

This GeM tender covers below BHEL requirement-

Enquiry Schedule No.	Item Detail	BHEL Material code
1.	NOMEX BOARD TYPE E-94 SIZE: 4X360	HW2171788011/ HW21788 REV: 02
2.	NOMEX BOARD TYPE E-94, SIZE: 5X360	HW2171788020/ HW21788 REV: 02
3.	NOMEX BOARD TYPE E-94 SIZE: 6X360	HW2171788038/ HW21788 REV: 02

1. Vendor to submit Co Related Test Certificate (TCs) from original manufacturer as per BHEL Specifications along with dispatch documents at the time of supply as per BHEL specifications HW21788 REV: 02

2. Vendor to submit Guarantee Certificate along with dispatch documents at the time of supply.

3. Quantity Tolerance $\pm 5\%$ is acceptable.

4. Offered prices on GeM should be inclusive of all taxes, duties, local levies / transportation / loading-unloading charges etc., as per General terms & conditions on GeM.

5. Payment term for this tender shall be

Type of Bidder	Payment term (number of days)
Micro & Small Enterprises (MSEs)	45 days
Medium Enterprises	60 days
Non MSME	90 days

S No	Tender Term and Condition	Confirmation from bidder
General Requirements		
1	Bidder to provide the documents as per pre-qualification requirements (PQR).	
2	Bidder who fails to qualify Pre-qualification requirement , their offer will not be considered for technical evaluation and price bid opening part (part -2 of this tender)	
3	Offers of non BHEL approved bidder for this item will be considered for further processing for part- 2 bid , which have submitted endorsed copy of FCA and cleared the technical scrutiny.	
4	Bidder to confirm that their quoted unit price in this tender is all-inclusive of basic rate, freight, insurance, packing & forwarding charges & any other charges if applicable + applicable GST	
5	Bidder to inform % of GST	

6	Term and condition shall be as per GeM T&C and GEM tender	
7	LD Clause and Risk purchase clause and Arbitration clause shall be as per GeM conditions.	
8	Quantity Tolerance $\pm 5\%$ is acceptable.	
9	Bidder shall upload technical offer sheet mentioning BHEL material code , quantity , size & confirmation of TC & GC in technical offer sheet .	
<u>QUALITY REQUIREMENTS</u>		
1	Bidder to confirm to submit co related test certificate from original manufacture test Certificate along with supply as per our specification HW21788 REV: 02	
2	The Guarantee Certificate shall be supplied along with PO supply.	

Important Instruction to bidders.

- Unregistered vendors may avail the soft copies of relevant specification and drawing by submitting the endorsed copy of attached FCA to either of the following e-mail IDs:
 - rajpal@bhel.in ; and kvimal@bhel.in
- Following attachment with this Catalogue for tender preparation.
 - Pre-qualification requirement (PQR)
 - Framework confidentiality Agreement (FCA) for availing specification /drawing for new participating bidder.
 - MII certificate format.
- All supporting document shall be sign and stamped by bidder

APPLICABLE MANDATORY TERMS AND CONDITIONS FOR THE PRESENT GEM TENDERS

Unregistered vendors at BHEL Haridwar for this item may avail the soft copies of relevant specification /drawing by submitting the endorsed copy of attached 'Non-Disclosure Agreement' (attached below) to either of the following e-mail IDs: (kvimal@bhel.in), (rajpal@bhel.in)

Bid should be free from correction, overwriting, using corrective fluid, etc. Any interlineation, cutting, erasure or overwriting shall be valid only if they are attested under full signature(s) of person(s) signing the bid else bid shall be liable for rejection. In the event of any Technical or Commercial queries, the same may please be addressed to the above mentioned BHEL concerned email IDs also, before Part I opening.

Sign & stamp by Bidder

Bidder to submit Techno- Commercial offer along with bid.

PRE- QUALIFICATION CRITERIA: Bidder to provide the documents as per attached Pre-qualification conditions/requirements (PQR). Bidder who fails to qualify Pre-qualification conditions/requirement, their offer will not be considered for technical evaluation and price bid opening (part -2 of this tender).

- Offered prices on GeM should be inclusive of all taxes, duties, local levies / transportation / loading unloading charges etc., as per General terms & conditions on GeM.
- Vendor to Inform the %age of GST charges inclusive in the offered prices.
- Vendor to confirm that 100% input tax credit shall be applicable on the GST amount.
- Guarantee Certificate as per respective BHEL ordering document (specification / Drawing) is required.
- Test Certificates / Guarantee Certificates / COC whatever applicable shall be provided along with dispatch documents.
- Please refer the Bidder specific ATC uploaded document for applicable terms and conditions for the enquiry.

• Documents are to be provided along with offer in respective attached format(s):

1. TECHNO- COMMERCIAL OFFER ALONG WITH COPY OF PAN CARD, GST REGISTRATION CERTIFICATE&MSME CERTIFICATE
2. PQR SUPPORTING DOCUMENTS
3. VENDORS CHECK LIST
4. TENDER SUBMISSION LETTER
5. CERTIFICATE OF NO DEVIATION
6. DECLARATION REGARDING INSOLVENCY_ LIQUIDATION_ BANKRUPTCY PROCEEDINGS
7. DECLARATION BY AUTHORIZED SIGNATORY REGARDING AUTHENTICITY OF SUBMITTED DOCUMENTS
8. DECLARATION BY AUTHORISED SIGNATORY OF BIDDER
9. DETAILS OF RELATED FIRMS AND THEIR AREA OF ACTIVITIES
10. DECLARATION FOR RELATION IN BHEL
11. DECLARATION REGARDING MINIMUM LOCAL CONTENT
12. DECLARATION REGARDING COMPLIANCE TO RESTRICTIONS UNDER RULE 144 (XI) OF GFR 2017
13. BANK ACCOUNT DETAILS FOR E-PAYMENT
14. POWER OF ATTORNEY FOR SUBMISSION OF TENDER
15. NON-DISCLOSURE AGREEMENT

- **Please refer the Bidder specific ATC uploaded document for applicable terms and conditions for the enquiry and submit all the required documents/Annexures.**

- ***VENDORS/BIDDERS TO PROVIDE THE DOCUMENTS AS PER BELOW PRE-QUALIFICATION REQUIREMENTS (PQR). ONLY THOSE OFFERS WILL BE CONSIDERED WHO WILL QUALIFY THE PQR. DRAWING/SPECIFICATION CAN ONLY BE PROVIDED ONLY AFTER SUBMISSION OF ENCLOSED NDA (NON-DISCLOSURE AGREEMENT), DULY SIGNED AND STAMP OF EACH AND EVERY PAGE ON YOUR COMPANY'S LETTER HEAD OR STAMP PAPER.***

All terms shall be applicable as per above terms and GeM terms & conditions only and no other quoted terms will be applicable.

Sign & stamp by Bidder

**PRE-QUALIFICATION REQUIREMENTS (TECHNICAL) FOR
NOMEX BOARD (HW21788)**

INTRODUCTION: Nomex Board is used as fillers in Generator Rotor End Winding. The material must be made from 100% Polyamide Fiber.

- EXPERIENCE:** The vendor/OEM should have the experience of successful manufacturing and supplying the Nomex Board to OEM of Turbo-Generator of capacity 200MW and above, for application as filler in Rotor. In support of which, vendor to submit the following documents: -
 - Unpriced Copy of two successfully executed purchase order for above Nomex Board used in Turbo-Generator of 200 MW and above rating.
 - Copy of Test Certificates (for dimensional, mechanical and electrical test, etc.) for the above Nomex Board corresponding to anyone of purchase order submitted against clause no 1.1.
 - Documentary evidence of acceptance of material, pertaining to purchase order for which TC has been submitted.
(In case vendor is Authorized Distributor/Channel Partner/Sister Concern / Group Company, experience of OEM may also be considered.)
- MANUFACTURING FACILITIES:** Vendor/OEM to confirm that OEM have all the in-house manufacturing facilities for above material meeting the requirements as per BHEL specification HW21788 Rev 02.
- TESTING FACILITIES:** Vendor/OEM to confirm that they have in-house test facilities, sufficient to carry out all the test as per enquired specification HW21788 Rev 02. In case vendor conducts test at an external testing agency, vendor to furnish the details of the same, e.g. NABL/ILAC/APLAC approved lab.
- Vendor to confirm the detailed technical requirements given in the enquired specification HW21788 Rev 02.
- Vendor, who is supplying this material to BHEL first time, has to submit one complete set of samples as per Table – 1 for laboratory evaluation samples as per Clause 5 of specification HW21788 Rev 02 & shop trial. Vendor will be qualified on the basis of successfully passing the test of submitted samples as per specification HW21788 Rev 02 in addition to qualifying other requirement of PQR.

Table – 1

S.no	Test	Length (mm)	Width (mm)	Thickness (mm)	Quantity
1	Density	10	10	10	2
2	Composition	25	25	Sheet Thickness as per enquiry	2
3	Inorganic Residue after burning	50	50	Sheet Thickness as per enquiry	2
4	Tensile Strength & Elongation (Machine Direction)	254 mm	25.4 ± 0.5 mm	Sheet Thickness as per enquiry	5
5	Tensile Strength & Elongation (Transverse to Machine Direction)	254 mm	25.4 ± 0.5 mm	Sheet Thickness as per enquiry	5
6	Bending e modulus	80±2	10±0.2	4±0.2	5
7	Shrinkage	100	100	Sheet Thickness as per enquiry	3

NOTE

- BHEL reserves the right to verify the information submitted by the vendor. In case the information is found to be false or incorrect, the offer shall be rejected.
- All the documents should be furnished in English language only. If the document provided by vendor is in any language other than English, it must be supported with its certified English translation.

APPLICABLE MANDATORY TERMS AND CONDITIONS FOR THE PRESENT GEM TENDERS

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TRANSIT INSURANCE: Transit Insurance of material is in Supplier/Vendor's scope. Supplier/Vendor shall insure the material at their cost for transportation.

Bidder to inform % of **INCLUSIVE GST**- %

The admissibility of GST, taxes and duties referred in this chapter or elsewhere in the contract shall be limited to direct transactions between BHEL & its Supplier/Vendor. BHEL shall not consider GST on any transaction other than the direct transaction between BHEL & its Supplier/Vendor.

Supplier/Vendor shall obtain prior written consent of BHEL before billing the amount towards such taxes. Where the GST laws permit more than one option or methodology for discharging the liability of tax/levy/duty, BHEL shall have the right to adopt the appropriate one considering the amount of tax liability on BHEL/Client as well as procedural simplicity with regard to assessment of the liability. The option chosen by BHEL shall be binding on the Contractor for discharging the obligation of BHEL in respect of the tax liability to the Supplier/Vendor. Supplier/Vendor has to submit GST registration certificate of the concerned state. Supplier/Vendor also needs to ensure that the submitted GST registration certificate should be in active status during the entire contract period.

Supplier/Vendor has to issue Invoice/Debit Note/Credit Note indicating HSN/SAC code, Description, Value, Rate, applicable tax and other particulars in compliance with the provisions of relevant GST Act and Rules made thereunder.

Supplier/Vendor has to submit GST compliant invoice within the due date of invoice as per GST Law. In case of delay, BHEL reserves the right of denial of GST payment if there occurs any hardship to BHEL in claiming the input thereof. In case of goods, Supplier/Vendor has to provide scan copy of invoice & GR/LR/RR to BHEL before movement of goods starts to enable BHEL to meet its GST related compliances. Special care should be taken in case of month end transactions.

Supplier/Vendor has to ensure that invoice in respect of such services which have been provided/completed on or before end of the month should not bear the date later than last working day of the month in which services are performed.

Subject to other provisions of the contract, GST amount claimed in the invoice shall be released on fulfilment of all the following conditions by the Supplier/Vendor: - a) Supply of goods and/or services have been received by BHEL. b) Original Tax Invoice has been submitted to BHEL. c) Supplier/Vendor has submitted all the documents required for processing of bill as per contract/ purchase order/ work order. d) In cases where e-invoicing provision is applicable, Supplier/Vendor is required to submit invoice in compliance with e-invoicing provisions of GST Act and Rules made thereunder. e) Supplier/Vendor has filed all the relevant GST return (e.g. GSTR-1, GSTR-3B, etc.) pertaining to the invoice submitted and submit the proof of such return along with immediate subsequent invoice. In case of final invoice/ bill, contractor has to submit proof of such return within fifteen days from the due date of relevant return. f) Respective invoice

Sign and stamped by bidder

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has appeared in BHEL's GSTR - 2A for the month corresponding to the month of invoice and in GSTR-2B of the month in which such invoices has been reported by the contractor along with status of ITC availability as "YES" in GSTR-2B. Alternatively, BG of appropriate value may be furnished which shall be valid at least one month beyond the due date of confirmation of relevant payment of GST on GSTN portal or sufficient security is available to adjust the financial impact in case of any default by the Supplier/Vendor. g) Supplier/Vendor has to submit an undertaking confirming the payment of all due GST in respect of invoices pertaining to BHEL.

Any financial loss arises to BHEL on account of failure or delay in submission of any document as per contract/purchase order/work order at the time of submission of Tax invoice to BHEL, shall be deducted from Supplier/Vendor's bill or otherwise as deemed fit.

TDS as applicable under GST law shall be deducted from Supplier/Vendor's bill.

Supplier/Vendor shall comply with the provisions of e-way bill wherever applicable. Further wherever provisions of GST Act permit, all the e-way bills, road permits etc. required for transportation of goods needs to be arranged by the contractor.

Supplier/Vendor shall be solely responsible for discharging his GST liability according to the provisions of GST Law and BHEL will not entertain any claim of GST/interest/penalty or any other liability on account of failure of Supplier/Vendor in complying the provisions of GST Law or discharging the GST liability in a manner laid down thereunder.

In case declaration of any invoice is delayed by the vendor in his GST return or any invoice is subsequently amended/alterd/deleted on GSTN portal which results in any adverse financial implication on BHEL, the financial impact thereof including interest/penalty shall be recovered from the Supplier/Vendor's due payment.

Any denial of input credit to BHEL or arising of any tax liability on BHEL due to non-compliance of GST Law by the Supplier/Vendor in any manner, will be recovered along with liability on account of interest and penalty (if any) from the payments due to the Supplier/Vendor.

In the event of any ambiguity in GST law with respect to availability of input credit of GST charged on the invoice raised by the contractor or with respect to any other matter having impact on BHEL, BHEL's decision shall be final and binding on the Supplier/Vendor

Variation in Taxes & Duties: Any upward variation in GST shall be considered for reimbursement provided supply of goods and services are made within schedule date stipulated in the contract or approved extended schedule for the reason solely attributable to BHEL. However downward variation shall be subject to adjustment as per actual GST applicability. In case the Government imposes any new levy/tax on the output service/goods after price bid opening, the same shall be reimbursed by BHEL at actual. The reimbursement under this clause is restricted to the direct transaction between BHEL and its Supplier/Vendor only and within the contractual delivery period only. In case any new tax/levy/duty etc. becomes applicable after the date of Bidder's offer but before opening of the price Bid, the Bidder/Supplier/Vendor must convey its impact on his price duly substantiated by documentary evidence in support of the same before opening of price bid. Claim for any such impact after opening the price bid will not be considered by BHEL for reimbursement of tax or reassessment of offer.

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Income Tax: TDS/TCS as applicable under Income Tax Act, 1961 or rules made thereunder shall be deducted/collected from Supplier/Vendor's bill.

Delivery period (in weeks) from PO date: _____

Bidders are requested to quote the best delivery meeting the delivery requirements. BHEL reserves the right to reject the offers not meeting BHEL's delivery requirement.

PAYMENT TERM:

FOR NON MSME Bidders- 100% payment shall be released within 90 days from the date of acknowledged receipt & acceptance of material at HEEP- BHEL stores and submission of billing documents.

FOR MSME Bidders- 100% payment shall be released within 45 days from the date of acknowledged receipt & acceptance of material at HEEP- BHEL stores and submission of billing documents.

FOR MEDIUM ENTERPRISES Bidders, 100% payment shall be released within 60 days upon receipt & acceptance of material at HEEP- BHEL stores and submission of billing documents.

No interest shall be payable on the security deposit or any other money due to the contractor". However, GST amount shall be reimbursed in line with compliance of 'GST' clause as mentioned above.

MICRO AND SMALL ENTERPRISES (MSE): Any Bidder falling under MSE category shall furnish the following details & submit documentary evidence/ Govt. Certificate etc. in support of the same along with their techno-commercial offer.

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

Note: If the bidder does not furnish the above, offer shall be processed construing that the bidder is not falling under MSE category. a) MSE suppliers can avail the intended benefits in respect of the procurements related to the Goods and Services only (Definition of Goods and Services as enumerated by Govt. of India vide Office Memorandum F. No. 21(8)/2011-MA dated 09/11/2016 office of AS & DC, MSME) only if they submit along with the offer, attested copies of either Udyam Registration. Date to be reckoned for determining the deemed validity will be the last date of Technical Bid submission. Non-submission of supporting document in GeM portal will lead to consideration of their bids at par with other bidders. No benefits shall be applicable for this enquiry if the above required documents are not uploaded at the time of bid submission. Documents submitted by the bidder shall be verified by BHEL for rendering the applicable benefits.

Sign and stamped by bidder

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Breach of contract, Remedies and Termination: The following shall amount to breach of contract:

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

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

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

Remedies in case of Breach of Contract.

- i) Wherein the period as stipulated in the notice issued as mentioned above has expired and Supplier/Vendor has failed to remedy the breach, BHEL will have the right to terminate the contract on the ground of "Breach of Contract" without any further notice to contractor.
- ii) Upon termination of contract, BHEL shall be entitled to recover an amount equivalent to 10% of the Contract Value for the damages on account of breach of contract committed by the Supplier/Vendor. This amount shall be recovered by way of encashing the security instruments like performance bank guarantee etc available with BHEL against the said contract. In case the value of the security instruments available is less than 10% of the contract value, the balance amount shall be recovered from other financial remedies

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(i.e. available bills of the Supplier/Vendor, retention amount, from the money due to the Supplier/Vendor etc. with BHEL) or the other legal remedies shall be pursued.

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

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

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

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

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

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

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

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

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

(a) In case defaulted Supplier/Vendor is the Sole Proprietorship Firm, any Sole Proprietorship Firm owned by same Sole Proprietor.

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

LD against delay in executed supply in case of Termination of Contract: LD against delay in executed supply shall be calculated in line with LD clause mentioned below, for the delay attributable to Supplier/Vendor. For limiting the maximum value of LD, contract value shall be taken as Executed Value of supply till termination of contract. Method for calculation of "LD against delay in executed supply in case of termination of contract" is given below. i. Let the time period from scheduled date of start of supply till termination of contract excluding the period of Hold (if any) not attributable to contractor = T1
ii. Let the value of executed supply till the time of termination of contract= X iii. Let the Total Executable Value of supply for which inputs/fronts were made available to Supplier/Vendor and were planned for

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execution till termination of contract = Y iv. Delay in executed supply attributable to Supplier/Vendor i.e. $T2 = [1 - (X/Y)] \times T1$ v. LD shall be calculated in line with LD clause of the Contract for the delay attributable to Supplier/Vendor taking "X" as Contract Value and "T2" as period of delay attributable to Supplier/Vendor.

LIQUIDATED DAMAGE:

Liquidated Damages, wherever referred under this Tender/Agreement, shall mean and refer to the damages, not in the nature of penalty, which the contractor agrees to pay in the event of delay in delivery of supplies, breach of contract etc. as the case may be. Liquidated Damages leviable upon the Supplier/Vendor is a sum which is agreed by the parties as a reasonable and genuine pre-estimate of damages which will be suffered by BHEL on account of delay/breach on the part of the Supplier/Vendor. If the Seller/Service Provider fails to deliver any or all of the Goods/Services within the original/re-fixed delivery period(s) specified in the contract/PO, the Buyer/BHEL will be entitled to deduct/recover the Liquidated Damages for the delay, unless covered under Force Majeure conditions aforesaid, @ 0.5% of the contract value of delayed quantity per week or part of the week of delayed period as pre-estimated damages not exceeding 10% of the contract value of delayed quantity without any controversy/dispute of any sort whatsoever.

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

In order to protect the commercial interests of BHEL, BHEL shall action against supplies / 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 with Suppliers / Contractors:

The offers of the bidders who are under suspension as also the offers of the bidders, who engage the services of the banned firms / principal / agents, shall be rejected. The list of banned firms is available on BHEL web site www.bhel.com. If any bidder / supplier / contractor during pre-tendering / tendering / post tendering / award / execution / post-execution stage indulges in any act, including but not limited to, malpractices, cheating, bribery, fraud or and other misconduct or formation of cartel so as to influence the bidding process or influence the price or tampers the tendering process or acts or omits in any manner which tantamount to an offence punishable under any provision of the Indian Penal Code, 1860(Bhartiya Nyaya Samhita 2023) or any other law in force in India, or does anything which is actionable under the Guidelines for Suspension of Business dealings, action may be taken against such bidder / supplier / contractor as per extant guidelines of the company available on www.bhel.com and / or under applicable legal provisions. Guidelines for suspension of business dealings is available in the webpage: http://www.bhel.com/vender_registration/vender.php.

Conflict of interest:

"A bidder shall not have conflict of interest with other bidders. Such conflict of interest can lead to anti-competitive practices to the detriment of Procuring Entity's interests. The bidder found to have a conflict

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of interest shall be disqualified. A bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if:

a) they have controlling partner (s) in common; or b) they receive or have received any direct or indirect subsidy/ financial stake from any of them; or c) they have the same legal representative/agent for purposes of this bid; or d) they have relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder; or e) Bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all bids in which the parties are involved. However, this does not limit the inclusion of the components/ sub-assembly/Assemblies from one bidding manufacturer in more than one bid; or f) In cases of agents quoting in offshore procurements, on behalf of their principal manufacturers, one agent cannot represent two manufacturers or quote on their behalf in a particular tender enquiry. One manufacturer can also authorise only one agent/dealer. There can be only one bid from the following: 1. The principal manufacturer directly or through one Indian agent on his behalf; and 2. Indian/foreign agent on behalf of only one principal; or g) A Bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the contract that is the subject of the Bid; or

h) In case of a holding company having more than one independently manufacturing units, or more than one unit having common business ownership/management, only one unit should quote. Similar restrictions would apply to closely related sister companies. Bidders must proactively declare such sister/ common business/ management units in same/similar line of business. "

PREFERENCE TO MAKE IN INDIA: For this procurement, the local content to categorize a Supplier/Vendor as a Class I local supplier/ Class II local Supplier/Non-Local Supplier and purchase preferences to Class I local supplier, is as defined in Public Procurement (Preference to Make in India), Order 2017 dated 04.06.2020 issued by DPIIT. In case of subsequent orders issued by the nodal ministry, changing the definition of local content for the items of the GeM Bid, the same shall be applicable even if issued after issue of this GeM Bid, but before opening of Part-II bids against this GeM Bid.

Bidder to submit 'MII Certificate' in attached format.

Compliance to Restrictions under Rule 144 (xi) of GFR 2017: I. Any bidder from a country which shares a land border with India will be eligible to bid in this tender only if the bidder is registered with the Competent Authority. The Competent Authority for the purpose of this Clause shall be the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT). II. "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process. III. "Bidder from a country which shares a land border with India" for the purpose of this Clause means: - a. An entity incorporated established or registered in such a country; or b. A

Sign and stamped by bidder

APPLICABLE MANDATORY TERMS AND CONDITIONS FOR THE PRESENT GEM TENDERS

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: 1. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together or through one or more juridical person, has a controlling ownership interest or who exercises control through other means. Explanation a. "Controlling ownership interest" means ownership of or entitlement to more than twenty-five per cent of shares or capital or profits of the company. b. "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements. 2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership. 3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person has ownership of or entitlement to more than fifteen percent of the property or capital or profits of the such association or body of individuals. 4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official; 5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership. V. An Agent is a person employed to do any act for another, or to represent another in dealings with third person. Note: (i) The bidder shall provide undertaking for their compliance to this Clause, in the format provided (as attached). (ii) Registration of the bidder with Competent Authority should be valid at the time of submission of bids and at the time of acceptance of the bids.

Settlement of Dispute: If any dispute or difference of any kind whatsoever shall arise between BHEL and the Supplier/Vendor, arising out of the contract for the performance of the work whether during the progress of contract termination, abandonment or breach of the contract, it shall in the first place referred to Designated Engineer for amicable resolution by the parties. Designated Engineer (to be nominated by BHEL for settlement of disputes arising out of the contract) who within 60 days after being requested shall give written notice of his decision to the contractor. Save as hereinafter provided, such decision in respect of every matter so referred shall forthwith be given effect to by the Supplier/Vendor who shall proceed with the work with all due diligence, whether he or BHEL desires to resolve the dispute as hereinafter provided or not. If after the Designated Engineer has given written notice of this decision to the party and no intention to pursue the dispute has been communicated to him by the affected party within 30 days from the receipt of such notice, the said decision shall become final and binding on the parties. In the event the Supplier/Vendor being dissatisfied with any such decision or if amicable settlement cannot be reached then all such disputed issues shall be resolved through conciliation in terms of the BHEL Conciliation Scheme 2018.

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APPLICABLE MANDATORY TERMS AND CONDITIONS FOR THE PRESENT GEM TENDERS

Conciliation: Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure as per BHEL Conciliation Scheme 2018. The proceedings of Conciliation shall broadly be governed by Part III of the Arbitration and Conciliation Act 1996 or any statutory modification thereof and provided in - "Procedure for conduct of conciliation proceedings" (as available in www.bhel.com)).

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

ARBITRATION: Except as provided elsewhere in this Contract, in case Parties are unable to reach amicable settlement (whether by Conciliation to be conducted as provided herein above or otherwise) in respect of any dispute or difference; arising out of the formation, breach, termination, validity or execution of the Contract; or, the respective rights and liabilities of the Parties; or, in relation to interpretation of any provision of the Contract; or, in any manner touching upon the Contract (hereinafter referred to as the 'Dispute'), then, either Party may, refer the disputes to Arbitral Institution (e.g. "IIAC" (India International Arbitration Centre) (identified by the contract issuing agency- HEEP- BHEL Haridwar) and such dispute to be adjudicated by Sole Arbitrator appointed in accordance with the Rules of said Arbitral Institution. A party willing to commence arbitration proceeding shall invoke Arbitration Clause by giving notice to the other party in terms of section 21 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the 'Notice') before referring the matter to arbitral institution. The Notice shall be addressed to the Head of the Region, Unit, BHEL, executing the Contract and shall contain the particulars of all claims to be referred to arbitration with sufficient detail and shall also indicate the monetary amount of such claim including interest, if any. After expiry of 30 days from the date of receipt of aforesaid notice, the party invoking the Arbitration shall submit that dispute to the Arbitral Institutions (by the contract issuing agency) and that dispute shall be adjudicated in accordance with their respective Arbitration Rules. The matter shall be adjudicated by a Sole Arbitrator who shall necessarily be a Retd Judge having considerable experience in commercial matters to be appointed/nominated by the respective institution. The cost/expenses pertaining to the said Arbitration shall also be governed in accordance with the Rules of the respective Arbitral Institution. The decision of the party invoking the Arbitration for reference of dispute to a specific Arbitral institution for adjudication of that dispute shall be final and binding on both the parties and shall not be subject to any change thereafter. The institution once selected at the time of invocation of dispute shall remain unchanged.

The fee and expenses shall be borne by the parties as per the Arbitral Institutional rules. The Arbitration proceedings shall be in English language and the seat and venue of Arbitration shall be (identified by the contract issuing agency)- HEEP- BHEL Haridwar. Subject to the above, the provisions of Arbitration & Conciliation Act 1996 and any amendment thereof shall be applicable. All matters relating to this Contract and arising out of invocation of Arbitration clause are subject to the exclusive jurisdiction of the Court(s) situated at HEEP- BHEL Haridwar. Notwithstanding any reference to the Designated Engineer or Conciliation or Arbitration herein, a. the parties shall continue to perform their respective obligations under the

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Contract unless they otherwise agree. Settlement of Dispute clause cannot be invoked by the Contractor, if the Contract has been mutually closed or 'No Demand Certificate' has been furnished by the Contractor or any Settlement Agreement has been signed between the Employer and the Contractor. It is agreed that Mechanism of resolution of disputes through arbitration shall be available only in the cases where the value of the dispute is less than Rs. 10 Crores. In case the disputed amount (Claim, Counter claim including interest is Rs. 10 crores and above, the parties shall be within their rights to take recourse to remedies other than Arbitration, as may be available to them under the applicable laws after prior intimation to the other party. Subject to the aforesaid conditions, provisions of the Arbitration and Conciliation Act, 1996 and any statutory modifications or re-enactment thereof as amended from time to time, shall apply to the arbitration proceedings under this clause. In case, multiple arbitrations are invoked (whether sub-judice or arbitral award passed) by any party to under this contract, then the cumulative value of claims (including interest claimed or awarded) in all such arbitrations shall be taken in account while arriving at the total claim in dispute for the subject contract for the purpose. Disputes having cumulative value of less than 10 crores shall be resolved through arbitration and any additional dispute shall be adjudicated by the court of competent jurisdiction.

JURISDICTION: Subject to as mentioned above of this bid / contract, the Civil Court having original Civil Jurisdiction shall alone have exclusive jurisdiction in regard to all matters in respect of the Contract.

GOVERNING LAWS: The bid / contract shall be governed by the Law for the time being in force in the Republic of India.

Force Majeure:

"Force Majeure" shall mean circumstance which is: a) beyond control of either of the parties to contract, b) either of the parties could not reasonably have provided against the event before entering into the contract, c) having arisen, either of the parties could not reasonably have avoided or overcome, and d) is not substantially attributable to either of the parties And Prevents the performance of the contract, Such circumstances include but shall not be limited to: i. War, hostilities, invasion, act of foreign enemies. ii. Rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war. iii. Riot, commotion or disorder by persons other than the contractor's personnel and other employees of the contractor and sub-contractors. iv. Strike or lockout not solely involving the contractor's personnel and other employees of the contractor and sub-contractors. v. Encountering munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, except as may be attributable to the contractor's use of such munitions, explosives, radiation or radio- activity. vi. Natural catastrophes such as earthquake, tsunami, volcanic activity, hurricane or typhoon, flood, fire, cyclones etc. vii. Epidemic, pandemic etc.

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

If either party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within 15 (fifteen) days after the occurrence of such event. The party who has given such notice shall be excused from the performance or punctual performance of its

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obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered or delayed. The Time for Completion shall be extended by a period of time equal to period of delay caused due to such Force Majeure event. Delay or non-performance by either party hereto caused by the occurrence of any event of Force Majeure shall not v) Constitute a default or breach of the Contract. vi) Give rise to any claim for damages or additional cost expense occasioned thereby, if and to the extent that such delay or non-performance is caused by the occurrence of an event of Force Majeure. BHEL at its discretion may consider short closure of contract after 1 year of imposition of Force Majeure in line with extant guidelines. In any case, Supplier/Vendor cannot consider deemed short-closure after 1 year of imposition of Force Majeure.

Cartel Formation: The Bidder declares that they will not enter into any illegal or undisclosed agreement or understanding, whether formal or informal with other Bidder(s). This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process. In case, the Bidder is found having indulged in above activities, suitable action shall be taken by BHEL as per extant policies/guidelines.

Fraud Prevention Policy: Bidder along with its associate /collaborators /sub-contractors /sub-vendors / consultants / service providers shall strictly adhere to BHEL Fraud Prevention Policy displayed on BHEL website <http://www.bhel.com> and shall immediately bring to the notice of BHEL Management about any fraud or suspected fraud as soon as it comes to their notice.

In the event of any ambiguity or conflict between the Tender Documents, the order of precedence shall be in the order below:

- a) Amendments/Clarifications/Corrigenda/Errata etc. issued in respect of the tender documents by BHEL.
- b) Buyer Added Bid Specific ATC
- c) GeM Bid Technical Conditions of Bid/Contract (TCC)
- d) GeM GTC

NOTE: 1. In the event of our customer order covering this tender being cancelled /placed on hold /otherwise modified, BHEL would be constrained to accordingly cancel / hold / modify the tender at any stage of execution. 2. BHEL may negotiate the L1 rate, if not meeting our budget / estimated cost. BHEL may re-float the tender opened, if L1 price is not acceptable to BHEL even after negotiation. Any deviation from the conditions specified in TECHNO-COMMERCIAL TERMS AND CONDITIONS, will lead to rejection of offer. 3. Any change in applicable rates of Tax or any other statutory levies (Direct / Indirect) or any new introduction of any levy by means of statute and its corresponding liability for the deliveries beyond the agreed delivery date for reasons not attributable to BHEL will be to vendors account. BHEL will not reimburse the same and any subsequent claim in this respect will be summarily rejected. 4. BHEL reserves its right to reject an offer due to unsatisfactory past performance by the respective Vendor in the execution of any contract to any BHEL project / Unit. 5. The offers of the bidders who are under suspension and also the offers of the bidders, who engage the services of the banned firms /principal/agents, shall be rejected.

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**APPLICABLE MANDATORY TERMS AND CONDITIONS FOR THE
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The list of banned firms is available on BHEL web site www.bhel.com. 6. Recovery / deduction as applicable as per Direct and Indirect taxes as notified by Govt. Of India from time to time will be made and information/certificate for such deduction/recoveries shall be provided by BHEL to the vendor.

BHEL reserves the right to inspect the material during manufacturing and also to get tested the material under dispatch from third party. The test results of third-party test shall be final and binding on the Supplier/Vendor. BHEL will reserve the right to inspect/test the material during/after manufacturing at suppliers' works, and/or at BHEL Site. In case of rejection at any stage, Supplier/Vendor shall be liable to replace the materials at his own cost. Test Certificates / CQIR (as per quality requirements / respective specification) and Guarantee Certificate to be provided by seller(s) along with material supply.

**All terms shall be applicable as per above GeM terms & conditions only
and no other terms will be applicable.**

Sign and stamped by bidder

NON DISCLOSURE AGREEMENT

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

By and Between

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

And

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

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

WHEREAS

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

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

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

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

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

5. **Disclosure**

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

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

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

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

6. Restriction on Use

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

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

7. Protection of Confidential Information

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

8. No Further Warranties

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

9. No Further Business Arrangement

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

10. Term

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

11. Injunctive remedy

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

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

12. Return of Confidential Information

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

13. Notice of Breach

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

14. Survival

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

15. Governing Law & Dispute Resolution

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

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

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

16. No Publication

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

17. Miscellaneous

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

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

18. Notices

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

Notice if to:

BHEL, then to,

Phone :

Fax :

E-mail :

ABC, then to,

(Name)_____

(Designation)_____

Phone :

Fax :

E-mail :

19. Counterparts, Telefax Signatures

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

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

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

BOTH SIDED

CHECK LIST

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

A	Name and Address of the Supplier		
B	GSTN No. the Supplier (Place of Execution of Contract / Purchase Order)		
C	Details of Contact person for this Tender	Name: Mr./ Ms Designation: Telephone No: Mobile No: Email ID:	
D	EMD DETAILS		
E	DESCRIPTION	APPLICABILITY (BY BHEL)	ENCLOSED BY BIDDER
i.	Whether Pre - Qualification Criteria is understood and provided proper supporting documents.	Applicable/ Not Applicable	YES / NO
ii.	Whether all pages of the Tender documents including annexures, appendices etc are read and understood	Applicable/ Not Applicable	YES / NO
iii.	Audited Balance Sheet and profit & Loss Account for the last three years	Applicable/ Not Applicable	YES / NO
iv.	Copy of PAN Card & GST registration	Applicable/ Not Applicable	YES / NO
v.	Submission of MSE certificate as specified in Tender	Applicable/ Not Applicable	YES / NO
vi.	Offer forwarding letter / tender submission letter as per Annexure - 2	Applicable/ Not Applicable	YES / NO
vii.	Submission of Certificate of No Deviation as per Annexure - 3	Applicable/ Not Applicable	YES / NO
viii.	Declaration regarding Insolvency/ Liquidation/ Bankruptcy Proceedings as per Annexure - 4	Applicable/ Not Applicable	YES / NO
ix.	Declaration by Authorized Signatory as per Annexure - 5	Applicable/ Not Applicable	YES / NO
x.	Declaration by Authorized Signatory regarding Authenticity of submitted Documents Annexure - 6	Applicable/ Not Applicable	YES / NO
xi.	Submission of Non-Disclosure Certificate as per Annexure - 7	Applicable/ Not Applicable	YES / NO
xii.	Submission of Integrity Pact as specified in Tender as per Annexure - 8	Applicable/ Not Applicable	YES / NO

xiii.	Declaration confirming knowledge about Site Conditions as per Annexure – 9	Applicable/ Not Applicable	YES / NO
xiv.	Declaration reg. Related Firms & their areas of Activities as per Annexure – 10	Applicable/ Not Applicable	YES / NO
xv.	Declaration for relation in BHEL as per Annexure – 11	Applicable/ Not Applicable	YES / NO
xvi.	Declaration reg. minimum local content in line with revised public procurement as per Annexure – 12	Applicable/ Not Applicable	YES / NO
xvii.	Declaration regarding compliance to Restrictions under Rule 144 (xi) of GFR 2017 as per Annexure – 13	Applicable/ Not Applicable	YES / NO
xviii.	Bank Account Details for E-Payment as per Annexure – 14	Applicable/ Not Applicable	YES / NO
xix.	Power of Attorney for submission of tender as per Annexure – 15	Applicable/ Not Applicable	YES / NO
xx.	Proforma of Bank Guarantee for Earnest Money as per Annexure – 16	Applicable/ Not Applicable	YES / NO

NOTE: Strike off 'YES' or 'NO', as applicable. Tender not accompanied by the prescribed **above applicable documents** are liable to be summarily rejected.

DATE :

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

OFFER FORWARDING LETTER / TENDER SUBMISSION LETTER

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

Offer Reference No:

Date:

To,

(Write Name & Address of Officer of BHEL inviting the Tender)

Dear Sir,

Sub: Submission of Offer against Ge M Bid No:

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

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

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

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

Authorised Representative of Bidder

Signature:

Name:

Address:

Place:

Date:

CERTIFICATE OF NO DEVIATION

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

To,

(Write Name & Address of Officer of BHEL inviting the Tender)

Dear Sir,

Subject: **No Deviation Certificate**

Ref: 1| GeM Bid No:,

2| All other pertinent issues till date

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

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

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

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

Thanking you,

Yours faithfully,

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

Date:

Place:

UNDERTAKING

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

To,

(Write Name & Address of Officer of BHEL inviting the Tender)

Dear Sir/Madam,

Sub: DECLARATION REGARDING INSOLVENCY/ LIQUIDATION / BANKRUPTCY PROCEEDINGS

Ref. GeM Bid Specification No:

I/We, _____ declare that,

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

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

Place:

Date:

DECLARATION BY AUTHORISED SIGNATORY OF BIDDER

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

To,

(Write Name & Address of Officer of BHEL inviting the Tender)

Dear Sir,

Sub: **Declaration by Authorised Signatory**

Ref: 1) GeM Bid Specification No:

2) All other pertinent issues till date

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

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

Yours faithfully,

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

Date:

DECLARATION BY AUTHORISED SIGNATORY OF BIDDER

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

To,

(Write Name & Address of Officer of BHEL inviting the Tender)

Dear Sir,

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

Ref : 1) GeM Bid No. & Date:

2) All other pertinent issues till date

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

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

Yours faithfully,

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

Date:

DECLARATION

Date _____

To,

(Write Name & Address of Officer of BHEL inviting the Tender)

Dear Sir/ Madam,

Sub: **Details of related firms and their area of activities**

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

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

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

Regards,

(_____)

From: M/s _____

Supplier Code: _____

DECLARATION FOR RELATION IN BHEL

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

To,

(Write Name & Address of Officer of BHEL inviting the Tender)

Dear Sir,

Sub: Declaration for relation in BHEL

Ref: 1) GeM Bid Specification No:

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

Tick (✓) any one as applicable

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

OR

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

i.

ii.

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

Note:

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

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

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

To,

(Write Name & Address of Officer of BHEL inviting the Tender)

Dear Sir,

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

Ref: 1) GeM Bid Specification No:

2) All other pertinent issues till date

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

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

1. _____ 2. _____

3. _____ 4. _____

...

Thanking you,

Yours faithfully,

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

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

Note:

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

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

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

To,

(Write Name & Address of Officer of BHEL inviting the Tender)

Dear Sir,

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

Ref: 1) GeM Bid Specification No:

2) All other pertinent issues till date

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

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

Thanking you,
Yours faithfully,

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

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

BANK ACCOUNT DETAILS FOR E-PAYMENT

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

1. Beneficiary Name :

2. Beneficiary Account No. :

3. Bank Name & Branch :

4. City/Place :

5. 9 digit MICR Code of Bank Branch :

6. IFSC Code of Bank Branch :

7. Beneficiary E-mail ID :
(for payment confirmation)

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

POWER OF ATTORNEY for SUBMISSION OF TENDER

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

KNOW ALL MEN BY THESE PRESENTS, that I/We do hereby make, nominate, constitute and appoint Mr. _____, whose signature given below herewith to be true and lawful Attorney of M/s. _____ hereinafter called 'Company', for submitting Tender/entering into Contract and inter alia, sign, execute all papers and to do necessary lawful acts on behalf of Company with M/s Bharat Heavy Electricals Ltd, Central Procurement Cell (CPC), in connection with _____vide GeM Bid No: _____, dated _____.

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

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

Dated at _____ this _____ day of _____

Director/CMD/Partner/Proprietor

Signature of Mr. _____ (Attorney)

Attested by: Director/CMD/Partner/Proprietor

Witness

Notary Public

General Terms and Conditions on GeM 4.0 (Version 1.19)

dt 26th September 2024

1. Introduction

This document is an electronic record published by GeM under the provisions of the Information Technology Act, 2000 and the rules made there under (as applicable) and shall act as valid agreement between Seller / Service Provider and Buyer. Further the use of GeM Portal for Sale / Purchase of Goods / Services and the **resulting Contracts shall be governed by the following General Terms and Conditions (GTC) (unless otherwise superseded by Product / Service specific Special Terms and Conditions (STC), Product / Track / Domain Specific STC of Particular Service including its SLA (Service Level Agreement) and BID/Reverse Auction Specific Additional Terms and Conditions (ATC) as applicable).**

Government EMarketplace (GeM) is the National Public Procurement Portal; an end- to-end online Marketplace for Central and State Government Ministries / Departments, Central & State Public Sector Undertakings (CPSUs & SPSUs), Autonomous institutions and Local bodies, for procurement of common use goods & services. The portal is owned and managed by GeM SPV which is a Section 8 (Non- Profit) Company registered under the Companies Act, 2013. GeM SPV operates, monitors and supervises all the business transactions on the portal through the Managed Service Provider as per defined roles and responsibilities.

2. General Terms and Definitions:

- a. **“APPLICABLE LAWS”** shall mean any statute, law, ordinance, notification, rule, regulation, judgment, order, decree, bye-law, approval, directive, guideline, policy or other governmental restriction as may be in effect.
- b. **“GOODS”** shall mean an Article / product or an intangible product like software, technology transfer, licenses, patents or other intellectual properties being offered for sale on the GeM portal by Seller(s) on GeM. The term ‘Goods’ shall also include works and services which are incidental or consequential to the supply of such goods, such as, transportation, insurance, installation, commissioning, training and guarantee / warrantee obligations as defined in the scope of supply given in the contract.

Note: If nothing contrary is specified in the contract and in the detailed specification of products given in contract, the scope of contract shall be supply of Goods on free delivery to consignee basis.

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- c. **“SERVICES”** shall mean the services offered or provided by the Seller such as IT Professional Services, Manpower Services, Security Services, Transport Services, etc. listed as Services on GeM. The term ‘Service’ shall also include supply of goods / articles which are incidental or consequential to the provisioning of such Services as defined in the scope of supply given in the contract
- d. **“SERVICE LEVEL AGREEMENT (SLA)”** shall mean the Contractual Commitment that prevails between the Buyer and the Service Provider with regard to type of service to be provided, deliverables, desired performance level, reliability and responsiveness, monitoring process and service level reporting, response and issue resolution time-frame, repercussions / penalties / remedies for service provider not meeting its commitment. The SLA of a particular contract may carry the matrix regarding the delivery of the goods and/or services and the corresponding penalties or remedies and liquidated damages as applicable.
- e. **“CATEGORY SPECIFICATION”** shall mean the framework of technical features, functional capabilities, technical properties, certifications of the items etc. in a particular category. The Specifications shall identify the key parameters defining the products with all necessary validations related to configuration, type of data, restrictions, range / allowed values, allowed units etc. Sellers as well as Buyers while offering / buying the Goods / services shall have to comply with the validation rules / restrictions provided for in the Category Specification. Buyers / Sellers cannot add parameters and / or drop down values not provided for in category Specification. If any Buyer / Seller desire to add new parameter, value, validation etc. against any category specification, they have to raise request for the same to GeM for incorporation in Category Specification.
- f. **“BUYER”** is the Contract placing authority, which includes Central/State Government Ministries/Departments including its attached/subordinate offices, Central/State Public Sector Units (PSUs) and Autonomous Bodies acting through its authorized officer(s) for and on behalf of President of India/Governor of the State/PSU/Autonomous Bodies, as the case may be, for purchase of Goods/Services offered by Sellers on GeM.
- g. **“SELLER / SERVICE PROVIDER”** on GeM shall mean any legal entity such as firm(s) of Proprietorship / Partnership Firm / Limited Liability Partnership / Private Limited / Limited company / Society registered under Society’s Act / Statutory Bodies etc., registered on GeM to sell its Good(s) / Service(s) to the Buyers registered on GeM.

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The “Seller on GeM” will be either OEM (Original Equipment Manufacturer*) or Seller having authorization to sell products manufactured by the OEM in open market or Licensed manufacturer under Drugs & Cosmetics Act, 1940 or Seller without OEM authorization inline with Quadrant policy of GeM.

* OEM is the owner of the Brand / Trademark of the product being offered or in case of un-registered brand’s products / products with own brand, the actual manufacturer of the final product. To be recognized as an OEM on GeM, seller has to get Vendor Assessment Report from designated agency (unless exempted as per GeM VA policy) as per due process of vendor assessment notified on GeM portal (which would include production of documentary evidences and demonstration of manufacturing facilities and / or capabilities as required).

In case of Services related to Goods, Service Provider on GeM will be either OEM or Service Provider having authorization to Service products manufactured by that OEM in open market. In respect of other Services, Service Provider on GeM will be any legal entity offering its services.

By registering on GeM portal , Seller / Service Provider hereby agrees to be bound by these General Terms and Conditions for Sale / Purchase of Goods and / or Services (GTC); Product / Service Specific Special Terms and Conditions (STC) and Service Level Agreements (SLAs) for various Services; and Additional (Bid Specific) Terms and Conditions (ATC) as applicable. For the purpose of this document and transactions on GeM, Seller as well as Service Provider will be referred to as “Seller”

- h. **“USER ID and PASSWORD”** All users including Buyers and Sellers (primary as well as secondary) will get User ID and Password created on GeM following due registration process defined on GeM. It is the responsibility of the user to keep their User ID and Password secure and confidential. Individual user shall be solely and completely responsible for all transactions taking place on GeM portal using his / her User Id and Password and GeM shall not be responsible in any manner.
- i. **“LICENSE”** shall mean by registering the Seller and by offering Product / Service details on GeM and by participating in Bids floated on GeM, the Seller grants GeM a non-exclusive, royalty-free, irrevocable, perpetual and fully sub-licensable right to use, reproduce, modify, adapt, publish, translate, distribute, and/or display publicly the content / materials / documents which has been submitted to GeM and / or GeM Buyer(s) during registration / bid participation excluding Aadhaar Number. In case of registration of Primary user and creation

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of secondary user(s) by the Buyer/Seller, their Aadhaar (UID) details collected by GeM are solely for user verification and to apply e- signing on the documents. The e-sign is at par with digital signatures as per Information Technology Act Amendment 2008 and it works based on details available in Aadhaar database of UIDAI and there is no interference / intrusion in their personal details.

- j. **“CONTRACT”** shall mean the purchase order created / issued by the Buyer on GeM for supply of Goods / Services in electronic form which includes scope of supply, delivery instructions and specifications etc. as ordered by Buyer against such Contract besides the subject GTC, STC/ATC as the case may be.
- k. **“BID SECURITY”** (also known as Earnest Money Deposit) shall mean Insurance Surety Bond, Account Payee Demand Draft, Fixed Deposit Receipt, Banker’s Cheque or Bank Guarantee (including e-Bank Guarantee) from any of the Commercial Banks or payment online in an acceptable form as defined in the bid document, safeguarding the purchaser’s interest in all respects.
- l. **“PERFORMANCE SECURITY”** shall mean Insurance Surety Bonds, Account Payee Demand Draft, Fixed Deposit Receipt from a Commercial bank, Bank Guarantee (including e-Bank Guarantee) from a Commercial Bank or online payment in an acceptable form as defined in the bid document safeguarding the purchaser’s interest in all respects.

3. Role, Responsibilities and Obligations of Buyer / Seller / Service Provider:

A. Role and Responsibilities of Sellers / Service Providers on GeM are as under:

- i. Only Director (s) / Partner (s) / Proprietor (as applicable) are authorized to become Primary User and register any legal entity on GeM as Seller.
- ii. Once Seller/Service Provider is registered and account is created on GeM, the Primary user of the Seller/Service Provider can create Secondary User Accounts within Seller/Service Provider Organization with different Roles and Responsibilities. However, the Primary User creating Secondary User accounts shall continue to be fully responsible and accountable for all actions / transactions done by Secondary Users on GeM Portal.
- iii. Since GeM is a trust based Portal, the complete accuracy and integrity of data submitted in respect of the Seller and also in respect of the Goods / Services offered on GeM will be the sole responsibility of the Seller/Service Provider. Seller will be liable for administrative action as per GeM terms and conditions in case of any discrepancy / infirmity in any data / information submitted on GeM.

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- iv. The Primary / Secondary Users of Sellers, offering Goods/Services and/or participating in e-Bidding / Reverse Auction on GeM, must ensure that they have the requisite authorization to enter into contract with Buyer(s) in GeM for and on behalf of the Seller, failing which such Seller as well as the individual(s) shall be vicariously liable for its actions and also for any liability arising out of such actions.
- v. Seller can offer any number of products. However, it will be the sole responsibility of the seller to satisfy themselves regarding possessing the requisites for doing business for the offered product(s). The Sellers are solely responsible for ensuring that there is no violation of any Intellectual Property Rights in their offer for sell / providing service on GeM.
- vi. The Seller should not exercise any corrupt influence on any aspect of contract and commit to take all measures necessary to prevent corruption maintaining complete transparency, integrity and fairness in all activities related to GeM.
- vii. The seller would represent its business on the GeM portal and is mandated to comply with all the terms and conditions of the platform. Sellers would be solely and absolutely responsible for the information provided about their organization, business, products and services on the portal and would be required to produce proof of such information, if requested at any point in time by the Buyer and / or GeM.
- viii. GeM would not allow creation of any fresh data related to Seller identity on GeM portal. All details provided by the Seller at the time of registration would be counter checked / verified through other data bases of Government such as PAN, MCA 21, Udyam Registration, etc. For Financial details, PAN / Income tax Database shall be primary validating database and will override any conflicting data in any other database. If the data / details entered by the seller while registering on GeM is not verified with validating databases, registration will not be allowed. Further, in case of any conflict in details after registration, Seller's registration would be automatically suspended. It is the Seller's responsibility to keep all their information on GeM updated with the latest change(s). Non-updating of details on GeM within 7 days of such occurrence would make Seller liable for administrative actions.
- ix. Eligibility of Sellers in terms of Turn Over / Past Performance / Profitability etc. and also their eligibility for availing various benefits / advantages in terms of various Govt. Policies / Guidelines / Acts / Laws etc. shall be determined solely on the basis of data fetched / validated or verified through external agency / owner of that set of database such as Income Tax / PAN Data Base, MCA 21, Udyam Registration, GSTN, Certifying Agencies such as BIS, BEE etc. In case of any

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discrepancy in data available in these databases, Seller has to get the same updated in the corresponding validating database before updating the same on GeM. Till such time only the existing validated information shall be used to decide seller's eligibility on GeM. Any default in sellers updating their data on partner sites / validating databases and any fall out of the same impacting adversely any transaction on GeM, shall entirely and exclusively be Seller's responsibility. GeM shall not be responsible for any consequential impact on any GeM transaction due to data discrepancy and / or suspension of seller account due to data discrepancy. Seller will be solely responsible for the same.

- x. The Seller shall be solely responsible for the Goods / Services including, without limitation, the applicable guarantee / warranty, shelf-life, quantity, quality and the title and for giving the correct and accurate details of the offer their Goods and / or /Services indicating product specifications, quantity which can be supplied over the specified time period, etc. as per catalogue or catalogue based template prescribed in GeM. Seller would ensure that the Goods or /Services offered are latest, new and complete in all respects. Where Seller is selling any Goods which needs spare parts, Seller should ensure and make available such spare parts for a minimum period of three years from the date of expiry of warrantee period (unless otherwise specified). The individual Sellers shall ensure that the products offered in e-Bidding and/or ordered shall remain available on GeM during the bid / contract validity period.
- xi. Sellers shall offer minimum discount of 10% on the Maximum Retail Price (MRP) mandatorily on GeM Marketplace (unless otherwise specified). Sellers are free to offer higher discounts. The Seller must offer its best possible lowest price on GeM Marketplace and undertake that it would not sell or offer to sell the same product outside GeM in comparable quantity on similar terms and conditions at a price lower than Offer Price on GeM Marketplace. In case any such infringement by Seller is noticed, the Seller shall be liable to be removed / debarred from the GeM.
- xii. By offering their product on GeM, the Seller agrees for sharing price details of the offered Goods / Service by GeM authorities with other Government agencies including Department of Excise & Customs, Income tax, GST, etc.
- xiii. Sellers shall ensure uploading of their product / service in the correct category in all respects. Any offering of wrong and misleading product(s) or service(s) in any of the category will be removed by GeM from the portal when noticed without making any reference to the seller(s). The seller(s) will also be liable for any other

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Administrative action as deemed fit by GeM for uploading wrong product(s) or service(s) in any category.

If any such infringement made by Seller leads to placement of a contract by any Buyer for such inappropriately offered product(s) / service(s) by the Seller, such contract shall be treated as null and void.

No claim whatsoever against such contract shall be admissible and entertained.

- xiv. The Seller(s) shall pass on all the benefits associated with any scheme / offer / freebies provided by the OEM on any product from time to time on an "as-is basis" to the Buyer. This obligation will also apply to OEM's directly supplying the goods. Holding back any such offer or accounting such freebies in quantity supplied shall make such consignments liable to be rejected by the consignee and shall also be considered as inappropriate and against the GeM policies for which GeM reserves all rights to take necessary action against such Seller/OEM as deemed fit.

By registering on GeM and by participating in any bid on GeM, Seller undertakes that presently it is not "Debarred from Bidding" on the grounds mentioned in Rule 151 of GFR 2017.

- xv. In case of drug manufacturer licensed under Drugs & Cosmetics Act 1940, drug manufacturers have to submit a notarized undertaking that the license for the product submitted by them has been issued under Drugs & Cosmetics Act, 1940 and is authentic and that the data of the same has been uploaded by the manufacturer on the SUGAM Portal under rule 84AB of Drugs Rules, 1945.

Only such manufacturers who have given the said undertaking as above will be considered as authentic for registration on GeM.

The said undertaking / affidavit to be submitted by the Drug Manufacturer, in prescribed form, would enable / empower Buyer / Ministry / Central Drugs Standard Control Organization (CDSCO) to initiate criminal proceedings in case of false declarations.

- xvi. By offering their product and fulfilling the basic need of regular updating of the stock on GeM as stipulated on the portal, the Seller agrees for the acceptance of the order placed through the Direct purchase and L1 purchase without any need for any acceptance or confirmation. The seller commits to hold the price and offer as valid till the date seller itself removes the product offer from GeM or changes the price in compliance with online price change guidelines / rule engines applicable in that category. The action as deemed fit may be initiated for

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the declining of the such orders as incident policy of the GeM.

- xvii. Bidders while participating in a bid should submit price element(s) in Financial bid only. Accordingly, all bidders are advised not to mention any price element(s) in the technical bid, else the offer shall be rejected as nonresponsive, except in case of Single Packet Bidding.

B. Role and Responsibilities of Buyer on GeM:

Buyer Registration on GeM is divided in two categories:

a. Primary User: In GeM, the Primary User is as under:

- i. Any officer of Central / State Government / PSU / Autonomous Bodies / Local Bodies / Constitutional Bodies / Statutory Bodies at the level of Deputy Secretary of the Government of India or equivalent
- ii. Head of the Office at Sub Centre / Unit / Branch, can Register his / her organization / unit on GeM portal as Primary User.

Primary User shall be responsible for registering the organization on GeM, for creating User accounts for Secondary Users, assigning them roles and responsibilities on GeM and for supervision of all transactions performed by Secondary Users under him / her.

Primary User shall also be vicariously responsible for ensuring compliance of General Financial Rules and / or Rules Governing Public Procurement in respect of their organization, all GeM terms and conditions and other Procurement Policies / Guidelines notified by the government from time to time, by all the secondary users including timely payments and for dispute resolutions as per GeM terms and conditions.

Primary user cannot perform any Procurement related transactions on GeM portal.

- b. **Secondary Users:** Secondary Users are officials responsible for procurement transactions on GeM including Placement of Contracts, Receipt of Stores, and Payments to the Sellers etc. The access rights permissible to registered Secondary users would be decided by the Primary User of the Department. Secondary Users may be given the roles of Buyer / Consignee / Drawing and Disbursement Office (DDO) / Paying Authority / Indentor / Technical Evaluator, etc. For transaction on GeM portal, Buyer is the official who is responsible for processing procurement transaction up to Order Placement stage. Consignee is the Secondary User in Buyer Organization responsible for certifying receipt and acceptance of the goods procured.

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Buyer's responsibilities on GeM portal are as under:

- i. The Buyers are responsible to ensure that the procurement done by them are in compliance of General Financial Rules and / or Rules Governing Public Procurement in respect of their organization, all GeM terms and conditions and other procurement Policies / Guidelines notified by the government from time to time, including timely payments as per GeM terms and conditions.
- ii. The Buyers (in all capacities i.e. as Buyer, Consignee, DDO, Paying Authority etc.) are responsible to ensure that the procurement done by them are in compliance with GeM Terms and Conditions / Guidelines and all contract related transactions are completed within time lines prescribed in GeM Contract.
- iii. The Buyers must ensure that they have the requisite authorization to enter into contract with Seller(s) on GeM for and on behalf of the organization, failing which such individual(s) shall be individually liable for its actions and also for any liability arising out of such actions.
- iv. While making procurement on GeM, the Buyers shall judiciously search and shortlist items using filters such as quantity, technical parameters, delivery period, warranty period, consignee location(s), Seller's eligibility etc. as per their approved requirements. Placement of contract for a product / service uploaded by the Seller in any wrong/inappropriate product category is strictly prohibited and such contracts shall be treated as null and void and such Buying shall adversely affect Buyer Rating on GeM.
- v. The Buyers shall satisfy themselves that the price of the selected offer is reasonable. Buyer is at liberty to utilize all the data / information and Business Analytics made available in GeM including e-bidding and reverse auction.
- vi. The Buyers, before placing the order on GeM, should have the required mandatory approval with prior sanction and approval of the competent authorities and shall be in compliance with and as per procedures outlined in GFR and other procurement guidelines issued by the Government from time to time.
- vii. On award of the Contract(s), it would be construed that the Buyer has obtained all necessary Administrative & Financial sanctions of the competent authority and adequate funds are available indicating the relevant Head of accounts in the awarded Contract(s).

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- viii. The Buyers should not exercise any corrupt influence on any aspect of contract and commit to take all measures necessary to prevent corruption maintaining complete transparency and fairness in all activities related to GeM.
- ix. Buyers are not allowed to place any order at GeM prices outside of GeM portal. The prices on GeM or discovered through GeM are only applicable if the procurement is made through GeM portal and online order is placed on GeM. Using GeM portal prices for placement of order outside GeM portal is strictly prohibited. Further, Buyers are not allowed to place any off-line contract to the Seller based on the outcome of e-Bidding / RA conducted on GeM. All such contracts shall be treated as invalid and GeM reserves the right to delete all data related to such transactions from GeM database besides taking suitable actions against such Buyers as well as sellers including suspension from GeM and / or reduction of Buyer / seller rating, etc. In case offline order is required to be placed due to some difficulty faced while awarding online contract on GeM due to any technical issue and / or lack of any functionality on the portal, offline order may be released. However, in all such cases, Buyers are obligated to promptly inform GeM, in writing, about any such issue(s) for generating and / or awarding of the contract through GeM portal and must get the order regularized by placement of an online order on GeM for the offline order to be treated as valid contract.
- x. The Additional Terms and Conditions (ATC) are to be incorporated by the Buyer after approval of its Competent Authority in the Buyer Organization, whereby the Buyer Organization is solely responsible for the impact of these additional clauses on the bidding process. Such impact may include restricting competition, enabling cartel formation, leading to higher procurement cost and lack of transparency. It is to be noted that if any clause(s) is / are incorporated by the Buyer in ATC as mentioned in the Disclaimer being published along with the bid document (either reported or discovered on suo-moto basis), then GeM reserves the right to:
 - a) Give due opportunity to the Buyer to remove any such clause(s) through official corrigendum within a reasonable timeline and thereafter cancel the bid in case of non-adherence by the Buyeror
 - b) Directly cancel the bid.

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- xi. Verification and / or validation of document(s) being submitted by bidder(s) during bid participation process lies solely with the buyer and GeM neither certifies the claim of the bidder(s) nor participate in the decision making process of buyer in any manner whatsoever.

C. Role and Responsibilities of Buyer / Seller / Service Provider on GeM:

a) Buyers / Sellers / Service Providers who wish to avail the e-BG facility available at GeM portal integrated through National E-Governance Services Limited (NeSL), hereby authorise GeM to receive, exchange, share, disseminate or part with any and / or all information relating to e-BG submitted by the Seller / Service Provider in favour of the Buyer, through NeSL portal and shall not hold GeM liable for receiving / sharing / exchanging / disseminating of such information as stated above.

b) The Buyer(s) further authorise GeM to initiate requests pertaining to e-BGs on behalf of the Buyers through NeSL portal and shall not hold GeM liable for initiation of such requests.

c) The Buyers / Sellers / Service Providers registered on GeM portal hereby give their explicit consent for the receipt / sharing / disseminating / exchanging of any and all information available with the NeSL regarding e-BG submitted by Seller / Service Provider issued by various banks in favour of the Buyer, with the Government EMarketplace (GeM) portal.

d) This consent shall remain in effect for the duration of the Buyer's / Seller's / Service Provider's registration on the GeM portal. In the event, the Buyer / Seller / Service Provider wishes to revoke its consent, they shall not use the NeSL facility available at the GeM portal for any transactions.

e) The Buyer / Seller / Service Provider confirms that they have read, understood, and agreed to the terms mentioned hereinabove, and that this consent / authorisation is given voluntarily and without coercion.

4. Enabling provisions of Rule 149 of General Financial Rules- 2017

Enabling provisions of Rule 149 of General Financial Rules- 2017 as amended vide Ministry of Finance OM dated 10.07.2024 regarding procurement through GeM and necessary guidelines and terms and conditions thereon:

GeM portal may be utilized by the Government buyers for on-line purchases as under:-

- i. Up to ₹ 50,000/- through any of the available suppliers on the GeM, meeting the requisite quality, specification and delivery period.

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Note: In case of automobiles, procurement under this sub-rule is permitted without any ceiling limit.

- ii. Above ₹ 50,000/- and up to ₹ 10,00,000/- through the GeM Seller having lowest price amongst the available sellers, of at least three different manufacturers, on GeM, meeting the requisite quality, specification and delivery period. The tools for online bidding and online reverse auction available on GeM can be used by Buyer even for procurements less than ₹ 10,00,000/-, if decided by the competent authority.
- iii. Above ₹ 10,00,000/- through the supplier having lowest price meeting the requisite quality, specification and delivery period after mandatorily obtaining bids, using online bidding or reverse auction tool provided on GeM.
- iv. The Government Buyers may ascertain the reasonableness of prices before placement of order using the Business Analytics (BA) tools available on GeM including the Last Purchase Price on GeM, Department's own Last Purchase Price etc.
- v. GFR rule 149 allows direct on-line purchases on GeM up to ₹ 50,000/- through any of the available suppliers on the GeM, meeting the requisite quality, specification and delivery period. However, this is subject to procuring authorities certifying the reasonability of rates. While making such direct on-line purchase below ₹ 50,000/-, the buyer should have approval of competent authority and should also record reasons for selecting the specific product in case lowest priced products are not being accepted / ordered.
- vi. Tools have been deployed on GeM portal to show the price of compared products on other e-commerce sites (wherever available) and also the rates at which orders have been placed on GeM for such items in recent past. While taking decision on reasonableness of price, the buyers may also take into account the discount over MRP; Last Purchase Price (LPP) on GeM, Department's own Last Purchase Price; rates on other e-commerce websites, etc. The prices on e-commerce site give a broad idea and its terms and conditions may be different. If it is found that the price available on GeM marketplace is not reasonable or is substantially higher than e-commerce sites or LPP, the GeM Portal provides tools for online bidding or reverse auction which can be used by the Buyers to get better competitive rates and then satisfy themselves about reasonableness of the price as per GFR -2017 before placement of contract. Bidding should be

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considered as the preferred mode of procurement above ₹ 50,000/-.

- vii. In case of Direct Purchase, during carting period, rates for carted quantity, for that buyer, are frozen for carting period as notified from time to time on GeM against any upward revision by seller. However, advantage of any downward revision in the offer price of carted item shall be automatically provided to the buyer.
- viii. According to the provisions of Rule 149 (ii) of GFR, 2017, GeM shall be utilized by Government buyers for direct on-line purchases above ₹ 50,000/- and up to ₹ 10,00,000/- however such purchase has to be through the Seller having the lowest price (L-1) amongst the available Sellers on the GeM. In order to ensure that buyers select only L-1 available offer, the GeM portal enables buyer to first compare all the product options available on GeM to ensure that it meets its requirements/ specifications. While comparing, care should be taken by the Buyer that comparison has to be done between products of at least three different Manufacturers / OEMs. For L-1 buying, comparison has to be made between products of at least three different OEMs, as per GFR. If Buyer wants to buy any specific OEM's product then he has to go for Proprietary Article Certificate (PAC) buying after obtaining necessary approvals of competent authorities for PAC buying as per GFR-2017, as amended from time to time or the Procurement Guidelines of the respective Organisation as the case may be.
- ix. **Proprietary Article Certificate (PAC) Buying:** While making procurement under PAC Buying on GeM, it is the responsibility of the Buyer to ensure that compliances with the conditions / rules as laid down under GFR, 2017, as amended from time to time or the Procurement Guidelines of the respective Organisation, as the case may be, is met before initiating procurement under PAC:
 - (a) In case a Govt. Buyer on GeM wants to make procurement on proprietary basis on the GeM Portal after obtaining the requisite approvals / PAC certificate from their competent authority as per Rule 166 of GFR-2017 or the Procurement Guidelines of the respective Organisation, as the case may be, the Buyer can use PAC filter provided on GeM for selecting a specific model/ make available from a particular GeM Seller. The Buyer should ensure before procuring the goods under PAC Buying that the Proprietary Article Certificate as per the conditions laid down in GFR or the Procurement Guidelines of the respective Organisation, as the case may be, is available with

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the Buyer. It is the responsibility of the Buyer to ensure compliance with GFR or the Procurement Guidelines of the respective Organisation while procuring goods on proprietary basis through the GeM Portal including ensuring the certificate to be in proper format as per GFR or the Procurement Guidelines of the respective Organisation, as the case may be.

(b) The Buyer should note that the Seller's price on the Portal is just their offer prices and the proper discovery of price generally happens through bidding/RA. Moreover, in PAC procurement irrespective of multiple listing by authorized sellers, the important issue of price control remaining with the OEM should not be overlooked. Therefore, in case of all the PAC procurements, the Buyers are advised to carry out extra due diligence in establishing the reasonableness of prices before placement of contract as per Para (vii) of Rule -149 of GFR-2017 or the Procurement Guidelines of the respective Organisation, as the case may be.

(c) Except for direct buying up to ₹ 50,000/- subject to establishing the reasonableness of price, the bidding is mandatory for procurements above ₹ 50,000/- as per GFR. As result of bidding, the response could be as under:

- i. Only OEM is available or only single authorised seller is available.
- ii. OEM as well as multiple authorised Sellers are available.
- iii. Multiple authorised Sellers of the OEM are available.

(d) After bidding, under PAC buying, the Buyer may take decision with the approval of the competent authority to process the procurement subject to establishing the reasonableness of prices before placement of contract as per Para (vii) of Rule - 149 of GFR-2017 or the Procurement Guidelines of the respective Organisation, as the case may be.

- x. In order to give flexibility to the buyers in sourcing their requirements through GeM, provision has been made in e-bid and RA modules for indicating delivery period in terms of "number of days from date of placement of contract". While stipulating delivery period in their bid documents, Buyers are advised to be careful since un-realistic delivery period stipulations may result in elimination of some genuine sellers, lack of competition and may ultimately have impact on cost of procurement. While fixing delivery period

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in e-bid/ RA bid, buyers should not only take into consideration the quantity required and the essentiality of requirement of that quantity within stipulated time period but also the possible impact of shorter delivery period on competition in e-bidding / RA.

- xi. Splitting of demands by creating multiple Bids / RAs of same goods / services or making repeated procurements of same Goods / Services through L-1 buying as per rule 149(i) and 149(ii) of GFR-2017 are strictly prohibited on GeM. Splitting of demand deprives the organizations from achieving the best competitive prices leveraging economies of scale. It also implies avoiding the necessity of obtaining the sanction of higher authority required with reference to the estimated value of the total demand. It is a violation of Para Rule 149 (viii) of GFR -2017 and terms and conditions of GeM Portal and Buyer including the Primary Buyer shall be entirely responsible for the same. If any such splitting of demand is noticed, GeM shall have the right to take necessary action such as blocking of such Bids/RAs and / or cancelling such contracts.
- xii. GeM is a dynamic online marketplace. The product/service listings across the existing categories are dynamic. Moreover, new categories of products/services are continuously being added on GeM. In situations where there is only one offer available in a product/ service category and/or there is offer from only one Seller after filter based search, the buyer should not select such offer for buying. Efforts should be made by Buyer to get their past suppliers and prospective Sellers on-boarded on GeM so as to ensure availability of sufficient Sellers on GeM. This however will not apply for PAC procurement.

xiii. e-Bidding and Reverse Auction (RA) on GeM

- (a) The e-Bidding / RA module of GeM is a tool provided to the Buyer(s) for organizing bidding / RA from GeM Sellers of the particular product category for a pre-defined requirement i.e. quantity, technical parameters for Goods/ Services of the particular product category required for one or more Buyers / Consignees.
- (b) Prior to initiating e-Bidding / RA, the Buyer shall judiciously search and shortlist item among the items offered on GeM using filters such as quantity, technical parameters, warranty period, consignee location(s) etc. as per the requirement. In case the search made using actual quantity required, fails to identify sufficient offers, the Buyer may use an indicative quantity for initial search and selection of product and quantity may be amended to match the actual requirement at the time of finalizing e-Bidding / RA.

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- (c) The technical parameters and warranty of the item identified by the Buyer shall be base parameters of the item for conducting e- Bidding / RA for the required Goods/Services.
- (d) The e-Bidding / RA document will be finalized by the Buyer(s) by stipulating requirements such as Quantity, Consignee Details, Terms of Delivery, Delivery Period, Bid Security, Performance Security, Time & Date for Start and End of Bid Submission and for Opening of Bids and required Bid Validity period etc. GeM system shall decide Start / Reference Price and Step Value of Decrement in case of RA based on product selection and / or outcome of bidding process.
- (e) The e-Bidding / RA invitation / Notice shall be published on GEM, stipulating the last date for bid submission / opening of bids giving at least clear 10 days time after the publication. Any change in last date for bid submission will be intimated to eligible bidders through e-mail / GeM. The e-Bidding invitation shall be extended to all the registered Sellers on GeM who have Goods / Services for that particular category listed on GeM, at least 2 hours prior to closing time of e-Bidding / RA. The GeM normally requires 48 hrs for approval / rejection of the product / service offered by Sellers before it is listed on the portal. Considering these time lines, the Sellers are required to offer their Goods / Services on GeM well in advance before bid closure. The decision of the Buyer / GeM regarding technical/commercial eligibility of the individual Seller to be invited for e-Bidding / RA shall be final.
- (f) The Seller participating in the e-bidding / RA may offer any one of their product(s) already listed on GeM. The bid submitted under:
 - i) e-Bidding shall remain valid for 15 days (or as stipulated by the Buyer in the bid document) from the Bid Opening Date (till 24.00 Hrs IST).
 - ii) RA in Bid to RA case, where the bid offer validity is less than 30 days, will be extended to 30 days including the RA initiation date.

Bid Validity can be further extended with mutual consent between Buyer and Seller. The products offered in e-Bidding / RA cannot be withdrawn by the Sellers from GeM during the bid validity period. However, in case there has been some technical issues in extending bid validity online on GeM portal and the buyer has in compliance with Clause 3(B)(b)(ix) communicated its intention to award the contract or awarded the contract to the successful bidder in writing, through any means and mode, outside GeM portal before the expiry of the bid validity, then in such circumstances, for the purposes of resolution of any such technical issues and /or necessary regularization, the

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bid validity shall be deemed to be extended until such issue is resolved / regularized by GeM.

The Buyer reserves the right to postpone/cancel the e-bidding and intimation thereof will be sent by e-mail / GeM to the Bidders. Any amendment / corrigendum to the e-bid invitation issued by the Buyer will be made online and shall be uploaded on the GeM. The participation by the Seller in e-bidding shall be construed as his / her acceptance for all the Terms and Conditions as outlined in the e-bidding including GTC, STC and ATC. However, the Buyer shall have right to decide the technical and commercial acceptability of the individual bids based on eligibility criteria and compliances as stipulated in the bid document. The technical parameters shown in the bid are from a particular catalogue as selected by the buyer while applying initial filters in selection of the product. The sellers are free to bid for same, equivalent or superior specifications catalogue / products. In the public interest, buyers will evaluate such bids based on their requirements / end use and bid parameters and will accordingly technically accept or reject the bids on merits.

- (g) In bid documents, Buyers can incorporate suitable eligibility criteria and additional terms and conditions only using various filters and ATC module available in e-bidding / RA modules of GeM. Buyers are not allowed to incorporate eligibility criteria and / or additional / special terms and conditions exterior to the GeM portal by making reference to any other website / documents etc.
- (h) In case, two or more acceptable bidders are found to have quoted identical lowest bid price, Buyer has to conduct Reverse Auction for the required Goods among all technically qualified bidders in case of bids for Goods. In case of Services bids, if the multiple L-1 bidders have quoted the lowest allowed price for that service, Buyer shall place the Contract by selection of a bidder amongst the L-1 bidders through a Random Algorithm executed by GeM system.
- (i) The Buyer reserves the right to accept/reject any bid including the lowest bid received through e-bid and/or annul the e- bidding process.
- (j) The participating bidders shall not disclose details of their bids or other details of their e-bids to other bidders or indulge in any anti-competitive behaviour including price manipulation in violation of Competition Act, 2002, as amended from time to time.
- (k) The Buyer/GeM will not be held responsible for consequential damages such as no internet connection, no power supply, system problems, loss of electronic information, power interruption etc.
- (l) Against any bidding or RA conducted on GeM, if a bidder quotes Nil

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Charges/consideration, the bid shall be treated as non- responsive and will not be considered.

- (m) There shall be no Bid Security for Bids / RA having estimated value less than ₹ 5 lakh. For bids / RA having estimated value more than ₹ 5 Lakh, while finalizing e-Bid / RA, Buyer shall indicate the exact amount of Bid Security required to be submitted by bidders. Scanned copy of the same shall be uploaded by Seller in the online bid and hard copy of the same will have to be submitted directly to the Buyer within 5 working days of bid opening, failing which the bid may be treated as incomplete & may lead to rejection of the bid by buyer without making any reference to the seller.

GeM recommends quantum of Bid Security @ 1% of estimated value of procurement. The Buyer also has the option to select Bid Security between 0.5% to 5%. The same should be valid for 45 days beyond the bid validity. No interest shall be payable upon the Bid Security / EMD or any other amounts payable by the Seller to the Buyer under the Contract. Following categories of Sellers shall however, be exempted from furnishing Bid Security:

- i. Micro and Small Enterprises (MSEs) who are holding valid Udyam Registration and are manufacturer of the offered Product or Service (Primary Product / Service - in case of bunch bid with total value wise evaluation) and give specific confirmation to this effect at the time of bid submission and claim EMD exemption and whose credentials are validated online through Udyam Registration website of Ministry of MSME and also through supporting document uploaded during bidding process and validated by the Buyer. State Government Buyers may, however, choose to exempt only MSEs from the State of Bid Inviting Authority by specifying the same in ATC of the Bid. In case no such ATC is included, eligible MSEs of all states are exempted.
- ii. Start-ups as recognized by Department for Promotion of Industry and Internal Trade (DPIIT), holding valid Startup Recognition Certificate which is to be uploaded while bidding and claiming EMD exemption and to be validated by the Buyer. Bidder to ensure that turnover for any of the financial years has not exceeded beyond limits prescribed in the certificate / Start Up scheme of DPIIT.
- iii. KVIC, ACASH, WDO, Coir Board, TRIFED and Kendriya Bhandar.
- iv. Sellers who have got their credentials verified through the process of Vendor Assessment by Vendor Assessment Agencies for the Primary Product / Primary Service for which Bid / RA has been invited and holding valid Vendor Assessment or Vendor Assessment Exemption

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Report / confirmation (Seller to upload VA report / VAE confirmation to be validated by the Buyer).

- v. Sellers / Service Provider having annual turnover of ₹ 500 Crore or more, at least in one of the past three completed financial year(s)
- vi. Sellers / Service Providers holding valid BIS License for the Primary Product Category whose credentials are validated through BIS database and through uploaded supporting documents to be validated by the buyer.
- vii. Central / State PSUs.
- viii. Seller / Service Provider registered with designated Agency / Authority as specified in the bid document by the Buyer – such bidder shall have to upload scanned copy of relevant valid registration document in place of Bid Security document while bidding.

Note:

1) No EMD to be taken from exempt category of sellers even by way of specific clauses mentioned in ATC / STC. Such clauses which are against the GeM GTC, will be treated as null and void.

2) However, State Government / State Autonomous / State Local Bodies / State PSU / Cooperatives may choose to seek EMD from MSE bidders by specifying the same in ATC / STC of the Bid. In case no such clause is included in ATC / STC, EMD exemption as per para (m) above shall prevail.

(n) Bid Security submitted by the bidder shall be forfeited, if the bidder:

- i. Withdraws or modify or impairs or derogates from the bid in any respect within the period of validity of its bid; or
- ii. If it comes to notice that the information / documents furnished in its bid is false, misleading or forged; or
- iii. Fails to furnish requisite performance security within stipulated time required as per e-bid / RA conditions.

(o) Notwithstanding above, GeM SPV / GeM Admin also reserve the right to debar such seller from GeM portal. Such debarment shall be for minimum 3 months initially on first such offence and on repeat offence, the debarment period can be increased suitably by GeM SPV / GeM Admin. By submitting a bid on GeM, the Bidder explicitly undertakes to abide by the above clause.

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- (p) Earnest money of unsuccessful bidders shall be returned within 15 days after the award of contract or expiry of bid validity, whichever is earlier. However, in case of two packet or two stage bidding, Bid securities of unsuccessful bidders during first stage i.e. technical evaluation should be returned within 15 days of declaration of result of first stage itself i.e. technical evaluation. Earnest money of successful bidder shall be returned within 15 days after receipt of Performance Security / e-PBG.
- (q) In case of RA, Start / Reference Price and Step Value of Decrement shall be indicated to the Bidders at the start of the auction. Any participating bidder can bid one or multiple Step Decrement lower than the prevailing Lowest Bid at that time.
- (r) The Bidder shall be able to view Bid Start Price, Bid Decrement Value, Prevailing Lowest Bid value and last Bid Placed by him. Whenever a lower price bid is received in the closing moment i.e. within 15 minutes of existing end time of Reverse Auction, the end time of reverse auction shall be extended automatically by another 15 minutes. All participant sellers of that RA shall be allowed to submit revised bid under the RA. The same process shall be repeated, if there is another lower bid received in the RA during last 15 minutes of RA.
- (s) GeM / Buyer shall not have any liability to bidders for any interruption or delay in access to the GeM site / Reverse Auction link etc, irrespective of the cause.
- (t) By creating a bid on GeM, the Buyer undertakes as under:

"I confirm that this tender document complies with the "Public Procurement (Preference to Make in India) Order, 2017, as amended from time to time" issued by DIPP and "Public Procurement Policy for Micro and Small Enterprises (MSEs) Order, 2012, as amended from time to time " issued by MoSME".

Note:

However, State Government / State Autonomous / State Local Bodies / State PSU / Cooperatives may choose to follow Make in India and MSE policy in line with State's own Procurement Policy by specifying the same in ATC / STC of the Bid.

(u) Bid to RA:

While creating bid on GeM, Buyer shall have the provision to select Bid to RA option. If this option is selected by the Buyer at the time of bid creation, Sellers would be required to submit their Technical and Commercial bids before bid closure. After completion of technical

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evaluation by the Buyer, Reverse Auction would be conducted as per Bid to RA qualification rule selected by the buyer, which have been stated below:

1) Bid to RA with 50% elimination rule:

Reverse Auction would be conducted amongst first 50% of the technically qualified bidders arranged in the order of prices from lowest to highest. Number of sellers eligible for participating in RA would be rounded off to next higher integer value if number of technically qualified bidders is odd (e.g. if 7 bids are technically qualified, then RA will be conducted amongst L-1 to L-4). In case number of technically qualified bidders are 2 or 3, RA will be between all without any elimination. If Buyer has chosen to split the bid amongst N sellers, then minimum N sellers would be taken to RA round. In case Primary products of only one OEM are left in contention for participation in RA based on lowest 50% bidders qualifying for RA, the number of sellers qualifying for RA would be increased to get at least products of one more OEM (directly participated or through its reseller) if available. Further, if bid(s) of any seller(s) eligible for MSE preference is

/ are coming within price band of 15% of Non MSE L-1 or if bid of any seller(s) eligible for Make in India preference is / are coming within price band of 20% of non MII L-1, then such MSE / Make in India seller shall also be allowed to participate in the RA process.

2) Bid to RA with H-1 elimination rule:

Reverse Auction would be conducted amongst all the technically qualified bidders except the Highest quoting bidder. The technically qualified Highest Quoting bidder will not be allowed to participate in RA. However, H-1 will be allowed to participate in RA in following cases:

- (a) If number of technically qualified bidders are only 2 or 3.
- (b) If Buyer has chosen to split the bid amongst N sellers, and H1 bid is coming within N.
- (c) In case Primary product of only one OEM is left in contention for participation in RA on elimination of H-1.
- (d) If L-1 is non-MSE and H-1 is eligible MSE and H-1 price is

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coming within price band of 15% of Non-MSE L-1.

(e) If L-1 is non-MII and H-1 is eligible MII and H-1 price is coming within price band of 20% of Non-MII L-1

After the RA process, the award of contract(s) shall be made by the buyer keeping in view the Public Procurement Policy for Micro and Small Enterprises (MSEs) Order, 2012 and Public Procurement (Preference to Make-in-India) Order, 2017 as amended from time to time.

(v) In case any Seller / Service provider has been debarred in any particular Department / Organization, Buyers of that particular Department / Organization only shall have the right to disqualify such Sellers / Service providers at the time of technical evaluation of Bids during the period of debarment, subject to the condition that orders of such debarment has been taken with approval of Competent Authority of that Department / Organization and has been communicated to the concerned Seller / Service Provider before bid opening date.

(w) GeM is an end to end on-line procurement portal and not a tender publishing portal. GeM has detailed GTC, product / service specific STC and a rich ATC library in-built in the portal which can be used to create a comprehensive bid document. Based on the available terms and conditions, there is hardly any need to add any additional conditions to be attached with any GeM bid. However, for inclusion of some clause which is considered absolutely necessary for that particular bid for reasons to be explained in detail, a provision for inclusion of additional conditions in the bid through corrigendum is available in Request Management System. Only indispensable conditions that are not covered in and are not in conflict with GeM GTC, Product / Service STC and the standard ATC library, and which are in compliance with the Govt. orders on Public Procurement and are not restrictive and not against the core principals of transparency, fairness and efficiency enshrined in GeM, can be requested through RMS ATC request for making part of GeM bid through corrigendum. Each such request has to be made only after due approval of the Competent Authority in Buyer Organization confirming that the request has been made with the approval of the Competent Authority. Buyer organization shall be solely responsible for the impact of the requested clauses on the bidding process and its outcome. The clauses which are already covered in standard ATC library available on GeM Portal, will not be allowed through RMS.

(x) Determination of eligibility in case of products requiring BIS License: In

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case the bid requires availability of BIS License, bidder has to upload currently valid and operative BIS License copy (Valid on the date of bid opening) to be considered eligible. Submitted BIS License may be in the name of Bidder / OEM or in the name of the Manufacturer to whom the OEM has outsourced manufacturing of his brand of product. The name of the Brand of the offered product should be mentioned in the BIS License. BIS certificate issued under Compulsory registration Scheme for electronic products to OEM/Brand owners for the products marketed under their brand name wherein their products are manufactured at third-party manufacturing unit is valid and is allowed for participation in the bids floated on GeM. The Manufacturer's Authorization in all such cases wherein the manufacturing is done by a third party shall be issued by the Brand owner / OEM and not by the third-party manufacturing unit mentioned in the BIS certificate.

- (y) Bid Splitting: In case of critical / vital / safety / security nature of the item, and / or large quantity under procurement and / or urgent delivery requirements and / or inadequate vendor capacity, Buyer may decide to have more than one source of supply. In such cases Buyer may opt for Bid Splitting while creating the bid on GeM, clearly indicating the Bid Splitting ratio in which order will be split among L-1, L-2, L-3, etc. as per ratio of splitting pre- disclosed in the bid. After technical and financial evaluation, before splitting the quantity, it should be ensured by the Buyer that the L1 price is reasonable. After deciding the acceptable reasonable price, L1 would be awarded contract for at least the first / highest percentage indicated in the bid splitting ratio. For the rest of the bid quantity, the L-1 rates / lowest accepted rate will be counter offered to the next higher quoting bidder(s) for price matching. On acceptance of the counter offer, the order will be placed on next higher quoting bidder(s) for the respective percentage. In case of non- acceptance of the counter offer by the next higher quoting bidder(s), a similar offer shall be made to L3 and L4, and so on. In case counter offered rates are not accepted for ratio of splitting quantity as per bid document by any of the subsequent bidders, the left over quantity will be divided between bidders who have accepted the rates in the ratio of their originally allocated quantities subject to their confirmation and after getting consent on mutually agreed delivery schedule for the additional quantity.

5. Contract(s):

Following documents shall be construed to be part of the contract generated through GeM:

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- i. Scope of supply including price as enumerated in the Contract Document.
- ii. General Terms and Conditions (GTC).
- iii. Product / Service specific Special Terms and Conditions (STC).
- iv. Product / Track / Domain Specific STC of Particular Service including its SLA (Service Level Agreement)
- v. Bid / RA specific Additional Terms and Conditions (ATC).

The Terms and Conditions stipulated in STC & SLA will supersede those in GTC and Terms and Conditions stipulated in ATC will supersede those in GTC and STC in case of any conflicting provisions.

6. Prices:

- i. **Offer price on GeM portal:** The prices of the offered Goods or Services shall be firm and fixed at any point of time and shall be indicated in INR (₹) for each accounting unit. The Seller can choose to offer Goods or Services with uniform all inclusive unit price for deliveries at locations across India on All India basis or for specified locations selected at the time of product listing. As such, for supply of Goods contract, no additional charges such as local levies / transportation / loading unloading charges etc., shall be payable over and above the contract price. For selected freight intensive products, as notified on GeM, the Seller may quote unit price inclusive of GST with delivery charge(s) (including transportation, loading unloading and local levies) payable extra as defined in the relevant categories. In respect of items requiring installation and / or commissioning and other services (as indicated in technical details of the item), the charges for the same shall also be included in the offered price on GeM.

Once a Buyer carts a particular quantity of offered Goods / Service, during carting period as notified from time to time on GeM, rates for carted quantity, for that buyer, are frozen for the period as specified on the portal against any upward revision by seller. However, advantage of any downward revision in the offer price of carted item shall be automatically provided to the buyer.

By offering their product and fulfilling the basic need of regular updating of the stock on GeM as stipulated on the portal, the Seller agrees for the

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acceptance of the order placed through the Direct purchase and L1 purchase without any need for any acceptance or confirmation. The seller commits to hold the price and offer as valid till the date seller itself removes the product offer from GeM or changes the price in compliance with online price change guidelines / rule engines applicable in that category. The action as deemed fit may be initiated for the declining of the such orders as incident policy of the GeM.

- ii. **Offer price in e-bidding:** Bidder is required to indicate offer price in the price schedule as provided in the bidding document. Complete breakup of price as required must be indicated. However, evaluation of the bid shall be on the basis of total all inclusive, landed price at consignee destination (unless otherwise specified in the ATC).
- iii. **Offer price in RA:** Bidder is required to indicate total offer price. Evaluation of the bid shall be on the basis of total all inclusive, landed price at consignee destination (unless otherwise specified in the ATC). Successful bidder shall have to provide complete breakup of the quoted price in the required price bid format before award of contract.
- iv. **Transaction / Annual Milestone Charge:** Sellers / Buyers will have to pay Transaction Charge and / or Annual Milestone Charge, wherever applicable, as per extant Revenue Policy of GeM.

7. Performance Security and Performance:

- i. There shall be no Performance security requirement for contracts Placed under Direct Purchase / L-1 Purchase Option under Para (i) and (ii) of GFR rule 149.
- ii. In case of contracts placed following e-Bidding / RA, Performance Security valid for 2 months beyond the date of completion of all contractual obligations including warrantee obligations, will be obtained from the successful Bidder, for ensuring due performance of the contract. The Buyer has the option to select Performance Security up to 5% of the value of contract (as per GFR quantum of Performance Security should be between 3 % to 5 % of the value of contract). While finalizing e- Bid / RA, Buyer shall indicate the percentage (%) of Performance Security required to be submitted by successful bidders. In case of any extension of contract obligation period, the seller shall be liable to suitably extend the validity of the Performance Security.

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Such Performance Security must be submitted by Seller to the Buyer within 15 days of award of contract on GeM. The payments to the seller shall become due only after receipt of Performance Security by the Buyer and verification of its genuineness. No interest shall be payable upon the Performance Security / PBG or any other amounts payable by the Seller to the Buyer under the Contract.

If the Seller fails or neglects to observe or perform any of his obligations under the contract it shall be lawful for the Buyer to forfeit either in whole or in part, the Performance Security furnished by the Seller. If the Seller duly performs and completes the contract in all respects the Buyer shall, refund the Performance Security, as the case may be, to the Seller within 30 days of completion of all contractual obligations by the Seller.

8. Duties & Taxes:

- i. Offer Prices on GeM shall be on all inclusive basis i.e. including all taxes, duties, local levies / transportation / loading-unloading charges etc. In the case of Bid / RA, complete break-up of the quoted price in the required price bid format shall be furnished by the Bidder, before award of contract.
- ii. Any Statutory variation in the rate of GST, taking place between the Bid Submission by seller and Bid End Date, shall be to the Seller's account. Hence, Seller must ensure that any Statutory variation in the rate of GST till Bid End Date is duly incorporated in the bid submitted by the seller. In case seller fails to incorporate the same in bid, the seller will not be eligible for claiming any change in price due to such Statutory variation.
- iii. Statutory variation in the rate of GST, taking place between the Bid end date and the original / refixed delivery period, shall be to the Buyer's account. For claiming any change in price due to such Statutory variation, the seller shall have to lodge claim before the Buyer providing documentary evidence of change in rate of GST taking place after Bid end date and the date of supply within the original / refixed delivery period along with an undertaking that the provisions of anti-profiteering clause under GST Act have been complied with.

In respect of contracts awarded under Direct Purchase and L-1 purchase, Statutory variation taking place after date of award of contract shall only be admissible subject to submission of documentary evidence and anti-profiteering compliance certificate to the Buyer. Changing Seller's offered price on GeM portal immediately after any such change in GST rates is seller's responsibility and in case of failure on part of seller, no

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increase shall be admissible for such changes taking place before award of contract under Direct Purchase and L-1 purchase.

- iv. No increase in price on account of statutory increase in the rate of GST taking place during the period of delivery period extension with liquidated Damages shall be admissible. Nevertheless, the Buyer shall be entitled to the benefit of any decrease in price on account of reduction in GST taking place during extended delivery period.
- v. The Bill Form / On-line invoice shall be generated by the Seller which may inter-alia include the following confirmations from the Seller:
 - a. Certified that the Goods and Services Tax (GST) charged on this Bill is not more than what is payable under the provision of the relevant Act or the Rules made there under.
 - b. Certified that the goods on which GST has been charged have not been exempted under the GST Act or the rules made there under and the charges on account of GST on these goods are correct under the provisions of that Act or the Rules made there under.
 - c. Certified that the Seller is registered with above indicated GSTIN as dealer in the State where in their Billing address is located for the purpose of GST.
 - d. The seller shall provide an undertaking that the provisions of anti-profiteering clause under GST Act have been complied with.
- vi. The on-line bill form / invoice generated on GeM is not a replacement for the GST invoice. The proper GST invoice as per requirements of GST rules shall be sent by the seller to the buyer / consignee directly along with the Goods / Services as and when deliveries are made to the consignee.
- vii. Seller shall comply with all the necessary statutory compliances, including but not limited to, GST registration in line with the extant provisions of GST Act, providing GST invoices or other documentation as per GST Law relating to the supply of Goods or Services, uploading the details of the invoices, payment of taxes, timely filing of valid statutory returns for the tax period in the GST portal, etc.

In case the Input Tax Credit of GST is denied or demand is recovered from Buyer on account of any act/ omission of the Seller in this regard, the Seller shall be liable in respect of all claims of tax, penalty and / or interest, loss, damages, costs, expenses and liability that may arise due to such non-

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compliance. Buyer shall have the right to recover such amount from any payments due to the Seller or from Performance Security, or any other legal recourse from the said Seller. If any tax is required to be paid by the Seller in pursuance of any demand from tax authorities, on account of Seller's suppression of facts, fraud or willful misstatement of facts while offering the products or submitting the bids, then the same shall not be passed on to Buyer through debit notes or Invoices or Supplementary Invoices and the seller shall be solely liable for payment of the same.

9. Integrity Pact:

All the Users in GeM i.e. Seller as well as Buyer agree not to indulge in any corrupt practices including without limitation any activity or action to influence the transaction on any aspect of contract and commit to take all measures necessary to prevent corruption maintaining complete transparency and fairness in all activities related to GeM. Users agree to follow and adhere with the Integrity Pact guidelines provided on GeM Portal.

10. Guarantee and Warrantee:

- i. The Goods/Services supplied under the Contract(s) shall be in accordance with the contract specifications & quality and the Goods shall be brand new and have standard Guarantee/Warrantee for one year period from the date of final acceptance by the consignee unless otherwise specified in category specifications, specific Bid / RA. Seller, at the time of listing their product on GeM portal or offering their products against any Bid / RA, may accordingly provide longer Guarantee/Warrantee period (i.e. more than 1 year) and in such case, Guarantee/Warrantee period stipulation made in category specifications / Bid / RA document, shall prevail over standard Guarantee / Warrantee period of 1 year stipulated in these General Terms and Conditions.
- ii. Notwithstanding the fact that the Buyer or its Quality Assurance Officer may have inspected and/or approved / accepted the said Goods, it is further guaranteed that if during the said guarantee / warrantee period, the Goods be discovered not to conform to the requisite description and quality and/or not giving satisfactory performance or have deteriorated, and the decision of the Buyer in that behalf shall be final and binding on the Seller and the Buyer shall be entitled to call upon the Seller to rectify and/or replace the Goods or such portion thereof as is found to be defective by the Buyer within 7 days. Otherwise, the Seller shall pay to the Buyer such compensations that may arise by reasons of the warranty therein contained. In cases requiring Spares, the Seller guarantees that

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they will supply Spare Parts, if and when required on agreed basis for an agreed price for a minimum period of three years from the date of expiry of warrantee period (unless otherwise specified in STC / ATC). The agreed basis could be, including but without any limitation, an agreed discount on the published catalogue or an agreed percentage of profit on the landed cost. The aforesaid provisions made specifically for Goods, shall also be applicable for Services to the extent the same are practically possible.

11. Buyer / Consignee's Right of Rejection (Return Policy):

- i. The Goods delivered shall bear the self-certified Manufacturer's/Seller's Warranty/Guaranty. Buyer / Consignee shall have the right to inspect the supplied Goods themselves and/or through their appointed agency at consignee's own cost, at Consignee's site(s) after receipt and accept or reject on proper justification any consignment of the Goods received within a period of 10 days (unless otherwise specified in STC or ATC) of receipt of consignment of goods. The date of receipt shall be reckoned from the date of receipt of the Goods as notified in the Provisional Receipt Certificate (PRC) which will be issued online by consignee immediately after receipt of Goods.
- ii. In case of Service contract, the Buyer reserves right to reject the same in conformance with the terms and conditions of the agreed Service Level Agreement (SLA). However, such right to reject services offered by the Seller under the contract shall be exercised by the Buyer within 10 days (unless otherwise specified in STC or ATC) of the date of receipt of the Service. The date & time of start and completion of the Service, shall be indicated by the Seller while raising on- line invoice for a specified period of Service as per Service Level Agreement (SLA). The date of such invoice or the date of completion of the service, whichever is later shall be reckoned as date of receipt of the Service.
- iii. On Acceptance / Part Acceptance or Rejection of Goods / Services, Consignee will issue an online 'Consignee's Receipt cum Acceptance Certificate' (CRAC), which will form the basis of Payments to the Seller.
- iv. No payment shall be made for rejected goods or services. After intimation of the rejection / part rejection by the Buyer/ Consignee, the Seller shall be liable to remove / lift back such rejected Goods within 10 days without any extra charge/cost to the Buyer / Consignee failing which suitable ground rent / warehousing charges would be payable by the Seller to the Buyer /Consignee. If the Seller fails to remove / lift back such rejected Goods

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within reasonable time period, the Buyer / Consignee shall have the right to dispose off such rejected goods at the risk and cost of the seller.

12. Payment Authority and Payment Terms:

Payments shall be made to the Seller in the manner below:

i. For Goods:

In case of goods, 100% payment will be released within ten (10) days of issue of consignee receipt-cum-acceptance certificate (CRAC) and on-line submission of bills unless otherwise specified in STC / ATC.

ii. For Services:

In case of services, 100% payments on the basis of monthly (unless otherwise specified) bills will be paid within ten (10) days of issue of consignee receipt- cum- acceptance certificate (CRAC) and on-line submission of bills unless otherwise specified in STC / ATC.

13. Terms of Delivery:

All the Goods or Services in the GeM shall be offered on Free Delivery at Site basis including loading/unloading. In respect of items requiring installation, commissioning and other services in the scope of supply (as indicated in respective product category specification / STC / ATC), the cost of the same shall also be included in the offer price.

14. Delivery Period

Seller shall indicate the quantity which can be supplied over the specified time period(s). The Seller would offer these details, which would constitute the part of the awarded Contract(s) in the GeM and would make a binding Contract between the Seller & the Buyer. Any modification thereto shall be mutually agreed and incorporated in the Contract. This Delivery Period/Time shall be deemed to be essence of the Contract and delivery must be completed not later than such date(s).

15. Extension of Delivery Period and Liquidated Damages:

Buyer may, on the request of the Seller or otherwise, extend the delivery date suitably subject to the following conditions:

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- i. The original Delivery Period may be re-fixed by the Buyer without any Liquidated damages subject to Force Majeure conditions mentioned below and also on the ground/reasons of delay attributable to the Buyer / Consignee.
- ii. For other cases, provided the price trend is not lower, the Delivery Period may be suitably extended for which an amount equal to the Liquidated Damages for the extended period(s) for delay in the supply of the Goods/Services after the expiry of contract delivery period /re-fixed delivery period, shall be recovered from the Seller as mentioned hereinafter for the extended period. No increase in price on any ground after the original/re-fixed delivery date shall be admissible during such extended period(s). Nevertheless, the Buyer shall be entitled to the benefit of any decrease in price on account of reduction in GST taking place during extended delivery period.
- iii. **Liquidated Damages:** If the Seller/Service Provider fails to deliver any or all of the Goods/Services within the original/re-fixed delivery period(s) specified in the contract, the Buyer will be entitled to deduct/recover the Liquidated Damages for the delay, unless covered under Force Majeure conditions aforesaid, @ 0.5% of the contract value of delayed quantity per week or part of the week of delayed period as pre-estimated damages not exceeding 10% of the contract value of delayed quantity without any controversy/dispute of any sort whatsoever.
- iv. **Force Majeure Conditions:**
If at any time during the continuance of the Contract, the performance in whole or in part by either party of any obligation under this Contract shall be prevented or delayed by the reasons of any war, hostility, acts of the public enemy, epidemics, civil commotion, sabotage, fires, floods, explosion, quarantine restrictions, strikes, lockouts or act of God (but not including negligence or wrongdoing, predictable/seasonal rain) provided notice of happening of such event duly evidenced with documents is given by one party to the other within 10 days from the date of occurrence thereof, neither party shall be by reasons of such event, be entitled to terminate the Contract nor shall either party have any claim for damages against the other in respect of such non-performance or the delay in performance, and deliveries under the contract shall be resumed as soon as practicable after such event has come to an end or ceased to exist, and the decision of the Buyer as to whether the deliveries have been so resumed or not, shall be final and conclusive, Provided further that if the performance in whole or

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part of any obligation under this contract is prevented or delayed by reason of any such event for a period exceeding 90 days, either party may at its option terminate the contract provided also that the Buyer shall be at liberty to take over from the Seller at a price to be fixed by Buyer, which shall be final, all unused, undamaged and accepted material, bought out components and Goods in course of manufacture in the possession of the Seller at the time of such termination or such portion thereof as the Buyer may deem fit excepting such materials, bought out components and Goods as the Seller may with the concurrence of the Buyer elect to retain.

16. Dispute resolution between the buyer and the seller / service provider

a) In case of order/ contracts placed without Bid / Reverse Auction (i.e. Direct Purchase, L1 Purchase, Push Button Procurement, etc.):

- i. In the event of any conflict or dispute arising out of or in connection with the Contract placed through GeM, the Parties shall endeavor to settle such disputes amicably. If a dispute is not resolved within 30 (thirty) days after a written notice of any dispute by one Party to the other, the same shall then be resolved through the mechanism of a Dispute Resolution Committee. This Dispute Resolution Committee shall comprise of representatives of both the Buyer and the Seller / Service Provider and shall be chaired by the Primary User of the Buyer organization/department or any other person as authorized by the Primary User.
- ii. If the Dispute Resolution Committee is not able to resolve the matter within 30(thirty) days of its formation, the dispute shall be dealt with in accordance to “**Guidelines for Arbitration and Mediation in Contracts of Domestic Public Procurement**” issued by Department of Expenditure via OM No. F.1/2/2024-PPD dated 03.06.2024, as amended from time to time.

b) In case of contracts placed through Bid / Reverse Auction:

Method of dispute resolution will be as per the option(s) selected by buyer while creation of the bid itself in line with “**Guidelines for Arbitration and Mediation in Contracts of Domestic Public Procurement**” issued by Department of Expenditure via OM No. F.1/2/2024-PPD dated 03.06.2024, as amended from time to time.

- c) The Contract shall be interpreted and governed in all respects in accordance with the laws of India. All disputes in connection with or arising out of the Contract, shall be subject to the exclusive jurisdiction of the Court within the local limits of whose jurisdiction principal place of business of the Buyer department / organization is located.

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- d) Both the Parties understand and agree that GeM being an Intermediary cannot be made a party to any dispute in connection with or arising out of the Contract and/or mediation / arbitration / Court proceedings between the Parties.

17. Laws Governing the Contract:

- i. The contract shall be governed by the laws of India for the time being in force.
- ii. Irrespective of the place of delivery, the place of performance or the place of payment under the contract, the contract shall be deemed to have been made at the registered address of the Buyer and / or Primary Buyer.
- iii. Jurisdiction of Courts: The courts of the place from where the contract has been made shall alone have jurisdiction to decide any dispute arising out of or in respect of the contract.
- iv. GeM SPV would not be a party to any such litigation.
- v. In case any Seller / Service provider makes GeM a party / respondent in any case involving any dispute between Buyer and Seller arising out of a concluded contract or arising out of bidding process initiated / concluded by the Buyer on GeM, it would be obligatory on the part of the Buyer to represent GeM also through their Counsel / Lawyer in the proceedings before the legal authority and ensure timely filing of replies / affidavits, etc. provided by GeM also through their Counsel / Lawyer before the concerned legal authority during the course of litigation. A standard reply on behalf of GeM, covering following aspects shall be incorporated in all replies / affidavits filed by the Buyer in such cases:

“Government EMarketplace is a National Public Procurement Portal; an end-to-end online Marketplace for Central and State Government Ministries / Departments, Central & State Public Sector Undertakings (CPSUs & SPSUs), Autonomous institutions and Local bodies, for procurement of common use goods & services. Prima facie, the dispute in the present case appears to be between the Buyer and Seller arising out a contract placed / bid created by the Buyer on Government EMarketplace. As per Clause 16, Clause 17 and Clause 22 of the General Terms and Conditions of Government EMarketplace (duly accepted by the Buyer and Seller), GeM is not to be made a party to any dispute between the Buyer and the Seller. As such Government EMarketplace is liable to be deleted from the array of parties.

In light of the above, we request your goodself to kindly delete Government EMarketplace from the array of parties.”

18. Limitation of Liability:

In any event, neither party shall be liable for any special, incidental, punitive, exemplary or consequential damages arising out of or in connection with the Contract entered between the parties. The aggregate liability of either party, whether under the contract, in tort or otherwise, shall not exceed the total contract value, provided that this limitation shall not apply to:

- (i) Any obligation or claim arising out of or in connection with any third party claim of IPR infringement,
- (ii) In the event of any gross negligence or willful misconduct on part of either party, as finally judicially determined by a court of competent jurisdiction.

19. Termination for Default:

If the seller does not perform its obligations within the Delivery Period / Date mentioned in the Contract, the same would constitute the breach of the Contract and the Buyer shall have the right to Cancel or Withdraw the Contract for the unsupplied portion after the expiry of the original, extended or re-fixed delivery date or period stipulated in the Contract. Such cancellation of contract on account of non - performance by the Seller would entitle the Buyer to forfeit the performance security besides other actions such as downgrading the Seller's rating or debarment from the GeM for specified period as decided by GeM on merits.

20. Closure of Transaction:

After satisfactory completion of all the obligations under the Contract and release of payments for the goods / services, the transaction shall be treated as closed.

21. Grounds for Administrative Action

- i) Administrative actions may be taken by GeM against the Buyer or the Seller either suo-moto on the basis of the platform mechanisms identified through analytics or on the basis of a complaint or report made to GeM by any stakeholders or any third party information or upon Court order, inter –alia, for non-adherence to the GeM Website Policies including Terms and Conditions and the Incident Management Policy published on the GeM Website.
- ii) The Seller would be liable for administrative actions such as suspension / debarment / removal from GeM, if they fail to abide by any of the Website

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Policies including the terms & conditions stipulated in this document and/or on anyone or more of the following grounds:

- (a) Listing the products/services not in the relevant categories and/or listing the same with vague/conflicting product specifications/details and irrelevant product photographs.
- (b) Offering Goods / Services without having proper authorization
- (c) Supplies goods of inferior/ substandard quality
- (d) Supplies or offers to supply refurbished or counterfeit or fake products
- (e) Withdraws or modify or impairs or derogates from the bid in any respect within the period of validity of its bid;
- (f) Seller furnishes inaccurate, false, misleading or forged or fails to furnish any information / documents, within the prescribed time limits, to GeM or to a Buyer, including during e-Bidding/ RA process;
- (g) Fails to furnish requisite performance security within stipulated time required as per e-bid / RA conditions;
- (h) Fails to update GeM about any change in information furnished within the prescribed time limits;
- (i) Executes services without conforming to requirement given in Service Level Agreement (SLA);
- (j) Fails to execute an order/ contract or fail to execute it satisfactorily
- (k) Is declared bankrupt or insolvent;
- (l) Fails to produce the requisite documents/ information during the course of inspection / assessment at any stage;
- (m) Performs any activity which is listed as prohibited activities on GeM.
- (n) On any other ground for which, in the opinion of GeM, the retention of the seller or any of its offered product in GeM is not in Public Interest.

Note: The grounds mentioned above are illustrative only. Users are also advised to read the list of prohibited activities published on the website.

- iii) Notwithstanding anything contained in the GTC, GeM reserves the right to cancel or annul the registration of any Seller or remove any of the Good/Services listed by a Seller on the GeM Website to comply with any provision of the Applicable Laws and / or Court Orders.

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- iv) GeM may take an administrative action in terms of the GeM Website Policies against a Buyer which may include reporting of any breach or misconduct to the Buyer Primary User and/or to the competent authority and GeM reserves the right to review the rating of such Buyer, and / or block Buyer's account for such time as considered appropriate by GeM.
- v) The Seller and the Buyer understands that the grounds for administrative action as provided under the Contract are only indicative and additional grounds may be provided under the GeM Website Policies including the Incident Management policy. The Seller/ Buyer warrants to abide by all additional grounds as may be specified by GeM in the GeM Website Policies from time to time.

22. Role of Government EMarketplace - Gem SPV

Government EMarketplace – GeM SPV is the owner of the GeM portal which monitors and supervises all the business transactions on the portal. The role and responsibilities of the company are as under:

- 22.1 To develop, operate and maintain technology driven e-marketplace, through a Managed Service Provider (MSP), to be used by government agencies for procurement of various goods and services in a transparent and efficient manner.
- 22.2 Overall supervision and monitoring of GeM portal operations, policy management, finalization and implementation of various business processes and work flows in adherence with the applicable law and executive orders issued from time to time . To provide tools for on-line Bidding, on-line Reverse Auction and Business Analytics Tools on GeM.
- 22.3 To work continuously for improvements in the Business Processes and Work Flows for various activities / functions on GeM based on feedback from various stakeholders to enhance transparency, efficiency, competitiveness, equality, economy in procurement of goods and services by government agencies.
- 22.4 To finalize General Terms and Conditions for sale and purchase of Goods and Services on GeM, Product / Service Specific Special Terms and Conditions, Special Terms and Conditions for Bunching of Goods / Services, Bid Specific Special Conditions, Project Specific Special Conditions etc.
- 22.5 To finalize, upload and approve Technical Specification Frameworks for various item / service categories on GeM and to monitor conformity of offered products to the larger framework so finalized

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and uploaded.

- 22.6 To decide addition / deletion of any of the offered product(s)/Product category (ies) and their framework of technical parameters on GeM.
- 22.7 To work and co-ordinate with different Organizations/Departments / Agencies for integration of their Databases with the GeM portal on real time basis for the purpose of verification/authentication of data entries made by stakeholders.
- 22.8 To offer and manage Demand Aggregation services for identified categories across buyers with assured reasonability of price, recommending for placement of orders by individual buyers
- 22.9 To co-ordinate with MSP for conducting workshops for the various Stakeholders in capacity building and in change management associated with the implementation of technology enabled procurement process.
- 22.10 To monitor MSP that the Buyers, Sellers and Service Providers are being assisted properly by them to onboard their goods and services on the GeM platform.
- 22.11 To identify and offer services of 3rd parties for Vendor Assessment relating to technical, financial capacity, past experience of sellers including manufacturing / testing facilities / quality control arrangement(s) of manufacturing premises and/or any of the premises related to manufacturing process of products / services offered by the seller / service provider on GeM.
- 22.12 To identify and offer services of 3rd parties for testing and certifying the quality of the product offered/ supplied, through documents, test reports/ certificates, testing at any independent lab or through inspection/testing by its authorized representative/s at firm's premises or at user's premises, that buyer choose to use.
- 22.13 Overall monitoring and management of Call Centre/Help desk operations being provided by the MSP.
- 22.14 Removal / debarring the Sellers/Buyers and Goods / services in GeM.
- 22.15 Management of complaints and their redressal mechanism in GeM (not disputes related to concluded contracts).
- 22.16 To identify, integrate and manage MoUs with verifying, certifying and validating entities across government(s) and also professional agencies to reinforce the online paperless, contactless and cashless system on GeM.

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- 22.17 To issue Notices, Circulars, News, Flashes, Updates etc in GeM
- 22.18 Reporting and MIS mechanism in GeM
- 22.19 Any other related activities in the GeM
- 22.20 In exceptional circumstances, for ensuring propriety of procurement processes or to obviate possible misuse of GeM functionalities, GeM SPV as GeM Admin may keep any Bidding / RA process on hold for some time as considered appropriate.
- 22.21 To take approved User Charges from Buyers and Sellers for the various transactions on the GeM portal as decided and notified on the GeM portal.

23. Miscellaneous Provisions

- 23.1 **Assignment:** Users understand and agree that the GTC, STC and ATC provisions, rights and obligations granted by GeM are non-transferrable or assignable by the User to any third party, without the prior written consent of GeM.

If same is permitted by GeM, all the conditions, rights and obligations of the GTC or any on-going STC/ATC shall also be binding upon such third party assignee besides the User.

- 23.2 **Indemnification:** The Seller shall at all time indemnify Buyer against all suits and claims which may be made in respect of the goods/services for infringement of any right protected by patent, registration of designs or trade mark. Provided always that in the event of any claim and suit in respect of alleged breach of patent, registered designs or trade-mark being made against the Buyer, the Buyer shall notify the Seller/ Service Provider of the same who shall at its own expense either settle any such dispute or conduct and litigation that may arise there from.

Buyers and Sellers agree to indemnify, defend and hold harmless GeM, its officials, Managed Service Provider (herein after individually and collectively referred to as "indemnified parties") from and against any and all losses, liabilities, claims, suits, proceedings, penalties, interests, damages, demands, costs and expenses (including legal and other statutory fees and disbursements in connection therewith and interest chargeable thereon) asserted against or incurred by the indemnified parties that arise out of, result from, or in connection with

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- 23.2.1 Breach of the contract(s); or
- 23.2.2 Any claims made by any third party due to, or arising out of, or in connection with, use of the Website; or
- 23.2.3 Any claim made by any third party regarding content/information or materials provided by Seller cause any damage to a third party; or arising out of, or in connection with, use of the Website.
- 23.2.4 Violation of any intellectual property rights or any other rights.

Once GeM notifies the Buyer/ Seller of such claims, they shall defend and indemnify GeM for the same. Further, in no case they shall compromise or settle any claim or admit any liability on the part of GeM without the express or prior written consent of GeM which can be withheld or denied or modified by GeM in its sole discretion or as per the Applicable Laws.

23.3 Severability: If due to any change in Applicable laws, certain part of the GTC or any applicable STC or any provisions of the GeM policies or portions thereof, becomes unenforceable, the remaining provisions shall continue in full force and effect so as to give effect to the intent of the parties.

23.4 Website Terms and Policies Updation: Buyers and Sellers are advised to check the website terms and conditions as well as policies such as Privacy Policy and the Website Disclaimer at all times, as GeM may update the Website and such terms from time to time.

23.5 List of Prohibitive Activities (Suggestive and Non-Exhaustive):

LIST OF PROHIBITIVE ACTIVITIES: The following is an indicative list of prohibitive activities which the Buyers and the Sellers registered on GeM platform shall not perform on the GeM platform. A breach of any of the prohibited activities shall give the right to GeM under the Applicable Laws or in terms of these GTC or the GeM Website Policies to take administrative action which may include partial or permanent disabling of account on GeM Website, debarment etc. Additionally, GeM may remove any non-compliant information and reserves the right to preserve and share with the appropriate authority such information and associated records for investigation purposes. The Buyer and the Seller understand that this list is only indicative and additional activities may be prohibited under the GeM

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Website Policies. The Buyers and the Sellers shall undertake to provide their full support that may be required by GeM for removal and disabling of the non-compliant information. The prohibited activities include:

- (i) Indulging in cyber-crime or other criminal activities which can become a threat to GeM, GeM Website, to the Government of India or to any State Government or Government Agency.
- (ii) Advertising, exhibiting, representing, publishing, pronouncing, listing, delivering, offering to sell or selling any kind of Goods/Services which can cause any kind of infringement or disparagement of intellectual property rights.
- (iii) Selling refurbished, counterfeit and/or fake Goods / Services under a brand or misusing others brand name.
- (iv) Offering to sell or selling above the MRP any Goods or misrepresenting the MRP.
- (v) Delivering some other Goods or Services instead of the Goods or Services Contracted for or delivering empty parcels or used Goods in breach of the terms of the Contract.
- (vi) Offering to sell or selling freebies which are 'Not for sale' Goods.
- (vii) Listing of the Goods on GeM Website without authorization to sell Goods manufactured by the OEM in open market or without proper authorization, if any required, for providing the Service.
- (viii) Listing of the Goods or Services is done on GeM Website without guarantee/warranty or without a genuine guarantee/warranty.
- (ix) Listing of the Goods or Services in irrelevant or inappropriate categories or with vague or conflicting specifications or description (including descriptive or pictorial description).
- (x) The Buyer /Seller registering on GeM and/or offering or buying the Goods and/or Services and/or participating in e-bidding/reverse auction on GeM, without the requisite authorization to enter into contract on behalf of the concerned legal entity. Failing which such individual(s) shall be individually liable for its actions and also for any liability arising out of such actions.
- (xi) If any Seller has been debarred from GeM then such Seller or their authorized sellers shall also not be permitted to register and offer/sell their products on GeM and / or participate in Bids / RA on GeM.
- (xii) Using GeM prices for making procurement outside GeM Portal.

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- (xiii) Splitting of demands by creating multiple Bids/RAs of same goods / services or making repeated procurements of same goods/services through Direct Purchase / L-1 buying as per rule 149(i) and 9(ii) of GFR- 2017.
- (xiv) Uploading goods / services containing information that —
 - (a) Belongs to another person and to which the user does not have any right to;
 - (b) Is grossly harmful, harassing, blasphemous, defamatory, obscene, pornographic, paedophilic, libellous, invasive of another's privacy, hateful, or racially, ethnically objectionable, disparaging, relating or encouraging money laundering or gambling, or otherwise unlawful in any manner whatever;
 - (c) Harm minors in any way;
 - (d) Infringes any patent, trademark, copyright or other proprietary rights;
 - (e) Violates any law for the time being in force;
 - (f) Deceives or misleads the addressee about the origin of such messages or communicates any information which is grossly offensive or menacing in nature;
 - (g) Impersonate another person;
 - (h) Contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer resource;
- (xv) Threatens the unity, integrity, defence, security or sovereignty of India, friendly relations with foreign states, or public order or causes incitement to the commission of any cognizable offence or prevents investigation of any offence or is insulting any other nation.
- (xvi) Achieving or trying to achieve illegal access to features on GeM Website not specifically authorized or exceeding the scope of authorized access to or other features of the GeM Website;
- (xvii) Obstructing or causing GeM to lose (in whole or in part) the services provided by any internet service provider ("ISPs") or carrying out any cyber security incident;
- (xviii) Sending unsolicited emails, bulk messaging, auto messaging, junk email, spam and like.

24. Incident management Policy on GeM:

GeM is a trust based system and self- declaration is the key, along with a strong automated process to penalize any deviant behaviour on part of Sellers / Buyers. For this purpose, deviations from the terms and conditions of procurement on GeM, including general terms and conditions, special and additional terms and conditions and any other relevant Government rules and guidelines, are termed as “deviation”. A deviation can occur while listing the products on GeM, at pre- contract stage, during bidding or at post contract stage on GeM. The mechanism for reporting and initiating action on such deviation has been detailed in the Incident Management Policy available on GeM portal under Resources. All stakeholders of GeM shall be bound by the actions as detailed in the Incident Management Policy.

All administrative actions under this Incident management Policy, taken by GeM against any of the stakeholders shall not cause any limitation on the legal and/or contractual remedies including any financial recoveries, available to Buyers/Sellers under the Terms and Conditions of contract and / or GeM policies. In case the Buyer / Seller choose to pursue any of these remedies, GeM shall not be made party to such proceedings /remedial actions taken by Buyer/Seller under the contractual provisions.

If any individual has registered multiple proprietorship concerns as separate seller entities on GeM under different business names (with same PAN), all such Seller entities would be equally impacted by the action taken against any one of such entities for his default / deviation under incident management policy.

All the allied firms, as per definition of DOE’s OM number F.1/20/2018-PPD dated 02/Nov/2021, will be equally impacted by the action taken against any one of such entities for the default / deviation under Incident Management Policy.

Following is the definition of allied firms:

All concerns which come within the sphere of effective influence of the debarred firms shall be treated as allied firms. In determining this, the following factors may be taken into consideration:

- a. Whether the management is common.
- b. Majority interest in the management is held by the partners or directors of banned / suspended firm.

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- c. Substantial or majority shares are owned by the banned/ suspended firm and by virtue of this it has a controlling voice.
- d. Directly or indirectly controls or is controlled by or is under common control with another bidder.
- e. All successor firms will also be considered as allied firms.

25. Use of Aadhaar Number in GeM:

Purpose of the Aadhaar authentication in GeM is to identify the user using eKYC. GeM has provisioned the option for Sellers and Buyers to provide virtual Aadhaar ID instead Aadhaar number. GeM receives First Name, Last Name, Mobile Number, Email ID, DOB and Gender details. It is used to link the mobile number with the user who is registering on GeM; on which subsequently OTP is sent for achieving the property of non-repudiation in different artefacts / documents generated on GeM. GeM has provisioned an alternative Identity Information option through PAN based verification to Sellers.

26.Compliance of Restrictions under Rule 144 (xi) of GFR 2017 as per DOE Order (Public Procurement No.4) dated 23.02.2023 (as amended from time to time)

Restrictions on procurement from a bidder of a country which shares a land border with India

- I. a) Any bidder from a country which shares a land border with India will be eligible to bid in this tender, whether of goods or services (including consultancy services and non-consultancy services), only if the bidder is registered with the Competent Authority.
b) Further, any bidder (including an Indian bidder) who has a Specified Transfer of Technology (ToT) arrangement with an entity from a country which shares a land border with India will be eligible to bid in any procurement whether of goods or services (including consultancy services and non-consultancy services) only if the bidder is registered with the Competent Authority.
- II. The requirement of registration for bidders covered by I (b) above will be applicable for all procurements where bids are issued / published after 01.04.2023.
- III. "Bidder" (Seller / Service Provider) means any person or firm or company, including any member of a consortium or joint venture (that is

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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.

- IV. "Bidder (or entity) from a country which shares a land border with India" for the purpose of the 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
- V. The beneficial owner for the purpose of (iv) above will be as under
1. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means. Explanation—
 - a. "Controlling ownership interest" means ownership of or entitlement to more than twenty-five per cent. of shares or capital or profits of the company;
 - b. "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;
 2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;
 3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of

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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.
- VI. An Agent is a person employed to do any act for another, or to represent another in dealings with third person.
- VII. The registration shall be valid at the time of submission of bid and at the time of acceptance of bid.
- VIII. If the bidder was validly registered at the time of acceptance / placement of order, registration shall not be a relevant consideration during contract execution.
- IX. “Transfer of Technology” means dissemination and transfer of all forms of commercially usable knowledge such as transfer of know-how, skills, technical expertise, designs, processes and procedures, trade secrets, which enables the acquirer of such technology to perform activities using the transferred technology independently.

Any false declaration and non-compliance of the above would be a ground for debarment and further legal action in accordance with law.

27: Caution Money Deposit:

- (i) All sellers on GeM are required to deposit a one-time amount as under as caution money:
1. Seller Turnover less than 1 Crore: ₹ 5,000/-
 2. Seller Turn over > 1 Crore but < 10 Crore: ₹ 10,000/-
 3. Seller Turn over > 10 Crore: ₹ 25,000/-
- (ii) The above caution money shall remain at the disposal of GeM SPV. This can be forfeited in part or in full (as per approval of CEO (GeM)) in following circumstances:

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- (a) Failure of the seller in executing any GeM contract or if the Seller fails or neglects to observe or perform any of his obligations under the contract (applicable only in respect of contracts that did not have provision of Performance Security).
 - (b) Withdraws any bid submitted on GeM within the period of validity of the bid.
 - (c) Fails to furnish requisite performance security as per GeM e-bid / RA conditions.
- (iii) In case the Caution Money of any seller is forfeited in full or part and his caution money deposit goes below the threshold indicated in para 1 above, the seller account shall be put on hold till the seller re-coups the caution Money account to required value. Seller's stock will become zero for all categories and seller will not be allowed to update anything till the caution money is topped up to minimum required amount.
- (iv) Forfeiture of caution money as per above shall be over and above any other actions taken against such sellers as per GeM Incident Management Policy and shall be without any prejudice to the rights and remedies available to GeM and / or Buyer as per provisions of the relevant contracts.

28: CMS 3.0 and OEM - Reseller responsibility matrix:

GeM has implemented enhanced Catalogue Management System (CMS 3.0) on GeM Portal. The Primary Objective of CMS 3.0 is to offer higher level of ownership & accountability to OEMs & its approved Resellers while maintaining Efficiency, Transparency & Inclusiveness of GeM. Complete and detailed Obligations and Privileges matrix of the different stakeholders in different quadrants is given in CMS document available on GeM Portal and OEMs and Resellers are bound to operate on GeM in compliance with the CMS document as updated from time to time.

- 1. CMS Quadrant 1 (CMS Q1):** Product offers in categories under Q1 will be solely offered by GeM validated OEMs. OEM shall be exclusively responsible for maintaining currency and sanity of catalogue and its offer in the Market Place. OEM shall be absolutely and exclusively responsible and be legally liable for sanity and quality of offers including Warranty and After Sales Service obligations.
- 2. CMS Quadrant 2 (CMS Q2):** OEMs as well as pre-Authorized Resellers can offer products in Q2. OEMs shall operate Market Place

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subject to providing its complete list of Open market authorized sellers along with formal commitment to list and maintain all appropriate and current Product Catalogue for pairing by its Resellers. OEM shall be absolutely and exclusively responsible and be legally liable for sanity and quality of catalogues including Warranty and After Sales Service obligations. Authorize Resellers shall be responsible for Pairing their offer with the already existing Product Catalogue created by the OEM. However, resellers can Update their Offer Price, Stock and Delivery Locations solely at their own discretion and shall be solely responsible for the same.

- 3. CMS Quadrant 3 (CMS Q3):** Catalogue creation in categories under Q3 can be from OEMs and/or their Resellers concurrently. In case OEM has not created Product Catalogue, Resellers of OEMs are also permitted to do the same. However, OEM can manage resellers and catalogues (when registered on GeM and taken OEM Dashboard). Further, OEM shall be responsible for the following:

- Maintain the Catalogue by adding / updating the Products / Services, Specifications, MRP & Offers specific to Product / Service
- Provide list of all its resellers and shall respond as per Service Level commitments to queries relating to Product Specifications / Services and / or verification of a Reseller, failing which they shall own responsibility of all and every fall out, by any act of such Resellers and / or offer of an insane catalogue.
- Validating & verifying the Catalogue uploaded by Reseller
- Assume all responsibility and legal liability for sanity and quality of offers including Warranty and After Sales Service obligations

However, resellers can update their Offer Price, Stock and Delivery Locations solely at their own discretion and shall be solely responsible for the same.

- 4. CMS Quadrant 4 (CMS Q4):** Catalogue creation in categories under Q4 can be done by OEMs as well as by any Reseller also. However, OEM (when registered on GeM and taken OEM Dashboard) shall be responsible for Validating & verifying the Catalogue uploaded by Reseller, Maintaining the Catalogue by adding/updating the Specifications, MRP etc. specific to catalogue. However, there is no

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requirement of any endorsement or authorization of the reseller by the OEM. Resellers can Update their Offer Price, Stock and Delivery Locations solely at their own discretion and shall be solely responsible for the same. Reseller will also be responsible for providing Replacement Warranty in case of Q4 products and Buyer shall not be required to take up with OEM for any warranty claims.

- 5. CMS (Special Category):** The Special Category is a specialized segment outside the four quadrants for select few categories that require a customized behavior such as Self-Help Groups (SHG) categories.

In Q3 and Q4, in case of re-sellers, if the reseller has not been approved as an authorized re-seller by the OEM on GeM, the re-seller is required to give an undertaking as under while uploading the product, while accepting any order and while participating in any bid:

“I hereby undertake that I have made arrangements for getting the stores from authorized distributor / dealer / channel partner of the OEM of the offered product. At the time of delivery of goods, I will provide necessary chain documents to prove that the supplied goods are genuine and are being sourced from authorized distributor / dealer / channel partner of the OEM. In case of any complaint from the Buyer / Consignee about genuineness of the supplied products, I shall be responsible for providing genuine replacement supplies.”

By uploading any product on GeM or accepting any order on GeM or by participating in any bid on GeM, the re-seller is deemed to have given above undertaking and is liable for compliance of the same.

Further in view of the on-line verification of Seller credentials by the OEM on GeM platform, there is no need for Buyer to ask for or insist on furnishing of OEM authorization in bids in respect of “OEM verified Catalogue” offered by "OEM Verified Reseller". OEM authorization is also not required to be sought and checked by Buyers in case of bids for products in Q1 or Q2.

29: One Bid per Bidder

A Bidder shall submit only one bid in a particular bidding process (unless otherwise allowed in the bid STC / ATC conditions). In case of a holding company having more than one independent manufacturing units or more than one unit having common business ownership / management, only one

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unit should quote. Similar restrictions shall apply to closely related sister companies. Bidder's sister/ Associated/ Allied concern(s) participating or applying against the same tender, shall lead to disqualification of Bidders. Sister / Associated / Allied concern means a company, society, partnership firm or proprietorship firm having one or more common persons as Director / Partner/ Member/ Owner. A Bidder who submits more than one bid will cause all the proposals submitted in the particular bid to be disqualified. In relation to the above, a person will include firm(s) of Proprietorship / Partnership Firm / Limited Liability Partnership / Private Limited / Limited company / Society registered under Society's Act / Statutory Bodies / any other legal entity, as the case may be, & will be deemed to have submitted multiple bids in a particular bid if a person bids in any of the two formats given below:

- i. individual or proprietorship format and/or
- ii. a partnership or association of persons format and/or
- iii. a company format

Whereby,

- A company shall for this purpose include any artificial person whether constituted under the Indian laws or of any other country.
- A person shall be deemed to have bid in a partnership format or in association of persons format if he is a partner of the firm which has submitted the bid or is a member of any association of persons which has submitted a bid.
- A person shall be deemed to have bid in a company format if the person holds:
 - i. More than 10% (ten percent) of the voting share capital of the company which has submitted a bid, or
 - ii. Is a director and / or Key Managerial Personnel of the company which has submitted a bid, or
 - iii. Holds more than 10% (ten percent) of voting share capital in and/or is a director and / or Key Managerial Personnel of a holding company of that company which has submitted the bid.

By making a bid pursuant to the Tender Documents, the bidder / tenderer shall be deemed to have declared that the bidder / tenderer has not made any other bid or multiple bids as understood or deemed in terms of this clause.

All the bids of a bidder who has submitted multiple bids, as per the clause, shall be rejected and Bid Security for all such bids shall be forfeited, not by way of penalty or liquidated damages but by way of reimbursement of the

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pre-estimated costs likely to be incurred by the buyer towards bidding process and in the scrutiny & evaluation of bids.

In addition to the above, bidders found to be in contravention to the said clause will be liable for administrative actions.

30: Push Button Procurement (PBP)

In line with Department of Expenditure OM No. F.6/7/2022-PPD dated 6th September, 2022, "Push Button Procurement (PBP)" for small value procurements will be available on GeM with the following conditions:

- a. PBP will be made only through bidding (PBP through Direct Purchase, L-1, Custom bid, etc. are not permitted).
- b. The total procurement value of the specific case is not to exceed ₹5,00,000 /- (inclusive of all taxes).
- c. PBP will be additional method of procurement and procuring entities are free to use or not to use this additional method of procurement.
- d. PBP method can be used only in case at least five bids are received. In case of less than five bids are received, the procurement is to restart using usual procurement method.
- e. Buyer is to ensure that no splitting of requirement is being done so as to bring procurement under PBP method.
- f. Once PBP bid is invited, contract will be placed directly without any human intervention (provided condition (d) above is complied).
- g. PBP will be permitted only for such categories, where at least ten sources are listed.

Push button procurement process is very simple and user friendly and mostly automated.

A) Buyer PB procurement:

- i. Buyer will select a product from marketplace, do product comparison, etc.
- ii. Thereafter instead of directly placing order on the L-1, the buyer will create a Push Button Procurement Notice by selecting the L-1 product which is otherwise eligible for L-1 purchase.
- iii. Clicking on "Create PBP Notice" will give an option to Buyer

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to decrease the quantity and delivery period at consignee level. This is enabled for Buyers to seek quotations for lower delivery periods and quantity lower than Minimum Order Quantity (MOQ) otherwise offered by the sellers in marketplace.

- iv. Per unit L-1 price will be set as ceiling price for that PBP Notice.

B) PBP Notice content and validations:

- i. The PBP Notice will contain all biddable specification parameters as per GeM category definition [excluding the text input parameters of the product chosen by Buyer, Consignee-wise Quantity and Consignee-wise Delivery Period.
- ii. Bunching of items is not allowed in PBP Notices.
- iii. The estimated all-inclusive bid value should be less than or equal to ₹ 5,00,000 based on the system identified L-1 price estimation for the quantity to be procured.
- iv. PBP Notice will include ONLY GeM GTC and category specific Special Terms and Conditions (STC), integrity pact, land border sharing countries declaration etc. Buyer is not allowed to push any new specification parameter or any Additional T&C.
- v. PBP Notice have participation time of 3 days and offer validity of 10 days.

C) Seller participation:

- i. PBP notices is published on GeM portal under a separate tab for anyone to see.
- ii. All sellers/service providers can view the PBP Notices created for their category in their dashboard.
- iii. By participating in PBP, Sellers unconditionally accept the GTC and STC, integrity pact, price declaration and other conditions part of the PBP Notice floated before participation.

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- iv. Sellers will offer their matching product and price against the PBP Notice by clicking on “Offer Price” and submission of price and compliance of T&C. This offer price will be applicable only for that PBP Notice.
- v. Seller/Service Provider can participate in a PBP Process only once and there is no option to withdraw.
- vi. PBP participation will be without EMD and against Bid Securing Declaration only.
- vii. Per unit price to be entered by the seller will have to be less than the L-1 price set as ceiling price in PBP Notice.

D) Procurement Decision:

- i. System/Buyer will open offers after PBP end date and time.
- ii. System will check if offers are received from at least 5 sellers offering products of at least two (2) different OEMs and total L1 value is less than or equal to ₹ 5,00,000/-.
- iii. Buyer will not get any access to see list of participating bidders or Seller details.
- iv. If all conditions as defined above are satisfied, system will automatically prompt Buyer to create order on L1 by providing details related to financial approval, paying authority and payment mode etc. as applicable to buyer.
- v. In case of multiple L1 System would place order on seller with maximum Seller Rating on GeM
- vi. If adequate number of offers are not received or total L1 value is more than ₹ 5,00,000/- system will cancel the PBP Notice. A message will be displayed to the buyer stating - Due to insufficient participation in the PBP, you cannot create an order against this PBP. You may go ahead and procure L1 in marketplace through L-1 Purchase after Comparing and verifying price reasonableness or create a regular bid / RA to get better response.
- vii. System will not allow same buyer to use PBP to BUY SAME

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ITEM in case of failure of the PBP for next 30 days.

- viii. System generated contract will have complete specification of the product offered by seller, Consignee-wise Quantity, Consignee- wise Delivery Period and GeM GTC and category specific STC etc.

*******END OF DOCUMENT*******