

ADDITIONAL TERMS & CONDITIONS

1. General Instructions:

- Drawings pertaining to this tender will be issued to only those sellers who will submit duly filled NDA (Non-Disclosure agreement) to BHEL at e-mail ID i.e. kaushal@bhel.in/deepakkkumar1@bhel.in.
- Vendor to extend offer validity as and when required.
- Participation of bidders from countries sharing land borders with India shall be governed as per Rule 144(xi) of the General Financial Rules (GFRs) 2017.
- Vendor to offer best delivery schedule in line with BHEL tender requirement. Delivery is not Sacrosanct. However, offer of vendors may not be considered whose quoted delivery does not match with BHEL requirement.

2. Item Details-

As per Annexure- 1

3. Quality Requirements –

- PLEASE CONFIRM FOR PROVIDING TESTING AND CERTIFICATION AS PER ORDERING DOCUMENTS

4. Commercial Terms

Bidder to accept all terms and conditions as per GeM enquiry and GeM latest GTC.

5. Warranty Terms

Goods shall comply with the specifications for material, workmanship and performance. Unless otherwise specified, the warranty shall be for a period of **24 months** from the date of receipt.

6. Payment term:

Payment terms shall be as per followings:

For Non MSEs bidder:

100% payment will be released within 90 days of issue of consignee receipt-cum-acceptance certificate (CRAC) and on-line submission of bills unless otherwise specified in STC / ATC.

For MSEs bidder:

For MSEs (covered under MSME Act) which are registered and periodically renewed with BHEL, the payment will be made within 45 days or as prescribed in the relevant act. Benefits of MSE (such as EMD Waiver, Tender fee exemption, Price preference, Payment preference etc.) will be given only to those MSE Vendors who are manufacturers of offered items against the NIT. No MSE benefits

shall be provided to Agents / Stockists / Dealers / Traders etc. for the items offered but not manufactured by themselves.”

For Medium Enterprises:

100% payment along with taxes, freight & insurance will be made after receipt and acceptance of material and within 60 days from the date of invoice subject to submission of non-discrepant documents within 15 days of supply as per terms and conditions of Purchase Order.

7. Breach of contract, Remedies and Termination:

In case of breach of contract, 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 the value of the security instruments available is less than 10% of the contract value, the balance amount will be recovered in all or any of the following manners i. from dues available in the form of Bills payable to defaulted supplier against the same contract. ii. from the dues payable to defaulted supplier against other contracts in the same Region/Unit /any other region/unit iii. In-case recoveries are not possible with any of the above available options, Legal action shall be initiated for recovery against defaulted supplier. Further, levy of liquidated damages, debarment, termination, de-scoping, short-closure, et c., will be applied as per provisions of the contract.

8. Conflict of Interest among Bidders/ Agents

*"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*
- 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 authorise 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."*

9. Action against Bidders / vendor / supplier / contractor in case of default:

In order to protect the commercial interests of BHEL, BHEL shall take action against suppliers / contractors by way of suspension of business dealings, who either fail to perform or are in default without any reasonable cause, cause loss of business/ money/ reputation, indulge in malpractices, cheating, bribery, fraud or any other misconduct or formation of cartels so as to influence the bidding process or influence the price etc.

Suspension of Business Dealings could be in the form of “Hold” or “Banning” a supplier/ contractor or a bidder and shall be as per “Guidelines for Suspension of Business Dealings with Suppliers/ Contractors” available at BHEL’s website [https://www.bhel.com/guidelines-suspension-businessdealings-Suppliers contractors](https://www.bhel.com/guidelines-suspension-businessdealings-Suppliers-contractors)

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

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

1.2 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.

1.3 Commitment by Bidder/ Supplier/ Contractor:

1.3.1 The bidder/ supplier/ contractor commits 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.

1.3.2 The bidder/ supplier/ contractor 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.

1.3.3 The bidder/ supplier/ contractor 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/ contractor during pre-tendering/ tendering/ post tendering/ award/ execution/ post-execution stage indulges in malpractices, cheating, bribery, fraud or and other misconduct or formation of cartel so as to influence the bidding process or influence the price or acts or omits in any manner which tantamount to an offence punishable under any provision of the Indian Penal Code, 1860 or any other law in force in India, then, action may be taken against such bidder/ supplier/ contractor as per extant guidelines of the company available on [www. bhel.com](http://www.bhel.com) and/or under applicable legal provisions.

11. Breach of contract, Remedies and Termination:

In case of breach of contract, 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 the value of the security instruments available is less than 10% of the contract value, the balance amount will be recovered in all or any of the following manners:

- i. from dues available in the form of Bills payable to defaulted supplier against the same contract.
- ii. from the dues payable to defaulted supplier against other contracts in the same Region/Unit /any other region/unit
- iii. In-case recoveries are not possible with any of the above available options, Legal action shall be initiated for recovery against defaulted supplier.

12. Further, levy of liquidated damages, debarment, termination, de-scoping, short closure, etc., will be applied as per provisions of the contract.

13. Rest terms and conditions shall be as per GeM (Latest Version- applicable at the time of issuance of enquiry).

Annexure-1				
Items Detail				
Ref no:T/T206/24/1567C/1				
Sl No	Material Code	Description	Qty (in Kg)	Unit
1	HW2151704998	KEVLAR SHEETS (HIGH PRESSURE STEAM & WATER) 0.8	10	Kg
2	AA2151504018	KEVLAR SHEETS (HIGH PRESSURE STEAM & WATER) 0.4	10	Kg
3	HW2151704963	KEVLAR SHEETS (HIGH PRESSURE STEAM & WATER) 3.2	400	Kg
4	AA2151704068	KEVLAR SHEETS (HIGH PRESSURE STEAM & WATER) 2	80	Kg
5	HW2151702987	KEVLAR SHEETS (LOW PRESSURE STEAM AND WATER) 1.6	100	Kg
6	HW2151704980	KEVLAR SHEETS (HIGH PRESSURE STEAM & WATER) 1.6	60	Kg



Pre-Qualification Requirement for Para-aramid synthetic fiber sheet / Kevlar sheet

(For material code: HW2151702987, as per specification AA21502 Rev 02 of indent no.20241567)

Description

Para-aramid synthetic fiber sheet / Kevlar sheets are intended to be used as gasket/packing in condenser of thermal power plants

Qualification Criteria

Only the vendors meeting the below mentioned criteria shall be considered for further evaluation. Vendor to state their response as per Format below:

Sr. No.	PRE-QUALIFICATION REQUIREMENTS	VENDOR RESPONSE																											
1	Vendor should have the status of either as manufacturer or the Authorised dealer of an OEM for para-aramid synthetic fiber sheet / Kevlar sheet. Vendor to confirm.	YES / NO																											
2	Vendor to submit proof of manufacturer by submitting any of following documents i.e., ISO Certificate or Factory license or NSIC Certificate or any other relevant certificate/document issued by government authority. In case of non-manufacturer, vendor to provide a valid authorisation certificate from their principal OEM along with the documents for OEM as specified above.	Document Enclosed: YES / NO																											
3	Vendor must have experience of supply of Para-aramid synthetic fiber sheet / Kevlar sheets meeting the minimum technical parameters listed in Table – 1 below <table border="1" data-bbox="289 913 1334 1236"><caption>Table-1</caption><thead><tr><th>S. No.</th><th>Parameter</th><th>Value</th></tr></thead><tbody><tr><td>1</td><td>Max. Operating Pressure</td><td>2.0 N/mm2</td></tr><tr><td>2</td><td>Max. Operating Temperature</td><td>350 deg. C</td></tr><tr><td>3</td><td>Compressibility</td><td>6-14%</td></tr><tr><td>4</td><td>Recovery (min.)</td><td>40%</td></tr><tr><td>5</td><td>Tensile Strength (min.)</td><td>6.7 N/mm2</td></tr></tbody></table>	S. No.	Parameter	Value	1	Max. Operating Pressure	2.0 N/mm2	2	Max. Operating Temperature	350 deg. C	3	Compressibility	6-14%	4	Recovery (min.)	40%	5	Tensile Strength (min.)	6.7 N/mm2	YES / NO									
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4	Vendor should have experience of supply of Para-aramid synthetic fiber sheet / Kevlar sheets for industrial applications. Vendor must have executed at least two (2) nos. of purchase orders of Para-aramid synthetic fiber sheet / Kevlar sheets in last 7 years from the date of issuance of enquiry. In support of the above specified experience requirement, supplier to furnish details of purchase orders (fulfilling requirements as mentioned at Sl. No.3) in the format given in Table-2 below: <table border="1" data-bbox="289 1415 1399 1684"><caption>Table-2</caption><thead><tr><th>Sl. No.</th><th>Item Details</th><th>Operating pressure</th><th>Operating Temperature</th><th>Compressibility</th><th>Recovery</th><th>Tensile strength</th><th>Name, Address, Email & Contact Details of customer</th><th>P.O. Number & Date</th></tr></thead><tbody><tr><td>01</td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr><tr><td>02</td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr></tbody></table>	Sl. No.	Item Details	Operating pressure	Operating Temperature	Compressibility	Recovery	Tensile strength	Name, Address, Email & Contact Details of customer	P.O. Number & Date	01									02									Format Filled: YES / NO
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5	Vendor has to submit following documentary evidence in support of above experience: I. Unpriced Purchase Order Copies (as per above details)..... II. Dispatch documents of any one supply..... III. Test certificates pertaining to any one supply. The correlation of dispatch documents and test certificates with purchase orders referred in support of experience has to be ensured by the supplier	Document Enclosed: YES / NO YES / NO YES / NO																											

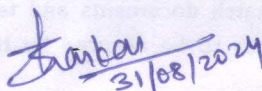
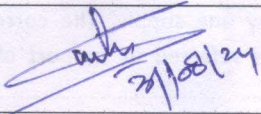
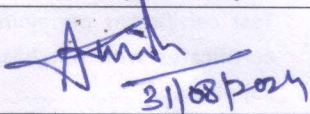


Pre-Qualification Requirement for Para-aramid synthetic fiber sheet / Kevlar sheet

	IV. Applicable Standard/International Standard for Para-aramid synthetic fiber sheet / Kevlar sheet supplied to Customer for BHEL reference only, if any.....	YES / NO
6	Testing Facilities: Supplier must have in-house testing facilities as per the requirement of enquiry specification. In case of outsourcing of tests, supplier to carry out tests at Government agency's accredited/recognized labs only. Supplier to confirm.	YES / NO

General Notes:

- Against vendor's reply, BHEL reserves the right to verify /ask additional information / documents / clarifications. In case any information is found to be false / incorrect, BHEL reserves the right to reject vendor's offer.
- Vendor's offer shall not be considered if vendor fails to furnish the document / information / clarification as mentioned above or vendor doesn't meet the acceptance criteria mentioned above.
- All the documents and correspondences shall be accepted in English language only.
- BHEL team may visit Vendor works to assess vendor's manufacturing and testing facilities, if required.

Prepared By	Checked By	Approved By
 31/08/2024	 31/08/24	 31/08/2024
Bhaskar Sundriyal (Manager / HXE)	Shiva Kant (Sr. Manager / HXE)	Alok Kumar Singh (Sr. DGM / HXE)

Pre-Qualification requirements for Para-Aramid Synthetic Fiber Sheet (Kevlar Sheet)

Sheets of Para-Aramid Synthetic Fiber (Kevlar or equivalent) are used as gasket/packing.

Sl. No.	Pre-qualification requirements	Vendor's Response
1	The Vendor should have experience of manufacturing & supplying of para-aramid synthetic fiber sheet in line with technical details as mentioned at Sl. No.-2 below. The vendor to confirm.	
2	Supplied para-aramid synthetic fiber sheet should meet the following parameters. a) Max. Operating Pressure - 2.0 N/mm ² or above b) Max. Operating Temperature- 50 deg. C or above c) Compressibility- 6-14% d) Recovery- 40% Min. e) Min. Tensile Strength- 6.7 N/mm ² The vendor to inform the actual parameters of supplied para-aramid synthetic fiber sheet.	
3	In support of Sl. No.-2 (above), vendor to furnish following information for previously supplied para-aramid synthetic fiber sheet meeting the above technical requirements as per Sl. No.-2. Minimum 01 No. P.O. must have been executed by the vendor in last ten (10) years from the date of issuance of enquiry. The vendor to confirm & furnish the following information for executed purchase orders. a) Customer name and its address b) Purchase Order No. & Date c) Name, designation, e-mail ID & Phone No. of the responsible person in customer's organization d) Thickness of supplied para-aramid synthetic fiber sheet e) Brand name of supplied para-aramid synthetic fiber sheet f) Total supplied quantity of para-aramid synthetic fiber sheet in Kg	
4	The Vendor to submit the following documents of supplied para-aramid synthetic fiber sheet for the successfully executed orders mentioned above at Sl. No.-3. a) Copy of Un-Priced Purchase Orders (P.O.). b) Material test certificate against any one of the above P.O. The submitted test certificates should have co-relation with P.O. c) Material acceptance certificate/dispatch document against any one of the above P.O. The submitted documents should have co-relation with P.O. d) Catalogue of supplied para-aramid synthetic fiber sheet (if available).	

Note:-

- Against vendor's replies, BHEL reserves the right to ask for more information/documents.
- Vendor's offer shall not be considered, if vendor fails to furnish the document/information and doesn't meet the acceptance criteria as mentioned above.
- In case information furnished by the vendor found false/incorrect, BHEL reserves the right to reject their offer.

Prepared by	Reviewed by	Approved by
<i>Susheel</i> 13/10/21	<i>Susheel</i> 13/10/21	<i>Lakhmi</i> 13/10/21
Susheel Kothiyal Dy Manager / STE-TG)	Susheel Kothiyal Dy Manager / STE-TG)	Lakhmi Singh (Manager/ STE-TG)

Pre-Qualification requirements for Para-Aramid Synthetic Fiber Sheet (Kevlar Sheet)

Sheets of Para-Aramid Synthetic Fiber (Kevlar or equivalent) are used as gasket/packing.

Sl. No.	Pre-qualification requirements	Vendor's Response
1	The Vendor should have experience of manufacturing & supplying of para-aramid synthetic fiber sheet in line with technical details as mentioned at Sl. No.-2 below. The vendor to confirm.	
2	Supplied para-aramid synthetic fiber sheet should meet the following parameters. a) Max. Operating Pressure - 2.0 N/mm ² or above b) Max. Operating Temperature- 50 deg. C or above c) Compressibility- 6-14% d) Recovery- 40% Min. e) Min. Tensile Strength- 6.7 N/mm ² The vendor to inform the actual parameters of supplied para-aramid synthetic fiber sheet.	
3	In support of Sl. No.-2 (above), vendor to furnish following information for previously supplied para-aramid synthetic fiber sheet meeting the above technical requirements as per Sl. No.-2. Minimum 01 No. P.O. must have been executed by the vendor in last ten (10) years from the date of issuance of enquiry. The vendor to confirm & furnish the following information for executed purchase orders. a) Customer name and its address b) Purchase Order No. & Date c) Name, designation, e-mail ID & Phone No. of the responsible person in customer's organization d) Thickness of supplied para-aramid synthetic fiber sheet e) Brand name of supplied para-aramid synthetic fiber sheet f) Total supplied quantity of para-aramid synthetic fiber sheet in Kg	
4	The Vendor to submit the following documents of supplied para-aramid synthetic fiber sheet for the successfully executed orders mentioned above at Sl. No.-3. a) Copy of Un-Priced Purchase Orders (P.O.). b) Material test certificate against any one of the above P.O. The submitted test certificates should have co-relation with P.O. c) Material acceptance certificate/dispatch document against any one of the above P.O. The submitted documents should have co-relation with P.O. d) Catalogue of supplied para-aramid synthetic fiber sheet (if available).	

Note:-

1. Against vendor's replies, BHEL reserves the right to ask for more information/documents.
2. Vendor's offer shall not be considered, if vendor fails to furnish the document/information and doesn't meet the acceptance criteria as mentioned above.
3. In case information furnished by the vendor found false/incorrect, BHEL reserves the right to reject their offer.

Prepared by	Reviewed by	Approved by
<i>Susheel</i> 13/10/21	<i>Susheel</i> 13/10/21	<i>Lakhmi</i> 13/10/21
Susheel Kothiyal Dy Manager / STE-TG)	Susheel Kothiyal Dy Manager / STE-TG)	Lakhmi Singh (Manager/ STE-TG)

Pre-Qualification Requirements (Technical) for KEVLAR SHEETS

1.0 Vendor should have experience of supplying, in last ten years (from date of enquiry), at least 10 kgs of para-aramid synthetic fiber sheet (Kevlar or equivalent).

1.1 In support of above, vendor shall furnish their experience list along-with PO copies, as per the following format to BHEL:

SI No	PO No.	Quantity(kg)	Size/Dimension	Material	Name & address of customer	Date of supply

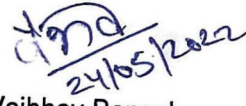
1.2 Vendor should furnish customer acceptance letter or material receipt of customer or material dispatch documents for at-least one P.O. listed above.

1.3 Vendor to furnish Test Certificates for the P.O. for which documents are submitted against Cl 1.2.

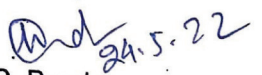
2.0 Vendor should confirm that they have in-house testing facilities for compressibility test, tensile strength test, etc. In case it is off-loaded to other sub-vendor, vendor to confirm that the testing is done in NABL approved lab.

NOTE:

1. BHEL reserves the right to verify information submitted by vendor. In case the information is found to be false / incorrect, the offer shall be rejected.


Vaibhav Bansal
(Dy Mgr/EME)


Amit Mittal
(DGM/EME)


K.C. Panda
(SDGM/EME)

ONE SIDED**NON DISCLOSURE AGREEMENT**

THIS NON DISCLOSURE AGREEMENT (this "**Agreement**") entered into on this day of June, 20.. (the "**Effective Date**")

By and Between

Bharat Heavy Electricals Limited (a Public Sector Undertaking of Government of India), a company incorporated under the Companies Act, 1956 and having its registered office at having its registered office at "BHEL House", Siri Fort, New Delhi - 110 049, India (hereinafter referred to as "**BHEL**" of which the expression shall unless repugnant to the context or the meaning thereof be deemed to include its successors and permitted assigns) (hereinafter referred to as "BHEL"),

And

ABC, a Company incorporated under the laws of and having its registered office at (hereinafter referred to as "ABC").

The party who is receiving information would be referred as Receiving Party and the party who is disclosing information would be referred as Disclosing Party, as the context requires.

WHEREAS

- (A) The Disclosing Party and The Receiving Party wish to explore and discuss the potential of certain mutually advantageous business relationships for _____, for the purpose ofproducts in India ('the Purpose');
- (B) The Disclosing Party, in furtherance of such business relationship, will disclose certain information, including but not limited to, scientific, development, financial, marketing, sales or other proprietary information;
- (C) The Receiving Party and the Disclosing Party wish to protect and preserve the confidentiality of such information provided by the Disclosing Party to the Receiving Party by preventing its unauthorized disclosure and use, in accordance with the terms of this Agreement; and
- (D) The Receiving Party agrees to hold such information in strict confidence and not to disclose or to use, directly or indirectly, for any purpose other than the performance of this Agreement

NOW, THEREFORE and in consideration of the promises made herein, their mutual and individual interests, and other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged, the Parties agree as follows:

1. **PURPOSE:** Purpose to ne mentioned here.
2. **DISCLOSING PARTY.** means a Party that discloses the confidential information to the other party under this agreement.
3. **RECEIVING PARTY** means a Party that receives the confidential information from the other party under this agreement.
4. **Confidential Information**
 - (a) Subject to the provisions of this Agreement, all information disclosed by the Disclosing Party to the Receiving Party, shall be deemed to be "Confidential Information" for the purposes of this Agreement.
 - (b)
 - (i) It is clarified that Confidential Information shall include, but is not limited to, any trade secret, technique, strategy, component, concept, program, report, study, memorandum, correspondence, documentation, information, manual, record, data, technology, product, plan, design, procedure, method, invention, sample, notes, summaries, analyses, compilations and other writings, producing any such sample, medium, test data relating to any research project, work in progress, future development, engineering, manufacturing, marketing, pricing, billing, servicing, financing, personnel matter, its present or future products, sales, suppliers, clients, customers, employees, investors, or any other information which the Disclosing Party provides to the Receiving Party whether in oral, written, graphic or electronic form and whether or not such information is identified as such by an appropriate stamp or marking. The Confidential Information shall also include all reports, notes or other material prepared by the Receiving Party based on the Confidential Information and/ or any discussion thereon.
 - (ii) Confidential Information includes information disclosed by the Disclosing Party or by any individual, firm or corporation controlled by, controlling, or under the common control of the Disclosing Party.
 - (c) Confidential Information shall not include any information which the Receiving Party can demonstrate to the Disclosing Party:
 - (1) is now, or has become, through no act or failure to act on the part of the Receiving Party, generally known or available to the public;
 - (2) is known by the Receiving Party at the time of receiving such information as evidenced by its records;
 - (3) is discovered/independently developed by the Receiving Party independent of any disclosures by the Disclosing Party; or

- (4) is hereafter furnished to the Receiving Party by a third party, as a matter of right and without restriction on disclosure.

- (d) Notwithstanding any other provision of this Agreement, the Receiving Party shall be permitted to disclose Confidential Information if such disclosure is in response to a valid order of a court or other governmental body, provided, however, that the Receiving Party shall be required to give prior notice in writing to the Disclosing Party so that the Disclosing Party may seek an appropriate protective order including that the Confidential Information so disclosed be used only for the purposes for which the order was issued;

5. **Disclosure**

In consideration of the disclosure of Confidential Information by, the Recipient hereby agrees to:

- (a) Shall treat as confidential and safeguard all information disclosed and/or its Affiliates in connection
- (b) to hold the Confidential Information in strict confidence and to take all necessary precautions to protect such Confidential Information (including, without limitation, all precautions the Recipient employs with respect to its own confidential materials);
- (c) limit disclosure of any Confidential Information to its concerned directors, officers and employees, (collectively "Representatives") strictly only to who have a need to know such Confidential Information in connection with the Transaction between the parties to which this Agreement relates, and only for that purpose;
- (d) advise its Representatives of the proprietary nature of the Confidential Information and of the obligations set forth 2 in this Agreement and require in writing such Representatives to keep the Confidential Information confidential;
- (e) shall keep all Confidential Information strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information;
- (f) not disclose any Confidential Information received by it to any third party; and
- (g) not to copy or reverse engineer any such Confidential Information.
- (h) not to use the Confidential Information for any purpose other than the Transaction.
- (i) not use the information for any scientific research or any other research.
- (j) Confidential information does not include information:
 - a. Which is generally available to the public other than as a result of a breach of this Agreement; or
 - b. Which is already in the possession of Recipient without restriction prior to any disclosure hereunder: or

- c. Which is or has been lawfully disclosed to Recipient by someone who is free lawfully to disclose the same without confidentiality restrictions; or
 - d. Which is independently developed by Recipient or its Affiliates and no Confidential information disclosed hereunder has been used directly or indirectly in such development; or
 - e. Whose applicable period of confidentiality pursuant hereto, or such other period specifically agreed to in writing by the parties, has ended
- (k) This agreement is not intended to, and does not, oblige either party to enter into any further agreements or to proceed with the transaction, any possible relationship or other transaction. Recipient acknowledges that Discloser makes no representation or warranty whether express or implied, as to the accuracy or completeness of Confidential information, and Discloser disclaims any and all liability unless contained in any definitive agreement.

Each Party will comply with all applicable data protection laws and regulations. Where applicable in particular if one Party receives access to and processes personal data on behalf of the other party in connection with this Agreement and such processing agreement, the Parties will enter into any required data processing of other data protection agreement

6. Restriction on Use

- (a)** The Receiving Party and its Representatives shall hold the Confidential Information received from the Disclosing Party in confidence, and shall not, directly or indirectly:
 - (i) disclose the Confidential Information to any third party; or
 - (ii) use the Confidential Information for any purpose other than the permitted Purpose.
- (b)** The Receiving Party shall not use the Confidential Information for any purpose or in any manner, which would constitute a violation of any applicable laws or regulations, directly or indirectly.
- (c)** The Confidential Information shall be the property of the Disclosing Party. No rights, licenses or interests including, but not limited to, trademarks, inventions, copyrights or patents are implied, transferred or granted in relation to the Confidential Information provided by the Disclosing Party to the Receiving Party under this Agreement.
- (d)** The Receiving Party shall not reproduce the Confidential Information in any form except as needed for the Purpose of the Agreement as set out above or with the prior written consent of the Disclosing Party.

(e) All the title and rights in the Confidential Information shall be reserved with the respective Discloser and/or its licensors and no rights or obligations other than those expressly set out in this Agreement are granted or to be implied from this Agreement. In particular no license is granted to the Recipient, directly or indirectly, by this Agreement relating to any invention, discovery, patent, copyright or other industrial or intellectual property right now or in the future.

7. Protection of Confidential Information

- (a) The Receiving Party represents and warrants that it shall protect the Confidential Information received with utmost care and diligence.
- (b) All Confidential Information shall be promptly returned to the Disclosing Party after the Receiving Party's need for it has expired, or upon request of the Disclosing Party, and in any event, upon completion or termination of this Agreement.

8. No Further Warranties

The Confidential Information shall be disclosed on an "**as is**" basis only and without any warranties of any kind, including but not limited to, warranties of merchantability or fitness for a particular purpose.

9. No Further Business Arrangement

Nothing contained herein shall be construed to obligate either Party to enter into any further agreements with each other. This Agreement does not create any other business arrangement, including but not limited to any partnership, agency or joint venture, between the Parties.

10. Term

The term of this Agreement shall commence on the Effective Date and valid for the period of two (2) years. The Disclosing party shall have a right to terminate this Agreement by giving a written notice of 30 days to the Receiving Party. However, the Receiving Party obligation to protect and restrict the use of Confidential Information under this Agreement shall continue until such time as the Disclosing Party discloses it to the public or when it otherwise becomes part of the public domain through no action of the Receiving Party.

11. Injunctive remedy

The Recipient acknowledges that the Confidential Information to be disclosed hereunder is commercially sensitive of a unique and valuable character, and that the unauthorized dissemination of the Confidential Information would destroy or diminish the value of such information. The damages that would result from the unauthorized dissemination of the

Confidential Information would be impossible to calculate. Therefore, Recipient hereby agrees that the affected Discloser shall be entitled to injunctive relief preventing the dissemination of any Confidential Information in violation of the terms hereof. Such injunctive relief shall be in addition to any other remedies available hereunder, whether at law or in equity. The affected Discloser shall be entitled to recover all its damages, costs and fees, including reasonable attorneys' fees, incurred in obtaining any such relief. Further, in the event of litigation relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and expenses.

12. Return of Confidential Information

Recipient shall immediately return and redeliver to the respective Discloser all tangible material embodying the Confidential Information provided hereunder and all notes, summaries, memoranda, drawings, manuals, records, excerpts or derivative information deriving there from and all other documents or materials ("Notes") (and all copies of any of the foregoing, including "copies" that have been converted to computerized media in the form of image, data or word processing files either manually or by image capture) based on or including any Confidential Information, in whatever form of storage or retrieval, upon the earlier of (i) the completion or termination of the dealings between the parties contemplated hereunder; (ii) the termination of this Agreement; or (iii) any breach of this agreement, in which case the party in breach shall also be liable towards the Disclosers under the law and this Agreement or (iv) at such time as the respective Discloser may so request; provided however that the Recipient may retain such of its documents as is necessary to enable it to comply with its document retention policies. Alternatively, the Recipient, with the written consent of the respective Discloser may immediately destroy any of the foregoing embodying Confidential Information (or the reasonably non-recoverable data erasure of computerized data) and, upon request, certify in writing such destruction by an authorized officer of the Recipient supervising the destruction).

13. Notice of Breach

Recipient shall notify the Disclosers immediately upon discovery of any unauthorized use or disclosure of Confidential Information by Recipient or its Representatives, or any other breach of this Agreement by Recipient or its Representatives, and will cooperate with efforts by the Discloser regain possession of Confidential Information and prevent its further unauthorized use.

14. Survival

The provisions of Clauses 8, 9 & 10 of this Agreement, and the rights and obligations contained there under shall not terminate upon termination of this Agreement.

15. Governing Law & Dispute Resolution

The contract shall be governed by the Law for the time being in force in the Republic of India. Civil Court having original Civil Jurisdiction at (name of Place) shall alone have exclusive jurisdiction in regard to all matters in respect of this agreement.

Except as provided elsewhere in this Contract, in case amicable settlement is not reached between the Parties, in respect of any dispute or difference; arising out of the formation, breach, termination, validity or execution of the Contract; or, the respective rights and liabilities of the Parties; or, in relation to interpretation of any provision of the Contract; or, in any manner touching upon the Contract, then, either Party may, by a notice in writing to the other Party refer such dispute or difference to arbitration. The arbitration shall be conducted by three arbitrators, one to be appointed by each of the Parties and a third arbitrator to be appointed by the mutual consent of the two arbitrators so appointed by the Parties.

The Arbitrator shall pass a reasoned award and the award of the Arbitrator shall be final and binding upon the Parties. Subject as aforesaid, the provisions of Arbitration and Conciliation Act 1996 (India) or statutory modifications or re-enactments thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause. The seat of arbitration shall be _____(the place from where the contract is issued)

16. No Publication

Neither Party shall disclose, publicise or advertise in any manner the discussions or negotiations contemplated by the Agreement without the prior written consent of the other Party, except as may be required by law.

17. Miscellaneous

- (a) This Agreement constitutes the entire understanding between the parties and supersedes any and all prior or contemporaneous understandings and agreements, whether oral or written, between the parties, with respect to the subject matter hereof. This Agreement can only be modified by a written amendment signed by the party against whom enforcement of such modification is sought.
- (b) Any failure by a Discloser to enforce the Recipient's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

- (c) Although the restrictions contained in this Agreement are considered by the parties to be reasonable for the purpose of protecting the Confidential Information, if any such restriction is found by a court of competent jurisdiction to be unenforceable, such provision will be modified, rewritten or interpreted to include as much of its nature and scope as will render it enforceable. If it cannot be so modified, rewritten or interpreted to be enforceable in any respect, it will not be given effect, and the remainder of the Agreement will be enforced as if such provision was not included.
- (d) Any notices or communications required or permitted to be given hereunder may be delivered by hand, deposited with a nationally recognized overnight carrier, electronic-mail, or mailed by certified mail, return receipt requested, postage prepaid, in each case, to the address of the other party first indicated above (or such other addressee as may be furnished by a party in accordance with this paragraph). All such notices or communications shall be deemed to have been given and received (a) in the case of personal delivery or electronic-mail, on the date of such delivery, and (b) in the case of delivery by a nationally recognized overnight carrier, on the third business day following dispatch.
- (e) Parties shall not directly or indirectly assign or transfer it by operation of law or otherwise without the prior written consent of the Disclosers, which consent will not be unreasonably withheld. All obligations contained in this Agreement shall extend to and be binding upon the parties to this Agreement and their respective successors, assigns and designees.
- (f) Paragraph headings used in this Agreement are for reference only and shall not be used or relied upon in the interpretation of this Agreement.

18. **Notices**

All notices, documents, consents, approvals or other communications (a 'Notice') to be given hereunder shall be in writing and shall be transmitted by first class registered or recorded delivery mail to the person at the address specified herein below, or by telex, facsimile or other electronic means in a form generating a record copy to the party being served at the relevant address for that party shown herein below. Any Notice sent by mail shall be deemed to have been duly served on receipt of delivery confirmation. Any Notice sent by telex facsimile or other electronic means shall be deemed to have been duly served at the time of transmission.

Notice if to:

BHEL, then to,

Phone :

Fax :

E-mail :

ABC, then to,

(Name)_____

(Designation)_____

Phone :

Fax :

E-mail :

19. Counterparts, Telefax Signatures

This Agreement may be signed in two counterparts, each of which is to be considered an original, and taken together as one and the same document.

IN WITNESS WHEREOF, of their Agreement to the terms and conditions contained herein, the undersigned have caused this Agreement to be executed by their duly authorized representatives:

For Bharat Heavy Electricals Limited	For ABC
Signature: Name: Designation:	Signature: Name: Designation:
Signature: Name: Designation:	Signature: Name: Designation: