(s) or for any forbearance, act or omission on the part of the Employer or any indulgence by the Employer to the said contractor(s) or by any such matter or thing whatsoever which under the law relating to sureties would but for this provision have effect of so relieving us.

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

The Bank also agrees that the Employer at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Contractor and notwithstanding any security or other guarantee that the Employer may have in relation to the Contractor's liabilities.

This Guarantee shall not be determined or affected by liquidation or winding up, dissolution or change of constitution or insolvency of the Contractor but shall in all respects and for all purposes be binding and operative until payment of all money payable to the Employer in terms thereof. This guarantee will not be discharged due to the change in the constitution of the Bank or the Contractor(s).

We..... BANK lastly undertake not to revoke this guarantee during its currency except with the previous consent of the Employer in writing.

Notwithstanding anything to the contrary contained hereinabove:

- a) The liability of the Bank under this Guarantee shall not exceed.....⁵
- b) This Guarantee shall be valid up to⁶
- c) Unless the Bank is served a written claim or demand on or before⁷ all rights under this guarantee shall be forfeited and the Bank shall be relieved and discharged from all liabilities under this guarantee irrespective of whether or not the original bank guarantee is returned to the Bank.
- d) We, _____ Bank, have power to issue this Guarantee under law and the undersigned as a duly authorized person has full powers to sign this Guarantee on behalf of the Bank.

Date _____ Day of _____
for _____ (indicate the name of the Bank) _____

(Signature of Authorized signatory)

¹ ADDRESS OF THE EMPLOYER. i.e. Bharat Heavy Electricals Limited

² ADDRESS OF THE VENDOR /CONTRACTOR / SUPPLIER.

³ DETAILS ABOUT THE NOTICE OF AWARD/CONTRACT REFERENCE

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

⁴ CONTRACT VALUE

⁵ BG AMOUNT IN FIGURES AND WORDS

⁶ VALIDITY DATE: *The validity of Bank Guarantee towards Retention amount shall be till actual completion work (Contract period) + 3 months*

⁷ DATE OF EXPIRY OF CLAIM PERIOD: *The Claim period may be kept 3 to 6 months beyond the validity date*

Note:

1. Bidders are advised that expiry of claim period may be kept 3-6 months after validity date.
2. The BG should be on Non-Judicial Stamp paper/e-stamp paper of appropriate value as per Stamp Act prevailing in the State(s) where the BG is submitted or is to be acted upon or the rate prevailing in the State where the BG was executed, whichever is higher. The Stamp Paper/e-stamp paper shall be purchased in the name of Vendor/Contractor/Supplier /Bank issuing the guarantee.
3. In Case of Bank Guarantees submitted by Foreign Vendors-
 - a. **From Nationalized/Public Sector / Private Sector/ Foreign Banks (BG issued by Branches in India)** can be accepted subject to the condition that the Bank Guarantee should be enforceable in the town/city or at nearest branch where the Unit is located i.e. Demand can be presented at the Branch located in the town/city or at nearest branch where the Unit is located.
 - b. **From Foreign Banks (wherein Foreign Vendors intend to provide BG from local branch of the Vendor Country's Bank)**
 - b.1 In such cases, in the Tender Enquiry/ Contract itself, it may be clearly specified that Bank Guarantee issued by **any of the Consortium Banks only** will be accepted by BHEL. As such, Foreign Vendor needs to make necessary arrangements for issuance of Counter- Guarantee by Foreign Bank in favour of the Indian Bank's (BHEL's Consortium Bank) branch in India. It is advisable that all charges for issuance of Bank Guarantee/ counter- Guarantee should be borne by the Foreign Vendor. The tender stipulation should clearly specify these requirements.
 - b.2 In case, Foreign Vendors intend to provide BG from Overseas Branch of our Consortium Bank (e.g. if a BG is to be issued by SBI Frankfurt), the same is acceptable. However, the procedure at sl.no. b.1 will required to be followed.

The BG issued may preferably be subject to Uniform Rules for Demand Guarantees (URDG) 758 (as amended from time to time). The BG Format provided to them should clearly specify the same.

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

ANNEXURE – XXVI

PROFORMA OF INSURANCE SURETY BOND TOWARDS RETENTION AMOUNT

(To be stamped in accordance with Stamp Act of India)

Insurance Surety Bond No.....

Date.....

To,
Bharat Heavy Electricals Limited,
Power Sector Eastern Region,
DJ-9/1, Sector – II, Salt Lake,
Kolkata (W.B.)– 700091

Dear Sirs,

In consideration, to **Bharat Heavy Electricals Limited** (Hereinafter referred to as the 'Employer' which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators and assigns), for having awarded, M/s ... **(Contractor's name)** ... having its Registered /Head Office at (Hereinafter referred to as the 'Contractor', which expression shall unless repugnant to the context or meaning thereof, include its successors administrators, executors and assigns), a Contract by issue of Letter of Award No.
dated ...dd/mm/yyyy... and the same having been unequivocally accepted by the contractor, valued at **Rs. (Rupees only)** and the Contractor having agreed to provide Retention Amount for the due fulfilment by the said Contractor of the terms and conditions contained in the said Contract equivalent to% (percent) of the said value of the Contract to the Employer amounting **Rs. (Rupees Only).**

We **[Name & Address of the Insurer]** having its Head Office at (hereinafter referred to as the 'Insurer', which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns) do hereby guarantee and undertake to pay the Employer, on demand any and all amount payable by the Contractor in terms of the agreement to provide Retention amount, to the extent of **Rs (Rupees Only)** as aforesaid at any time up to ...**dd/mm/yyyy... [#]** without any condition, demur, reservation, contest, recourse or protest and/or without any reference to the Contractor. Any such demand made by the Employer on the Insurer shall be conclusive and binding notwithstanding any difference between the Employer and the Contractor or the Insurer and the Contractor or any dispute pending before any Court, Tribunal, Arbitrator or any other authority. The Insurer undertakes

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	--	---

not to revoke this Insurance Surety Bond during its currency and or any period extended under the contract, without prior consent of the Employer and further agrees that the guarantee herein contained shall be enforceable till ...dd/mm/yyyy... [@].

The Employer shall have the fullest liberty, without affecting in any way the liability of the Insurer under this Insurance Surety Bond, from time to time to extend the performance of the Contract by the Contractor for the purpose of which, the Insurer shall be liable to extend the validity of the present Insurance Surety Bond without any demur, condition, protest and the Insurer shall at no point in time have an option of revoking the same, The Employer shall have the fullest liberty, without affecting this Insurance Surety Bond, to postpone from time to time the exercise of any powers vested in them or of any right which they might have against the Contractor, and to exercise the same at any time in any manner, and either to enforce or to forbear to enforce any covenants, contained or implied, in the Contract between the Employer and the Contractor or any other course or remedy or security available to the Employer. The Insurer shall not be released of its obligations under these presents by any exercise by the Employer of its liberty with reference to the aforesaid or any of them or by reason of any other act or forbearance or other acts of omission or commission on the part of the Employer or any other indulgence shown by the Employer or by any other matter or thing whatsoever which under law would, but for this provision, have the effect of relieving the Insurer.

The Insurer also agrees and undertakes that the Employer at its option shall be entitled to enforce this Insurance Surety Bond against the Insurer as a Surety, in the first instance without proceeding against the Contractor and notwithstanding any security or other guarantee that the Employer may have in relation to the Contractor's liabilities. Notwithstanding anything contained herein above our liability under this Insurance Surety Bond is restricted to **Rs. (Rupees Only)** and it shall remain in force up to and including ...dd/mm/yyyy... [#] and shall be extended from time to time for such period, as may be desired by **M/s ...(Contractor's name)...** on whose behalf this Insurance Surety Bond has been given.

Dated this..... day of..... 20 at.....

(Signature)

(Name)

(Designation with Insurer Stamp)

Authorised Vide Power of Attorney

No.....

Date.....

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
---	--	---	------------------

WITNESS :

1.(Signature)
.....(Name)
.....(Official Address)
2.(Signature)
.....(Name)
.....(Official Address)

Notes:

- 1) **# Validity date:** The validity of Insurance Surety Bond towards Retention Amount shall be till actual completion work (Contract period) + 3 months
- 2) **@ Date of Expiry of Claim Period:** The Claim period may be kept 3 to 6 months beyond the validity date.
- 3) The Insurance Surety Bond shall be from an Insurer as per guidelines issued by Insurance Regulatory and Development Authority of India (IRDAI).
- 4) The Employer shall be the Creditor, the Contractor shall be the Principal debtor and the Insurance company/Insurer shall be the Surety in respect of the Insurance Surety Bond to be issued by the Insurer.
- 5) The Insurance Surety Bond should be on Non-Judicial stamp paper/e-stamp paper of appropriate value as per Stamp Act prevailing in the state(s) where the Insurance Surety Bond is executed, whichever is higher. The Stamp Paper/e-stamp paper shall be purchased in the name of Bidder/Insurer issuing the Insurance Surety Bond.

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	--	---

ANNEXURE – XXVII

BANK GUARANTEE FOR INTEREST BEARING REFUNDABLE ADVANCE

(To be stamped in accordance with Stamp Act of India)

Bank Guarantee No:

Date:

To

**Bharat Heavy Electricals Limited,
Power Sector Eastern Region,
DJ-9/1, Sector – II, Salt Lake,
Kolkata (W.B.)– 700091**

Dear Sirs,

This deed of Guarantee made this _____ day of _____ two thousand _____ by < **Name and Address of Bank**> hereinafter called the "The Guarantor" (which expression shall unless repugnant to the context or meaning thereof be deemed to include its successors and assigns) in favour of M/S Bharat Heavy Electricals Limited a Company incorporated under the Companies Act, 1956, having its registered office at BHEL House, Siri Fort, New Delhi - 110049 through its unit at Bharat Heavy Electricals Limited, Power Sector Eastern Region, DJ-9/1, Sector – II, Salt Lake, Kolkata (W.B.) – 700091, hereinafter called "The Company" (which expression shall unless repugnant to the context or meaning thereof be deemed to include its successors and assigns).

WHEREAS M/s. _____ (hereinafter referred to as the Contractor) have entered into a Contract arising out of Letter of Award no.: _____ dtd. _____ (hereinafter referred to as "the Contract") for the < **Name of work**> with the Company.

AND WHEREAS the Contract inter-alia provides that the Company will pay to the Contractor interest bearing advance of Rs. _____ (Rupees _____ only) on certain terms and conditions specified in the Contract subject to the Contractor furnishing a Bank Guarantee for Rs. _____ (Rupees _____ only) in favour of the Company.

AND WHEREAS the Company has agreed to accept a Bank Guarantee from a Bank to cover the said advance.

AND WHEREAS the Contractor has approached the Guarantor and in consideration of the arrangement arrived at between the Contractor and the Guarantor, the Guarantor has agreed to give the Guarantee as hereinafter mentioned in favour of the Company.

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	--	---

NOW THIS DEED WITNESSES AS FOLLOWS: -

- (1) In consideration of the Company having agreed to advance a sum of Rs. _____ (Rupees _____ only) to the Contractor, the Guarantor do hereby guarantee the due recovery by the Company of the said advance with interest thereon as provided according to the terms and conditions of the Contract. If the said Contractor fails to utilise the said advance for the purpose of the Contract and /or the said advance together with interest as aforesaid is not fully recovered by the Company the Guarantor do hereby unconditionally and irrevocably undertake to pay to the Company without demur and merely on a demand, to the extent of the said sum of Rs. _____ (Rupees _____ only) any claim made by the Company on them for the loss or damage caused to or suffered by the Company by reasons of the Company not being able to recover in full the advance with interest as aforesaid.
- (2) The decision of the Company whether the Contractor has failed to utilise the said advance or any part thereof for the purpose of the Contract and / or as to the extent of loss or damage caused to or suffered by the Company by reason of the Company not being able to recover in full the said sum of Rs. _____ with interest if any shall be final and binding on the Guarantor, irrespective of the fact whether the Contractor admits or denies the default or questions the correctness of any demand made by the Company in any Court Tribunal or Arbitration proceedings or before any other Authority.
- (3) The Company shall have the fullest liberty without affecting in any way the liability of the Guarantor under this Guarantee, from time to time to vary any of the terms and conditions of the Contract or extend time of performance by the Contractor or to postpone for any time and from time to time any of the powers exercisable by it against the Contractor and either enforce or forebear from enforcing any of the terms and conditions governing the Contract or securities available to the Company and the Guarantor shall not be released from its liability under these presents by any exercise by the Company of the liberty with reference to the matters aforesaid or by reasons of time being given to the Contractor or any other forbearance, act or commission on the part of the Company or any indulgence by the Company to the Contractor or of any other matter or thing whatsoever which under the law relating to sureties would, but for this provision have the effect of so releasing the Guarantor from its liability under this guarantee.
- (4) The Guarantor further agrees that the Guarantee herein contained shall remain in full force and effect during the period till the Company discharges this Guarantee, subject to however, that the Company shall have no

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	--	---

claim under this Guarantee after ____ i.e. (the present date of validity of Bank Guarantee unless the date of validity of this Bank Guarantee is further extended from time to time, as the case may be) unless a notice of the claim under this Guarantee has been served on the Guarantor before the expiry of the said period in which case the same shall be enforceable against the Guarantor notwithstanding the fact that the same is enforced after the expiry of the said period.

- (5) The Guarantor undertakes not to revoke this Guarantee during the period it is in force except with the previous consent of the Company in writing and agrees that any liquidation or winding up or insolvency or dissolution or any change in the constitution of the Contractor or the Guarantor shall not discharge the Guarantor's liability hereunder.
- (6) It shall not be necessary for the Company to proceed against the Contractor before proceeding against the Guarantor and the Guarantee herein contained shall be enforceable against them notwithstanding any security which the Company may have obtained or obtain from the Contractor shall at the time when proceedings are taken against the Guarantor hereunder be outstanding or unrealised.
- (7) Notwithstanding anything contained herein before, our liability under the Guarantee is restricted to Rs. ____ (Rupees ____). Our guarantee shall remain in force until ____, i.e. the present date of validity of Bank Guarantee unless the date of validity of this Bank Guarantee is further extended from time to time. Unless a claim or demand under this guarantee is made against us on or before-----, we shall be discharged from our liabilities under this Guarantee thereafter.
- (8) Any claim or dispute arising under the terms of this document shall only be enforced or settled in the courts at Kolkata only.
- (9) The Guarantor hereby declares that it has power to execute this Guarantee under its Memorandum and Articles of Association and the executant has full powers to do so on its behalf under the Power of Attorney dated ____ (To be incorporated by the Bank) granted to him by the proper authorities of the Guarantor.

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

IN WITNESS whereof the _____(Bank) has hereunto set and subscribed its hand the day, month and year first, above written.

(Name of the Bank)

Signed for and on behalf of the Bank
(Designation of the Authorized Person Signing the Guarantee)

(Signatory No.-----)

DATED:
SEAL

=====

Notes:

1. The BG shall be executed on non-judicial stamp papers of adequate value procured in the name of the Bank in the State where the Bank is located.

The BG is required to be sent by the executing Bank directly to BHEL at the address where tender is submitted / accepted, under sealed cover.



ANNEXURE- XXVIII

LIST OF CONSORTIUM BANK

Sl. No.	NAME OF THE BANK
1	State Bank of India
2	Canara Bank
3	IDBI Bank Limited
4	ICICI Bank Limited
5	HDFC Bank Limited
6	Axis Bank
7	IndusInd Bank Limited
8	Bank of Baroda
9	Exim Bank
10	Indian Bank
11	Punjab National Bank
12	Union Bank of India
13	Yes Bank Limited
14	RBL Bank Ltd.
15	Indian Overseas Bank
16	Kotak Mahindra Bank Limited
17	Federal Bank Limited
18	Hongkong and Shanghai Banking Corporation Ltd

	CENTRAL PROCUREMENT CELL (CPC) <i>PURCHASE DEPARTMENT</i>	GENERAL CONDITIONS OF CONTRACT (GCC)	<i>ANNEXURES</i>
--	---	--	--

ANNEXURE – XXIX

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. If BHEL is to initiate Conciliation, then, the invitation to Conciliate shall be extended to the concerned Stakeholder in **Format-2** hereto. Where the stakeholder is to initiate the Conciliation, the notice for initiation of Conciliation shall be sent in **Format-3** hereto.
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. The appointment of Conciliator(s) shall be completed and communicated by the concerned Department/Group of BHEL Unit/Division/Region/Business Group to the other party and the Conciliator(s) within 30 days from the date of acceptance of the invitation to conciliate by the concerned party in the **Format-4**. The details of the Claim, and counter-claim, if any, shall be intimated to the Conciliator(s) simultaneously in **Format-1**.
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.

	CENTRAL PROCUREMENT CELL (CPC) <i>PURCHASE DEPARTMENT</i>	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	---	---	------------------

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

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	---	---	------------------

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; or,
 - 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:

Sl. No.	Particulars	Amount
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) 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 the,

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

		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. 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.

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	--	---

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. 4 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.

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

FORMAT-1

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 Claim(s)/Counter Claim(s):

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

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.

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

FORMAT-2

FORMAT FOR NOTICE INVOKING CONCILIATION CLAUSE BY BHEL FOR REFERRING THE DISPUTES TO CONCILIATION THROUGH IEC

To,

M/s. (Stakeholder's name)

Subject: **NOTICE FOR INVOCATION OF THE CONCILIATION CLAUSE OF THE CONTRACT BY BHEL**

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

Dear Sir/Madam,

As you are aware, with reference to above referred Contract/MoU/Agreement/LOI/LOA, certain disputes have arisen, which, in spite of several rounds of mutual discussions and various correspondences have remained unresolved. The brief particulars of our claims which arise out of the above- referred Contract/MoU/Agreement/LOI/LOA are reproduced hereunder:

Sl. No.	Claim description	Amount involved

As you are aware, there is a provision in the captioned Contract/MoU/Agreement/LOI/ LOA for referring disputes to conciliation.

In terms of Clause -----of Procedure i.e., Annexure ----- to the Contract/MoU /Agreement / LOI / LOA, we hereby seek your consent to refer the matter to Conciliation by Independent Experts Committee to be appointed by BHEL. You are invited to provide your consent in writing to proceed with conciliation into the above mentioned disputes within a period of 30 days from the date of this letter along with details of counter-claims, if any, which you might have with regard to the subject Contract/ MoU/ Agreement/ LOI/ LOA.

Please note that upon receipt of your consent in writing within 30 days of the date of receipt of this letter by you, BHEL shall appoint suitable person(s) from the BHEL Panel of Conciliators.

This letter is being issued without prejudice to our rights and contentions available under the contract and law.

Thanking you.
Yours faithfully

Representative of BHEL

Note: The Format may be suitably modified, as required, based on facts and circumstances of the case.

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

FORMAT-3

FORMAT FOR NOTICE INVOKING CONCILIATION CLAUSE BY A STAKEHOLDER FOR REFERRING THE DISPUTES TO CONCILIATION THROUGH IEC

To,
BHEL (Head of the Unit/Division/Region/Business Group)

Subject: **NOTICE FOR INVOCATION OF THE CONCILIATION CLAUSE OF THE CONTRACT BY A STAKEHOLDER**

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

Dear Sir/Madam,

As you are aware, with reference to above referred Contract/MoU/Agreement/LOI/LOA, certain disputes have arisen, which, in spite of several rounds of mutual discussions and various correspondences have remained unresolved. The brief particulars of our claims which have arisen out of the above- referred Contract/MoU/Agreement/LOI/LOA are enumerated hereunder:

Sl. No.	Claim description	Amount involved

As you are aware, there is a provision in the captioned Contract/MoU/Agreement/LOI/ LOA for referring inter-se disputes of the Parties to conciliation.

We wish to refer the above-said disputes to Conciliation as per the said Clause of the captioned Contract/MoU/Agreement/LOI/ LOA. In terms of Clause -----of Procedure i.e., Annexure ----- to the Contract/MoU /Agreement / LOI / LOA, we hereby invite BHEL to provide its consent in writing to proceed with conciliation into the above mentioned disputes within a period of 30 days from the date of this letter along with details of counter-claims, if any, which it might have with regard to the subject Contract/ MoU/ Agreement/ LOI/ LOA and to appoint suitable person(s) as Conciliator(s) from the BHEL Panel of Conciliators.

This letter is being issued without prejudice to our rights and contentions available under the contract and law.

Thanking you
Yours faithfully

Representative of the Stakeholder

Note: The Format may be suitably modified, as required, based on facts and circumstances of the case.

	CENTRAL PROCUREMENT CELL (CPC) PURCHASE DEPARTMENT	GENERAL CONDITIONS OF CONTRACT (GCC)	ANNEXURES
--	--	---	------------------

FORMAT-4

FORMAT FOR INTIMATION TO THE STAKEHOLDER ABOUT APPOINTMENT OF CONCILIATOR/IEC

To,

M/s. (Stakeholder's name)

Subject: **INTIMATION BY BHEL TO THE STAKEHOLDER AND CONCILIATOR(S) ABOUT APPOINTMENT OF CONCILIATOR/IEC**

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

Sir,

This is with reference to letter dated ----- regarding reference of the disputes arising in connection with the subject Contract No/MoU/Agreement/LOI/LOA to conciliation and appointment of Conciliator(s).

In pursuance of the said letter, the said disputes are assigned to conciliation and the following persons are nominated as Conciliator(s) for conciliating and assisting the Parties to amicably resolve the disputes in terms of the Arbitration & Conciliation Act, 1996 and the Procedure --- to the subject Contract/MoU/Agreement/LOI/LOA, if possible.

Name and contact details of Conciliator(s)

- a)
- b)
- c).....

You are requested to submit the Statement of Claims or Counter-Claims (strike off whichever is inapplicable) before the Conciliator(s) in Format 5 (enclosed herewith) as per the time limit as prescribed by the Conciliator(s).

Yours faithfully,

Representative of BHEL

CC: To Conciliator(s)... for Kind Information please.
Encl.: As above

Note: The Format may be suitably modified, as required, based on facts and circumstances of the case.