



An ISO 9001
Company

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

Annexure – A- Terms and Conditions

ACCEPTANCE OF TECHNO - COMMERCIAL TERMS AND CONDITIONS BY THE BIDDERS

Description of the Equipment and Scope of work:		LOAD CELLS FOR BOTTOM ASH MEASUREMENT.
Projects		NTPC Telangana STPP 2x800MW
BHEL Tender No. & Date		1802200181 dated 20.10.2022
<i>To be filled by bidder</i>		
Name of the firm (Bidder)		:
Offer reference		:
Address		:
Contact details		<p><u>Contact person 1</u> Name: Designation: Office Phone: Mobile: e-mail:</p> <p><u>Contact person 2</u> Name: Designation: Office Phone: Mobile: e-mail:</p>
Sl. No.	Terms and conditions	Vendor's confirmation
1 (a)	Technical Requirements: Supply of COMPRESSION TYPE LOAD CELL OF 50 TONNE CAPACITY FOR BOTTOM ASH WEIGHT MEASUREMENT SYSTEM shall be as per the technical specification CI:1819:BASHLC/REV.01	
1 (b)	Quality Plan shall be submitted by bidder in case of placement of PO. Supply shall be as per the quality plan approved by BHEL/end customer.	
1 (c)	Pre-qualification requirement (PQR): Offer shall be considered only if bidder is meeting Tender Prequalification requirement (Annexure-B). Vendor to comply with Pre-Qualification requirement of the tender and submit along with their technical bid - the credentials and other documents as indicated in the PQR in the format prescribed. Otherwise their offer will get rejected.	
1 (d)	REVERSE AUCTION: <i>BHEL shall be resorting to Reverse Auction (RA) (Guidelines as available on www.bhel.com) for this tender. RA shall be conducted among all the techno- commercially qualified bidders.</i>	

	<i>Price bids of all techno-commercially qualified bidders shall be opened and same shall be considered as initial bids of bidders in RA. In case any bidder(s) do(es) not participate in online Reverse Auction, their sealed envelope price bid along with applicable loading, if any, shall be considered for ranking.</i>	
1 (e)	<p>Evaluation method</p> <p>Evaluation and L1 identification shall be on total landed cost to BHEL including all cost up to destination.</p> <p>Currency of evaluation shall be INR. Rate quoted in Foreign currencies will be converted to INR by multiplying with the Exchange rate (SBI TT Selling rate) as on the technical bid opening date. If the date of opening happens to be a bank holiday, then the forex rate as on previous bank (SBI) working day shall be taken.</p>	
1 (e)	Vendor shall quote as per the enclosed price Schedule format only.	
1 (f)	<p>Inspection by BHEL/ BHEL approved TPIA/Customer.</p> <p>Inspection and testing requirements are to be carried out as per the specification and BHEL/ end customer approved QAP and all test certificates are to be submitted in complete set as indicated in our specification/QAP.</p> <p>In case of order, vendor to give the inspection notification for all witness test as per the QP for BHEL/end customer 3 working days before date of inspection.</p>	
1 (g)	<p>a. This Tender is hosted in EPS portal & offer to be submitted through EPS portal only. You are requested to submit your 2 parts offer before due date & time of the enquiry through NIC (https://eprocurebhel.co.in) only.</p> <p>b. Offer is to be submitted in TWO part bids system (Technical bid + Price bid) in the E-Procurement NIC PORTAL (https://eprocurebhel.co.in) ONLY.</p> <p>c. Scanned copy of the filled Annexure-B, Tender documents etc., shall be uploaded in the EPS portal.</p> <p>d. At its option, BHEL may consider extending the due date/s for the tender openings. Sufficient notice would be given by BHEL for such extensions and it will be published as corrigendum in following websites, https://eprocurebhel.co.in http://www.bhel.com/tender/</p>	
1 (h)	<p>Authorization for participation in EPS portal through DSC: E-Tender.</p> <p>Participation requirements:</p> <p>Either Principal or authorized agent shall register their Digital Signature Certificate (DSC) (Class 3- SHA2- 2048 BIT- SIGNING & ENCRYPTION). Suppliers are advised to go through the FAQ available in the web portal (https://eprocurebhel.co.in). DSC shall be registered for the authorized person and all transaction done using that DSC against our tenders shall be taken as valid communication and shall be</p>	

	<p>binding on principal/agent and is valid legally.</p> <p>For foreign Principal In case of Principal (being foreigner), they may apply for DSC through Indian embassy at their country and can register with us for participating in E-tenders. Details of the applicable procedure is available in the webpage http://www.cca.gov.in/cca/.</p> <p>For Indian agent In case of agents participating/registering their DSC (of authorized person), it will be at the sole authorization of principal to their agents to participate on their behalf and all transactions done using that DSC against our tenders shall be known as valid communication and shall binding on principal and is legally valid.</p>	
1 (i)	<p>The Tender will be operated in two part bid system. One-part consisting of PQR, Technical bid with Commercial terms & conditions and other part is Price Bid.</p> <p>Based on the PQR compliance, technical suitability, vendors will be short-listed. The price Bid of short listed vendors will be opened on a suitable date with due intimation to vendors. Reverse Auction is applicable for this tender.</p>	
2(a)	<p>Firm Price: The quoted / finalised rates shall be Firm till execution of the supplies. Offer with PVC clause will not be considered.</p>	
3 (a)	<p>Delivery term: Indigenous Suppliers The quote shall be on FOR NTPC Telangana project site basis inclusive of Packing, forwarding, Freight. Transit Insurance is under BHEL scope.</p> <p>Import Supplier: Import vendors to submit offers on CFR (Cost & Freight), Chennai Air port. Port of discharge should be Chennai.</p>	
4 (a)	<p>Payment Terms (Indigenous): 100% direct payment through EFT within 45 days for MSE Vendors from the date of receipt of materials at BHEL Site against site acknowledgement and 10% PBG. 100% direct payment through EFT after 60 days for Medium Vendors and 90 days for Non-MSE vendors from the date of receipt of materials at BHEL Site against site acknowledgement and 10% PBG.</p> <p>Payment Terms (Import): BHEL Payment term is 100% payment on CAD basis after 90 days from the date of receipt of documents, specified in PO, at BHEL bank and against 10% PBG. Respective bank charges to respective account.</p> <p>If supplier insists for LC, only Usance LC with 120 days credit will be opened one month prior to material readiness. Hence, supplier shall intimate the material readiness accordingly for opening of LC. LC validity period will be 90 days and for any extension, applicable charges will be to supplier's account..</p>	

4 (c).	<p>Any deviation in the above payment term will attract loading as mentioned below. MCLR rate of SBI p.a. + 6% (as applicable on the date of bid opening. Techno-commercial bid opening in case of two part bids) shall be considered for loading for the period of relaxation sought by bidder's subject to competent authority approval. Example of the same is provided below.</p> <table border="1" data-bbox="308 443 1141 656"> <thead> <tr> <th>Payment term</th> <th>Relaxation period (days)</th> <th>Loading (@ MCLR 7.7% p.a. + 6%)</th> </tr> </thead> <tbody> <tr> <td>LC 90 days</td> <td>30</td> <td>1.13%</td> </tr> <tr> <td>LC 60 days</td> <td>60</td> <td>2.25%</td> </tr> <tr> <td>LC 30 days</td> <td>90</td> <td>3.38%</td> </tr> </tbody> </table>	Payment term	Relaxation period (days)	Loading (@ MCLR 7.7% p.a. + 6%)	LC 90 days	30	1.13%	LC 60 days	60	2.25%	LC 30 days	90	3.38%	
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4 (d).	<p>Performance Bank Guarantee: BHEL require a performance Bank Guarantee for the due performance of LOAD CELLS FOR BOTTOM ASH MEASUREMENT supplied under this contract to a value of 10% of Order value covering the Warranty period. The PBG shall be in BHEL format (Format attached) which is to be opened in any one of the banks mentioned under List of Consortium Banks attachment. All banks charges shall be to vendor account only. Any deviation on PBG leads to rejection of offer. Performance bank guarantee shall have minimum claim period of 3 to 6 months from the date of expiry.</p>													
5 (a).	<p>Liquidated damages (LD):</p> <ol style="list-style-type: none"> Time is the essence of the contract. The ordered items shall be delivered as per the delivery period mentioned in the Purchase Order. In case the supplier supplies the ordered items beyond the delivery period specified, Liquidated Damages -LD - as detailed below shall be will be levied from the supplier without prejudice to any other relief /compensation available to BHEL, Tiruchirapalli under any other condition of the contract/applicable legal provisions. Failure to dispatch the materials in the time as per the delivery quoted in our Purchase Order(PO) would make the supplier liable to an un-conditional LD at the rate of 0.5% of the total order value per week of the delay or part thereof subject to a maximum of 10% of the total order value. Any deviation from the above LD clause, loading will be applied to the extent to which it is not agreed by the bidder (at offered value). Indigenous: For "FOR Delivery terms", Lorry way bill date will be taken for LD calculation for cases where E way bill is not mandatory. Wherever E Way Bill is involved, the date of commencement of movement of vehicle as reflected in E way Bill [the 'Valid from' date in the E way Bill] will be taken for LD calculation Import: For CFR terms, BL date will be considered for LD calculation. 													

5(b).	In case of PO placements, required documents have to be submitted for approval within 15 days from the date of PO & reply for any further clarification has to be within 7 days. Any delay beyond the above specified period will be considered during LD calculation.	
6 (a).	Warranty Period: Vendor shall give warranty against design & manufacturing defects for a period of 36 months from the date of commissioning or 48 months from the date of supply whichever is earlier.	
6 (b).	Repair & replacements: Within the warranty period, vendor has to replace / rectify the defective/ damaged items on free of cost within a reasonable time of reporting from our end. All incidental charges like freight, insurance and customs duty are to your account only. The defective parts and components shall be collected by your Indian agent or / authorized person, only after completing the replacement / repairs. If the supplier fails to replace / rectify the defective/ damaged items on free of cost within 60 days of reporting from our end, the same shall be treated as failure to execute the contract and actions as per the Guidelines for Suspension of Business Dealings with Suppliers /Contractors available in the webpage: http://www.bhel.com/vender_registration/vender.php . would be taken against such supplier without prejudice to the other remedies available to BHEL under the contract and law in this regard.	
6 (c).	No Deviation is permitted on warranty period. If still vendor offered any deviation on the warranty period, it may lead to rejection of offer.	
7.	Duty benefits for import vendors a) Whether PTA/ CEPA or any other agreement/treaty between respective Governments/Countries exists and the same is applicable for your supplies w.r.t this Enquired Items/tender. b) If yes, mention the Concessional Customs Duty (Such Duty Benefits) % c) Documentary proof for the applicable Concessional Customs Duty (eg. PTA/ CEPA or other agreement) shall be submitted along with the Part-1 bid. d) Relevant documents and details to avail the above concessional duty benefits by BHEL shall be submitted by the supplier along with dispatch documents. e) In the event of seller failing to provide appropriate documents along with dispatch documents for purchasers to avail disclosed concessional duty benefits in India, financial loss, so incurred, will be to the seller's account. Note: Evaluation of the Price bids will be based on the above details only and unless mentioned/furnished by the vendor, Customs Duty benefit will not be applied for evaluation purposes.	YES / NO SUBMITTED/NOT SUBMITTED CONFIRMED/NOT CONFIRMED CONFIRMED/NOT CONFIRMED
8.	Risk purchase clause: a. In the event of any successful Tenderer's failure to fulfil any of the tender / Contract obligations including supply of whole or any part of the ordered items as per Contract / Agreement, BHEL has the right to terminate the contract and purchase from elsewhere, at the risk and cost of the defaulted supplier, either the whole of the goods or any	

	<p>part which the supplier has failed to deliver or dispatch within the time stipulated in the contract or if the same were not available, the best and nearest available substitute thereof. The supplier shall be liable for the additional expenditure/difference in Cost, if any, including consequential losses which BHEL may sustain by reason of risk purchase in addition to the applicable LD as per the Purchase order/contract.</p> <p>b. The decision of BHEL with regard to the additional expenditure / difference in cost and consequential losses incurred by BHEL shall be final and binding on the supplier.</p> <p>c. The amount recoverable under risk purchase shall be recovered from the defaulted supplier in all or any of the following manners:</p> <ul style="list-style-type: none"> • from dues available in the form of Bills payable to defaulted supplier, SD, BGs against the same contract. • from the dues payable to defaulted supplier against other contracts in the same Region/Unit /any other region/unit In-case recoveries are not possible with any of the above available options, Legal action shall be initiated for recovery against defaulted supplier. <p>GST is applicable on amount recoverable from vendors under risk purchase clause as per Govt. Circular No. 178/10/2022-GST dt. 03.08.2022.</p>	
9.	<p>Suspension of Business Dealings:</p> <p>The offers of the bidders who are under suspension as also the offers of the bidders, who engage the services of the banned firms, shall be rejected. The list of banned firms is available on BHEL web site www.bhel.com.</p> <p>If any bidder/ supplier/ contractor during pre-tendering/ tendering/ post tendering/ award/ execution/ post-execution stage indulges in mal-practices, cheating, bribery, fraud or and other misconduct or formation of cartel so as to influence the bidding process or influence the price or acts or omits in any manner which tantamount to an offence punishable under any provision of the Indian Penal Code, 1860 or any other law in force in India or does anything which is actionable under the Guidelines for Suspension of Business dealings, action may be taken against such bidder/ supplier/ contractor as per extant guidelines of the company available on www.bhel.com and/or under applicable legal provisions. Guidelines for suspension of business dealings is available in the webpage.</p>	
10 (a).	<p>Delivery Period:</p> <p>Delivery Period shall be 10 weeks from the date of final document approval (GA drawing, data sheet and Quality plan)</p> <p>Material shall be dispatched after obtaining dispatch clearance from BHEL.</p> <p>The delivery dates mentioned above and given in the PO are indicative only. The exact delivery date will be intimated by BHEL while giving dispatch clearance.</p> <p>The supplier shall keep the manufactured items safely till the dispatch clearance is given by BHEL.</p>	

11.	<p>Documents are to be submitted along with technical bid (Part-1)</p> <p>01. Covering letter 02. Unpriced offer. 03. Filled technical specification 04. Filled BHEL Terms and condition sheet (Annexure-A) 05. Filled Pre-Qualification requirement (Annexure- B) along with supporting documents 06. Catalogue's 07. Third party non-disclosure agreement 08. MSE documents (if applicable) 09. Make In India certification in attached format (if applicable) 10. Filled up No deviation Format</p> <p>Documents are to be submitted along with Price bid (Part-2) 01. Priced offer as per the format attached with enquiry.</p> <p>Note: All the pages of documents are to be signed and sealed by authorized signatory of the company. Any query during enquiry stage shall be replied within three days failing which offer may be rejected as non-responsive.</p>	
12.	<p>Offer Validity: 150 days minimum from techno commercial bid opening (Part-1)</p>	
13.	<p>O & M manuals: Detailed O&M manuals shall be furnished. Three soft copies of O&M manuals in (CD ROM) compact disc to be submitted. One hard copy and one CD should be sent along with transit assembly to site directly.</p>	
14.	<p>Kindly indicate the GST No of your Firm</p>	
15.	<p>Kindly Indicate the HSN Code for all items</p>	
16.	<p>Please indicate the applicable GST % (IGST)</p>	
17.	<p>Response to Tenders for Indigenous supplier will be entertained only if the vendor has a valid GST registration Number (GSTIN) which should be clearly mentioned in the offer. If the dealer is exempted from GST registration, a declaration with due supporting documents need to be furnished for considering the offer. Dealers under composition scheme should declare that he is a composition dealer supported by the screen shot taken from GSTN portal. The unregistered dealer as well as the composition dealer has to submit an undertaking stating that they will not claim GST during the execution of the contract even if their status under GST changes to regular tax payer. The dealer has to submit necessary documents if there is any change in status under GST.</p>	
18.	<p>Supplier shall mention their GSTIN in all their invoices (incl. credit Notes, Debit Notes) and invoices shall be in the format as specified/prescribed under GST laws. Invoices shall necessarily contain Invoice number (in case of multiple numbering system is being followed for billing like SAP invoice no, commercial invoice no etc., then the Invoice No. which is linked/uploaded in GSTN network shall be clearly indicated), Billed to party (with GSTIN) & Shipped to party details, item description as per PO, Quantity, Rate, Value, applicable taxes with nomenclature (like IGST, SGST, CGST & UTGST)</p>	

	separately, HSN/ SAC Code, Place of Supply etc. Wherever E-Invoice is applicable, the tax invoice/ CN / DN submitted by the vendor must contain the QR code generated in E-Invoice Portal & IRN.	
19.	All invoices shall bear the HSN Code for each item separately (Harmonized System of Nomenclature)/ SAC code (Services Accounting Code)	
20.	Invoices will be processed only upon completion of statutory requirement and further subject to following: i. Vendor declaring such invoice in their GSTR-1 Return/ IFF ii. Receipt of Goods or Services and Tax invoice by BHEL	
21.	As the continuous uploading of tax invoices in GSTN portal (in GSTR-1/ IFF) is available for all (i.e. both Small & Large) tax payers, all invoices raised on BHEL may be uploaded immediately in GST portal on dispatch of material /rendering of services. The supplier shall ensure availability of Invoice in GSTN portal before submission of invoice to BHEL. Invoices will be admitted by BHEL only if the invoices are available in GSTN portal (in BHEL's GSTR-2A/ GSTR-2B).	
22.	In case of discrepancy in the data uploaded by the supplier in the GSTN portal or in case of any shortages or rejection in the supply, then BHEL will not be able to avail the tax credit and will notify the supplier of the same. Supplier has to rectify the data discrepancy in the GSTN portal or issue credit note or debit note (details also to be uploaded in GSTN portal) for the shortages or rejections in the supplies or additional claims, within the calendar month informed by BHEL.	
23.	In cases where invoice details have been uploaded by the vendor but failed to remit the GST amount to GST Department (Form PMT-08 or Form GST RET-01 to be submitted) within stipulated time, then GST paid on the invoices pertaining to the month for which GST return not filed by the vendor will be recovered from the vendor along with the applicable interest (currently 24% p.a) and all subsequent bills of the vendor will not be processed till filing of the GST return by the vendor	
24.	In case GST credit is denied to BHEL due to non-receipt or delayed receipt of goods and/ or tax invoice or expiry of timeline prescribed in GST law for availing such ITC, or any other reasons not attributable to BHEL, GST amount claimed in the invoice shall be disallowed to the vendor.	
25.	Where any GST liability arising on BHEL under Reverse Charge (RCM), the vendor has to submit the invoices to BHEL well within the timeline prescribed in GST Law, to enable BHEL to discharge the GST liability. If there is a delay in submission of invoice by the vendor resulting in delayed payment of GST by BHEL along with Interest, then such Interest payable or paid shall be recovered from the vendor.	
26.	Blank	
27.	GST TDS will be deducted as per Section 51 of CGST Act 2017 and in line with Notification 50/2018 –Central Tax dated 13.09.2018. GST TDS certificate will be generated in GSTN portal subsequent to vendor accepting the TDS deduction in the GSTN portal & the vendor can	

	directly download the Certificate from the GSTN Portal.	
28.	<p>MSE VENDOR:</p> <p><i>i. If L1 vendor is an MSE vendor entire project package will be ordered on L1 vendor.</i></p> <p><i>ii. If a Non MSE vendor is coming as L1, then L1 prices will be counteroffered on MSE vendor who is quoting price within the price band L1+15% and if they are agreeing, purchase order will be awarded for full/complete supply of total tendered value to MSE.</i></p> <p><i>iii. If more than one MSE vendors are available in the L1+15% price band then lowest of the MSE vendor will be selected for counteroffering. If lowest MSE vendor is not accepting it will be counteroffered to the next MSE vendor in the price band and so on.</i></p> <p><i>iv. Finally if none of the MSE vendor in the price band is not accepting it will be ordered on L1 non MSE vendor.</i></p> <p>Payment for MSE Indigenous vendors will be as per MSMED Act, 2006</p> <p>MSE suppliers can avail the intended benefits only if they submit along with the offer, attested/notarized copy of Udyam Registration certificate.</p> <p>Non submission of such documents will lead to consideration of their bid at par with other bidders. No benefit shall be applicable for this enquiry, in case of any deficiency in the above required documents or in case the documents are not submitted before price bid opening. If the tender is to be submitted through e-procurement portal, then the above required documents are to be uploaded on the portal even if submitted earlier.</p>	
29.	<p><u>Make in India:</u></p> <p>For this procurement, the local content to categorize a supplier as a Class I local supplier/ Class II local Supplier/ Non- Local supplier and purchase preference to Class I local supplier, is as defined in Public Procurement (Preference to Make in India), Order 2017 dated 04.06.2020 issued by DPIIT. In case of subsequent orders issued by the nodal ministry, changing the definition of local content for the items of the NIT, the same shall be applicable even if issued after issue of this NIT, but before opening of Part-II bids against this NIT.</p> <p>The local supplier at the time of tender, bidding or solicitation shall be required to provide self-certification that the item offered meets the minimum local content and shall give details of the location(s) at which the local value addition is made.</p> <p>Orders issued by Govt. of India with respect to Restriction under Rule 144 (xi) of GFR on procurement from bidders representing countries</p>	

	sharing land border will be applicable for this tender. In case of subsequent orders issued by Govt. of India regarding procurement from bidders representing countries sharing land border, the same shall be applicable even if issued after issue of this NIT.	
30.	<p><u>Packing Requirements (for indigenous vendors):</u></p> <ul style="list-style-type: none"> • Packing should ensure the healthiness of the Equipment including all electrical Accessories which may be stored for longer period (up to 2 years) at Site conditions (open to atmosphere). • All openings (Fluid, Pneumatic & Electric) shall be firmly capped. • Items shall be packed in suitable enclosure (to prevent damage/rusting due to Seashore atmospheric conditions) from all four sides and also it should be covered with polythene to make it water proof. • Packing and struts shall be used to arrest rolling of items and to avoid transit damage. • Limit switches and such components shall be encapsulated properly with suitable material like Thermocol. • Suitable arrangement (lugs/hooks) for loading and unloading of the equipment in packed condition at site. <p><u>Packing Requirements (for import vendors):</u></p> <ul style="list-style-type: none"> • Packing shall be sea worthy/Air worthy. 	
31.	<p><u>Agency Commission:</u></p> <ul style="list-style-type: none"> • If overseas principal has any tie-up with any third party/ agents, it should be declared while submitting offers. • In respect of offers from overseas suppliers, agency commission, if any, payable to their agents in India, shall invariably be shown separately in the Performa invoice and this will be paid by BHEL in India, in Indian rupees, on satisfactory completion of the contract. • Copies of current agency agreement / authorization letter in respect of agency commission shall be furnished along with offer. • For calculation of rupee equivalent agency commission, exchange rate as prevailing on the date of order will be taken. 	
32.	<p><u>Important Information for Import Suppliers:</u></p> <ul style="list-style-type: none"> • Indian Customs has imposed a penalty on late filing of Bill of Entries (Air/Sea Shipments) by the importer. Bill of Entry is Required to be Filed Latest by the End of Day Preceding the Day (including Holidays) of Arrival of the Vessel for sea shipments and by the end of same day on arrival of air shipment. At present penalty is Rs.5000/- per day (for Initial 03 days) & Rs.10000/- per day (thereafter). Hence the supplier shall submit the Non-Negotiable Documents (Bill of Lading, Commercial Invoice, Packing List, Certificate of Origin, etc.) either by email or post/courier to BHEL well before the landing of cargo at final port of discharge. • In case of any penalty due to late filing of Bill of entry for reasons attributable to suppliers (as listed below), the same will be 	

	<p>recovered from the bills of supplier:</p> <ul style="list-style-type: none"> ○ Non availability of Non-Negotiable Documents (NNDs) before the cargo arrival ○ Discrepancy in documents ○ Short landing of Consignments (For shipments on CFR/CPT/CIF/CIP – Chennai Port) <p><u>Transport Conditions for Import:</u></p> <p>The Original Documents (Airway Bill, Invoice, Packing List, Certificate of Origin & Test Certificate) shall reach BHEL well in advance before the flight arrival. The soft copies of the above shall be forwarded to BHEL immediately after shipment.</p> <ul style="list-style-type: none"> ○ In the event of delayed submission of documents/ non-submission of documents by the supplier as per the mutually agreed terms, an amount up to 5% of the invoice value will be retained towards detention/ demurrage & other charges and the difference if any between actual charges and recovery will be settled separately through supplementary invoice. ○ No-objection Certificate shall be issued to the Liner, authorizing BHEL to get the Delivery Order without producing the Original Airway Bill. ○ This is required to ensure avoidance of detention/ demurrage at Chennai Sea-port/Airport that may arise in case of delayed presentation of documents by the Seller. 	
33.	<p><u>Fraud Prevention Policy</u></p> <p>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.</p>	
34.	<p><u>Cartel Formation</u></p> <p>All the firms should desist from forming cartel as the practice is prohibited under Section 3(3) (a) & (d) of the competition Act 2002. If any such instance is observed during this tender will attract disciplinary action as per BHEL policies.</p> <p>The Bidder declares that they will not enter into any illegal or undisclosed agreement or understanding, whether formal or informal with other Bidder(s). This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process. In case, the Bidder is found having indulged in above activities, suitable action shall be taken by BHEL as per extant policies/guidelines.</p>	
35.	<p><u>Resolution of Disputes</u></p> <p>The Parties agree that if at any time (whether before, during or after the arbitral or judicial proceedings), any Disputes (which term shall</p>	

mean and include any dispute, difference, question or disagreement arising in connection with construction, meaning, operation, effect, interpretation or breach of the contract/tender which the Parties are unable to settle mutually), arise inter-se the Parties, the same may, be referred by either party to Conciliation to be conducted through Independent Experts Committee to be appointed by competent authority of BHEL from the BHEL Panel of Conciliators.

The proceedings of Conciliation shall broadly be governed by Part-III of the Arbitration and Conciliation Act 1996 or any statutory modification thereof.

Notes:

1. No serving or a retired employee of BHEL/Administrative Ministry of BHEL shall be included in the BHEL Panel of Conciliators.
2. Any other person(s) can be appointed as Conciliator(s) who is/are mutually agreeable to both the parties from outside the BHEL Panel of Conciliators.

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 Annexure X to this Terms and conditions.

The Annexure X together with its appendices will be treated as if the same is part and parcel hereof and shall be as effectual as if set out herein in this terms and conditions.

Except as provided elsewhere in this Contract, in case amicable settlement is not reached between the parties, in respect of any dispute or difference; arising out of the formation, breach, termination, validity or execution of the Contract; or, the respective rights and liabilities of the Parties; or, in relation to interpretation of any provision of the Contract; or, in any manner touching upon the Contract, then, either Party may, by a notice in writing to other Party refer such dispute or difference to sole arbitration of an arbitrator appointed as per the Arbitration and Conciliation Act, 1996 (India) or statutory modification or re-enactment thereof and the rules made thereunder and for the time being in force.

The Arbitrator shall pass a reasoned award and the award of the Arbitrator shall be final and binding upon the parties.

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

Subject as aforesaid, the provision of Arbitration & Conciliation Act 1996 (India) or statutory modification or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceeding under this clause.

	<p>The seat of arbitration shall be Trichy, Tamil Nadu, India</p> <p>The cost of arbitration shall be borne as per the award of the Arbitrator.</p> <p>Subject to arbitration in terms of clause above, the Courts at Trichy, Tamil Nadu, India shall have exclusive jurisdiction over any matter arising out of or in connection with this Contract.</p> <p>Notwithstanding the existence or any dispute or difference and/or reference for the arbitration, the vendor shall proceed with and continue without hindrance the performance of its obligation under this Contract with due diligence and expedition in a professional manner except where the Contract has been terminated by either Party in terms of this Contract.</p> <p><u>In Case of Contract with Public Sector Enterprise (PSE) or a Government Department, the following shall be applicable:</u></p> <p>In the event of any dispute or difference relating to the interpretation and application of the provisions of commercial contract(s) between Central Public Sector Enterprises (CPSEs)/Port Trusts inter se and also between CPSEs and Government Departments/Organizations (Excluding disputes concerning Railways, Income Tax, Customs & Excise Departments, such dispute or difference shall be taken up by either party for resolution through AMRCD as mentioned in DPE OM No. 4(1)/2013 –DPE (GM)/FTS-1835 dated 22-05-2018.</p>	
<p>36.</p>	<p><u>Force Majeure clause</u></p> <p>a. Notwithstanding the provisions contained in other clauses, the supplier shall not be liable for imposition of any such sanction so long the delay and/or failure of the supplier in fulfilling its obligations under the contract is the result of an event of Force Majeure. For purposes of this clause, Force Majeure means an event beyond the control of the supplier and not involving the supplier’s fault or negligence and which is not foreseeable and not brought about at the instance of the party claiming to be affected by such event and which has caused the non – performance or delay in performance. Such events may include, but are not restricted to, wars or revolutions, hostility, acts of public enemy, civil commotion, sabotage, fires, floods, explosions, epidemics, quarantine restrictions, strikes excluding by its employees, lockouts excluding by its management, freight embargoes and Acts of GOD.</p> <p>b. If a Force Majeure situation arises, the supplier shall promptly notify the Purchaser/Consignee in writing of such conditions and the cause thereof within twenty-one days of occurrence of such event. Unless otherwise directed by the Purchaser/Consignee in writing, the supplier shall continue to perform its obligations under the contract as far as reasonably practical, and shall seek all reasonable alternative</p>	

	<p>means for performance not prevented by the Force Majeure event.</p> <p>c. If the performance in whole or in part or any obligation under this contract is prevented or delayed by any reason of Force Majeure for a period exceeding sixty days, either party may at its option terminate the contract without any financial repercussion on either side.</p> <p>d. In case due to a Force Majeure event the Purchaser/Consignee is unable to fulfil its contractual commitment and responsibility, the Purchaser/Consignee will notify the supplier accordingly and subsequent actions taken on similar lines described in above sub-paragraphs.</p>	
37.	<p>Set off : BHEL shall have the right to recover any money which in the sole opinion of BHEL is due from the supplier from any money due to the supplier under this Contract or any other contract or from the Security Deposit/BG furnished by the supplier under this Contract or any other contract.</p>	
Note.	<ol style="list-style-type: none"> 1. In the event of our customer order covering this tender being cancelled /placed on hold / otherwise modified, BHEL would be constrained to accordingly cancel / hold / modify the tender at any stage of execution. 2. BHEL may negotiate the L1 rate, if not meeting our budget / estimated cost. BHEL may re-float the tender opened, if L1 price is not acceptable to BHEL. Any deviation in specified commercial terms- Annexure-A, will lead to rejection of offer. 3. BHEL reserves its right to reject an offer due to unsatisfactory past performance by the respective Vendor in the execution of any contract to any BHEL project / Unit. 4. Any other Techno –Commercial Terms indicated by the vendor in their offer elsewhere will be ignored. BHEL will proceed with tender evaluation as per Annexure-A only. 	