

CORRIGENDUM – 1

TO

GENERAL CONDITIONS OF CONTRACTS

GCC – BOP (Rev No. 00)

wef 14/08/2024



BHARAT HEAVY ELECTRICALS LIMITED

GCC BOP Cl. No.	Existing clause	Read as
Clause no 16.1 of GENERAL COMMERCIAL TERMS & CONDITIONS (Page 15 of 31)	Timely dispatch/delivery and completion of other schedules as stipulated in Order/Contract shall be the essence of Order/Contract. If the Seller/Contractor 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 breach of Order/Contract and hereunder.	Timely dispatch/delivery, Erection & commissioning and completion of other schedules as stipulated in Order/Contract shall be the essence of Order/Contract. If the Seller/Contractor fails to complete the dispatch/delivery, Erection & commissioning 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 breach of Order/Contract and hereunder.
Clause no 16.2.1 (a) of GENERAL COMMERCIAL TERMS & CONDITIONS (Page 15 of 31)	a) LD on mandatory spares portion where delivery for mandatory spares is defined separately in the NIT. LD shall be applicable @ ½ percent and applicable GST thereon, of the total mandatory spares portion contract value excluding GST per week or part thereof, limiting to 10% of total contract value of mandatory spares excluding GST.	a) LD on mandatory spares - Purchaser reserves the right to recover from the Seller/ Contractor, as agreed liquidated damages if dispatch/delivery of the mandatory spares is delayed beyond the contractual completion date or extension thereof as per the period stipulated in the Order/ Contract and not by way of penalty, a sum equivalent to half (½) percent of the total contract price (mandatory spares) per week or part thereof, limited of ten (10) percent of the total contract price (mandatory spares) excluding GST.
Clause no 16.2.1 (b) of GENERAL COMMERCIAL TERMS & CONDITIONS (Page 16 of 31)	(b) LD on Supply and E&C- Purchaser reserves the right to recover from the Seller/ Contractor, as agreed liquidated damages and not by way of penalty, a sum equivalent to half (½) percent and applicable GST thereon, of the total contract price (main supply and E&C) excluding GST per week or part thereof, subject to a maximum of ten (10) percent of the total contract price (main supply and E&C) excluding GST, if E&C completion of the package is delayed beyond the contractual completion date or extension thereof as per the period stipulated in the Order/ Contract. Liquidated Damages will not be deducted from supply payment for delay in supply. LD on Mandatory spares shall be dealt as per clause (a) above.	(b1) LD on Supply - Purchaser reserves the right to recover from the Seller/ Contractor, as agreed liquidated damages if dispatch/delivery of the package (Main supply) is delayed beyond the contractual completion date or extension thereof as per the period stipulated in the Order/ Contract and not by way of penalty, a sum equivalent to half (½) percent of the total contract price (main supply) per week or part thereof, limited of ten (10) percent of the total contract price (main supply) excluding GST. (b2) LD on E&C - Purchaser reserves the right to recover from the Seller/ Contractor, as agreed liquidated damages if E&C completion of the package is delayed beyond the contractual completion date or extension thereof as per the period stipulated in the Order/ Contract and not by way of penalty, a sum equivalent to half (½) percent of the total contract price (supply+ E&C) per week or part thereof, limited to ten (10) percent of the total contract price (supply + E&C) excluding GST. However, total LD for delay in supply and E&C shall be limited to 10% of total contract price (supply + E&C) excluding GST.

GCC BOP Cl. No.	Existing clause	Read as
Clause no 16.2.1 (c) of GENERAL COMMERCIAL TERMS & CONDITIONS (Page 16 of 31)	c) LD on service portion (PG test, O&M, AMC, etc.) where delivery for services are defined separately in the NIT. LD shall be applicable @ ½ percent and applicable GST thereon, of the total service portion contract value excluding GST per week or part thereof subject to a maximum of ten (10) percent of the total contract value of service portion excluding GST.	c) LD on service portion (PG test, O&M, AMC, etc.) where delivery for services are defined separately in the NIT. LD shall be applicable @ ½ percent of the total service portion contract value per week or part thereof limited to ten (10) percent of the total contract value of service portion excluding GST.
NOTE of clause no. 16.0 of GENERAL COMMERCIAL TERMS & CONDITIONS (Page 16 of 31)	(i) Liquidated Damages will not be deducted from supply payment for delay in supply.	Stands deleted


GENERAL CONDITIONS OF CONTRACTS

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BHARAT HEAVY ELECTRICALS LIMITED

	BHARAT HEAVY ELECTRICALS LIMITED (BHEL)	GENERAL CONDITIONS OF CONTRACT GCC – BOP Revision no. 00	DEFINITION OF TERMS
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DEFINITION OF TERMS


Throughout the Tender Documents including the Enquiry Letter, the following words shall have the meanings assigned to them herein, unless the subject matter or the context requires otherwise.

- 1 **Purchaser / Buyer** means Bharat Heavy Electricals Limited (the term "Purchaser/Buyer" may hereinafter also be referred to as 'BHEL') incorporated under the Companies Act, 1956 having its registered office at BHEL House, Siri Fort, New Delhi-110049, India and inter alia having a Unit/ Region/ Division at any place in India and abroad The term 'Purchaser/Buyer' shall be deemed to include its successors and assigns.
- 2 **Owner** shall mean the **Customer** or **Client** for whose project the enquiry is issued by Purchaser and shall include its successors and assigns as well as authorized officer(s)/ representative(s).
- 3 **Consultant** shall mean the agency appointed by Owner or Purchaser to provide consultancy services for the project and shall include its successors and assigns as well as authorized officer(s)/ representative(s).
- 4 **Tenderer** shall mean the Person(s) / HUF/ AOP (Association of Persons)/ Firm / Company / a Joint Venture/ Consortium or any such other Organization/ Enterprise which quotes against the Tender Enquiry issued by **Purchaser/ Buyer**. It may also be referred as **Bidder** or **Vendor**.
- 5 **'Order / Contract'** shall mean and include the **Purchase/ Work Order** along with bid/ tender/ offer, the bidding conditions, clarifications issues by the buyer as regards the tender or the bidding conditions, covering letter, letter of intent / acceptance / award, specific agreement, the General Conditions of Contract and Special Conditions of Contract for commercial conditions of Purchase, specific agreement on technical conditions, special technical conditions and technical conditions/ specifications, Inspection/ Quality Plan, Schedule of Prices and Quantities, Drawings, if any enclosed or to be provided by the Buyer or his authorized nominee, Integrity pact (as and when if applicable), and any subsequent amendments hereto as may be mutually agreed upon, (It may also be referred to as the "Order"). Any conditions or terms stipulated by the bidder in the tender/offer or subsequent letters shall not form part of the Contract unless specifically accepted in writing by BHEL before award of the order. 'Parties to the Contract' shall mean the Seller and the Buyer as named in the main body of the Purchase Order.
- 6 **Seller/ Contractor** shall mean the Firm/ Company/ Organization with whom the Order/ Contract is made and shall be deemed to include its successors, representatives, heirs, executors, administrators and assigns *as agreed between parties to the contract*, as the case may be. It may also be referred as **Supplier or Vendor**.
- 7 **Sub-Contractor/ sub-vendor** shall mean the person/ firm/ company/ organization to whom any part of the work has been sub-contracted by Seller/ Contractor, with the written consent of Purchaser, and shall include sub-contractor's heirs, executors, administrators, representatives and assigns *as agreed between Seller and BHEL*.

Note - The terms used in this document like Tenderer/ Bidder/ Vendor/ Seller/ Contractor/ Supplier can be used interchangeably. In the same way the terms used in this document like Purchaser/Buyer/BHEL can be used interchangeably.


- 8 **Engineer** shall mean the authorized officer of Purchaser to act as the engineer on its behalf for the purpose of the Order/ Contract.
- 9 **Site** shall mean and include the land and place on which the project station related facilities are to be constructed and any adjacent land which may be allocated or used by Owner, *buyer* or Seller/ Contractor in performance of the Order/ Contract.
- 10 **Acceptance Tests** shall mean such tests as prescribed in specifications and/ or tests mutually agreed upon by Purchaser and Seller/ Contractor, to be performed by Seller/ Contractor during the process at vendors'/ sub vendors'

	BHARAT HEAVY ELECTRICALS LIMITED (BHEL)	GENERAL CONDITIONS OF CONTRACT GCC – BOP Revision no. 00	DEFINITION OF TERMS
<p>works and after/ <i>during the erection/ commissioning</i> of equipment to establish its satisfactory operation as per specifications.</p> <p>11 Commissioning shall mean all activities inter alia successful/ satisfactory completion of Initial Operation and readiness of the contracted/ ordered package / plant and materials unit wise/ set wise/ lot wise/ individual sub-system etc. including associated stand by for TRIAL operation. This will include all consumables and inputs required for pre-commissioning. (Refer Annexure-XII)</p> <p>12 Trial Operation or Reliability Run shall mean continuous integrated operation of the contracted/ ordered package / plant and materials unit wise/ set wise/ lot wise/ individual sub-system etc. Under varying loads as proof of satisfactory operation for a specified period for further beneficial use in power plant/Unit. The procedure to be agreed during detailed engineering (Refer Annexure-XII).</p> <p>13 Inspection Agency (IA) shall mean person(s) authorized by Purchaser / Owner to inspect the stores as per Order/ Contract at <i>Vendor's/ Contractor's/ Sub-Contractor's</i> works. Vendors to raise inspection call on BHEL – CQS website.</p> <p>14 Month shall mean calendar month and week shall mean 7 days.</p> <p>15 Consignee shall mean the official(s)/ person(s) to whom the stores are required to be delivered in the manner indicated in the Order/ Contract.</p> <p>16 Plant/ Equipment/ Stores shall mean the goods, machinery, components, parts, spares etc. required to be supplied by Seller/ Contractor as per Order/ Contract.</p> <p>17 Contract Engineer (CE) shall mean the official who signs the Order/ Contract on behalf of Purchaser.</p> <p>18 Site Engineer shall mean official authorized by owner to receive and verify the in-coming stores, and issue Material Receipt Certificate (MRC)/ Stores Receipt Voucher (SRV).</p> <p>19 Site Inspection Agency (Site IA) shall mean person(s) authorized by Purchaser/ Owner to inspect the stores/ works included in Order/ Contract at the Project Site.</p> <p>20 Performance Guarantee Test: A test to be conducted by the vendor and witnessed by owner/ purchaser, as per procedure submitted by the vendor and approved by owner/ purchaser describing the objective of the test, detailed procedures to test the guaranteed parameters, obligations as per the order/ contract, results presentation procedure and verification and acceptance criterion (Refer Annexure-XII)</p> <p>21 Technical Specification / Specification shall mean the all the Specifications wherein detailed description of the design and materials based on which project is to be delivered by Supplier.</p> <p>22 Wherever term 'Due date and time' is referred, it implies Indian Standard Time and date.</p> <p>23 HANDING OVER package wise definition in line with Annexure-XII</p> <p>24 GENERAL - The words incorporating singular shall include plural and vice-versa, the words incorporating masculine gender shall include feminine gender and vice-versa, and the words incorporating persons shall include bodies, corporate, limited liability companies, partnership and other legal entities.</p>			

	BHARAT HEAVY ELECTRICALS LIMITED (BHEL)	GENERAL CONDITIONS OF CONTRACT GCC – BOP Revision no. 00	ABBREVIATIONS
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ABBREVIATIONS

AWB	Airway Bill
AMC	Annual Maintenance Contract
BG	Bank Guarantee
BL	Bill of Lading
BOCW	The Building and other Construction Workers (Regulation of Employment & Conditions of Service) Act
BOQ	Bill of Quantity
CAN	Cargo Arrival Notice
C&F/ CFR	Cost and Freight
CFS	Container Freight Station
CIF	Cost, Insurance and Freight
COO	Certificate of Origin
CQ	Corporate Quality
DDP	Delivery Duty Paid
DMS	Document Management System
EMD	Earnest Money Deposit
E&C	Erection and Commissioning
FCA	Free Carrier
FCL	Full Container Load
FIR	First Information Report
FOB	Free on Board
FOR	Free on Rail/ Road
FTL	Full Truck Load
GCC	General Conditions of Contract
GR	Goods Receipt
GST -	CGST/IGST/UTGST Central/ Integrated/ Union Territory Goods and Services Tax
H1 Bidder	Bidder quoting highest cost to BHEL
HSE	Health Safety and Environments Guidelines
HQ/ Hqrs	Headquarter
HUF	Hindu Undivided Family
ICC	International Chamber of Commerce
IGM	Import General Manifest
IP	Integrity Pact
IEM	Independent External Monitor
L1 Bidder	Bidder quoting lowest cost to BHEL
LC	Letter of Credit
LD	Liquidated Damages
LOA / LOI	Letter of Award / Letter of Intent
LR	Lorry Receipt
MCE	Marine cum Erection

	BHARAT HEAVY ELECTRICALS LIMITED (BHEL)	GENERAL CONDITIONS OF CONTRACT GCC – BOP Revision no. 00	ABBREVIATIONS
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MDCC	Material Dispatch Clearance Certificate
MRC	Material Receipt Certificate
MSMED	Micro Small and Medium Enterprises Development
NCR	National Capital Region
NIT	Notice Inviting Tender
NND	Non Negotiable Document
OBL	Ocean Bill of Lading
O&M	Operation & Maintenance
ORC	Over run charges
PBG	Performance Bank Guarantee
PEM	Project Engineering Management
P&ID	Process & Instrumentation Diagram
PO	Purchase Order
PQR	Pre-Qualification Requirement
PTL	Part Truck Load
PVC	Price Variation Clause
QA	Quality Assurance
QS	Quality Surveillance
RA	Reverse Auction
RBI	Reserve Bank of India
RFQ	Request for Quotation
RR	Railway Receipt
SBI	State Bank of India
SCC	Special Conditions of Contract
SCE	Storage cum Erection
T&P	Tools & Plants
TReDS	Trade Receivables Discounting System
IEC	Independent Experts Committee



**BHARAT HEAVY
ELECTRICALS
LIMITED**

(BHEL)


**GENERAL CONDITIONS
OF CONTRACT
GCC – BOP**

Revision no. 00

**INSTRUCTIONS TO
BIDDERS**


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1.0 GENERAL INSTRUCTIONS

- 1.1 Tenderers are advised to study all the tender documents carefully. Any submission of tender by the tenderer shall be deemed to have been done after careful study and examination of the tender documents and with full understanding of the implications thereof. The specifications and terms & conditions shall be deemed to have been accepted unless otherwise specifically commented upon in 'Deviation' sheet (refer annexure-II-Cost of Withdrawal) by the tenderer in his offer. Non-compliance with any of the requirements and instructions in the Tender Enquiry may result in rejection of the tender.
- 1.2 The general terms of business or sale of the bidder shall not apply to the Buyer or the Contract unless specifically agreed to otherwise in the Contract. Any other terms and conditions of the bidders attached/ referred in the bid of the Bidder against the tender enquiry will be treated as rejected by the Buyer unless specifically agreed to in the Contract.
- 1.3 Any deviations from or additions to these 'General Conditions of Contract' require Buyer's express written consent before awarding the order/ contract.
- 1.4 Acceptance, receipt of shipments or services or effecting payment as regards any such shipments or services shall not mean that the general terms of business or sale of the seller have been accepted. Any additional and new terms & conditions mentioned in any of the document submitted by vendor after award of contract shall have no effect.
- 1.5 Purchase orders/ Work orders/ Contracts, agreements and amendments thereto shall be binding if made or confirmed by the Buyer in writing. Only the Purchasing/ *Contracting* department of the Buyer is authorized to issue the Purchase Order (Contract/Work Order) or any amendment thereto. Any document purporting to be a Contract/Order or an amendment thereto issued by any person not from the Purchasing Department of the Buyer will not be binding on the Buyer and will not be deemed to create any mutual rights and obligations for the Buyer and the Seller/Bidder.
- 1.6 In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following order of precedence:
 - i. Amendments to Purchase Order/ Work Order/ Framework Agreement
 - ii. Purchase Order/ Work Order/ Framework Agreement
 - iii. Letter of intent (LOI)/ Letter of Award (LOA)
 - iv. Clarifications agreed between Buyer and Seller as regards to the tender or the bidding conditions
 - v. The final set of deviations acceptable to purchaser with loading as specified in relevant section.
 - vi. Corrigenda to NIT, with those of later date having precedence over those of earlier date
 - vii. Enquiry letter and annexures except documents listed in point no (vii) to (ix) below
 - viii. Technical specifications
 - ix. Special Conditions of Contract (SCC)
 - x. General Conditions of Contract (GCC)
- 1.7 In the GCC, wherever references are being made for any particular web links, bidder to properly apprise itself about these web links before submission of the bid.

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2.0 PROCEDURE FOR SUBMISSION & OPENING OF TENDERS

- 2.1 Bids shall be submitted strictly in accordance with the requirements of tender documents. Incomplete offers are liable to be rejected.
- 2.2 Tenders shall be submitted in **Two parts** (or as specified in NIT) on or before the Due Date and time indicated in the NIT/ RFQ.

PART – I: Techno-Commercial Bid

comprising of Technical Offer, Annexure-I of GCC, Commercial Terms & Conditions, Unpriced copy of Price Bid & Annexure II of GCC, PQR documents (if applicable) in two sets or as specified in NIT.

PART – II: Price Bid

Containing Prices, cost of withdrawal of deviation as per Annexure-II of GCC, to be submitted in original, strictly, as per Price Schedule of BHEL for complete scope of Tender Enquiry.

NOTE:


Offers are liable to be rejected for changes made by bidders in the Price Schedule, except those specified in the unpriced bid and accepted by Purchaser.

Where-ever it is specified in NIT that the bids are to be submitted on BHEL e-procurement portal, bidder to upload the bid documents on specified portal and no paper bids are required to be submitted.

- 2.2.1 PART-I (Techno-Commercial bid) shall be opened on Due Date and time specified in the NIT/ RFQ, or extension thereof, in presence of bidders who may like to attend. In case of e-bid, system generated intimation of bid opening to bidders will be applicable (i.e. presence of bidders is not applicable in case of e-bid). Incomplete offers are liable to be rejected. Purchaser reserves the right to open both Part-I and Part-II together.
- 2.2.2 PART-II containing prices shall be submitted along with Part-I but in a separate sealed cover. Corrections/ amendments shall be properly authenticated; else the offer is liable to be rejected. Intimation for Part-II opening shall be given to all the techno-commercially acceptable bidders and opening of bids shall be done in presence of tenderers who may like to attend. In case of e-bid, system generated intimation of bid opening to bidders will be applicable (i.e. presence of bidders is not applicable in case of e-bid).
- 2.2.3 Any discount/ revised offer submitted by a bidder on its own shall be accepted provided it is received on or before the due date and time of offer submission. The discount shall be applied on pro-rata basis to all items unless specified otherwise by the bidder.
Unsolicited discounts/revised offers given after due date and time of offer submission shall not be accepted.

In case there is no change in the technical scope and/or specifications and/or commercial terms & conditions, the bidder/s shall not be allowed to change his/their price bids after the due date, within the validity period.

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 by BHEL (after freezing the scope, technical specifications and commercial terms & conditions) to submit the impact of such changes on their price bid. A cut-off date and time shall be given to all the techno-commercially acceptable bidders to submit the impact on their price bids.

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In the event of any bidder, after finalizing the technical specification & scope of supply, opting to revise and submit their latest price bid instead of submitting impact on their price bid asked by BHEL, then their original price (i.e. the previous bid) shall also be opened.

Price Impact/ Discount/ Revised Price Bid shall be duly superscribed as:

“Price Impact / Discount/ Revised Price Bid (Part-II) (delete whichever is not applicable), Revision No. against Tender Enquiry No. _____ dated _____”

2.3 After technical & commercial examination of the offers received and clarifications obtained (if required), Part-II (Revised Price Bid/ Original Price Bid along with Price Impact and Discount, if any) shall be opened, for which the date and time shall be intimated to technically and commercially acceptable bidders in case of public opening. BHEL may opt to finalize the prices through Reverse Auction amongst technically and commercially acceptable bidders. BHEL reserves the right to open the earlier price bids, if any, submitted by the bidder(s), if required.

2.4 No correspondence shall be entertained from the tenderers after opening of Part-II (Price bid), except clarifications (if any) asked by BHEL in writing.

2.5 Only one representative of the bidder will be permitted to be present for tender opening. The representative to be present for tender opening should have proper authentication/ Photo Identity Proof which needs to be produced on demand by BHEL.

2.6 Purchaser may negotiate the tender with L1 bidder after price bid opening.

2.7 **BID SUBMISSION**

2.7.1 **E- Bid**


2.7.1.1 Bidders shall have to visit BHEL E-Procurement web site and have to upload their quotation on BHEL e-bid portal in line with NIT requirement by due date and time.

2.7.1.2 For uploading Bids, bidders have to use their organization's authorized Digital signature (DSC class-III/ applicable class for bidding). In case the same is not available with the bidder then such bidder has to arrange as per the existing provisions of BHEL E procurement portal and ensure timely submission of the bids.

2.7.1.3 Bidders to note that hard copy of the bid is not required to be submitted and Bid is to be uploaded on BHEL e-bid portal only. In case paper bids are received from any of the bidder against e-bid, same shall be ignored

2.7.2 **Paper Bid:**

2.7.2.1 Bid/ Quotation must be enclosed in sealed cover(s) as per requirements of the tender enquiry, on which the tender enquiry number and the due date MUST BE written. Covering letter of tender submission shall be as per Annex I.

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MARKING ON ENVELOPES

2.7.2.2 Following shall be superscribed on the envelopes which shall be addressed by name and designation to the official inviting tender:

PART-I: 1. TENDER ENQUIRY No. AND ITEM DESCRIPTION
 2. DUE DATE FOR OPENING
 3. "TECHNO-COMMERCIAL BID".

PART-II: 1. TENDER ENQUIRY No. AND ITEM DESCRIPTION
 2. DUE DATE FOR OPENING
 3. "PRICE BID".

2.7.2.3 Both Parts - I & II shall be submitted in separate sealed covers duly superscribed as indicated above and shall be enclosed further in a main cover duly sealed and superscribed as:

"TENDER FOR _____ AGAINST TENDER ENQUIRY NO. _____ DUE ON _____
CONTAINING PART-I & PART-II BIDS"

2.7.2.4 Envelope not marked with tender enquiry number is liable to be ignored and may not be opened.

2.7.2.5 Tenders shall be sent to BHEL officials by name & designation as given in NIT.

2.7.2.6 Tenders can either be deposited in tender room in person or sent by Courier/ Registered or Speed Post to the above mentioned address. It shall be bidders' responsibility to ensure that tenders are delivered in time.

2.7.2.7 Name of vendor's dealing person with Contact No(s), Email ID and Address of correspondence shall be provided in the bid.

2.7.2.8 Tenders received after the Due Date and Time of submission shall be rejected.


2.7.2.9 Unsolicited tenders will not be entertained.

Note: Bid should be free from Erasure, cutting, overwriting, whitener or 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

3.0 MINIMUM E&C CHARGES AND SUPERVISION OF E&C CHARGES

3.1 **Total Erection & Commissioning charges** (excluding GST) should be minimum 20% (or as specified in NIT) of the total quoted price of main equipment supply (including freight & excluding GST) and erection & commissioning (excluding GST); failing which the break-up of prices shall be adjusted accordingly for ordering. However, while doing adjustments, vendor quoted prices for mandatory spares, PG test charges, O&M spares, O&M charges, etc. will not be changed.

3.2 **Supervision of E&C charges, if applicable** should not exceed 2% of the total contract value, failing which the quoted amount shall be restricted (2% of the total contract value) by BHEL at the time of evaluation and ordering.

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4.0 **AUTHORITY FOR TENDER SIGNING**

A person signing the tender or any other document in respect of Order/ Contract on behalf of the tenderer, without disclosing his authority to do so shall be deemed to warrant that he has the authority to bind the tenderer. If it is discovered at any time that the person so signing had no authority to do so, the Purchaser may, without prejudice to any other right or remedy, cancel the Order/ Contract and make or authorize the purchase of the stores at the risk and cost of such tenderer and hold such tenderer liable to Purchaser for all costs and damages arising from cancellation of the Order/ Contract including any loss which Purchaser may sustain on account of such purchase.

Notes:

- a) Bids of Indian supplier shall be in Indian Rupee only.
- b) Bids of foreign suppliers shall preferably be USD.
- c) An authorized representative/ agent can represent only one bidder for the given package.

5.0 **CLARIFICATIONS REQUIRED BY BIDDERS**

Technical and commercial clarifications required before submission of the tender should be addressed to the official(s) inviting the tender.

6.0 **DEVIATIONS - LISTING**

Tenders shall be submitted strictly in accordance with the requirements of tender documents. In case of deviations from NIT, the tenderer shall give cost of withdrawal of such deviation in the Annexure-II (i.e. in cost of withdrawal sheet). Any deviation not mentioned in deviation sheet and shown separately or found hidden in offer, will not be taken cognizance of.


7.0 **VALIDITY OF OFFER**

Vendors' offers shall be submitted with the following validity periods:

- i. Original offer shall be valid for six months from Part-I opening date unless specified otherwise in NIT.
- ii. If revised price bid/ price impact is asked by BHEL, the validity of the same shall be two months from the date of price bid opening or six months from Part-I opening, whichever is later.
- iii. In case where Reverse auction (RA) is conducted, the validity of the same shall be two months from the date of successful RA completion or six months from Part-I opening, whichever is later.
- iv. In case of negotiation, validity of offer shall be two months from receipt of revised price /negotiated final price or six months from Part-I opening, whichever is later.
- v. Offers with shorter validity than above are liable to be rejected
- vi. Prices of Recommended Spares, O&M Spares and Mandatory Spares (wherever these are Optional items) shall be valid till three years from the date of PO (for placement of order) unless specified otherwise in NIT.
- vii. Unit prices for scope addition/ deletion shall be valid till three years from the date of PO (for amendment of PO).

8.0 **LANGUAGE & CORRECTIONS**

- i. 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

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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.

- ii. Tenderer shall quote the rates in English language and Indo-Arabic numerals only. Total Price shall be entered in figures as well as in words. For the purpose of tender, metric system of units shall be used.
- iii. All entries in the tender shall either be typed or written legibly in ink. Cancellations, corrections, insertions, erasements, over-writing (if unavoidable) shall be authenticated with signature and seal by the bidder.


9.0 **PRICE DISCREPANCY**

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

- i. Bidders should quote total price in “figures” with corresponding words in price bid format.
- ii. 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.
- iii. 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.
- iv. 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 (ii) and (iii) above.
- v. If there is such discrepancy in an offer, the same shall be conveyed to the bidder with target date up to which the bidder has to send his acceptance on the above lines and if the bidder does not agree to the decision of the Purchaser, the bid is liable to be ignored.

10.0 **TENDERER TO INFORM HIMSELF FULLY**

- 10.1 Tenderer shall closely peruse all clauses, specifications & drawings etc. indicated in tender documents before quoting. In case of any doubt about meaning of any portion of tender specifications or discrepancies or omissions in drawings/ tender document or clarifications regarding scope of work etc., tenderer shall contact the official(s) inviting the tender for clarifications, before submitting the offer.
- 10.2 Tenderer shall make independent enquiries as to conditions and circumstances affecting cost estimates, and possibility of executing supplies/ works as described. Tenderer shall be deemed to have inspected and examined the site and its surroundings and to have satisfied himself as to the form and nature of the site, the quantities and materials necessary for completion of the work and means of transport and access to the site, the accommodation required, general labor position at site and to have quoted prices taking into consideration the risks, contingencies and other circumstances which may influence or affect execution of the Order/ Contract.

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- 10.3 It is the responsibility of tenderer to keep himself informed about all taxes & duties applicable on materials/ services as prevailing at the time of tendering. If the rates assumed by tenderer are less than the tariff rates prevailing at the time of tendering, the tenderer will be himself responsible for such under quotations.

11.0 ETHICS IN BUSINESS DEALINGS/ SUSPENSION OF BUSINESS DEALINGS

In order to protect the commercial interests of BHEL, it becomes necessary to take action against bidders/ sellers/ 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 bidders/ sellers/ suppliers / contractors. Detailed guidelines are available at www.bhel.com / www.pem.bhel.com. Bidders should get themselves acquainted with these guidelines.

12.0 INTEGRITY PACT (IP)

IP is a tool to ensure that activities and transactions between the Company and its Bidders/ Contractors are handled in a fair, transparent and corruption free manner. A panel of Independent External Monitors (IEMs) have been appointed by BHEL with the approval of CVC. The names of the IEMs in panel are mentioned in NIT.

Integrity Pact (IP) will be applicable for all tenders/ contracts valuing more than a specific value as specified in NIT/ RFQ.

The IP as enclosed as per annexure-VIII (as enclosed in NIT) 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. (Refer Annexure-VIII for Integrity pact).

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 the any of the IEMs mentioned in the NIT. All correspondence with the IEMs shall be done through email only.


"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 officials whose contact details are provide in NIT".

12.1 INTEGRITY COMMITMENT:

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

12.1.1 Commitment by BHEL:

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

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12.1.2 Commitment by Bidder/Seller:

- The Bidder/Seller commit to take all measures to prevent corruption and will not directly or indirectly influence any decision or benefit which it is not legally entitled to nor will act or omit in any manner which tantamount to an offence punishable under any provision of Indian penal code, 1860 or any other law in force in India.
- The Bidder/Seller 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.
- The Bidder/Seller will perform/execute the contract as per the contract terms & conditions and will not default without reasonable causes, which causes loss of business/money/reputation, to BHEL.

If any Bidder/Seller during Pre-tendering/tendering/post tendering/award/execution/post-execution stage indulges in mal-practices, cheating, bribery, fraud or and other misconduct of 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/Seller as per the extent guidelines of the company (Fraud Prevention Policy, suspension of Business dealings with suppliers/contractors etc.) available on www.bhel.com and/or under applicable legal provisions.

13.0 MODE OF FINALIZATION OF PRICES (REVERSE AUCTION OR PRICE BID OPENING)

Mode of finalization of prices (through reverse auction/ price bid opening) of all techno-commercially qualified bidders shall be as specified in NIT.

Detailed terms and conditions for RA are available on www.bhel.com. Business Rules for RA shall be sent to the bidders before conducting RA.


14.0 REJECTION OF TENDER AND OTHER CONDITIONS

14.1 Acceptance of tender will rest with Purchaser and does not bind him to accept the lowest or any tender and reserves to itself full rights for the following without assigning any reasons whatsoever:

- To reject any or all the tenders.
- To increase or decrease the quantities.
- To reject any commercial or technical deviation given in offer.
- To split the work amongst two or more bidders.
- To award the work in parts.

14.2 Standard pre-printed conditions of tenderer attached to offer will not be accepted.

14.3 Purchaser will not be bound by any new power of attorney granted by tenderer or by changes in composition of the firm made subsequent to award of Order/ Contract. Purchaser may, however, recognize such power of attorney and changes after obtaining proper legal advice, the cost of which will be chargeable to the Seller/ Contractor concerned.

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- 14.4 If tenderer gives wrong information/furnishes false documents/certificates etc., whether during the bidding stage or subsequent to award of contract then the purchaser reserves the right to reject such an offer at any stage or cancel the Order/ Contract, if awarded, and forfeit the security deposit and bank guarantee. Such actions/omission may also invite action by BHEL as per extant guidelines for suspension of business dealing with supplier/contractor (as available on www.bhel.com)

DEALING WITH BIDDERS UNDER SUSPENSION

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 firm is available on BHEL web site www.bhel.com

15.0 **DEVIATIONS FROM NIT**

Deviations (Commercial as well as Technical) from NIT are generally not acceptable. In case of deviations from NIT, the tenderer shall give cost of withdrawal of such deviations as per Annexure-II.

16.0 **LOADING FOR COMMERCIAL DEVIATION (WHERE COST OF WITHDRAWAL NOT GIVEN)**

For deviations w.r.t. Payment terms, Liquidated damages, if a bidder chooses not to give any cost of withdrawal of deviation, loading as per Annexure-VII will apply.

17.0 **INTEREST RATE FOR LOADING**

Interest Rate for loading will be taken as Base rate of SBI on the date of bid opening; (Techno-commercial bid, in case of 2 part bids) + 6% for the period of relaxation sought by the bidders. If the bid opening day happens to be non-working day for SBI, then previous bank working day shall be considered.

18.0 **DISCOUNT**

Discount offered by any bidder in the original price bid, against the present Tender Enquiry, which is also indicated to be applicable to any other Enquiry, shall be considered against the present Tender Enquiry only. In case only percentage discount is indicated, the same shall be applicable to optional prices also. Discount offered shall be valid for full duration of offer validity. Any conditional discount shall not be considered for evaluation.


19.0 **EVALUATION CRITERIA**

19.1 **TENDER EVALUATION**

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.

Bidders (other than cases of single part bids) shall be given an opportunity to withdraw the deviations/ furnish clarifications/ 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 mentioned in this document/NIT.

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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.

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 banned firms is available on BHEL web site www.bhel.com. Please also see clause no. 11 and other provisions in GCC.

19.2 **COST EVALUATION**

Tenders will be evaluated on the basis of total cost to BHEL, taking into consideration loadings, if any, and all available financial advantages, including those available from Owner, taxation authorities etc.

For evaluation, exchange rate (TT selling rate of State Bank of India) as on date of tender opening (Part-I bid in case of two part bid) shall be considered. If the relevant day happens to be a bank holiday, then the forex rate as on the previous bank (SBI) working day shall be taken.

In case of foreign bidders for supply packages, the quoted C&F price shall be loaded by following factors to arrive at total evaluation price:

- a) Insurance for evaluation purposes shall be @ 0.1 % of quoted C&F price.
- b) Port handling/clearing charges @1% of C&F value
- c) Custom duty with applicable cess as per special conditions of contract-as prevailing on date of tender opening (Part-I).
- d) Inland freight (Indian port to project site) @ 3% of C&F value


20.0 **FOREIGN SUPPLIERS & INDIAN AGENTS OF FOREIGN SUPPLIERS**

Please refer our website www.pem.bhel.com , www.bhel.com for details.

21.0 **MICRO, SMALL & MEDIUM ENTERPRISES**

Extant regulations of Govt. of India will be applicable.

Preferences as mentioned in "Public Procurement Policy for Micro and Small Enterprises (MSEs) Order, 2012" shall be given to Micro and Small enterprises. Payment to MSEs will be governed as per the prevailing Act. MSE Bidders/ as defined by the MSMED Act as amended from time to time can avail the intended benefits only if they submit along with the offer, attested copies of either EM II certificate/ Udyog Aadhar Memorandum certificate having deemed validity (five years from the date of issue in acknowledgement in EM III Udyog Aadhar) or valid NSIC certificate or EM III Udyog Aadhar Memorandum certificate along with attested copy of a CA certificate (Format enclosed as per Appendix I where deemed validity of EM II certificate/Udyog Aadhar Memorandum certificate of five years have expired) applicable for the relevant financial year (latest audited) or such other document as may be stipulated in the MSMED Act or its rules/regulations as amended from time to time and/or by the Buyer. The deemed validity will be assessed on the date of bid opening (Part 1 in case of two part bid). Non submission of such documents as stipulated hereinbefore will lead to consideration of their bids at par with other Bidders. No benefit shall be applicable for the concerned for the tender enquiry, if any

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deficiency in the above required documents is not submitted before the 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. Documents should be notarized or attested by a Gazetted officer. This provision for MSE will apply subject to the condition that the participating MSE meets the tender requirements.

In case of any change in the MSE status of the Bidder, it shall be the responsibility of the Bidder to notify the change as a part of the bid document. If at a later date it comes to the knowledge of BHEL, that the change in the status has not been intimated by the Bidder and the order was obtained under the premise of an MSE then BHEL may reject the bid or, as the case may be, cancel the order and take necessary steps for suspension of the business dealing against the Bidder as per the extant guidelines for suspension of business dealings with suppliers/ contractors of BHEL (as available on www.bhel.com). In case if all the items being procured under the enquiry fall under category of reserved items as defined in "Public Procurement Policy for Micro and Small Enterprises (MSEs) Order, 2012" and if any of the MSE bidder(s) is techno-commercially qualified then the price bids of only MSE bidders shall be opened. If no MSE bidder is techno-commercially qualified, then price bids of all techno-commercially qualified Bidders shall be opened.

22.0 **BHEL FRAUD PREVENTION POLICY**

The 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. BHEL Fraud prevention policy is also uploaded on www.pem.bhel.com & www.bhel.com

23.0 **TENDERING COST**

Tender documents are free of cost. However, Bidder shall bear all costs associated with the preparation and submission of its bid at its end. BHEL, shall in no case, be responsible or liable for these costs, regardless of the conduct or the outcome of the bidding process.

24.0 **AVAILABILITY OF SPARES**


Vendor to keep BHEL informed by giving six-month (or specified in SCC) advance notice for discontinuation of manufacturing of the spares, mentioned/ required in the order.

25.0 **SPLITTING OF ORDER**

BHEL reserves the right to award tendered quantities to one or more Bidders. In case splitting is desired, the ratio of splitting shall be as mentioned in NIT, subject to acceptance of L1 price by L2, L3 etc., in order of their ranking.

If no splitting is mentioned in the NIT but it is later discovered that the quantity needs to be distributed on more than one Bidder the intention and manner of splitting shall be disclosed to all the techno-commercial acceptable bidders before price bid opening.

However extant Guidelines/ Instructions of Govt. of India shall prevail.

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26.0 MAKE IN INDIA

For this procurement, Public Procurement (Preference to Make in India), Order 2017 dated 16.09.2020 and subsequent Orders issued by the respective Nodal Ministry shall be applicable even if issued after issue of the NIT but before finalization of contract/ PO/WO against the NIT. In the event of any Nodal Ministry prescribing higher or lower percentage of purchase preference and / or local content in respect of this procurement, same shall be applicable. Vendors are requested to go through the above mentioned orders and furnish the required documents as specified in the NIT.

27.0 START UP VENDORS

MSME / Start up vendors to submit applicable documents along with their offer for availing the benefits as per GOI guidelines.

28.0 TReDS PLATFORM


BHEL is registered with TreDS platform. MSME Bidders are requested to get registered with TReDS platform to avail the facility as per the GOI guidelines.

29.0 EXPORT ADMINISTRATION REGULATIONS

If a delivery includes such technology and / or supply that is subject to the export regulations, the Seller shall obtain due permissions, approvals, license etc. as applicable from time to time under laws in force.

30.0 AGENCY AGREEMENT: - For Indian agents of foreign principals:

- i. BHEL shall deal directly with foreign bidders/vendors, wherever required, for procurement of goods. However, if the foreign principal desires to avail the services of an Indian agent, then the foreign principal should ensure compliance to regulatory guidelines- which require mandatory submission of an Agency Agreement.
- ii. It shall be incumbent on the Indian agent and the foreign principal to adhere to the relevant guidelines of Government of India, issued from time to time.
- iii. The Agency Agreement should specify the precise relationship between the foreign OEM / foreign principal and their Indian agent and their mutual interest in the business. All services to be rendered by agent/ associate, whether of general nature or in relation to the particular contract, must be clearly stated by the foreign supplier/ Indian agent. Any payment, which the agent or associate receives in India or abroad from the OEM, whether as commission or as a general retainer fee should be brought on record in the Agreement and be made explicit in order to ensure compliance to laws of the country.
- iv. Any agency commission to be paid by BHEL to the Indian agent shall be in Indian currency only.
- v. Tax deduction at source is applicable to the agency commission paid to the Indian agent as per the prevailing rules.
- vi. In the absence of any agency agreement, BHEL shall not deal with any Indian agent (authorized representative/ associate/ consultant, or by whatever name called) and shall deal directly with the foreign principal only for all correspondence and business purposes.
- vii. The "Guidelines for Indian Agents of Foreign Suppliers" (refer www.bhel.com) shall apply in all such cases.

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- viii. The supply and execution of the Purchase Order (including indigenous supplies / service) shall be in the scope of the OEM / foreign principal. The OEM / foreign principal should submit their offer inclusive of all indigenous supplies / services and
- ix. evaluation will be based on 'Total cost to BHEL'. In case OEM / foreign principal recommends placement of order(s) towards indigenous portion of supplies / services on Indian supplier(s) / agent on their behalf, the credentials / capacity / capability of the Indian supplier(s) agent to make the supplies / services shall be checked by BHEL as per the extant guidelines of Supplier Evaluation, Approval & Review Procedure (SEARP), before opening of price bids (if required as per NIT). It will be the responsibility of the OEM / foreign principal to get acquainted with the evaluation requirements of Indian supplier/ agent as per SEARP available on www.bhel.com.

The responsibility for successful execution of the contract (including indigenous supplies / services) lies with the OEM/ foreign principal. All bank guarantees to this effect shall be in the scope of the OEM/ foreign principal.

BHEL prefers to deal directly with the manufacturers. In case any Manufacturer insists for submission of offer from their agent and subsequently placement & execution of PO through their agent:

- i. Agent should submit authorization letter from the manufacturer, clearly indicating name and address of Manufacturer & agent. The authorization letter should be tender specific and clearly define that the manufacturer has authorized only the referred agent for participating in the tender. Manufacturer, should take responsibility for Quality and Guarantee. In case offer of one Manufacturer received from more than one agent (i.e. Manufacturer authorizing more than one agent), all such offer will be ignored.
- ii. Manufacturer should necessarily meet PQR defined in NIT for manufacturers in either case (i.e. In case of Submission of Offer Directly by manufacturer or Participating through agent). Offers of Manufacturers forwarded by their agent (i.e. Offer are of manufacturer and agent is only forwarding their offer with their covering letter), should be treated as direct offer from manufacturer.
- iii. The C&F price quoted will be deemed to be inclusive of Indian Agency commission. Agency commission if payable shall be converted to Indian Rupees at TT buying rates of exchange ruling on tender opening date which shall not be subjected to any further exchange rate variation, as disclosed by the bidder in his quoted C&F price will be paid in Indian Rupees on receipt & acceptance of Materials or it's installation at destination, as the case may be. The TT buying rate prevailing on the date of technical bid opening shall be considered for computation of Agency commission.
- iv. In a tender either the Indian Agent on behalf of Principal / OEM or the Principal / OEM itself can bid, but both cannot bid simultaneously for same item / product in the same Tender. If both OEM and its authorized agent submit their bids separately in that case only the offer of OEM can be considered.




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1.0 **ISSUANCE OF PURCHASE ORDER AND RECTIFICATION OF ERRORS**

Issuance of LOI / LOA / Purchase order by the Purchaser shall result in a binding contract between the Seller/ Contractor and Buyer. Seller/Contractor shall acknowledge the LOI /LOA/ Purchase Order issued by BHEL (Purchaser) within 7 days of its receipt. Seller/ Contractor should examine the LOI / LOA/ Purchase Order immediately upon receipt and bring to the notice of BHEL, within 7 days of receipt, any discrepancy/errors with regard to scope of work, rates, taxes & duties, agreed terms & conditions etc. for due rectification. If the Seller/ Contractor fails to give such acknowledgement within seven days, LOI /LOA/ Purchase order issued shall be deemed as *having no discrepancy/ errors. In case of any clerical error in the LOI /LOA/ Purchase order with respect to agreed Terms & Conditions, BHEL reserves the right to issue correction(s) as and when noticed.*

2.0 **INTENT OF CONTRACT**

Nothing in this document, unless otherwise specified, is intended to, or shall be deemed to, establish any partnership or agency between the parties.

3.0 **PRICES**

Prices shall be with PVC for the entire scope of work in line with the tender documents and subsequent clarifications/ confirmations till completion of contract.

While, total price will be considered for evaluation, as per provision of tender, separate orders will be placed for (i) Engineering, (ii) Main supply, (iii) E&C, (iv) Mandatory spares and (v) O&M, as applicable and as per price schedule.

4.0 **TAXES AND DUTIES**

4.1 **GST is defined and includes CGST/ SGST/ UTGST/ IGST**

4.1.1 Seller/ Contractor is required to ensure that the quoted price should be exclusive of GST (or specified in NIT).

4.1.2 It is the responsibility of the seller/contractor to issue the Tax Invoice strictly as per the format prescribed under the relevant applicable GST law. Vendor to indicate the proper GSTN Registration/ HSN/SAC code in their tax invoice.


4.1.3 **State wise GST registration code of purchaser units / regions as per annexure no XI.**

4.1.4 Seller/contractor is required to mention the GST registrations number as per POWO or as informed by respective region/site/unit of BHEL.

4.1.5 In general, GST shall be paid at actuals against Tax Invoice in case BHEL is able to take the input tax credit. Decision of BHEL in this regard will be final and binding on the seller/contractor

4.2 **OTHER TAXES & LEVIES**

All taxes/ duties/ Cess ~~BOCW~~ / *seignior age fee* other than GST shall be deemed to be included in the Ex-Works prices. No variation for such taxes and levies shall be paid in any circumstance unless specifically agreed upon even if the same are mentioned anywhere in the bids by the bidders.

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Note : For BOCW, please refer SCC/NIT.

4.3 **CUSTOM DUTY**


- 4.3.1 Applicable Customs Duty/ IGST/ Goods and Services Compensation Cess under Goods and Services Tax (Compensation to States) Act, 2017 element for imported items shall be included in the Ex-Works prices unless specified in the price format of the NIT.
- 4.3.2 Seller/ Contractor shall arrange for his own import license, if required, since Purchaser will not provide any import license. Therefore, Seller/ Contractor alone shall be responsible for any delay in getting import license or non-availability of the same or completion of other related formalities. Purchaser shall not be responsible for any financial liability, whatsoever, on this account.
- 4.3.3 For items where CIF is available, as specified in NIT- Essentiality Certificate or Project Authority Certificate (PAC) as per Import Policy, if required to avail concessional customs duty, shall be clearly mentioned in the offer. Import content (CIF value in rupees) with list of items, quantity, foreign currency, Country of origin etc., shall be submitted by the bidder as part of Price bid.

4.4 **DIRECT TAX**

- 4.4.1 Seller is required to update himself on its own and comply with provisions of Indian Income Tax Act as notified from time to time. Purchaser shall not be liable towards liability of income tax accruing to the Seller of whatever nature including variations thereof, arising out of this Order/ Contract, as well as tax liability of the Seller/ Contractor and his personnel.
- 4.4.2 Deductions of Tax at source at the prevailing rates shall be effected by the Purchaser before release of payment, as a statutory obligation, if applicable. TDS certificate will be issued by the Purchaser as per statutory provisions. The Seller/Contractor has to mention their Permanent Account Number (PAN) and GSTIN in all invoices.

4.5 **GST COMPLIANCES**

- 4.5.1 The bidder should be registered with the appropriate authority under relevant GST laws.
- 4.5.2 **The bidder to specify in their offer (part 1 bid) the category of registration under GST i.e. registered dealer and composite dealer.**
- 4.5.3 **In the event of any GST quoted by a bidder (registered as a composite dealer), the GST shall be considered for evaluation and ordering purpose.**
- 4.5.4 **In the event of any change in the status of vendor from composite to regular dealer after the submission of the bid but before the supply, no reimbursement of additional GST will be made. However, the vendor has to raise the invoice strictly, as per the law, by adjusting their ex-works price.**
- 4.5.5 **Vendor/Supplier will share the Tax invoice along with LR/RR (as applicable) to BHEL immediately on removal of goods from vendor/supplier works.**
- 4.5.6 All payments against Tax Invoice to vendors/contractors shall be released only after:

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- i. Vendor/ contractor declaring such invoice in GSTR-1/GST-ANX-1 as per the relevant GST Act.
- ii. The tax component charged by the vendor in the invoice should match with the details uploaded by vendor in GSTR-1/GST-ANX-2.
- iii. Confirmation of payment of GST thereon by vendor on GSTN portal. In case, any GST credit is delayed/denied to BHEL due to non/delayed receipt of goods and/or tax invoice or expiry to timeline prescribed in the relevant GST Act for availing such ITC, or any other reasons not attributable to BHEL, tax amount shall be recoverable from the vendor/contractor along with interest levied/ leviable on BHEL.

4.5.7 Wherein GST liability arises on BHEL under reverse charge, any interest levied/leviable due to any reasons not attributable to BHEL shall be recovered from the vendor/contractor.

4.5.8 The applicable TDS under GST/ Goods and Services (Compensation to States) Act will be deducted from the payments.

5.0 **STATUTORY VARIATION**

5.1 In general, Statutory variation for GST is payable to the Seller during currency of the contract between Buyer and Seller. Further, for period beyond the currency of the contract, BHEL will reimburse the actual applicable tax even if the same is higher than the amount applicable within the contractual period in case BHEL is able to take the input tax credit. However, the decision of BHEL in this regard will be final and binding on the seller/contractor otherwise vendor/contractor has to bear the differential upward increase in tax and ex- works price is to be adjusted accordingly

5.2 No other variations such as on Custom Duty, exchange rate, minimum wages, prices of controlled commodities, any other input etc. shall be payable by the purchaser unless specifically agreed upon.

6.0 **VARIATION OF CONTRACT VALUE**


Prices shall be with PVC (as specified in NIT) for any increase or decrease in the Order/ Contract value (Ex-works) as per annexure-XIII (for any amendment) within three years from the date of original PO unless specified otherwise in NIT. The Purchaser shall have the right to increase or decrease quantities and scope up to the above extent of value and Seller/ Contractor shall be bound to accept the same at the contracted prices without any escalation.

Note:

- i. In case of package *broken into Purchase Orders of main supply, services and spares, quantity variation clause shall be applicable on cumulative sum of such individual Purchase Orders.*
- ii. Quantities (within PO/permissible quantity contract price variation) shall be released within **three** years from the date of purchase order/ LOI / LOA, unless mentioned otherwise in NIT/SCC specifically.

7.0 **ENGINEERING DOCUMENTS SUBMISSION**

All engineering document submission by vendors after award of contract shall be online, using BHEL Document Management System (DMS) (as applicable). Comments would also be conveyed to vendors

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through DMS. This would ensure enhanced engineering coordination and speedy approval of documents.

For facilitating submission of documents online, vendors shall submit details as per format available on line (select Vendor Login Creation form link available at https://www.pem.bhel.com/Bhel_vendor_section.aspx) to concerned Dealing Engineer in Purchase Dept. of BHEL-PEM for creation of login account in PEM's DMS.

- i. Internet explorer version –Internet Explorer 11 or above
- ii. Internet speed – 2 mbps
- iii. Pop up from <https://www.pem.bhel.com/> should not be blocked
- iv. Vendor's internal proxy setting should not block DMS application's link <https://www.pem.bhel.com/wrenchweb>

Procedure for uploading comments, viewing comments etc. is available at https://www.pem.bhel.com/Dms_Manuals.html.

8.0 **TRANSPORTATION & FREIGHT CHARGES**

All dispatches shall be through road carriers, on freight pre-paid basis. Road Permit/E-way bill, if required, will be arranged by Supplier.

9.0 **TERMS OF PAYMENT**

9.1 **MANDATORY SPARES**

9.1.1 **INDIAN VENDORS**

Payment of 90% of basic price of materials supplied along with 100% freight and taxes & duties (as applicable), shall be paid against receipt of material (receipted LR) at site on prorata basis.


Balance 10% of basic price of materials supplied will be released on pro – rata basis on receipt of Material Receipt Certificate (MRC) / Store Receipt Voucher (SRV) from project site engineer of purchaser/customer.

9.1.2 **FOREIGN VENDORS**

Payment of 80% of C&F price of materials supplied, shall be paid against Bill of lading/ AWB on pro-rata basis. Balance 20% of C&F price of materials supplied will be released on pro – rata basis, as detailed below:

Balance 10% of C&F price of materials shall be paid against Import General Manifest (IGM)/ Bill of Entry on pro-rata basis.

Balance 10% of C&F price of materials shall be released on pro-rata basis after receipt of Material Receipt Certificate (MRC) / Store Receipt Voucher (SRV) from project site engineer of Purchaser/customer.

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9.2 SUPPLY PAYMENT

9.2.1 INDIAN VENDORS

Payment of 80% of basic price of materials supplied, as per approved billing schedule, along with 100% freight, taxes and duties (as applicable), shall be paid against receipt of material (receipted LR) at site on pro-rata basis.

10% of basic price of materials supplied will be released on pro-rata basis after submission of Material Receipt Certificate (MRC) from project site engineer of Purchaser.

Collection of Material Receipt Certificate from Site and its submission for claiming the payment shall be the responsibility of the Seller/ Contractor.

10 % of basic price of materials supplied shall be released against (2.5% against each activity) the completion of: (a) Trial run of the system/ package; (b) Successful completion of the PG test/ demonstration test of the system/ package, as applicable; (c) Submission of final documents, e.g. As-built drawings, O&M manual etc. as applicable and (d) Liquidation of Punch Point.

BHEL site(s) / ISG / REGION HQ, at discretion, may further split up the above percentages and effect payment to suit the site condition, project cash flow requirement, according to the progress of work. In case of Turnkey package-After successful TRIAL operation of package vendor shall obtain FINAL SUPPLY time extension and claim these retention payments

List of packages with PG Test applicability is as per Annexure-IX. List of documents required for FINAL bill payment (i.e RETENTION payment) shall be issued by BHEL site(s) / ISG / REGION HQ during detailed PO/WO.


Note: - In case PG test/ demonstration test of the system/ package, as applicable cannot be completed within one year after completion of Trial run, for reasons not attributable to the contractor, payment for PG Test/ demonstration test of the system/ package, as applicable can be released on submission of BG of equivalent amount, valid initially for 6 months & to be revalidated till completion of PG test/ demonstration test of the system/ package, as applicable.

However, contractor has to fulfil all formalities for final billing/ contract closing, prior to drawing this payment.

9.2.2 FOREIGN VENDORS

Payment of 75% of the C&F price of materials supplied, as per approved billing schedule, along with 100% taxes and duties (as applicable) and inland freight, shall be paid against Bill of lading/ AWB on pro-rata basis.

10% of C&F price of material supplied shall be released against Import General Manifest (IGM)/ Bill of Entry on pro-rata basis.

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5% of C&F price of material supplied shall be released after submission of Material Receipt Certificate (MRC) from project site engineer of Purchaser.

Collection of Material Receipt Certificate from Site and its submission for claiming the payment shall be the responsibility of the Seller/ Contractor.

10 % of C&F price of materials supplied shall be released against (2.5% against each activity) the completion of: (a) Trial run of the system/ package; (b) Successful completion of the PG test/ demonstration test of the system/ package, as applicable; (c) Submission of final documents, e.g. As-built drawings, O&M manual etc. as applicable and (d) Liquidation of Punch Point.

BHEL site/ Region Hqrs/ ISG, at discretion, may further split up the above percentages and effect payment to suit the site condition, project cash flow requirement, according to the progress of work.

List of packages with required final documents and PG Test applicability is as per Annexure-IX.

Note: - In case PG test/ demonstration test of the system/ package, as applicable cannot be completed within one year after completion of Trial run, for reasons not attributable to the contractor, payment for PG Test/ demonstration test of the system/ package, as applicable can be released on submission of BG of equivalent amount, valid initially for 6 months & to be revalidated till completion of PG test/ demonstration test of the system/ package, as applicable.

However, contractor has to fulfil all formalities for final billing/ contract closing, prior to drawing this payment.

9.3 **ERECTION & COMMISSIONING PAYMENT**

80 % (Eighty percent) of contract E&C price along with taxes (as applicable) shall be released on pro-rata erection of item/ material, on submission of protocol, duly signed by BHEL site official(s)/ customer, as per approved billing schedule.


10 % (Ten percent) of contract E&C price along with taxes (as applicable) shall be released on pro-rata commissioning of individual sub-system, on submission of protocol, duly signed by BHEL site official(s) and customer, as per approved billing schedule.

10 % (Ten percent) of contract E&C price along with taxes (as applicable) shall be released against (2.5% against each activity)

(a) Trial run of the system/ package; (b) Successful completion of the PG test/ demonstration test of the system/ package, as applicable; (c) Submission of final documents, e.g. As-built drawings, O&M manual etc. as applicable and (d) Liquidation of Punch Point and handing over.

BHEL site/ Region Hqrs / ISG, at discretion, may further split up the above percentages and effect payment to suit the site condition, project cash flow requirement, according to the progress of work. After successful TRIAL operation of package vendor shall obtain FINAL E & C time extension and claim these retention payments.

List of packages with PG Test applicability is as per Annexure-IX. List of documents required for FINAL bill payment (i.e RETENTION payment) shall be issued by ISG/REGION during detailed PO/WO.

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9.4 PAYMENT OF SERVICE(S) CHARGES: DEMONSTRATION CHARGES, SUPERVISION OF ERECTION / COMMISSIONING CHARGES, ENGINEERING CHARGES, O&M CHARGES (IF APPLICABLE, AS SEPARATE LINE ITEM OF PRICE FORMAT)

100% payment shall be released after successful completion of the activity on pro rata basis, on Site certification/ certification by engineering as applicable. Payment of O&M on quarterly basis after completion of each activity or as specified in NIT, on Site certification/ certification by engineering as applicable.

Note:- Engineering design, if applicable is defined as separate line item in NIT BOQ, same shall not be more than 5% of main supply (excluding freight and GST) failing which breakup shall be adjusted accordingly from supply price for ordering.

9.5 RELEASE OF PAYMENT

Vendors shall submit billing documents for payment directly to BHEL. Payment will be released within 60 days after submission of complete documents as per clause no 9.6.2 – 9.6.5 below or as per order/ contract (45 days for vendors qualified and registered as Micro or Small as per MSMED Act).

Notes:

- i. Vendors are required to issue Tax Invoice inclusive of PVC value (if applicable) wherever indices are available. In case PVC indices not available, vendors to submit PVC invoices on availability of applicable indices.
- ii. Any negative PVC, if not adjusted in earlier payments, will be adjusted at the time of MRC payment.
- iii. Payment for supply for Foreign vendors will be released within 90 days from date of Bill of Lading/AWB against payment clause no 9.1.2 and 9.2.2.

9.6 DOCUMENTS TO BE SUBMITTED BY VENDOR

9.6.1 FOR RECOGNITION OF DISPATCH


Copy of the following documents by e-mail/ fax immediately on dispatch:

- i. GST compliant invoice
- ii. LR for Indian Vendors (indicating Invoice No., no. of boxes, PTL (if applicable) etc.) / Bill of Lading or AWB for foreign vendor
- iii. Packing List: Must be indicating No. of boxes, Packing size, Gross weight and net weight of each package, Contents of the package with cross reference to BoM item code no. or item serial no. and Quantity of each item separately
- iv. Insurance Intimation to underwriter through email/fax
- v. Dispatch Clearance

Note: - Above list is tentative in nature and will be finalised at the time of PO.

9.6.2 A) FOR CLAIMING PAYMENTS (UNDER CLAUSE 9.1.1, 9.2.1 (Original + 1 copy)

- i. GST compliant invoice
- ii. PVC Calculation and copy of all applicable indices, if PVC applicable.
- iii. Receipted LR (signed & stamped)

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- iv. Packing List: Must be indicating No. of boxes, Packing size, Gross weight and net weight of each package, Contents of the package with cross reference to BoM item code no. or item serial no. and Quantity of each item separately
- v. Guarantee Certificate
- vi. Duty drawback (if applicable) documents: As per applicable law

B) FOR CLAIMING PAYMENTS (UNDER CLAUSE 9.1.2, 9.2.2) (Original + 1 copy)

- i. Invoice
- ii. Bill of Lading or AWB
- iii. Packing List: Must be indicating No. of boxes, Packing size, Gross weight and net weight of each package, Contents of the package with cross reference to BoM item code no. or item serial no. and Quantity of each item separately
- iv. Guarantee Certificate
- v. COO - Certificate of Origin

9.6.3 FOR CLAIMING MRC PAYMENT

- i. Invoice for claiming MRC payment
- ii. Copy of MRC

9.6.4 FOR CLAIMING PAYMENT FOR SERVICES

- i. GST compliant invoice
- ii. Respective documents as specified in clause 9.3 & 9.4.

9.6.5 FOR CLAIMING RETENTION PAYMENT:

- i. Activity completion certificate (i.e TRIAL operation/PG test/Final drawing/documents/liquidation of punch points as applicable) from BHEL/Customer as applicable.
- ii. FINAL time extension.
- iii. HR compliances, store NOC and any other documents checklist Shall be issued by REGION/ISG during detailed POWO. Compliance of these is required before 1st retention payment release.


9.7 LOADING DETAILS IN CASE OF DEVIATIONS

Loading details in respect to deviations in Payment Terms, LD, PVC indicated in Annexure – VII

9.8 BHEL'S BANKERS

Please refer ISG / REGION HQ "website for details.

9.9 MODE OF PAYMENT/ NON PAYMENT OF INTEREST

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Payments shall be made directly to the Seller/ Contractor by E-transfer. Seller/ Contractor to provide necessary information for the same as per Annexure – VI.

Note: Option of payment through TReDS is also available to MSME vendors.

- 9.10 Notwithstanding anything to the contrary contained in any other document comprising the contract, no interest shall be payable by the Purchaser to the Seller/Contractor on any money or balances including but not limited to the security amount, bank guarantee amount, EMD, retention money, any bills or any amount withheld which may become due owing to difference or misunderstanding or any dispute between the Purchaser and the Contractor, or any delay on the part of Purchaser in making periodical or final payment or any other aspects incidental thereto.

10.0 **RECOVERY OF OUTSTANDING AMOUNT**

In event of any amount of money being outstanding at any point of time against the Seller/ Contractor due to excess payment, imposition of liquidated damages, invocation of risk and cost clause 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 Seller/ Contractor from the following:


- i. Dues available in the form of bills payable to Seller, Security Deposit (SD), BGs against the same contract,
- ii. Dues payable to Seller against other contracts including SDs, BGs in the same Region/Unit/Division of BHEL.
- iii. Dues payable to Seller against other contracts including SDs, BGs in the different Region/Unit/Division of BHEL.
- iv. Any other mode as deemed fit by the Purchaser at its sole discretion.

11.0 **CONTRACT PERFORMANCE BANK GUARANTEE (CPBG)**

- 11.1 Vendor shall submit Separate bank guarantee (Engineering Charges, Main supply, services, mandatory spares etc.) for Orders / POs values (value excluding taxes, duties and freight) (as per Annexure-III) for 5% (or specified in NIT / order / PO) of Order value (excluding taxes, duties & freight) within 30 days from the date of purchase order to cover the due performance of Order / Contract and to fulfill the guarantee conditions stipulated in the Order / Contract.

Note: BG value can be proportionately reduced after completion of Guarantee Period/Defect liability Unit-wise/ Lot wise/ Stage-wise/Set-wise, subject to the units/lots/sets/stages being explicitly specified in in the contract.

- 11.2 Value of the Bank Guarantee (at the time of submission) shall remain unchanged for any subsequent variations in order/ contract value up to 20%. Beyond this, the Seller/ Contractor shall arrange to enhance or reduce the value of the Bank Guarantee accordingly.
- 11.3 Validity of the Bank Guarantee shall be for the entire Guarantee/Defect liability period or Package performance guarantee test acceptance (as applicable) whichever is later. Initially, it should be at least 18 months, later extended to cover the above period, one months before its expiry.

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- 11.4 Purchaser reserves the right to encash the bank guarantee and forfeit the amount in the event of any default, failure or neglect on part of the Seller / Contractor in fulfillment of performance of the Order/ Contract or in the event GST credit is delayed / denied to BHEL due to non/delayed receipt of goods and / or tax invoice or expiry to timeline prescribed in the relevant act for availing such Input Tax Credit or any other reasons not attributable to BHEL.
- 11.5 Equivalent amount along with interest shall be recovered from payment due to the Seller/ Contractor, before releasing any payment, in absence of a valid bank guarantee.
- 11.6 Bank Guarantees shall be from Consortium Bank as per list and directives on [www. pem.bhel.com](http://www.pem.bhel.com).
- 11.7 The expiry of claim period should be kept min. of three months after BG validity.
- 11.8 In case of private sector banks, a clause to be incorporated in the text of bank guarantee that it can be enforced by being presented at any branch of the bank located in the respective PS-region HQs.

Notes-


- (A) In case of delay in submission of performance security (CPBG), enhanced performance security (CPBG), which would include interest (SBI rate + 6%) for the delayed period, shall be submitted by the bidder. Further, if performance security is not submitted till such time the first bill becomes due, the amount of performance security due shall be recovered as per terms defined in NIT / contract, from the bills along with due interest.
- (B) In case, seller/ contractor submits CPBG later for the equivalent amount, recovered amount will be refunded. (Excluding interest penalty amount).

12.0 **GUARANTEE FOR PLANT/ EQUIPMENT/ STORES**


- 12.1 Seller/ Contractor shall warrant that the plant/ equipment/ 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.

Guarantee period for packages (excluding mandatory spares) shall be as stipulated in Special Conditions of Contract or otherwise, 12 calendar months from the date of handing over of the system Unit wise/Lot-wise/Stage-wise/Set-wise/ system wise (as applicable) to customer / BHEL, OR PG test of system (if applicable), whichever is later.

Seller/ Contractor's liability in respect of any complaints, defects and claims shall not be limited to supply and installation of replaced parts free of charge, or repair of defective parts to the extent that such replacements are attributable to or arise from faulty workmanship, material or design, in the manufacture, of the plant / equipment / stores but at the option of the Purchaser, to the payment of the value, expenditure and damages as mentioned hereafter, provided defects on being discovered are brought to the notice of the Seller/ Contractor within a period of three (3) months from the date of expiry of the guarantee period.

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	<p>Guarantee period for mandatory spares shall be 18 months from the date of handing over of complete package (as applicable) to customer / BHEL or as stipulated in Special Conditions of Contract.</p>
12.2	<p>All replacements and repairs during the guarantee period shall be delivered and completed promptly and satisfactorily within a period of three months from the time of reporting the defect/ loss/ rejection etc. If the Seller/ Contractor so desires and the Purchaser agrees, subject to import control regulations, the replaced parts can be taken over by Seller/ Contractor or his representative or can be dispatched at Seller/ Contractor's cost. No claim, whatsoever shall be entertained by Purchaser on account of such replaced parts.</p>
12.3	<p>All the replaced and replenished plant/ equipment/ stores shall also be guaranteed as per above clauses.</p>
12.4	<p>Decision of Purchaser with regard to Seller/ Contractor's liability and the amount involved, if any, payable by Seller/ Contractor under the guarantee shall be final, conclusive and binding. However, vendor's maximum liability will be limited to the total contract value including taxes, duties and freight except under the condition of Risk purchase including taxes, duties and freight.</p> <p>This shall not be applicable on the recoveries arising out of Risk and Cost, recoveries made by Customer from BHEL on account of Contractor, any other type of recoveries for workmanship, material, T&P etc. due from the contractor.</p>
13.0	<p><u>(A) DELIVERY / COMPLETION SCHEDULE (FOR SUPPLY contract)</u></p>
13.1	<p>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. Mere payment by itself shall not constitute acceptance of the goods or materials in any manner, whatsoever.</p>
13.2	<p>Terms of delivery shall be FOR dispatch station / project site for indigenous supplies and C&F for foreign supplies.</p>
	<p><u>(B) DELIVERY / COMPLETION SCHEDULE (FOR Turnkey Packages E&C contract)</u>:- E&C shall be considered completed after completion of TRIAL operation / PG test and Handing over (as applicable) of complete package.</p>
14.0	<p><u>INSPECTION AND TESTING AT CONTRACTOR'S PREMISES</u></p>
14.1	<p>Purchaser's nominated Inspection Agency shall have at all reasonable times access to Seller/ Contractor's premises or works and shall have the power at all reasonable times to inspect drawings of any portion of the work or examine the materials and workmanship of the plant/ equipment/ stores during their manufacture, and if part of the plant/ equipment/ stores is manufactured at other premises, the Seller/ Contractor shall arrange for inspection, examination and testing by the Inspection Agency as if the plant/ equipment/ stores is manufactured on the Seller/ Contractor's premises.</p>
	<p>Inspection calls should be raised by the Seller/ Contractor on BHEL CQS Website/CQIR website link.</p>

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Such inspection, examination and testing by itself shall not relieve the Seller/ Contractor from any obligation under the Order/ Contract.

Non-conformance from the contract specifications shall be reported by the Seller/ Contractor as per Part – I of Annexure – IV.

- 14.2 Seller/ Contractor shall give Inspection Agency reasonable notice of any material being ready for testing and the Inspection Agency shall (unless the inspection of tests is voluntarily waived) attend at the Seller/ Contractor's premises within seven (7) days of the date on which the material is notified as being ready. All standard shop tests, physical and chemical tests required by the standards or as may be prescribed or approved as per Order/ Contract shall be conducted by the Seller/ Contractor. Purchaser/ Inspection Agency reserves the right to waive any of the above tests requirements and to prescribe new tests, if found necessary, to complete the work so as to conform to the best practices. Seller/ Contractor shall forthwith forward to the Inspection Agency, duly certified copies of the test certificates in quadruplicate, for approval. Further copies of the shop test certificates shall be bound with the instruction manuals referred to in "Seller/ Contractor's documents, drawings and instruction manuals".

In case of delay in witnessing of inspection beyond stipulated time (i.e. 7 days from the date on which the material is notified as being ready), by BHEL arising due to reasons not attributable to vendor, BHEL will extend the delivery period for such delay in carrying out inspection. If BHEL is not able to witness inspection up to 15 days then in addition to delay beyond stipulated period, extension in delivery time of 7 days' for arranging fresh inspection will be given.


- 14.3 Where the Order/ Contract provides for tests/ inspections at the premises or works of the Seller/ Contractor or any sub-contractor, the Seller/ Contractor, except specified otherwise, shall provide free of charge such assistance, labour, materials, electricity, fuel, water, stores, apparatus, measuring instruments and test equipment including any other facilities as may be reasonably required to carry out such tests efficiently.

14.4 INSPECTION MEASURING AND TEST EQUIPMENT'S

- 14.4.1 Inspection Measuring and Test Equipment (IMTE) whether used by the Seller/ Contractor or sub-contractor shall be calibrated, maintained and controlled. Calibration shall be valid and IMTE maintained in sound condition during usage.

- 14.4.2 In addition to above, Seller/ Contractor shall ensure the following:

- i. Measurement uncertainty is known and consistent with required measurement capability of the IMTE.
- ii. Selection of IMTEs is compatible with the necessary accuracy and precision of required measurement.
- iii. IMTEs are calibrated at the required intervals against certified equipment having known valid relationship to nationally recognized standards, at recognized calibration labs.
- iv. Calibration records are available and traceable to the particular IMTE.
- v. In case, during recalibration, the IMTE is found out of calibration, report on action taken to validate the previous results along with both calibration records of the IMTE to be furnished to Inspection Agency.

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vi. IMTEs are stored, handled and preserved such that accuracy and fitness are maintained and safeguarded from adjustments.

Note -Purchaser's decision on acceptability of the product in such cases shall be binding.

14.4.3 Responsibility of usage of valid and calibrated IMTEs by his sub-contractor(s) shall be of the Seller/ Contractor.

14.4.4 In case, calibration records are required by purchaser, copies of the same shall be furnished.

14.4.5 Seller/ Contractor shall be fully responsible for the Quality of products supplied by sub-contractors.

15.0 MATERIAL DESPATCH CLEARANCE CERTIFICATE (MDCC)

15.1 When the tests have been satisfactorily completed at Seller/ Contractor's works, the Inspection Agency shall issue an inspection report that effect within seven (07) days after completion of the tests, but if the tests were not witnessed by the Inspection Agency or his representative, the material acceptance report would be issued within seven (07) days after receipt of the test certificates by the Purchaser.

15.2 Purchaser will issue MDCC to the Seller/ Contractor within 7 days based on inspection report/ test certificates/Certificate of Conformance as applicable.

In case of delay in issuance of MDCC beyond 7 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. If BHEL is not able to issue MDCC up to 15 days then in addition to delay beyond stipulated period, 7 days' additional time shall be given to the vendor to facilitate the vendor for arranging logistics arrangements.

15.3 Seller/ Contractor shall not dispatch any material before issue of MDCC by Purchaser.


15.4 Satisfactory completion of tests or issue of MDCC shall not bind the Purchaser/ Owner to accept the supply/ equipment should it, on further tests after erection, be found not to comply with the contract provisions.

16.0 DELIVERY FAILURE AND TERMINATION / LIQUIDATED DAMAGES

16.1 Timely dispatch/delivery and completion of other schedules as stipulated in Order/Contract shall be the essence of Order/Contract. If the Seller/Contractor 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 breach of Order/Contract and hereunder.

16.2 DELAYED DELIVERY

16.2.1 a) **LD on mandatory spares portion** where delivery for mandatory spares is defined separately in the NIT. LD shall be applicable @ ½ percent and applicable GST thereon, of the total mandatory spares portion contract value excluding GST per week or part thereof, limiting to 10% of total contract value of mandatory spares excluding GST.

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b) **LD on Supply and E&C-** Purchaser reserves the right to recover from the Seller/ Contractor, as agreed liquidated damages and not by way of penalty, a sum equivalent to half ($\frac{1}{2}$) percent and applicable GST thereon, of the total contract price (main supply and E&C) excluding GST per week or part thereof, subject to a maximum of ten (10) percent of the total contract price (main supply and E&C) excluding GST, if E&C completion of the package is delayed beyond the contractual completion date or extension thereof as per the period stipulated in the Order/ Contract. Liquidated Damages will not be deducted from supply payment for delay in supply. LD on Mandatory spares shall be dealt as per clause (a) above.


c) **LD on service portion** (PG test, O&M, AMC, etc.) where delivery for services are defined separately in the NIT. LD shall be applicable @ $\frac{1}{2}$ percent and applicable GST thereon, of the total service portion contract value excluding GST per week or part thereof subject to a maximum of ten (10) percent of the total contract value of service portion excluding GST.

NOTE:

- i. Liquidated Damages will not be deducted from supply payment for delay in supply.
- ii. LR/RR date for indigenous supplies (Bill of Lading/AWB for Foreign supplies) shall be treated as the date of dispatch for levying LD as per clause 16. However, if receipted LR date for indigenous supply is beyond **30 days for FTL/ 45 days for PTL from the date of LR** (PTL to be clearly mentioned in LR), such excess period shall be considered for LD purpose irrespective of dispatch date. **Import General Manifest (IGM)/Bill of entry date** (whichever is earlier), for foreign supplies, is beyond 90 days from the date of Bill of Lading/AWB, such excess period shall be considered for LD purpose irrespective of dispatch date.
- iii. In case of any amendment/ revision, LD shall be linked to the amended/ revised contract value and delivery date(s).
- iv. If Order/ Contract involves two or more Units/ Sets/ Lots/ Stages, then Liquidated Damages shall be levied on order/ contract value excluding GST of the delayed Unit/ Set/ Lot/ Stage, provided delivery stipulated in the Order/ Contract is Unit/ Set/ Lot/Stage wise, however total LD amount shall be limited to 10% of total order/ amended order value excluding GST of delayed Unit/ Set/ Lot/Stage. Any subsequent lot released (not envisaged in original contract) due to increase in quantity within permissible quantity variation shall be treated as separate lot for the purpose of LD.
- v. The sum specified above is not a penalty but a genuine pre-estimate of the loss/ damage which will be suffered by purchaser on account of delay on the part of the Contractor/Seller and the said amount will be deductible without proof of actual loss or damage caused by such delay

16.2.2 Purchaser reserves the right to purchase from elsewhere on account of and at the risk and cost of Seller/ Contractor, with notice to Seller/ Contractor, the plant/ equipment/ stores due for delivery but not so delivered, or their equivalent without cancelling the Order/ Contract in respect of plant/ equipment/ stores not yet due for delivery. The manner and method of such purchase shall be at the discretion of the Purchaser.

16.2.3 Purchaser reserves the right to cancel the Order/ Contract or a portion thereof for the plant/ equipment/ stores not so delivered at the risk and cost of the Seller/ Contractor and the Seller/ Contractor shall be liable to the Purchaser for any excess cost thereof.

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16.2.4 Seller/ Contractor shall continue performance of the Order/ Contract, under all circumstances, to the extent not cancelled.

17.0 INSURANCE

17.1 It is the entire responsibility of the successful bidder to insure their workmen against accident and injury while at work as required by the relevant rules and to pay compensation, if any, to their workmen as per statutory act. The successful bidder shall also insure their staff against accident/ injury with Workmen's compensation policy, group personal insurance, etc., as may be applicable.

17.2 The successful bidder shall take insurance covering for all materials (excluding plant material), tools & plants, manpower, workers, etc., required to be provided & deployed for the job by the bidder.

17.3 These insurance covers have to be taken prior to start of work and they shall make available the policy to Construction Manager, BHEL for necessary verification before start of work. However, irrespective of such verification/ acceptance, sole responsibility to maintain adequate insurance cover at all times during the period of contract shall lie with The successful bidder. Regarding aforesaid insurance cover, The successful bidder shall directly deal with the insurance company for all matters regarding the insurance in his scope.


17.4 BHEL/ customer shall arrange comprehensive insurance policy for total supply & services for main equipment/ system covering transit risks & loss, destruction or damage during handling at site, storage, civil works, erection, testing and commissioning up to trial operation/ completion of unit(s) including theft, sabotage, fire, lightning and other natural calamities.

17.5 Successful bidder shall timely intimate dispatches/ discrepancy during contract operation, to the underwriter. The name of the underwriter and Policy No shall be intimated in due course of time.

17.6 The successful bidder will take necessary precautions/ due care to protect the material at project site, while in their custody from any damage/ loss till the same is handed over to BHEL/ customer at project site. For lodging/ processing of insurance claim The successful bidder will submit necessary documents. BHEL reserve the right to recover the loss from The successful bidder in case the damage/ loss is due to negligence/ carelessness on the part of The successful bidder. In case of theft of material under Successful bidder's custody, the same shall be reported to police by The successful bidder immediately and copy of FIR and subsequently police investigation report shall be submitted to BHEL/ customer for taking up with insurance. However, this will not relieve The successful bidder of their contractual obligation for the materials in his custody.

17.7 In case the damage/ loss/ theft of materials are attributable to negligence/ failure in discharging the duties and obligations of The successful bidder, the expenses incurred for repair/ replacement of such components in excess of the amount realized from the underwriters, limited to Normal Excess (Deductible Franchise) shall be recovered from The successful bidder.

17.8 In case the claim is summarily rejected by the underwriters due to WILFUL NEGLIGENCE of The successful bidder, the entire cost of repair/replacement will be recovered from The successful bidder.

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17.9 It will be responsibility of The successful bidder to replenish the items lost/ damaged in time without hampering the schedule of work and without waiting for settlement of insurance claim. Amount received from the underwriters on settlement of insurance claim shall be passed on to The successful bidder as and when available.

18.0 **INTER-CHANGEABILITY AND CHANGES** (Applicable for spares and replacements)

18.1 All similar components or parts of similar equipment supplied by Seller/ Contractor shall be interchangeable with one another.

18.2 Even though all the work and materials necessary for satisfactory completion of the works may not be detailed in the specifications and schedules, the cost will be considered to be within the contract price and no extra charges shall be payable. However, if there are substantial changes in the specifications of the plant/ equipment/ stores, consequential changes in prices shall be mutually agreed between Purchaser and Seller/ Contractor.

19.0 **PACKING**

19.1 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.

19.2 In case of shipment by sea, the packing shall be sea-worthy and of international standards.

19.3 Packing List shall be submitted as per standard format along with advance set of documents for claiming payment which must indicate:

- i. No. of boxes
- ii. Packing size.
- iii. Gross weight and net weight of each package.
- iv. Contents of the package with cross reference to BoM item code no. or item serial no.
- v. Quantity of each item separately.


The Packing list must cover all the BoM items and supplier to give the following undertaking in the Packing List:

“The Packing List provided herewith is as per the BoM approved under PO No.-.....dated-”

19.4 **PACKING FOR SPARES**

Different types of spares i.e. start-up/ commissioning spares and initial spares (Mandatory spares and recommended O&M spares) are to be packed separately. Mandatory and Recommended Spares shall not be packed with main equipment but shall be packed separately.

Packing of Mandatory Spares/Recommended spares should have a Red color band all around the container / package and words “MANDATORY / RECOMMENDED SPARES” written in red color. Project, Package description, BHEL’s PO No. and date s also be clearly mentioned on the box. One copy of laminated packing slip shall be placed inside the container and one copy shall be pasted on the cover of the container.

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19.5 COLOUR CODING OF TAGS/ MARKING/ STICKERS

19.5.1 Aluminum stickers are required to be attached to large components but plastic sheet tags should be tied with small components, giving details like purchase order, description of the component, quantity etc.

19.5.2 Tags should be of the color as mentioned below:

Main equipment	: Yellow or White tag
Mandatory spares	: Pink or Red tag
Start-up/ Commissioning spares	: Blue tag
O&M spares	: Green tag

19.5.3 Similar color scheme to be followed wherever stickers are pasted on components.

20.0 STORAGE INSTRUCTIONS

Successful tenderer shall be required to submit detailed instructions for storage of supplies within three months of date of issue of LOI /LOA/ Order/ Contract. In case storage instruction available in technical specification of the tender, same shall be followed by the vendors.

21.0 MATERIAL RECEIPT CERTIFICATE

Seller/ Contractor shall arrange Material Receipt Certificate from the project site, duly signed by Purchaser/ Owner Site Engineer after receipt & physical verification of the material at site.


22.0 CONSIGNEE'S RIGHT OF REJECTION

22.1 Notwithstanding any approval of Purchaser or Engineer in respect of plant/ equipment/ stores or materials or other particulars or work or workmanship involved in performance of order/ contract (with or without any test carried out by Seller/ Contractor or Inspection Agency or under direction of Contract Engineer), and notwithstanding delivery of the plant/ equipment/ stores where so provided to the consignee, it shall be lawful for the consignee, on behalf of the Purchaser, to reject the plant/ equipment/ stores or any part/ portion of consignment thereof, within 60 days after actual delivery at the stipulated place or destination, if such plant/ equipment/ stores or part/ portion of consignment thereof is not in conformity with terms and conditions of order/ contract whether on account of any loss, storage, deterioration or damage before dispatch or otherwise, whatsoever.

22.2 Rejected goods or materials shall be removed by Seller/ Contractor within a period of 30 days from the date of receipt of notice of such rejection. The expenses to be incurred in respect thereof shall be borne entirely by the Seller/ Contractor.

23.0 RISK IN STORES (FOR TURNKEY CONTRACTS)

Seller/ Contractor shall perform the order/ contract in all respects in accordance with terms and conditions thereof. Stores and every constituent part thereof, whether in possession or control of the Seller/ Contractor, his agents or servants, or a carrier, or in joint possession of Seller/ Contractor, his agent or servants and Purchaser, his agents or servants, shall remain in every respect at the risk of Seller/ Contractor until their actual delivery to consignee at the stipulated place or destination or where so provided in acceptance of offer, until their delivery to a person specified by Purchaser as interim

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consignee for the purpose of dispatch to the consignee. Seller/ Contractor shall be solely responsible for all losses, destructions, damages or deterioration to the plant/ equipment/ stores from any cause whatsoever, while the plant/ equipment/ stores await dispatch after approval by the Inspection Agency.

24.0 SHORTAGES / DAMAGES

Any shortages or damages during unloading, storage and handling at site, including at the time of erection and commissioning, shall be made good by the Seller/ Contractor at his risk and cost, to meet the project schedule. In case of faults/ discrepancies in any material, component, sub-assembly, assembly, etc., the same shall be supplied/ replenished free of cost to enable the equipment to be put to service.

25.0 CONFIDENTIALITY

Seller/ Contractor shall, at all times, undertake to maintain complete confidentiality of all data, information, software, drawings & documents, etc. belonging to the Purchaser and also of systems, procedures, reports, input documents, manuals, results and any other company documents discussed and/ or finalized during the course of execution of order/ contract. i.e. Seller/Contractor shall in no way share or use such intellectual property of BHEL/purchaser to promote his own business with others. Purchaser reserves the right to claim damages from the Seller/Contractor, or take appropriate penal action as deemed fit against the Seller/Contractor, for any infringement of the provisions contained herein.

26.0 INTELLECTUAL PROPERTY & LICENSES

If any patent, design, trademark, trade secret or any other intellectual property rights apply to the delivery or accompanying documentation/drawings, Buyer or its customer shall be entitled to the legal use thereof free of charge by means of a non-exclusive, assignable, transferrable, sub-licensable, worldwide, perpetual license. All intellectual property rights that arise due to the execution of the delivery by the Seller and by its employees or third parties involved by the Seller for the performance of the contract shall be promptly notified by the Seller to the Buyer and shall be deemed to belong to the Buyer. The Seller shall be obligated to cooperate with the Buyer and do everything necessary to obtain or perfect the above mentioned rights in favor of the Buyer.


The Seller represents and guarantees that the delivery does not infringe on any of the intellectual property rights of third parties. In the event a third party makes a claim, the Seller shall also be obligated to do everything necessary to obtain or establish the alternate acceptable arrangement pending resolution of any (alleged) claims by third parties.

The Seller agrees to indemnify, defend and hold harmless the Buyer, its officers, employees, agents, representatives, successors, assignees or any of the Buyer's customers buying or using the goods or services specified herein, against any actual or alleged infringement of such intellectual property interests, claims by third parties in this regard and shall pay to the Buyer merely on demand without demur and without requiring the Buyer to furnish any proof of such claim, such sum as indicated in the demand towards any liabilities, damages, penalties, injuries, claims, demands, actions, cost and expenses etc. suffered as a result thereof.

The Seller agrees that its liability under this clause shall be unlimited

27.0 DEFAULT/ BREACH OF CONTRACT, INSOLVENCY AND RISK PURCHASE

27.1 In case of delays (beyond the maximum late delivery period as per LD clause) in completion of works or non-fulfilment of any other terms and conditions of the Contract as enumerated subsequently in this

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clause, then, without prejudice to its right to recover any expenses, losses or damages to which the Buyer may be put to incur or sustain by reason of the Seller/Contractor's default or breach of Order/Contract or to suspend business dealings with the Seller/Contractor in terms of the Buyers' Guidelines for Suspension of Business Dealings as applicable from time to time, the Buyer shall also be entitled to cancel the Order/ Contract either in whole or portion thereof without compensation to Seller. On the occurrence of any of the acts/omissions mentioned below, the Buyer may if it so desires, procure upon such terms and in such manner as deemed appropriate, plant/ equipment/ stores not so delivered or others of similar description where plant/ equipment/ stores exactly complying with particulars are not, in the opinion of the Buyer (which shall be final), readily procurable, at the risk and cost of the Seller.

The Seller shall be liable to the Buyer for any excess costs incurred thereof and the Seller shall continue the performance of the Order/Contract to the extent not cancelled under the provisions of this clause. The Seller shall on no account be entitled to any gain on such repurchases. If the Bidder does not agree to this Risk Purchase clause, BHEL reserves the right to reject the bid/offer of the Bidder.

The order/contract may be cancelled in whole or part thereof and Risk & Cost Clause in line with terms and conditions of PO/Contract may be invoked by the Buyer in any of the following cases:

- i. If the Seller/Contractor fails to deliver the goods or materials or any installment thereof within the period(s) fixed for such delivery or the Seller's poor progress of the supply/services vis-à-vis delivery/execution timeline as stipulated in the contract, backlog attributable to the Seller including unexecuted portion of supply does not appear to be executable within balance period available;
- ii. delivers goods or materials not of the contracted quality and failing to adhere to the contract specifications/execution methodology;
- iii. withdrawal from or repudiation/abandonment of the supply/services by the Seller before completion as per contract or if the Seller refuses or is unable to supply goods or materials covered by the order/Contract either in whole or in part or otherwise fails to perform the Order/Contract.
- iv. Non supply by the Seller within scheduled completion/delivery period as per contract or as extended from time to time for reasons attributable to the Seller;
- v. Termination of Contract on account of any other reason(s) attributable to the Seller.
- vi. Assignment, transfer, sub-letting of Contract without BHEL's written permission resulting in termination of Contract or part thereof by BHEL.
- vii. If the Seller be an individual or a Sole Proprietorship, in the event of death or insanity of the Seller.
- viii. If the Seller/Contractor being an individual or if a partnership firm thereof, shall at any time be adjudged insolvent or shall have a receiving order for administration of his estate made against him or shall take any proceeding for composition under any Insolvency Act for the time being in force or make any assignment of the order/Contract or enter into any arrangement or composition with his creditors or suspend payment or if the firm dissolved under the Partnership Act;
- ix. If the Seller/Contractor being a Company is wound up voluntarily or by order of a Court or a Receiver, Liquidator or Manager on behalf of the debenture holders and creditors is appointed or circumstances have arisen which entitles the Court of debenture holder and creditors to appoint a receiver, liquidator or manager
- x. Non- Compliance to any contractual condition or any other default attributable to the Seller.

Such defaulting vendor/Seller shall not be eligible to participate in re-tendering conducted on account of risk purchase made due to fault of such vendor/Seller.

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27.2 BHEL's right to go for Risk and Cost, Calculation of Risk and Cost amount & LD, recovery options to BHEL are given in detail in Annexure-V hereto.

28.0 **TERMINATION OF CONTRACT**

28.1 Purchaser shall have the right to cancel Order/ Contract, wholly or in part, in case they are obliged to do so on account of any decline, diminution, curtailment or stoppage of their business / customer requirement and in that event, the Seller/ Contractor compensation claim shall be settled mutually.

Purchaser shall have the right to cancel order/ contract at the risk and cost of Seller/ Contractor in case either the Seller/ Contractor himself or any of his representative or agent is found to have been a previous employee (rank of Executive Director or General Manager Incharge having powers of Executive Director or General Manager having powers of Executive Directors) of the Purchaser immediately before retirement and has within a period of one years of such retirement accepted the employment of the Seller/ Contractor either as a Seller/ Contractor or as an employee without having obtained prior permission of Purchaser.

28.2 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 would also get cancelled.

29.0 **TRANSFER, SUB-LETTING/ ASSIGNMENT/ SUB-CONTRACTING**


29.1 Seller/ Contractor 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 of Seller/ Contractor sub-letting, transferring or assigning 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 plant/ equipment/ stores from elsewhere at risk and costs of Seller/ Contractor and the Seller/ Contractor shall be liable for any loss or damage which Purchaser may sustain in consequence of or arising out of such risk purchase.

29.2 If Seller/ Contractor is an individual or proprietary concern and the individual or the proprietor dies or the partnership is dissolved or substantially affected, then unless the Purchaser is satisfied that legal representative of individual seller/ contractor or proprietor of proprietary concern and surviving partners of partnership firm are capable of carrying out and completing the order/ contract, the Purchaser shall be entitled to cancel the order/ contract as to its incomplete portion and without being in any way liable to payment of any compensation to estate of seller/ contractor and/ or to surviving partners of seller's/ contractor's firm on account of cancellation of the order/ contract.

29.3 Decision of Purchaser that legal representatives of deceased seller/ contractor or surviving partners of the seller's/ contractor's firm cannot carry out and complete the order/ contract shall be final and binding on the parties hereto.

29.4 Terms and Conditions shall not get affected in case of merger/ amalgamation/ takeover/ re-arrangement etc.

29.5 However, engagement of a labors supply contractor for providing labors for execution of work shall not be considered as transfer/ sub-letting of the job. No prior approval from BHEL for the same shall be required.

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30.0 **FORCE MAJEURE**

- 30.1 Notwithstanding anything contained in the contract, neither the Seller nor the Buyer shall be held responsible for total or partial non execution/non- performance of any of the contractual obligations, in case such execution/performance is impeded/prevented due to occurrence of a 'Force Majeure' event not within the reasonable control of the party affected, which materially interferes or directly affects the performance of the obligations or duties under the contract.

Force Majeure event means an event beyond the control of the parties to the contract including but not limited to war, Military operations of any nature, Act of God, earthquakes, floods, fire, quarantine restrictions, acts of public enemy, blockades, civil war, explosion, epidemics, insurgency, change in law or government policy etc.


- 30.2 The party claiming to be affected by such Force Majeure event shall notify/inform the other party in writing without delay within a reasonable period of the occurrence and cessation of such event specifying the Force Majeure event and its effect on performance of contractual obligations. In the event of the parties hereto not agreeing that a force majeure event has occurred, the parties shall submit the dispute(s) for resolution pursuant to the provisions hereunder, provided that the burden of proof as to whether a force majeure event has occurred shall be upon the party claiming such an event.
- 30.3 If it is agreed between the parties that a Force Majeure event has occurred and its effect continues for a period of 36 months, then either party shall be free to cancel the contract. However, if the effect of such event ceases within this period of 36 months, the performance of the obligations put on hold shall be resumed immediately.
- 30.4 Notwithstanding the above provisions, Purchaser shall reserve the right to cancel the Order/ Contract, wholly or partly, in order to meet the overall project schedule and make alternative arrangements for completion of delivery and other schedules.
- 30.5 If a war like situation has developed in a country where Sellers's works (of this PO) is located or there is political instability or civil war and Indian Embassy located in that country/Indian Government forbids or advises for not having any business dealings in that country/ region/zone, then BHEL reserves the right to cancel the order/Contract without incurring any liability for any kind of payment or compensation to the Seller on that account.

31.0 **INDEMNIFICATION**

Seller/ Contractor shall fully indemnify and keep indemnified the Purchaser against all claims /losses/damages/demands/expenses of any nature of whatsoever nature arising during the course and out of the execution of this Order/ Contract on in connection of this contract.

32.0 **SETTLEMENT OF DISPUTES**

- 32.1 Except as otherwise specifically provided in the Order/ Contract, all disputes concerning questions of the facts arising under the Order/ Contract, shall be decided by Purchaser, subject to written appeal by the Seller/ Contractor to the Purchaser, whose decision shall be final.
- 32.2 Any dispute or difference shall be, to the extent possible, settled amicably between the parties hereto, failing which the disputed issues shall be settled through arbitration.

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32.3 Seller/ Contractor shall continue to perform the order/ contract, pending settlement of dispute(s).

33.0 **ARBITRATION & CONCILIATION**

33.1 **CONCILIATION**

If at any time (whether before, during or after the arbitral or judicial proceedings), any Disputes (which term shall mean and include any dispute, difference, question or disagreement arising in connection with construction, meaning, operation, effect, interpretation or breach of the agreement, contract), 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 (IEC) to be appointed by competent authority of BHEL from the BHEL Panel of Conciliators under BHEL Conciliation Scheme.

Notes:

- i. No serving or a retired employee of BHEL/Administrative Ministry of BHEL shall be included in the BHEL Panel of Conciliators.
- ii. 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.
- ii. 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 (Annexure-X) to this GCC. The Procedure (Annexure-X) together with its Formats will be treated as if the same is part and parcel hereof and shall be as effectual as if set out herein in this GCC.
- iii. The Contractor/ supplier hereby agrees that BHEL may make any amendments or modifications to the provisions stipulated in the Procedure (Annexure-X) to this GCC from time to time and confirms that it shall be bound by such amended or modified provisions of the Procedure (Annexure-X) with effect from the date as intimated by BHEL to it.
- iv. The venue of conciliation shall be Delhi/ New Delhi/ PO issuing agency city where PO is issued by BHEL Power Sector Regional HQ


33.2 **ARBITRATION**

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 of 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 terms of Section 21 of Arbitration & Conciliation Act in writing to the other Party commence arbitration. The notice shall as far as possible contain the particulars of all claims to be referred to arbitration.

The arbitration shall be conducted by Sole Arbitrator to be appointed mutually by the Competent Authority of BHEL (purchaser) & Seller within the statutory period as applicable. As far as practicable, names of 2 or more persons shall be forwarded to the Seller for seeking consent of the Seller to one of the names proposed for appointment as arbitrator in the case. If the parties fail to agree on the name of Sole Arbitrator, then appointment shall be made as per the provisions of section 11 of the Arbitration & Conciliation Act.

The Arbitrator shall pass a reasoned award and the award of the Arbitrator shall be final and binding upon the Parties. The language of Arbitration shall be English.

Subject as aforesaid, the provisions of Arbitration of Conciliation Act 1996 (India) or statutory modification/ Amendments or re-enactments thereof and the rules made thereunder and for the time

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being in force shall apply to the arbitration proceedings under this clause. The seat and venue of arbitration shall be Delhi/ New Delhi/ PO issuing agency city where PO is issued by BHEL Power Sector Regional HQ

The cost of arbitration shall be borne equally by the parties' subject to the final apportionment of the cost of the arbitration as per the award/order of the arbitrator.

Subject to the arbitration in terms of Clause above, the Courts at Delhi-NCR/ (PO issuing agency city- where PO has been issued by BHEL Power Sector Regional HQ) shall have exclusive jurisdiction over any matter arising out of or in connection with this contract.

Notwithstanding the existence or any dispute or difference and/or reference for the arbitration, the Contractor shall proceed with and continue without hindrance the performance of its obligations 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.

33.3 IN CASE OF CONTRACT WITH PUBLIC SECTOR ENTERPRISE (PSE) OR A GOVERNMENT DEPARTMENT & INSTITUTES, THE FOLLOWING SHALL BE APPLICABLE

In the event of any dispute or difference relating to the interpretation and application of the provisions of the commercial contract 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 and Excise Departments) such dispute or difference shall be taken up by either party for resolution through Administrative Mechanism for Resolution of CPSEs Disputes(AMRCD) as mentioned in Department of Public Enterprises(DPE) office Memorandum No. 4 (1)/2013-DPE(GM)/FTS-1835 dated 22.05.2018 as amended from time to time.

A copy of the extant Department of Public Enterprises (DPE) Office Memorandum is available on Govt. of India website and the same shall apply with any amendments as made from time to time.

34.0 LAWS GOVERNING THE CONTRACT

34.1 Contract, including all matters connected with contract, shall be governed by the Indian Law, both substantive and procedural, for the time being in force including modification thereto, and shall be subject to the exclusive jurisdiction of the Indian courts at Delhi-NCR/ (PO issuing agency city- where PO has been issued by BHEL Power Sector Regional HQ).


It shall be responsibility of the vendor to ensure compliance of Labor laws, safety regulations, workmen compensation, insurance, BOCW act or other relevant acts.

34.2 **HEALTH SAFETY AND ENVIRONMENT GUIDELINES (HSE)** of BHEL are available on www.pem.bhel.com vendor section for compliance for erection (composite) contracts.

35.0 JURISDICTION OF COURT

Courts at Delhi-NCR/ (PO issuing agency city- where PO has been issued by BHEL Power Sector Regional HQ) shall have exclusive jurisdiction to decide the dispute, if any, arising out of or in respect of the contract(s) to which these conditions are applicable.

36.0 **HEALTH SAFETY AND ENVIRONMENT GUIDELINES (HSE)** of BHEL are available on www.pem.bhel.com under tenders/EOI > Important instructions to bidders compliance for by supplier/ seller/ contractor at given link- <https://www.pem.bhel.com/Documents/GCC/HSE%20Plan.pdf>

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37.0 SUPPLIER PERFORMANCE MONITORING AND RATING SYSTEM

- 37.1.1 A detailed plan/ programme for completion of the contractual scope of work as per the time schedule given in the contract shall be jointly agreed between BHEL and Contractor, before commencement of work. The above programme shall be supported by month/ Quarter wise deployment of resources viz. Manpower, T&P, Consumables, etc. Progress will be reviewed periodically (Monthly/ Quarterly) vis a vis this jointly agreed programme. Joint periodical progress reports monthly/ Quarterly and other reports/information including manpower, consumables, T&P mobilization etc. as applicable shall be made. These progress reports shall also form basis for evaluating agency time extension proposal.
- 37.1.2 Monthly/ Quarterly progress review between BHEL and Contractor shall be based on the agreed program as above, availability of inputs/fronts etc., and constraints if any, as per prescribed formats.
- 37.1.3 The monthly/ Quarterly Joint progress review shall record shortfalls attributable to (i) Contractor, (ii) Force Majeure Conditions, and (iii) BHEL
- 37.1.4 Online performance monitoring system as defined in NIT will be used for quarterly/ overall performance review of the vendors.

38.0 PHYTOSANITARY CERTIFICATE:


- i. As per the Indian Law, all consignments being imported into India by air/sea require a phytosanitary certificate from the country of origin-if articles have been packed with wooden packaging materials. This is mandatory. Please confirm in your offer/dispatch documents that the required phytosanitary certificate will be submitted.
- ii. Packaging material means any kind of material of plant origin used for packing which include, hay, straw wood shavings, wood chips, saw dust, wood waste, wooden pallets, dunnage mats, wooden packages, coir pith, peat or sphagnum moss etc.

39.0 HOLD ON CONTRACT EXECUTION CASES OTHER THAN FORCE MAJEURE

In case of uncertainty regarding lifting of HOLD on contract execution relating to any activity put by Buyer/BHEL (because of any reason other than Force Majeure) or by end customer (cancellation or hold on project), the contract/Purchase Order may be short closed by Buyer/BHEL after 3 years from date of imposition of HOLD without prejudice to any claim of either party with regard to the executed portion of the contract. However, all future obligations of the Buyer and Seller with respect to the contract/Purchase Order shall come to end in case of such short closure.

40.0 NON DISCLOSURE AND INFORMATION OBLIGATIONS

All drawing and technical documents or technical information whether contained in physical form or in electronic form or any oral information that is subsequently transcribed in to physical/electronic form etc. (hereinafter referred to as "Technical Information") relating to the product or it's manufacture submitted by one party to the other, prior or subsequent to the formation of contract, shall remain property of the disclosing party. Technical Information belonging to one party and received by the other party, shall be treated as Confidential Information and shall not, without the express written consent of such disclosing party, be used by the receiving party or any of its agents, employees, representatives etc., for any other purpose, other than that, for which such Technical Information was

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provided. Such Technical Information shall not, without the prior written consent of the disclosing party, otherwise be used or copied, reproduced, transmitted or communicated to a third party.

The Seller shall provide Buyer with all information pertaining to the delivery in so far as it could be of importance to Buyer. The Seller shall not reveal confidential information (including price) to its own employees not involved with the tender/ Contract & its execution and delivery or to third parties, or to make use of such information pertaining to any data, designs, drawings, specifications and other information furnished to it by the Buyer, unless Buyer has agreed to this in writing beforehand. The Seller shall not be entitled to use the Buyer's name in advertisements and other commercial publications without prior written permission from Buyer.

Upon completion, cancellation or termination of this order, Seller shall return to the Buyer all such data, designs drawings, specifications and other information, including copies made by Seller.

DRAWINGS, PATTERNS & TOOLS: All drawings, patterns & tools supplied by BHEL or made at BHEL's expense are BHEL's property. These cannot be used or referred to any other party and must only be used in the execution of BHEL's orders. These should be preserved at the seller's/ contractor's cost for a period of not less than 5 years. Patterns & tools should be returned to BHEL within 90 days of issue of the same or completion of work, whichever is later.

Bidder/Seller/ Contractor shall, at all times, maintain complete confidentiality of all technical information including data, information, software, drawings & documents, etc. belonging to the Buyer and also of systems, procedures, reports, input documents, manuals, results and any other company documents discussed and/ or finalized during the course of execution of order/ contract.


The Confidentiality obligation of the Seller under this Agreement shall survive the Expiration/early termination of this contract. The above undertaking in this clause shall, however, not apply to Technical Information which:

- i. through no fault of the receiving Party, is or comes in public domain through publication or otherwise, or
- ii. the receiving Party can establish was in its possession, without any restrictions as to its disclosure at the time of its receipt, or
- iii. is subsequently lawfully acquired by the receiving Party independently of the other Party, or
- iv. receiving Party is required to disclose to comply with applicable law, rule, regulation, or court order or other compulsory process of a court or other governmental body.

If the Seller, in order to perform its Contract needs to disclose to a subcontractor or suppliers the Technical Information received from the other Party e.g. for the purpose of use, manufacture, repair, maintenance and purchase, then such first mentioned Party shall have the right to do so to the extent needed for such purpose, but shall first obtain from such subcontractor or supplier a confidentiality undertaking consistent with the provisions of this Clause and submit to BHEL for records. In case of failure of seller to ensure compliance of this clause, he seller shall be liable to compensate BHEL for any damage/ loss whatsoever suffered by BHEL as a result of breach of this clause.

41.0 NON WAIVER OF DEFAULTS

If any individual provision of the Contract is held by a Court or any other Responsible Authority to be unlawful, invalid, void or unenforceable, that provision shall be deemed to be deleted from the Contract and shall be of no force or effect and this Contract shall remain in full force and effect as if such provision had not originally been contained in this Contract and the other provisions shall not be affected. In the event of any such deletion the Parties shall negotiate in good faith in order to agree to terms of a mutually acceptable and satisfactory alternative provision in place of the provision so deleted.

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No waiver shall be effective unless it is communicated in writing to the other party. A waiver accorded on one occasion shall not constitute a continuing waiver in respect of such such/similar breach/event in future and separate waiver shall be necessary for each event/breach.

The failure of BHEL to exercise any contractual right or remedy or to enforce any of the terms and conditions of this Order/Contract or to exercise any right or privilege granted to BHEL under this Contract or under law shall not constitute a waiver thereof or constitute a waiver of any right or remedy arising from any other breach of the Contract nor shall it release the seller from any of the warranties or obligations of the Order/Contract and the same shall continue in full force and effect.

42.0 **QUALITY ASSURANCE DOCUMENTS (AS APPLICABLE)**

The vendor shall be required to submit the following Quality Assurance Documents (in original + one copy) within 2 weeks after dispatch of the equipment (as applicable).

- a) Test report of components.
- b) Non-destructive examination results/ reports including radiography interpretation reports.
- c) Welder identification list listing welders and welding operator's qualification procedures and welding identification symbols.
- d) Sketches and drawings used for indicating methods of traceability of the radiographs to the location of the equipment.
- e) Stress relief time temperature charts.
- f) Factory test results for testing required as per applicable codes and standards referred to in the specification.
- g) Inspection Report duly signed by QA Personnel of BHEL/ Third Party/and customer and vendor for the agreed inspection hold points. During course of inspection the following will also be recorded:
 - i. When some important work repair work is involved to make the job acceptable.
 - ii. The repair works remain part of the accepted product quality.
 - iii. Letter of conformity certifying that that requirement is in compliance with finalised
 - iv. specification requirements.


43.0 **EXTENSION OF TIME FOR COMPLETION**

a) If the completion of work as detailed in the scope of work gets delayed beyond the contract/ completion period, the seller/ contractor shall request for an extension of the contract and BHEL at its discretion may extend the contract as per procedure prescribed in clause 43.0 (b), (c) & (d).

Pending finalization of extension of time, payment to vendors for supply/E&C executed during such periods will be done only in excess of maximum LD amount as per LD clause for delayed delivery (clause no 16.1). On finalization of extension of time, payments to vendor shall be regularized in line with approved time extension proposal.

b) Based on the reviews jointly signed as per clause no 37.1, the scope balance at the end of original contract period less the backlog attributable to the seller/ contractor shall be quantified, and the number of months of 'Time extension' required for completion of the same shall be jointly worked out. Within this period of 'Time extension', the seller/ contractor is bound to complete the portion of backlog attributable to the seller/ contractor. Any further 'Time extension' or 'Time extensions' at the end of the previous extension shall be worked out similarly.

c) However, if any 'Time extension' is granted to the seller/ contractor to facilitate continuation of work and completion of contract, due to backlog attributable to the seller/ contractor alone, then it shall be without

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prejudice to the rights of BHEL to impose LD in line with clause no 16.1 for the delays attributable to the seller/ contractor, in addition to any other actions BHEL may wish to take at the risk and cost of seller/ contractor.

d) A joint program shall be drawn for the balance amount of work to be completed during the period of 'Time Extension'. Review of the program and record of shortfall shall be done as per clause no 37.1.

e) During time extension of E&C contract, Time extension for Supply contract shall also be issued based on delay analysis of E&C contract.

44.0 OVER RUN CHARGES (Only for E&C contract): - This shall be applicable only for Erection and commissioning (E&C) contract:


i. In case the E & C scheduled completion time gets extended beyond the period as stated in E&C LOI / LOA due to reasons not attributable to the contractor, the contractor shall be considered for payment of over run charges @1% of E&C contract value (excluding taxes) limiting up to Rs 1,00,000 per month or as defined in SCC subject to total ORC limited to 10% of E&C contract value (excluding taxes) . on fulfilment of following conditions:-

1. Initial mobilisation of manpower, T&P has been completed and Erection work started by agency.
2. Materials worth 80% of supply contract value have been received at site. (20% assumed as ready stock & shelf life items)
3. The reasons for delay in completion of work are not attributable to contractor but however subject to the provisions of clause 30 of GCC related to "Force Majeure".
4. Contractor achieves the month wise targets fixed during the overrun period for which ORC is being claimed. No payment shall be paid for the month, if the targets are not achieved for that month due to reasons attributable to the contractor. Monthly package Joint review shall form basis for such evaluation. In case of dispute about the same, BHEL engineer decision shall be final.
5. The contractor maintains sufficient workforce and other resources required for proper E&C/storage of material already received at site.

45.0 PRICE VARIATION CLAUSE: - PVC (as per SCC / NIT) shall be applicable for Supply, Mandatory Spares & E&C portions, if there is delay beyond original overall completion schedule not attributable to vendor.

46.0 ADVANCE


- i. **ADVANCE:** Normally no advance is payable to the contractor. However, advance payment in exceptional circumstances shall be interest bearing and secured though a Bank Guarantee and shall be limited to a maximum of 5% of contract value. This 'Interest Bearing Recoverable Advance' shall be payable in not less than two instalments with any of the instalment not exceeding 60% of the total eligible advance.
- ii. **ADDITIONAL INTERIM ADVANCE:** In exceptional circumstances, with due justification, Competent Authority of BHEL is empowered to approve proposals for payment of additional interim interest bearing advance against Bank Guarantee, for resource augmentation towards expediting work for project implementation.

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- iii. Bank Guarantee towards 'Interest Bearing Recoverable Advance' shall be at least 110% of the advance so as to enable recovery of not only principle amount but also the interest portion, if so required.
- iv. Contractor shall establish the utilization of advance drawn before the release of next instalment.
- v. 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.
- vi. The rate of interest applicable for the above advances shall be the base rate of State Bank of India prevailing on the date of release of advance plus 6%, and such rate will remain fixed till the total advance amount is recovered.
- vii. Unadjusted amount of advances paid shall not exceed 5% of the total contract value at any point of time. Recovery of advances shall be made from the due Bills progressively such that the advance amounts paid along with the interest is fully recovered by the time the contractor's billing reaches 90% of contract value.
- viii. 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
- ix. Contractor to submit Bank Guarantee as per prescribed formats for each of the advance 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 period, the contractor shall renew the BG or submit fresh BG for the outstanding amount, valid for at least one year or the remaining recovery duration whichever is earlier.
- x. BHEL is entitled to make recovery of the entire outstanding amount in case the contractor fails to comply with the BG requirement.

47.0 RESTRICTIONS UNDER RULE 144(xi) OF THE GENERAL FINANCIAL RULES (GFRs), 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.
- 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 Order 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
 - 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:

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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 shareholder's 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 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

VI. The successful bidder shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority.

Note- The above clause shall not be applicable for the bidders from those countries (even if sharing a land order with India) to which the Government of India (GoI) has extended lines of credit or in which the GoI is engaged in development work.

Bidders to submit the certification (as applicable) as per Order issued by Ministry of Finance.




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ANNEXURE No.	DESCRIPTION OF ANNEXURES
I	OFFER SUBMISSION AS PER NIT
II	DEVIATION SHEET (COST OF WITHDRAWAL)
III	BANK GUARANTEE FOR PERFORMANCE SECURITY
IV	NON-CONFORMANCE REQUEST (NCR)
V	RISK AND COST CLAUSE
VI	NEFT DETAILS
VII	LOADING CRITERA
VIII	INTEGRITY PACT
IX	LIST OF PACKAGES WITH PG TEST AND REQUIRED FINAL DOCUMENTS
X	PROCEDURE OF CONCILIATION
XI	GSTN CODES OF BHEL
XII	DEFINITION OF SCCCCESSFUL COMMISSIONING, TRIAL OPERATION, HANDOVER, PG TEST & PBG RELEASE CLAUSE
XIII	PACKAGE WISE VARIATION IN CONTRACT VALUE
XIV, XV & XVI	FORMATS FOR MONTHLY/ QUATERLY PROGRESS REVIEW

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ANNEXURE – I

(To be filled up by the Bidder)

Ref. No. :

Date :

M/s Bharat Heavy Electricals Ltd.,
Project Engineering Management,
PPEI Building, HRD & ESI Complex,
Plot No. 25, Sector – 16A,
NOIDA – 201 301 (U.P.)

Attention: Shri

Dear Sir,

1. 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 in your price schedule format and as per the indicated delivery schedule.
2. If the work or any part thereof is awarded to us, we undertake to submit security-cum-contract performance bank guarantee as per your requirement.
3. We have annexed to this tender the following documents: -

Part-I (Techno Commercial Bid) - in a properly sealed cover/ uploaded on BHEL e-procurement website

- i) Complete Techno-Commercial Offer (in two sets).
- ii) Unpriced copy of deviation sheet (cost of withdrawal) – annexure -II
- iii) Unpriced copy of Price Schedule using format given by BHEL.
- iv) Any other documents (please specify).

Part-II (Price Bid along with Priced Annexure-II) - in a separate, properly sealed cover, in the format given by BHEL/ uploaded (filled in the online price schedule) of BHEL e-procurement website

Thanking you,

Yours faithfully,

(Signature of the bidder with Name, Designation and Company's Seal)




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ANNEXURE-II: DEVIATION SHEET (COST OF WITHDRAWAL)									
PROJECT:-									
PACKAGE:-									
TENDER ENQUIRY REFERENCE:-									
NAME OF VENDOR:-									
SL NO	VOLUME/ SECTION	PAGE NO.	CLAUSE NO.	TECHNICAL SPECIFICATION/ TENDER DOCUMENT	COMPLETE DESCRIPTION OF DEVIATION	COST OF WITHDRAWAL OF DEVIATION	REFERENCE OF PRICE SCHEDULE ON WHICH COST OF WITHDRAWAL OF DEVIATION IS APPLICABLE	NATURE OF COST OF WITHDRAWAL OF DEVIATION (POSITIVE/NEGATIVE)	REASON FOR QUOTING DEVIATION
TECHNICAL DEVIATIONS									
COMMERCIAL DEVIATIONS									
PARTICULARS OF BIDDERS' AUTHORISED REPRESENTATIVE									
				DESIGNATIONS		SIGN & DATE			
NAME									
NOTES:									
1. Cost of withdrawal of deviation will be applicable on the basic price (i.e. excluding taxes, duties & freight) only.									
2. All the bidders have to list out all their Technical & Commercial Deviations (if any) in detail in the above format.									
3. Any deviation not mentioned above and shown separately or found in other, will not be taken cognizance of.									
4. Bidder shall submit duly filled unpriced copy of above format indicating "quoted" in "cost of withdrawal of deviation" column of the schedule above along with their Techno-commercial offer, wherever applicable. In the absence of same, such deviation(s) shall not be considered and offer shall be considered in total compliance to NIT.									
5. Bidder shall furnish price copy of above format along with price bid.									
6. The final decision of acceptance/rejection of the deviations quoted by the bidder shall be at discretion of the Purchaser.									
7. Bidders to note that any deviation (technical/commercial) not listed in above and asked after Part-I opening shall not be considered.									
8. For deviations w.r.t. Credit Period, Liquidated damages, Firm prices if a bidder chooses not to give any cost of withdrawal of deviation (loading as per Annexure-VII), will apply. For any other deviation mentioned in un-priced copy of this format submitted with Part-I bid but not mentioned in priced copy of this format submitted with Priced bid, the cost of withdrawal of deviation shall be taken as NIL.									
9. Any deviation mentioned in priced copy of this format, but not mentioned in the un-priced copy, shall not be considered.									
10. All techno-commercial terms and conditions of NIT shall be deemed to have been accepted by the bidder, other than those listed in unpriced copy of this format.									
11. Cost of withdrawal is to be given separately for each deviation. In no event bidder should club cost of withdrawal of more than one deviation else cost of withdrawal of such deviations which have been clubbed together shall be considered as NIL.									
12. In case nature of cost of withdrawal (positive/negative) is not specified it shall be assumed as positive.									
13. In case of discrepancy in the nature of impact (positive/negative), positive will be considered for evaluation and negative for pricing.									

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ANNEXURE-III

CONTRACT PERFORMANCE BANK GUARANTEE

Bank Guarantee No: _____

Date: _____

To,

NAME

& ADDRESSES OF THE BENEFICIARY

Dear Sirs,

In consideration of the Bharat Heavy Electricals Limited 1 (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 at1 through its Unit at..... (name of the Unit) having awarded to (Name of the Vendor / Contractor / Supplier) having its registered office at2 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) for..... 5 (hereinafter called the 'Contract') and the Vendor/Contractor/Seller having agreed to provide a Contract Performance 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 a maximum amount 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/Contractors/Supplier shall have no claim against us for making such payment.

We the bank 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.

We 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 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

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security or other guarantee that the Employer may have in relation to the Vendor/Contractor/Supplier 's liabilities.

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

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 the8 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 exceed6
- b. This Guarantee shall be valid up to7
- c. Unless the Bank is served a written claim or demand on or before..... 8 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.

Dated..... ..

For and on behalf of

Place of Issue..... ..

(Name of the Bank)

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 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 and 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-

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- 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 (New Delhi for POs issued from PEM Noida/ PO issuing agency) 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.


or & On behalf of Guarantee issuing bank
(Office Seal)

Name:
E-mail ID:
Contact number:

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ANNEXURE – IV

NON-CONFORMANCE REQUEST (NCR) (GRANTING OF NCR DOES NOT ENTITLE ANY INCREASE IN PRICE OR EXTENTION OF SCHEDULE, TO VENDOR)			
PART-I (TO BE FILLED BY VENDOR)			
NAME OF VENDOR:		NCR NUMBER:	
SPECIFICATION TITLE:		SPECIFICATION NUMBER:	
PROJECT SITE:		LOI/ PO NUMBER:	
DRAWING TITLE:		DRAWING NUMBER:	
DATE BY WHICH DECISION REQUIRED ON NCR:			
SL. NO.	REQUIREMENT AS PER SPECIFICATION/ DRAWING	NON-CONFORMANCE OBSERVED/ REQUESTED	REASON
PROPOSED ACTION:			
FORWARDED <input type="checkbox"/> CE <input type="checkbox"/> IA TO <input type="checkbox"/> SITE IA (2 Copies)			
		SIGNATURE	DATE
		SEAL	

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ANNEXURE – IV (contd.)

NON-CONFORMANCE REQUEST (NCR)

(GRANTING OF NCR DOES NOT ENTITLE ANY INCREASE IN PRICE OR EXTENTION OF SCHEDULE, TO VENDOR)

PART – II (TO BE FILLED BY IA OR SITE IA)

☐ NCR RECOMMENDED
☐ NCR RECOMMENDED AS PER REMARKS BELOW
☐ NCR NOT RECOMMENDED

REMARKS:

ACTION

☐ Returned to Vendor
☐ Forwarded to CE (PEM) (2 Copies)

NAME

SIGNATURE

DATE

PART-III (TO BE FILLED IN BY BHEL)

☐ NCR APPROVED
☐ NCR APPROVED AS PER REMARKS
☐ NCR NOT APPROVED

REMARKS:

A) WITHOUT INCREASE IN CONTRACT PRICE
B) WITH REDUCTION IN CONTRACT PRICE (DETAILS ENCLOSED)
C) WITHOUT AFFECTING PROJECT SCHEDULE

ACTION

☐ Returned to Vendor (in case NCR not approved)
☐ Forwarded to MM/ PG on _____
(For issue of PO amendment)

NAME

SIGNATURE

DATE

NOTE: Project Engineer (PEM) shall approve the NCR after obtaining consent/ approval of affected departments/ agencies and also of SH and DH.

PART- IV (TO BE FILLED BY CONTRACT ENGINEER (PEM))

PO No.

PO Date

PO Amendment No.

PO Amendment Date

DISTRIBUTION: ☐ VENDOR

(1COPY EACH) ☐ SITE IA


☐ IA

☐ PEM-ENGG.

NAME

SIGNATURE

DATE

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ANNEXURE – IV (contd.)


INSTRUCTIONS FOR VENDOR REGARDING NON-CONFORMANCE REQUEST (NCR)

1. Photo-copies of the NCR Form can be used by the Vendor, whenever required.
2. Non-conformances, due to the following and/ or other reasons, shall be raised by the Vendor, in this form, in order to obtain BHEL decision on the same.
 - a) Changes from Bid Specification and Deviations agreed during negotiations.

OR

Changes from Contract Specification required as a result of detailed design and preparation of drawings by the Vendor.

 - b) Changes in Contract Drawings and Documents approved by BHEL.
 - c) Inaccurate workmanship, procedure or practice.
 - d) Use of material other than the size, type of grade as called for in the specification/ drawing.
3. Vendor shall send two copies of the NCR to :
 - a) Contract Engineer (CE) of BHEL/ PEM for non-conformances required as a result of detailed design and preparation of drawings by the Vendor etc.
 - b) Inspection Agency (IA) for all non-conformances during manufacture/ fabrication, assembly etc.
 - c) Site Inspection Agency (Site IA) for all non-conformances during site fabrication, erection and commissioning.
4. Vendor shall mark copies of NCRs and all correspondence, in this respect, to Contract Engineer (CE) of BHEL/ PEM.
5. Names and addresses of Inspection Agency and Site Inspection Agency are given in the Letter of Intent/ Purchase Order.
6. Non-conformances raised in this form only, will be entertained by BHEL.
7. NCRs shall be kept to a minimum.
8. A summary of non-conformances granted, if any, shall be included by the Vendor in the Quality Assurance Document Package to be forwarded to BHEL & Customer, on satisfactory completion of inspection and tests.
9. Granting of NCR by BHEL does not entitle the Vendor to any increase in price or extension of schedule.

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ANNEXURE-V

(RISK AND COST CLAUSE)

1. BHEL reserves the right to terminate the contract or withdraw portion of work and get it done through other agency, at the risk and cost of the contractor *after due notice of a period of 14 days' by BHEL* in any of the following cases:
 - i) If the Seller/Contractor fails to deliver the goods or materials or any instalment thereof within the period(s) fixed for such delivery or the Seller's poor progress of the supply/ services vis-a-vis delivery/execution timeline as stipulated in the Contract, backlog attributable to seller including unexecuted portion of supply does not appear to be executable within balance available period;
 - ii) Delivers goods or materials not of the contracted quality and failing to adhere to the contract specifications;
 - iii) Withdrawal from or repudiation/ abandonment of the supply/ services by Seller before completion as per contract or if the Seller refuses or is unable to supply goods or materials covered by the Order/Contract either in whole or in part or otherwise fails to perform the Order/Contract;
 - iv) Non-supply by the Seller within scheduled completion/delivery period as per Contract or as extended from time to time, for the reasons attributable to the Seller;
 - v) Termination of Contract on account of any other reason (s) attributable to Seller.
 - vi) Assignment, transfer, subletting of Contract without BHEL's written permission resulting in termination of Contract or part thereof by BHEL.
 - vii) If the Seller be an individual or a sole proprietorship Firm, in the event of the death or insanity of the Seller;
 - viii) If the Seller/Contractor being an individual or if a firm on a partnership thereof, shall at any time, be adjudged insolvent or shall have a receiving order for administration of his estate made against him or shall take any proceeding for composition under any Insolvency Act for the time being in force or make any assignment of the Order/Contract or enter into any arrangement or composition with his creditors or suspend payment or if the firm dissolved under the Partnership Act;
 - ix) If the Seller/Contractor being a company is wound up voluntarily or by order of a Court or a Receiver, Liquidator or Manager on behalf of the debenture holders and creditors is appointed or circumstances shall have arisen which entitles the Court of debenture holder and creditors to appoint a receiver, liquidator or manager;
 - x) Non-compliance to any contractual condition or any other default attributable to Seller.

1.1 Risk & Cost Amount against Balance Work:

Risk & Cost amount against balance work shall be calculated as follows:

$$\text{Risk \& Cost Amount} = [(A-B) + (A \times H/100)]$$

Where,

A= Value of Balance scope of Work (*) as per rates of new contract

B= Value of Balance scope of Work (*) as per rates of old contract being paid to the contractor at the time of termination of contract i.e. inclusive of PVC & ORC, if any.

H = Overhead Factor to be taken as 5

In case (A-B) is less than 0 (zero), value of (A-B) shall be taken as 0 (zero).


1.2 * Balance scope of work (in case of termination of contract):

Difference of Contract Quantities and Executed Quantities as on the date of issue of Letter for 'Termination of Contract', shall be taken as balance scope of Work for calculating risk & cost amount.

Contract quantities are the quantities as per original contract. If, Contract has been amended, quantities as per amended Contract shall be considered as Contract Quantities.

Items for which total quantities to be executed have exceeded the Contract Quantities based on drawings issued to contractor from time to time till issue of Termination letter, then for these items total Quantities as per issued drawings would be deemed to be contract quantities.

Substitute/ extra items whose rates have already been approved would form part of contract quantities for this purpose.

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Substitute/ extra items which have been executed but rates have not been approved, would also form part of contract quantities for this purpose and rates of such items shall be determined in line with contractual provisions.

However, increase in quantities on account of additional scope in new tender shall not be considered for this purpose.

NOTE: In case portion of work is being withdrawn at risk & cost of contractor instead of termination of contract, contract quantities pertaining to portion of work withdrawn shall be considered as 'Balance scope of work' for calculating Risk & Cost amount.

1.3 **LD against delay in executed work in case of Termination of Contract:**

LD against delay in executed work shall be calculated in line with LD clause no. 16 of GCC, for the delay attributable to contractor. For limiting the maximum value of LD, contract value shall be taken as Executed Value of work till termination of contract.

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


- i. Let the time period from scheduled date of start of work till termination of contract excluding the period of Hold (if any) not attributable to contractor = T1
- ii. Let the value of executed work till the time of termination of contract = X
- iii. Let the Total Executable Value of work for which inputs/fronts were made available to contractor and were planned for execution till termination of contract = Y
- iv. Delay in executed work attributable to contractor i.e. $T2 = [1 - (X/Y)] \times T1$
- v. LD shall be calculated in line with LD clause (clause 16) of the Contract for the delay attributable to contractor taking "X" as Contract Value and "T2" as period of delay attributable to contractor.

2. **Recoveries arising out of Risk & Cost and LD or any other recoveries due from Contractor**

Without prejudice to the other means of recovery of such dues from the Seller recoveries from the Seller on whom risk & cost has been invoked shall be made from the following:

- a) Dues available in the form of Bills payable to seller, SD, BGs against the same contract.
- b) Dues payable to seller against other contracts, SDs, BGs in the same Region/Unit/ Division of BHEL.
- c) Dues payable to seller against other contracts, SDs, BGs in the different Region/Unit/ division of BHEL.

In-case recoveries are not possible with any of the above available options, Legal action shall be initiated for recovery against contractor.

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ANNEXURE– VI

NEFT APPLICATION FORM

Name of the Vendor Name of the Bank Address of the Bank Vendor's A/c no

Type of A/c

IFSC Code

RTSG Code


Vendor's e-mail address

Authorized Signatory Seal

ABOVE DETAILS ARE TO BE SUBMITTED ON COMPANY'S LETTERHEAD.

THE DETAILS MAY EITHER BE ATTESTED BY VENDOR'S 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 COMPANY'S LETTERHEAD.

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ANNEXURE– VII

LOADING CRITERIA

No deviations in GCC terms and conditions are generally acceptable, and bids with deviations are liable to be rejected. However, in exceptional circumstances, BHEL may accept deviations with Loading as given below:

A) PAYMENT TERMS

Payment will be released generally within 60 days after receipt of material/ services and complete documents as per order/ contract (45 days for vendors qualified and registered as Micro or Small as per MSMED Act).

Loading will be done for vendors seeking earlier payment w.r.t. above, for the value and the period of deviation, as per Clause 17.0 of 'Instructions to Bidders'.

Time periods assumed by BHEL/ PEM for a few activities are as follows:

Material Receipt Certificate (MRC) – 120 days from dispatch.


B) BANK GUARANTEE `

Non submission of Bank Guarantee – No deviation is permitted.

C) LIQUIDATED DAMAGES

If maximum limit asked for is on Undelivered Portion – 10% value of the total quoted ex works price & freight (excluding GST).

If maximum limit asked is less than 10 % of contract value loading shall be to the extent to which not agreed by bidder (at offered value).

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ANNEXURE– VIII

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

_____. 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.

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.

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

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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(s)/ Contractor(s) will not enter with other Bidder(s) into any illegal or undisclosed agreement or understanding, whether formal or informal. 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.

2.1.3 The Bidder(s)/ Contractor(s) will not commit any penal offence under the relevant IPC/ PC 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 & 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 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.

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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 / Sub-contractors

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.


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

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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 organization.

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.

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 this time, the same shall be binding and continue to be valid despite the lapse of this pact as specified as 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)


For & On behalf of the Bidder/ Contractor
(Office Seal)

Place_____

Date_____

Witness: _____
(Name & Address) _____


Witness: _____
(Name & Address) _____

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ANNEXURE IX

LIST OF TURNKEY PACKAGES WITH REQUIRED PG TEST & FINAL DOCUMENTS


SL. NO.	PACKAGE NAME	AS BUILT DRAWINGS	O&M MANUAL	FINAL DRAWINGS	INSPECTION DOCUMENTS	PG TEST APPLICABILITY
1	AIRCONDITIONING SYSTEM	Y	Y	Y	Y	Y
2	CHLORINE DIOXIDE DOSING SYSTEM	Y	Y	Y	Y	Y
3	COAL BUNKER DEBLOCKING DEVICES	Y	Y	Y	Y	Y
4	COMPRESSED AIR SYSTEM	Y	Y	Y	Y	Y
5	CONDENSATE POLISHING UNIT	Y	Y	Y	Y	Y
6	CW TREATMENT PLANT	Y	Y	Y	Y	Y
7	D.M. PLANT	Y	Y	Y	Y	Y
8	D/G EOT CRANES ABOVE 100T	N	Y	Y	Y	N
9	D/G EOT CRANES UP TO 100T	N	Y	Y	Y	N
10	EFFLUENT TREATMENT PLANT	Y	Y	Y	Y	Y
11	EFFLUENT/SEWAGE TRANSFER SYSTEM	Y	Y	Y	Y	Y
12	ELECTROLYTIC CHLORINATION PT.	Y	Y	Y	Y	Y
13	ELEVATORS	N	Y	Y	Y	N
14	FUEL OIL HANDLING AND STORAGE SYSTEM	Y	Y	Y	Y	Y
15	GAS CHLORINATION PLANT	Y	Y	Y	Y	Y
16	H2 GEN. PLANT	N	Y	Y	Y	Y
17	HVAC FOR FGD	Y	Y	Y	Y	Y
18	HVAC FOR HYDRO	Y	Y	Y	Y	Y
19	IDCT	Y	Y	Y	Y	Y
20	MILL REJECT SYSTEM (CONVEYOR TYPE)	Y	Y	Y	Y	Y
21	MILL REJECT SYSTEM (PNEUMATIC TYPE)	Y	Y	Y	Y	Y
22	MISC. TANKS(SITE FABRICATED)	N	Y	Y	Y	N
23	NDCT	Y	Y	Y	Y	Y
24	OZONE GENERATION PLANT	N	Y	Y	Y	Y
25	PRETREATMENT PLANT	Y	Y	Y	Y	Y
26	SEWAGE TREATMENT PLANT	Y	Y	Y	Y	Y
27	SIDE STREAM FILTERATION SYSTEM	N	Y	Y	Y	Y
28	SOLID WASTE MANAGEMENT	Y	Y	Y	Y	Y
29	VENTILATION SYSTEM	Y	Y	Y	Y	Y
30	WATER TREATMENT PACKAGES	Y	Y	Y	Y	Y
31	WEIGH BRIDGE	N	Y	Y	Y	N

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ANNEXURE X

BRIEF PROCEDURE FOR CONDUCT OF CONCILIATION PROCEEDINGS

1. The proceedings of Conciliation shall broadly be governed by Part-III of the Arbitration and Conciliation Act 1996 or any statutory modification thereof and as provided herein:
2. The party desirous of resorting to Conciliation shall send an invitation/notice in writing to the other party to conciliate specifying all points of Disputes with details of the amount claimed. The party concerned shall not raise any new issue thereafter. Parties shall also not claim any interest on claims/counter-claims from the date of notice invoking Conciliation till the conclusion of the Conciliation proceedings. If BHEL is to initiate Conciliation, then, the invitation to Conciliate shall be extended to the concerned Stakeholder in **Format 7** hereto. Where the stakeholder is to initiate the Conciliation, the notice for initiation of Conciliation shall be sent in **Format-8** 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-9**. The details of the Claim, and counter-claim, if any, shall be intimated to the Conciliator(s) simultaneously in **Format-5**.
5. The Parties shall be represented by only their duly authorized in-house executives/officers and neither Party shall be represented by a Lawyer.
6. The first meeting of the IEC shall be convened by the IEC by sending appropriate communication/notice to both the parties as soon as possible but not later than 30 days from the date of his/their appointment. The hearings in the Conciliation proceeding shall ordinarily be concluded within two (2) months and, in exceptional cases where parties have expressed willingness to settle the matter or there exists possibility of settlement in the matter, the proceedings may be extended by the IEC by a maximum of further 2 months with the consent of the Parties subject to cogent reasons being recorded in writing.
7. The IEC shall thereafter formulate recommendations for settlement of the Disputes supported by reasons at the earliest but in any case within 15 days from the date of conclusion of the last hearing. The recommendations so formulated along with the reasons shall be furnished by the IEC to both the Parties at the earliest but in any case within 1 month from the date of conclusion of the last hearing.
8. Response/modifications/suggestions of the Parties on the recommendations of the IEC are to be submitted to the IEC within time limit stipulated by the IEC but not more than 15 days from the date of receipt of the recommendations from the IEC.
9. In the event, upon consideration, further review of the recommendations is considered necessary, whether by BHEL or by the other Party, then, the matter can be remitted back to the IEC with request to reconsider the same in light of the issues projected by either/both the Parties and to submit its recommendations thereon within the following 15 days from the date of remitting of the case by either of the Parties.

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10. Upon the recommendations by the Parties, with or without modifications, as considered necessary, the IEC shall be called upon to draw up the Draft Settlement Agreement in terms of the recommendations.
11. When a consensus can be arrived at between the parties only in regard to any one or some of the issues referred for Conciliation the draft Settlement Agreement shall be accordingly formulated in regard to the said Issue(s), and the said Settlement Agreement, if signed, by the parties, shall be valid only for the said issues. As regards the balance issues not settled, the parties may seek to resolve them further as per terms and conditions provided in the contract.
12. In case no settlement can be reached between the parties, the IEC shall by a written declaration, pronounce that the Conciliation between the parties has failed and is accordingly terminated.
13. Unless the Conciliation proceedings are terminated in terms of para 22 (b), (c) & (d) herein below, the IEC shall forward his/its recommendations as to possible terms of settlement within one (1) month from the date of last hearing. The date of first hearing of Conciliation shall be the starting date for calculating the period of 2 months.
14. In case of 3 members IEC, 2 members of IEC present will constitute a valid quorum for IEC and meeting can take place to proceed in the matter after seeking consent from the member who is not available. If necessary, videoconferencing may be arranged for facilitating participation of the members. However, the IEC recommendations will be signed by all members. Where there is more than one (1) Conciliator, as a general rule they shall act jointly. In the event of differences between the Members of IEC, the decision/recommendations of the majority of the Members of IEC shall prevail and be construed as the recommendation of the IEC.
15. The Draft Settlement Agreement prepared by the IEC in terms of the consensus arrived at during the Conciliation proceedings between the Parties shall be given by the IEC to both the parties for putting up for approval of their respective Competent Authority.
16. Before submitting the draft settlement agreement to BHEL's Competent Authority viz. the Board Level Committee on Alternative Dispute Resolution (BLCADR) for approval, concurrence of the other party's Competent Authority to the draft settlement agreement shall be obtained by the other party and informed to BHEL within 15 days of receipt of the final draft settlement agreement by it. Upon approval by the Competent Authority, the Settlement Agreement would thereafter be signed by the authorized representatives of both the Parties and authenticated by the members of the IEC.
17. In case the Draft Settlement Agreement is rejected by the Competent Authority of BHEL or the other Party, the Conciliation proceedings would stand terminated.
18. A Settlement Agreement shall contain a statement to the effect that each of the person(s) signing thereto (i) is fully authorized by the respective Party(ies) he/she represents, (ii) has fully understood the contents of the same and (iii) is signing on the same out of complete freewill and consent, without any pressure, undue influence.
19. The Settlement Agreement shall thereafter have the same legal status and effect as an arbitration award on agreed terms on the substance of the dispute rendered by an arbitral tribunal passed under section 30 of the Arbitration and Conciliation Act, 1996.
20. Acceptance of the Draft Settlement Agreement/recommendations of the Conciliator and/or signing of the Settlement Agreement by BHEL shall however, be subject to withdrawal/closure of any arbitral and/or judicial proceedings initiated by the concerned Party in regard to such settled issues.

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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:


- On the date of signing of the Settlement agreement by the Parties; or,
- 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,
- 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,
- 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,
- 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:

SI 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.
SI No	Particulars	Amount
		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, Signing of the Settlement Agreement after approval of the Competent Authority or

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			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 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
SI No	Particulars		Amount
			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.
<p>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.</p> <p>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.</p> <p>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.</p>			

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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.

Format 5 to BHEL Conciliation Scheme, 2018 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):

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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.

FORMAT-7

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.

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FORMAT-8 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.

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FORMAT-9

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.

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ANNEXURE XI

STATE WISE GST REGISTRATION CODE OF BHEL

Sl.No	State	Nodal Unit Registered as Supplier of Goods/Services in GST	GSTIN of Nodal Unit
1	Andhra Pradesh	HPVP	37AAACB4146P7Z8
2	Assam	PSER	18AAACB4146P1ZE
3	Bihar	PSER	10AAACB4146P1ZU
4	Chandigarh	PSNR	04AAACB4146P1ZN
5	Chattishgarh	PSWR	22AAACB4146P1ZP
6	Daman & Diu	EDN	25AAACB4146P1ZJ
7	Delhi	TBG	07AAACB4146P1ZH
8	Gujarat	PSWR	24AAACB4146P1ZL
9	Haryana	PSNR	06AAACB4146P1ZJ
10	Himachal Pradesh	PSNR	02AAACB4146P1ZR
11	Jharkhand	PSER	20AAACB4146P5ZP
12	Karnataka	EDN	29AAACB4146P1ZB
13	Kerala	PSSR	32AAACB4146P1ZO
14	Maharashtra	PSWR	27AAACB4146P1ZF
15	Madhya Pradesh	BPL	23AAACB4146P1ZN
16	Punjab	IVP	03AAACB4146P2ZO
17	Rajasthan	PSNR	08AAACB4146P1ZF
18	Tamil Nadu	TRY	33AAACB4146P2ZL
19	Telangana	Hyd	36AAACB4146P1ZG
20	Tripura	PSER	16AAACB4146P1ZI
21	Uttar Pradesh	PSNR	09AAACB4146P2ZC
22	Uttarakhand	HWR	05AAACB4146P1ZL
23	West Bangal	PSER	19AAACB4146P1ZC
24	Mizoram	PSER	15AAACB4146P1ZK
25	Orissa	PSSR	21AAACB4146P1ZR
26	Arunachal Pradesh	PSER	17AAACB4146P17Q

Annexure-XII

Sl.No.	Package	Definition for successful Commissioning	Definition for successful TRIAL operation	Handover	PG test- applicability and retention release (FINAL bill) clause	P&G release clause
1	MISC. TANK (DM, CST/SITE FABRICATED)	First fill of liquid/water/oil (as applicable) in Tank (After painting).	Operation of Tanks with fill of liquid/water/oil (as applicable) in Tank for ONE MONTH for further beneficial use to Plant	After successful TRIAL operation and 1 year defect liability period, package deemed to be handed over to BHEL/customer.	Not applicable. Final bill shall be paid after TRIAL operation completion	After defect liability period completion.
2	FUEL OIL HANDLING/UNLOADING SYSTEM (TANKS WITH FUEL UNLOADING SYSTEM)	First fill of LDO or HFO in TANK with respective unloading pumps.	Operation of all Drives /sub systems and equipment's (Drain pump, sump pump, APRDS, panel as per scope) its demonstration through PLC/DCS as applicable.	After successful PG test conductance package deemed to be handed over to BHEL/Customer	Final bill shall be paid after successful PG test completion.	After completion of successful PG test OR defect liability period completion, which ever is later.
3	D/G EOT CRANES UP TO 100T & D/G EOT CRANES ABOVE 100T	Load Test of EOT and statutory certificate/licence/Third party inspection report	trouble free/stable operation of EOT for 1 month for beneficial use in plant	Handover protocol with BHEL/Customer	Not applicable. Final bill shall be paid After Handover	After handover to customer
4	COMPRESSED AIR SYSTEM	Commissioning of compressor stream with air dryer and air receiver	trouble free/stable operation of system including PLC/DCS operation of package for 1 month for beneficial use in plant	After successful PG test conductance package deemed to be handed over to BHEL/Customer	Final bill shall be paid after successful PG test completion.	After completion of successful PG test OR defect liability period completion, which ever is later.
5	D.M. PLANT	Demonstration of two cycle of continuous DM water production per stream	trouble free/stable operation of system including PLC/DCS operation of package for 1 month for beneficial use in plant	After successful PG test conductance package deemed to be handed over to BHEL/Customer	Final bill shall be paid after successful PG test completion.	After completion of successful PG test OR defect liability period completion, which ever is later.
6	PRETREATMENT PLANT	"1 week generation of treated water including commissioning of chemical dosing system.	trouble free/stable operation of system including PLC/DCS operation of package covering all other sub systems like thickener/sludge disposal (as applicable) for 1 month for beneficial use in plant	After successful PG test conductance package deemed to be handed over to BHEL/Customer	Final bill shall be paid after successful PG test completion.	After completion of successful PG test OR defect liability period completion, which ever is later.
7	COOLING TOWER-NDCT	First water Charge of Cooling water and readiness for operation	trouble free/stable operation of system including operation of package covering all other sub systems sump pump, aviation light,elevator, etc. (as applicable) for 1 month beneficial use in plant	After successful PG test conductance package deemed to be handed over to BHEL/Customer	Final bill shall be paid after successful PG test completion.	After completion of successful PG test OR defect liability period completion, which ever is later.
8	COOLING TOWER-IDCT	Trial RUN of all CT FANs + First water Charge of Cooling water	trouble free/stable operation of system including PLC/DCS operation of package covering all other sub systems sump pump,hoist for 1 month beneficial use in plant.	After successful PG test conductance package deemed to be handed over to BHEL/Customer	Final bill shall be paid after successful PG test completion.	After completion of successful PG test OR defect liability period completion, which ever is later.
9	ELECTROLYTIC CHLORINATION PLANT	1 week of continuous Chlorine dosing in water (CW,RAW, Potable as applicable)	trouble free/stable operation of system (including PLC/DCS operation of package covering all elect and C&I part.) for 1 month for beneficial use in plant	After successful PG test conductance package deemed to be handed over to BHEL/Customer	Final bill shall be paid after successful PG test completion.	After completion of successful PG test OR defect liability period completion, which ever is later.
10	GAS CHLORINATION PLANT	1 week of continuous Chlorine dosing in water (CW,RAW, Potable as applicable)	trouble free/stable operation of system (including PLC/DCS operation of package covering all elect and C&I part.) for 1 month for beneficial use in plant	After successful PG test conductance package deemed to be handed over to BHEL/Customer	Final bill shall be paid after successful PG test completion.	After completion of successful PG test OR defect liability period completion, which ever is later.
11	CW TREATMENT PLANT	1 week of continuous Chemical dosing in CW	trouble free/stable operation of system (including PLC/DCS operation of package covering all elect and C&I part.) for 1 month for beneficial use in plant	After successful PG test conductance package deemed to be handed over to BHEL/Customer	Final bill shall be paid after successful PG test completion.	After completion of successful PG test OR defect liability period completion, which ever is later.

Annexure-XII						
Sl.No.	Package	Definition for successful Commissioning	Definition for successful TRIAL operation	Handover	PG test- applicability and retention release (FINAL bill) clause	P&G release clause
12	AC SYSTEM	1 week continuous operation of AC UNIT (Chiller/VAM,AHU,PUMPS etc as involved in ONE Independent AC system.)	trouble free/stable operation of ONE Independent AC system (including PLC/DCS operation of package covering all elect and C&I part.) for 1 month for beneficial use in plant	UNIT wise/ BUILDING wise PG test of ONE Independent UNIT shall be allowed After 12 months operation of such system, that part of package deemed to be handed over to BHEL/Customer	Final bill shall be paid after successful PG test completion.	After completion of successful PG test OR defect liability period completion, which ever is later.
13	MILL REJECT SYSTEM (CONVEYOR TYPE) & MILL REJECT SYSTEM (PNEUMATIC TYPE)	Commissioning of all drives and instruments UNIT wise and readiness for Start of "Mill reject conveying/collection.	trouble free/stable operation of system (including PLC/DCS operation of package covering all elect and C&I part.) for 1 month for beneficial use in plant	UNIT wise PG test of ONE Independent UNIT shall be allowed After 12 months operation and that part deemed to be handed over to BHEL/Customer	Final bill shall be paid after successful PG test completion.	After completion of successful PG test OR defect liability period completion, which ever is later.
14	EFFLUENT TREATMENT PLANT	Commissioning of drives/pumps and C&I work scope(Area wise) and its chemical treatment in CMB.	trouble free/stable operation of all sub system for 1 month.	After successful PG test conductance package deemed to be handed over to BHEL/Customer	Final bill shall be paid after successful PG test completion.	After completion of successful PG test OR defect liability period completion, which ever is later.
15	VENTILATION SYSTEM	Demonstration of AIR washer/UAF operation for 1 week.	trouble free/stable operation of ONE Independent AIR washer / UAF system (including PLC/DCS operation of package covering all elect and C&I part.) for 1 month for beneficial use in plant	UNIT wise/ BUILDING wise PG test of ONE Independent UNIT shall be allowed After 12 months operation of such system, that part of package deemed to be handed over to BHEL/Customer	Final bill shall be paid after successful PG test completion.	After completion of successful PG test OR defect liability period completion, which ever is later.
16	SIDE STREAM FILTRATION SYSTEM	Demonstration of Filtration Plant for 1 week.	trouble free/stable operation of system for 1 month.	After successful PG test conductance package deemed to be handed over to BHEL/Customer	Final bill shall be paid after successful PG test completion.	After completion of successful PG test OR defect liability period completion, which ever is later.
17	ELEVATOR	Load Test of Elevator and statutory certificate/licence/Third party inspection report	trouble free/stable operation of elevator for 1 month.	Handover protocol with BHEL/Customer	Not applicable. Final bill shall be paid After Handover	After defect liability period completion.
18	CONDENSATE POLISHING UNIT	1 cycle operation of each service vessel in respective UNIT including resin regeneration system.	trouble free/stable operation of CPU (including PLC/DCS operation of package covering all electrical and C&I part.) for 1 month for beneficial use in plant	UNIT wise PG test of ONE Independent UNIT shall be allowed After 12 months operation and that part deemed to be handed over to BHEL/Customer	Final bill shall be paid after successful PG test completion.	After completion of successful PG test OR defect liability period completion, which ever is later.
19	H2 GENERATION PLANT	1st PESO license for erection and 2nd license for commissioning & operation, 2 week operation of all equipment's (generation skid, purification skid and compressor skid) and availability of H2 at filling station.	2 week trouble free/stable operation of H2 generation system for beneficial use in plant.	After successful PG test conductance package deemed to be handed over to BHEL/Customer	Final bill shall be paid after successful PG test completion.	After completion of successful PG test OR defect liability period completion, which ever is later.
20	OZONE GERATION PLANT			Not Required		
21	SEWAGE TREATMENT PLANT	"1 week operation of all the drives including commissioning of chemical dosing system and generate treated water for final use."	trouble free/stable operation of system for 1 month.	After successful PG test conductance package deemed to be handed over to BHEL/Customer	Final bill shall be paid after successful PG test completion.	After completion of successful PG test OR defect liability period completion, which ever is later.
22	COAL BUNKER DEBLOCKING DEVICES			Not Required		
23	SOLID WASTE MANAGEMENT			Not Required		
24	WEIGH BRIDGE	Load Test of Weigh bridge and statutory certificate/licence/Third party inspection report	trouble free/stable operation of Weigh bridge for 1 month.	Handover protocol with BHEL/Customer	Not applicable. Final bill shall be paid After Handover	After defect liability period completion.



**BHARAT
HEAVY
ELECTRICALS
LIMITED
(BHEL)**

**GENERAL CONDITIONS
OF CONTRACT
GCC - BOP**


Revision no. 00

ANNEXURES

Annexure-XIII

Package wise variation in contract value


S. No.	Package Name	Overall variation in contract value
1	CHLORINE DIOXIDE DOSING SYSTEM	+/- 10%
2	CONDENSATE POLISHING UNIT	+/- 10%
3	SIDE STREAM FILTRATION SYSTEM	+/- 10%
4	CW TREATMENT PLANT	+/- 10%
5	Water Treatment Packages	+/- 10%
6	PRETREATMENT PLANT	+/- 10%
7	MILL REJECT SYSTEM (CONVEYOR TYPE)	+/- 10%
8	MILL REJECT SYSTEM (PNEUMATIC TYPE)	+/- 10%
9	COAL BUNKER DEBLOCKING DEVICES	+/- 10%
10	D.M. PLANT	+/- 10%
11	EFFLUENT TREATMENT PLANT	+/- 10%
12	IDCT	+/- 10%
13	NDCT	+/- 10%
14	FUEL OIL HANDLING AND STORAGE SYSTEM	+/- 10%
15	MISC. TANKS(SITE FABRICATED)	+/- 10%
16	H2 GEN. PLANT	+/- 10%
17	ELECTROLYTIC CHLORINATION PT.	+/- 10%
18	OZONE GENERATION PLANT	+/- 10%
19	GAS CHLORINATION PLANT	+/- 10%
20	SOLID WASTE MANAGEMENT	+/- 10%
21	D/G EOT CRANES UP TO 100T	+/- 10%
22	D/G EOT CRANES ABOVE 100T	+/- 10%
23	ELEVATORS	+/- 10%
24	AIRCONDITIONING SYSTEM	+/- 30%
25	VENTILATION SYSTEM	+/- 30%
26	COMPRESSED AIR SYSTEM	+/- 10%
27	WEIGH BRIDGE	+/- 10%
28	HVAC for Hydro	+/- 30%
29	HVAC FOR FGD	+/- 30%
30	Sewage Treatment Plant	+/- 10%
31	Effluent/Sewage Transfer System	+/- 10%

	BHARAT HEAVY ELECTRICALS LIMITED (BHEL)	GENERAL CONDITIONS OF CONTRACT GCC – BOP Revision no. 00	ANNEXURES
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CUMULATIVE ENGG PLAN & REVIEW WITH VENDOR

Annexure XIV

LOA date											
Sl. No.	Customer Drawing No.	BHEL Drawing No.	Drawing Title	Scheduled/ Resubmission Date	Submitted Date	Rev. No	Comment Date	APPROVAL Date	Approval Category	Delay in Submission	Remarks
1		Drg 1									
2		Drg 1									
3		Drg 1									
4		Drg 2									
5		Drg 2									
6		Drg 3									
7		Drg 4									
8		Drg 4									
9		Drg 4									
10		Drg 4									
11		Drg 5									

	BHARAT HEAVY ELECTRICALS LIMITED (BHEL)	GENERAL CONDITIONS OF CONTRACT GCC – BOP Revision no. 00	ANNEXURES
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Annexure XV

PART – B: PLAN(PHYSICAL) FOR THE NEXT QUARTER i.e.

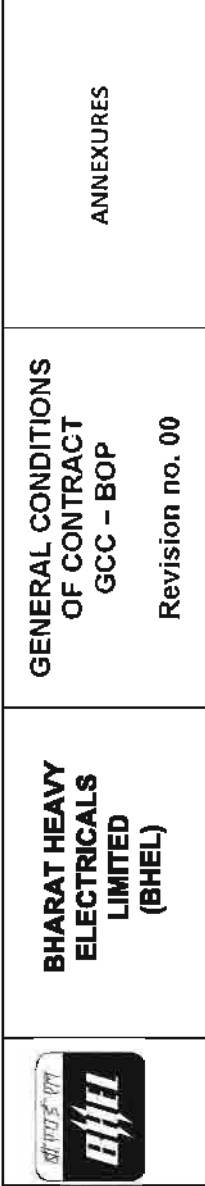
Date of Plan

SN.	Description of Supply	Original Planned Quantity	Planned Quantity (excluding shortfalls attributable to Vendor till date)	Unit of Measurement	REMARKS (Reasons for difference in Original Planned Quantity w.r.t Planned quantity to be given)

Note : “Original Planned Quantity” shall be as per latest jointly agreed programme between BHEL and Vendor before commencement of work or at the time of latest Time Extension, as the case may be.

BHEL
(Sign with name, designation and date)

VENDOR
(Sign with name, designation and date)




WORK PLAN & REVIEW WITH VENDOR

Date of Plan/ Review.....

SN.	Description of Work	Unit of Measurement	Unit Rate	Planned		Cumulative Shortfall attributable to Vendor upto last quarter		Achieved		Shortfall attributable to BHEL w.r.t Plan		Cumulative Shortfall attributable to Vendor upto & including this quarter			REMARKS (Reasons for Shortfall attributable to Vendor. Supporting documents to be kept as record.)
				(QTY Planned for the quarter as per Part –C of last quarter)		Vendor upto last quarter		Attained		to BHEL w.r.t Plan		Shortfall attributable to Vendor upto & including this quarter			
				Phy.	Financial	Phy	Financial	Phy.	Financial	Phy.	Financial	Phy.	Financial	Phy.	
(a)	(b)	(c)	(d)		A	B	C	D	E=A+B-C-D						
					Phy.	Financial	Phy	Financial	Phy.	Financial	Phy.	Financial			
	Value of Other Items not mentioned above but planned to be executed in this quarter														
	Total				ΣA	ΣB	ΣC	ΣD		ΣE					

(Sign with name, designation and date)

(Sign with name, designation and date)
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	BHARAT HEAVY ELECTRICALS LIMITED (BHEL)	GENERAL CONDITIONS OF CONTRACT GCC – BOP Revision no. 00	ANNEXURES
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Annexure XVI

PART – B: PLAN(PHYSICAL) FOR THE NEXT QUARTER i.e.

Date of Plan

SN.	Description of work	Original Planned Quantity	Planned Quantity (excluding shortfalls attributable to Vendor till date)	Unit of Measurement	REMARKS (Reasons for difference in Original Planned Quantity w.r.t. Planned quantity to be given)

Note: “Original Planned Quantity” shall be as per latest jointly agreed programme between BHEL and Vendor before commencement of work or at the time of latest Time Extension, as the case may be.

BHEL
(Sign with name, designation and date)

VENDOR
(Sign with name, designation and date)

APPENDIX – I

(CERTIFICATE BY CHARTERED ACCOUNTANT ON LETTER HEAD)

This is to Certify that M/S, (hereinafter referred to as 'company') having its registered office at is registered under MSMED Act 2006, (Entrepreneur Memorandum No (Part II) dtd:, Category: (Micro/Small)). (copy enclosed).

Further verified from the Books of Accounts that the investment of the company as per the latest audited financial year as per MSMED Act 2006 is as follows:

1. **For Manufacturing Enterprises:** investment in plant and machinery (i.e. original cost excluding land and building and the items specified by the Ministry of Small Scale Industries vide its notification No. S.O.1722 (E) dated October 5, 2006:
Rs Lacs
2. **For Service Enterprises:** Investment in equipment (original cost excluding land and building and furniture, fittings and other items not directly related to the service rendered or as may be notified under the MSMED Act, 2006:
Rs Lacs

(STRIKE OFF WHICHEVER IS NOT APPLICABLE)

The above investment of Rs Lacs is within permissible limit of Rs Lacs for Micro/ Small (Strike off which is not applicable) Category under MSMED Act 2006.

Or

The company has been graduated from its original category (Micro/Small) (strike off which is not applicable) and the date of graduation of such enterprise from its original category is (dd/mm/yyyy) which is within the period of 3 years from the date of graduation of such enterprise from its original category as notified vide S.O.No. 3322(E) dated 01.11.2013 published in the gazette notification dated 04.11.2013 by Ministry of MSME.

Date:

(Signature)

Name-

Membership Number-

Seal of Chartered Accountant-