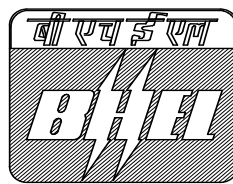


GENERAL COMMERCIAL TERMS AND CONDITIONS

FOR

OUTSOURCING CIVIL ENGINEERING WORKS

PE-GC-000-600-C001 Rev.: 00



**Bharat Heavy Electricals Limited
Project Engineering Management
PPEI Building, Power Sector,
Plot No. 25, Sector 16A,
Noida (U.P.)-201301**

Regd. Office: 'BHEL-House', Siri Fort, New Delhi - 110 049

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1.0	<p>DEFINITION:</p> <p>The following terms and expressions shall have the meaning hereby assigned to them except where the context other wise requires.</p>
1.1	<p>The “Purchaser” shall mean M/s Bharat Heavy Electrical Limited (A Govt. of India Undertaking) incorporated under the Companies Act 1956 with its registered office at BHEL House, Siri Fort, New Delhi – 110 049. The expression shall include its successors and assign. It may also be referred to as BHEL.</p>
1.2	<p>The “Owner” shall mean the Customer or Client or Project Authorities for whose Project the tender enquiry has been issued by the Purchaser and shall include his successors and assigns as well as Authorized Officer(s) / Representative(s) which may also be referred as Customer or Owner / Customer.</p>
1.3	<p>The “Consultant” shall mean the agency appointed by the Owner or Purchaser to provide consultancy services for the Project and shall include his successors and assigns as well as Authorized Officers(s) / Representative(s).</p>
1.4	<p>The “Tenderer” shall mean the Firms / Company / Organization / Joint Venture / Consortium acceptable to purchaser, which quotes against the Tender Enquiry issued by the purchaser for outsourcing engineering work. It may also be referred as bidder or vendor or engineering Sub-Consultant.</p>
1.5	<p>“Acceptance of Offer” shall mean issue of Letter of Intent / Award of work Order / Contract or Memorandum or Detailed Order / Contract communicating the acceptance of offer, to the successful Tenderer.</p>
1.6	<p>The “Order / Contract” shall mean and include the general conditions, bidding conditions, specific conditions if any, specifications, schedules, drawings, agreement / work order, schedules of prices and quantities, letter of intent / award of the purchase, any special conditions applicable to a particular contract / work order including subsequent amendment mutually agreed upon in writing. It may also be referred as Order or Contract / Order or Work Order or Purchase Order or Contract.</p>
1.7	<p>The “Sub-Consultant” shall mean the Firm / Company / Organization with whom the Order / Contract / Work Order is entered into and shall be deemed to include his successors, representatives, heirs, executors, administrators and permitted assigns as the case may be. It may also be referred to as Contractors or Seller or Supplier.</p>
1.8	<p>The “Sub-Contractor” shall mean the Person / Firm / Company / Organization to whom any part of the work has been sub contracted by the Sub-Consultant, with the written consent of the Purchaser and shall include his heirs executors, administrators, representatives and assigns.</p>
1.9	<p>The “Specification” shall mean the specifications contained in the tender document including any subsequent modifications thereof and the drawings, schedules etc. attached there to, if any.</p>
1.10	<p>The “Site” shall mean and include the land and places on, into or through which the Power Station / Plant and the related facilities are to be constructed and any adjacent land, path, street, or reservoir which may be allocated or used by the owner or Sub-</p>

	Consultant in the performance of the Order / Contract.
1.11	“Commissioning” shall mean successful completion of Trial Operations and readiness of the contracted / ordered plant and materials for commercial use. This will include all consumables and inputs required for pre-commissioning.
1.12	“Initial Operation” or “Trial Operation” or “Reliability Run” shall mean continuous integrated operation of the contracted / ordered plant and materials under varying loads to furnish proof of satisfactory operation for a specified period.
1.13	“Temporary Work” shall mean all temporary works of every kind required in or for the execution, completion or maintenance of the works.
1.14	“Approved” means approved in writing including subsequent written confirmation of previous verbal approval and Approval means approval in writing as stated above.
1.15	“Month” shall mean English calendar month & “Week” shall mean 7 days.
1.16	“Consignee” shall mean the Official (s) / Person (s) to whom the stores are required to be delivered in the manner defined in the Contract / Order.
1.17	“Issue of Notice” – All notices, communications & references shall be deemed to have been duly given to the contractor, if delivered to the contractor or his authorized agent or left at the address either of the contractor or his authorized agent. The address of the contractor or his authorized agent shall be furnished to the Purchaser and shall include name, designation etc. In the event of any change in address of the Contractor / Sub-contractor, the same is required to be conveyed within 7 days of such change to the purchaser.
1.18	<p>General</p> <p>The words incorporating singular shall include plural and vice-versa, in the words importing masculine gender shall include feminine and vice-versa and the words importing persons shall include bodies, corporate, limited liability companies, partnership and other legal entities.</p>
1.19	<p>Time Schedule</p> <p>The overall schedule of completion of engineering shall be as mentioned in the Technical Specification enclosed with the tender.</p>
2.0	CONTRACT:
2.1	The Contract between the Purchaser and Sub-Consultant is merely a Contract only and shall not be treated as partnership, joint venture, consortium, company or any other type of association between the parties to the Contract and anticipated scope of work as specified in the Technical Specification document enclosed.
3.0	PRICES:
3.1	<p>Basic Prices</p> <p>Basic prices shall be firm for the entire scope of work in line with all instructions, Technical Specifications and terms and conditions specified in the Tender Documents.</p>

4.0	TAXES AND DUTIES:
4.1	<p>Sales Tax / Service Tax / Value Added Tax (VAT) or any other tax</p> <p>Service tax shall be reimbursed only if the same is payable by the Sub-Consultant to the respective Govt. authorities meeting all statutory requirements and availing all exemptions / concessions under the respective Acts. Unless and until the taxes and duties are indicated specifically separately in commercial and price bids BHEL shall assume that the prices quoted are inclusive of these and no reimbursement for these will be made by BHEL.</p>
4.2	No liability on account of the dealings between sub-consultant and his sub-contractor shall be borne by the purchaser.
5.0	VARIATION:
5.1	The price shall remain firm for any increase or decrease in the quantity of Order / Contract value up to plus or minus 30% only. The purchaser shall have the right to add or delete the systems/buildings in the scope up to the above extent of value and the Sub-Consultant shall be bound to accept the same at the contracted prices without any escalation.
5.2	<p>Price Discrepancy</p> <p>Totals / Gross Totals of Prices should be indicated both in words as well as in figures. If there is discrepancy in Unit Price, Total Price quoted in words and figures, the arithmetical errors will be rectified on the following basis:</p> <ul style="list-style-type: none"> ➤ If there is discrepancy between the Unit Price and the Total Price, which is obtained by multiplying the Unit Price and quantity, or between Sub-total and the Total Price, the Unit or Sub-total price shall prevail and the Total Price shall be corrected. ➤ If there is a discrepancy between the words and figures, the amount in words will prevail. ➤ For ordering: Corrected or quoted price (whichever is lowest) shall be considered for ordering.
6.0	SECURITY DEPOSIT CUM CONTRACT PERFORMANCE GUARANTEE:
6.1	Time for Submission
6.1.1	The successful tenderer shall deposit security deposit in the format prescribed by BHEL within thirty (30) days from the date of communication of acceptance of offer by way of Letter of Intent / Order / Contract to cover the due performance of the Order / Contract and to fulfill the guarantee conditions stipulated in the Order / Contract.
6.1.2	Delay in deposit of security deposit shall carry interest charges @ 3.0% per quarter or part thereof, on the value for which security deposit is required, for the delayed period and shall be deducted from the payments due to the Sub-Consultant.
6.1.3	Purchaser reserves the right to cancel the Order / Contract in the event of failure to deposit the above security / bank guarantee acceptable to Purchaser within the stipulated time period, at the risk and cost of the Sub-Consultant.
6.2	Value
6.2.1	The value of the security deposit shall be 10% of the Order / Contract value excluding

	<p>taxes and duties. If the value of the Order / Contract gets enhanced at any time, the Sub-Consultant shall submit the security deposit in the form of Bank Guaranty / in the form acceptable to the Purchaser corresponding to the enhanced value within 30 days of issue of Order / Contract amendment, failing which the purchaser shall have right to recover the equivalent amount from the payments due to the Sub-Consultant.</p>
6.2.2	<p>Security Deposit may be furnished in any one of the following forms:</p> <ul style="list-style-type: none"> i) Cash (as permissible under the Income Tax Act) ii) Pay Order, Demand Draft in favour of BHEL. iii) Local cheques of scheduled banks, subject to realization. iv) Securities available from Post Offices such as National Savings Certificates, Kisan Vikas Patras etc. (Certificates should be held in the name of Sub-Consultant furnishing the security and duly pledged in favour of BHEL and discharged on the back). v) Bank Guarantee from Scheduled Banks / Public Financial Institutions as defined in the Companies Act subject to a maximum of 50% of the total security deposit value. The balance 50% has to be remitted either by cash or any other form of security acceptable to Purchaser. The Bank Guarantee format shall have the prior approval of BHEL. vi) Fixed Deposit Receipt issued by Scheduled Banks / Public Financial Institutions as defined in the Companies Act. The FDR should be in the name of the contractor, A/C BHEL, duly discharged on the back. vii) Security deposit can also be recovered at the rate of 10% from the running bills. However in such cases at least 50% of the Security Deposit should be collected before the start of the work and the balance 50% may be recovered from the running bills. viii) EMD of the successful tenderer shall be converted and adjusted against the security deposit.
6.2.3	<p>The security deposit shall not carry any interest.</p>
6.2.4	<p>Security deposit shall not be refunded to the contractor except in accordance with the terms of the contract and only after the completion of contract in all respect.</p> <p>Note: Acceptance of Security Deposit against Sl. No. 6.2.2 (iv) and 6.2.2 (vi) above will be subject to hypothecation or endorsement on the documents in favour of BHEL. However, BHEL shall not be liable or responsible in any manner for the collection of interest or renewal of the documents or in any other matter connected therewith. Purchaser shall have the first charge over the Securities so furnished.</p>
6.3	<p>Validity</p>
6.3.1	<p>For the purpose of the Contract, the validity of the bank guarantee shall be initially up-to the contractual delivery period. It shall be later extended to cover the entire guarantee period plus two months claim period, failing which BHEL may recover the amount equivalent to the bank Guarantee either from the next bills or shall have unconditional right to encash the same. The purchaser shall reserve the right and it shall be lawful on its part to forfeit and en-cash the bank guarantee, in the event of any default, failure or neglect on the part of the Sub-Consultant, in fulfillment of performance of the Order / Contract.</p>
6.3.2	<p>The Security deposit-cum-contract performance bank guarantee shall be revalidated by the Sub-Consultant and be kept alive at all material times till the complete fulfillment of the contractual obligations. The bank guarantee shall be extended by the Sub-Consultant at his cost, for a period not less than three months at a time, on the same terms for full value of the Order / Contract, before expiry of the bank guarantee.</p>

6.3.3	Equivalent amount together with interest, if any, shall be recovered from the payments due to the Sub-Consultant before releasing any payment, in the absence of a valid Bank Guarantee.
7.0	TERMS OF PAYMENT:
7.1	Refer Price Schedule & PAYMENT TERMS ENCLOSED as per clause numbers 7.0 of the Technical Specification.
7.2	Payment for the visits: 100% per visit charges on certification of Purchaser design engineer on bimonthly basis.
7.3	No extra payments shall be made for the revision or revalidation of documents, during guarantee period.
7.4	Mode of Payment will be made directly to the Sub-Consultant through Electronic Clearance System (ECS) in their bank account directly. The Sub-Consultant is required to complete the necessary documentations in this regard with Purchaser.
7.5	Payment shall be made within 90 days of the receipt of invoices complete in every respect. For MSED resisted vendors, it shall be within 45 days of the receipt of invoices complete in every respect. No interest shall be payable for the delayed period.
8.0	RECOVERY OF OUTSTANDING AMOUNT: In the event of any amount of money being outstanding at any point of time against the Sub-Consultant, due to excess payment or any other reason whatsoever, in the present Order / Contract or any other Order / Contract, the outstanding amount shall be recovered from the payments due to the Sub-Consultant or at any other appropriate time and manner / mode as deemed fit by the Purchaser at its sole discretion.
9.0	WORK COMPLETION SCHEDULE:
9.1	The Sub-Consultant shall so organize his resources and perform the Order / Contract so as to complete its scope of work as per the specifications and conditions as per stipulated delivery / completion schedule.
10.0	PROGRESS REPORTS:
10.1	The Sub-Consultant shall submit a detailed estimated completion schedule covering various key phases of the works with in 7 (seven) days after the date of acceptance of the Order / Contract. This schedule shall also clearly indicate the interface facilities/inputs to be provided by the Purchaser / Owner and the dates by which such facilities / inputs are required.
11.0	DELIVERY FAILURE AND TERMINATION/LIQUIDATED DAMAGES & CONSEQUENTIAL DAMAGES:
11.1	The parties hereto agree that the timely completion of work as per schedules as stipulated in Order / Contract shall be a crucial requirement of the Order/Contract. If the Sub-Consultant fails to complete the dispatch/delivery and other schedules within the time period stipulated in the order/contract, or within any extension of time granted by the purchaser, it shall be lawful for the purchaser to recover damages for breach of Order / Contract without prejudice to any other rights and / or remedies provided for, in the Order / Contract and hereunder.

11.2	Delayed Delivery
11.2.1	<p>The purchaser reserves the right to recover from the Sub-Consultant, as agreed liquidated damages and not by way of penalty, a sum equivalent to half percent (1/2%) of the total contract price per week or part thereof, subject to a maximum of ten per cent (10%) of the total contract price excluding elements of taxes, if the Sub-Consultant has failed to complete any part of the work within the period stipulated in the Order / Contract.</p> <p>Note: The LD shall be applicable only after agreed schedule date of completion.</p>
11.2.2	The purchaser reserves the right to do or get the balance work done from elsewhere on account of and at the risk and cost of the Sub-Consultant without notice to the Sub-Consultant if required engineering work is not completed as per schedule. Purchaser reserves the right to cancel the order/contract or a portion thereof for the work not so completed from else where at the risk and cost of the Sub-Consultant and the Sub-Consultant shall be liable to the purchaser for any excess costs thereof.
11.2.3	Sub-Consultant shall continue the performance of the Order / Contract under all circumstances, to the satisfaction of the Purchaser.
12.0	GUARANTEE FOR DESIGN AND ENGINEERING:
12.1	The Sub-Consultant shall warrant that the design & engineering for civil consultancy shall be of the highest quality in line with Purchaser / Owner requirements and meeting all other generally accepted CODAL provisions and in full conformity with the Order / Contract specifications / data / drawings.
12.2	The guarantee shall be valid in line with our guarantee terms with the owner i.e. 12 months shall be from date of initial operation of the plant. Therefore the Sub-Consultant shall be associated for their obligations under guarantee terms.
12.3	The decision of the purchaser with regard to Sub-Consultant's liability and the amount involved if any payable by the Sub-Consultant under the guarantee shall be final conclusive and shall continue the performance of the Order / Contract
13.0	WITHHOLDING AND LIEN IN RESPECT OF SUM CLAIMED:
13.1	Whenever any claim or claims for payments of a sum of money arises out of or under the Order/Contract against the Sub-Consultant, the Purchaser shall be entitled to withhold and also have a lien to retain such sum or sums in whole or sums in part from security, if any, deposited by the Sub-Consultant and for the purpose aforesaid, the purchaser shall be entitled to withhold the said cash security deposit or the security furnished as the case may be and also have a lien over the same, pending finalisation or adjudication of any such claim. It shall be an unconditional responsibility of the Sub-consultant to keep such securities / guaranty valid for entire period any charges incurred it for keeping such securities / guaranties alive till the time the dispute is resolved or due payments released. In the event of the security being insufficient to cover the claimed amount or amounts or if no security has been taken from the Sub-Consultant, the purchaser shall be entitled to withhold and have a lien to retain to the extent of such claimed amount or amounts referred to from any sum or sums found payable or which at any time thereafter may become payable to the Sub-Consultant under the same Order / Contract or any other Order / Contract with the purchaser or any other person contracting, pending finalisation or adjudication of any such claim.

13.2	<p>It is an agreed term of the Order / Contract that the sum of money so withheld or retained under the lien referred to above will be kept withheld or retained as such by the purchaser till the claim arising out of or under the Order / Contract is determined by the Arbitrator or by the competent court, prescribed as the case may be and that the Sub-Consultant will have no claim for interest or retention under the lien referred to and duly notified as such to the Sub-Consultant. For the purpose of this clause, where the Sub-Consultant is partnership firm or a limited company or joint venture or consortium, the Purchaser shall be entitled to withhold and also have a lien to retain towards such claimed amount or amounts in whole or in part from any sum found payable to any partner / limited company / joint venture / consortium as the case may be, whether in his individual capacity or otherwise.</p>
13.3	<p>It is an agreed term of the Order / Contract that the sum of money so withheld or retained under this clause by purchaser which will be kept withheld or retained as such by the purchaser or till his claim arising out of in the same Order / Contract or any other Order / Contract is either mutually settled or determined by the arbitrator or by the competent court, hereinafter, provided, as the case may be, that the Sub-Consultant shall have no claim for interest or damages whatsoever on this account of or any other ground in respect of any sum of money withheld or retained under this clause and duly notified as such to the Sub-Consultant.</p>
14.0	<p>CONFIDENTIALITY:</p> <p>All information, drawings, classified documents provided by BHEL to Sub-Consultant for the purpose of carrying out a project work shall remain the property of BHEL and shall be returned to BHEL on completion of the project. All information generated during the execution of the project, such as details, designs, drawings and documents by Sub-Consultant shall be exclusive property of BHEL and its Intellectual Property rights shall be that of BHEL. BHEL shall have full right to use these in any manner suitable to BHEL Business requirements. Sub-Consultant will execute Non-Disclosure Agreement as required by BHEL in this respect. This section will survive the expiration or termination of contract.</p>
15.0	<p>TERMINATION OF THE CONTRACT:</p>
15.1	<p>The purchaser shall have the right to cancel the Order / Contract, wholly or in part, in case he is obliged to do so on account of any decline, diminution, curtailment or stoppage of his business and in that event, the Sub-Consultant shall have no claim for compensation against purchaser on account of such cancellation.</p>
15.2	<p>The purchaser shall also have the right to cancel the Order / Contract at the risk and cost of the Sub-Consultant in case either the Sub-Consultant himself or any of his representative or agent is found to have been a previous employee of the purchaser immediately before the retirement and has within a period of two years of such retirement accepted the employment of the Sub-Consultant either as a Sub-Consultant or as an employee without having obtained the prior permission of the purchaser.</p>
16.0	<p>TRANSFER, SUB-LETTING / ASSIGNMENT / SUBCONTRACTING:</p>
16.1	<p>The Sub-Consultant shall not sublet, transfer or assign this Order / Contract or any part thereof or interest therein or benefit or advantage thereof save with the prior consent in writing of the purchaser. In the event of Sub-Consultant sub-letting, transferring or assigning this 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 Order / Contract and to purchase the stores from elsewhere at risk and costs of the Sub-Consultant and the Sub-Consultant shall be liable for any loss or</p>

	damage which the purchaser may sustain in consequence of, or arising out of such risk purchase.
16.2	If the Sub-Consultant is an individual or a proprietary concern and the individual or the proprietor dies or the partnership is dissolved or substantially affected, then unless the purchaser is satisfied that the legal representative of the individual Sub-Consultant or the proprietor of proprietary concern and in the case of partnership, surviving partners are capable of carrying out and completing the Order/Contract, the purchase shall be entitled to cancel the Order / Contract as to its incomplete and without being in any way liable to payment of any compensation to the estate of Sub-Consultant and/or to the surviving partners of the Sub-Consultant's firm on account of the cancellation of the Order / Contract.
16.3	Terms and Conditions shall not get affected in case of merger / amalgamation/re-arrangement / takeover etc.
16.4	The decision of the purchaser that the legal representatives of the deceased Sub-Consultant or surviving partners of the Sub-Consultant's firm can not carry out and complete the order/contract shall be final and binding on the parties hereto.
17.0	FORCE MAJEURE:
17.1	Notwithstanding anything contained in clause 9.0, if at any time, during the continuance of the Order / Contract the performance in whole or in part by either party, of any obligations under this Order/Contract shall be prevented or delayed by reason of any war hostilities, acts of the public enemy, restrictions by Govt. of India, civil commotion, sabotage, fires, floods, explosion, epidemics, quarantine restrictions, strike, lock-outs, or acts of God (hereinafter referred to as 'event'), then, provided notice of the happening of such event is given by either party to other within fifteen (15) days from the date of occurrence thereof, neither party shall by reason of such event be entitled to terminate this Order/Contract nor shall have any claim for damages against each other in respect of such non-performance and delay in performance. Performance under the Order/Contract shall be resumed immediately after such event has come to an end or ceased to exist and decision of the purchaser as to whether the deliveries have to be resumed or not shall be final, conclusive and binding on the parties hereto.
17.2	In the event of the parties hereto not able to agree that a force majeure event has occurred, the parties shall submit the disputes 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.
17.3	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.
19.0	CONTRACT PERFORMANCE EVALUATION: Purchaser as per norms being decided by him from time to time shall evaluate by the Purchaser as per norms being decided by him from time to time. The Sub-Consultant may be de-listed or put under hold or retained based on the performance in the present Order / Contract.
20.0	SETTLEMENT OF DISPUTES:
20.1	Except as otherwise specifically provided in the Order / Contract, all disputes concerning

	<p>questions of the facts arising under the Order / Contract, shall be decided by purchaser, subject to written appeal by the Sub-Consultant to the purchaser, whose decision shall be final and binding.</p>
20.2	Any disputes or differences shall be to the extent possible settled amicably between the parties hereto, failing which the disputed issues shall be settled through arbitration.
20.3	The Sub-Consultant shall continue to perform the Order / Contract, pending settlement of dispute(s).
21.0	ARBITRATION:
21.1	In the event of any dispute or difference arising out of the execution of the Order / Contract or the respective rights and liabilities of the parties or in relation to interpretation of any provision by the Sub-Consultant in any manner relating to the Order / Contract, such dispute or difference shall (except as to any matters, the decision of which is specifically provided for therein) be referred to the arbitration of the tribunal appointed by the competent authority of the Purchaser. The reference of the dispute shall be before sole arbitrator.
21.2	Subject as aforesaid, the provisions of Arbitration and Conciliation Act, 1996 (India) or statutory modifications or re-enactments thereof and the rules made there under and for the time being in force shall apply to the arbitration proceedings under this clause. The venue of arbitration shall be at Delhi/New Delhi.
21.3	In case of Order / Contract on Public Sector Enterprises (PSE) or a Govt. Deptt., the following clause shall be applicable:
21.4	In the event of any dispute or difference relating to the interpretation and application of the provisions of the Order / Contract, such dispute or difference shall be referred to by either party to the arbitration of one of the arbitrators in the department of public enterprises. The award of the arbitrator shall be binding upon the parties to the dispute. Provided, however, any party aggrieved by such award may make a further reference for setting aside or revision of the award to the Law secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary or Additional Secretary when so authorized by the Law Secretary, whose decision shall bind the parties hereto finally and conclusively. The parties in the dispute will bear equally the cost of arbitration as intimated by the arbitrator.
22.0	LAWS GOVERNING THE CONTRACT: <p>The Order / Contract shall be executed and governed by the laws of India and the courts of India alone shall have jurisdiction in respect of any matter arising under or in connection with the Order / Contract.</p>
23.0	JURISDICTION OF COURT: <p>The contract shall be governed by the law for the time being in force in the Republic of India. The jurisdiction to decide any disputes arising out of the Contract shall be the Civil Courts (Delhi/New Delhi).</p>