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General Conditions of Contract

(Common for Power Sector Regions)

2010

BHARAT HEAVY ELECTRICALS LIMITED

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CHAPTER -1

1. GENERAL INSTRUCTION TO TENDERERS

1.1. DESPATCH INSTRUCTION

- i) The General Conditions of Contract form part of the Tender specifications. All pages of the tender documents shall be duly signed, stamped and submitted along with the offer in token of complete acceptance thereof. The information furnished shall be complete by itself. The tenderer is required to furnish all the details and other documents as required in the following pages
- ii) Tenderers are advised to study all the tender documents carefully. Any submission of tender by the tenderer shall be deemed to have been done after careful study and examination of the tender documents and with the full understanding of the implications thereof. Should the tenderers have any doubt about the meaning of any portion of the Tender Specification or find discrepancies or omissions in the drawings or the tender documents issued are incomplete or shall require clarification on any of the technical aspect, the scope of work etc., he shall at once, contact the authority inviting the tender well in time (so as not to affect last date of submission) for clarification before the submission of the tender. Tenderer's request for clarifications shall be with reference to Sections and Clause numbers given in the tender documents. The specifications and terms and conditions shall be deemed to have been accepted by the tenderer in his offer. Non compliance with any of the requirements and instructions of the tender enquiry may result in the rejection of the tender.
- iii) Integrity pact (IP) shall be applicable for all tenders / contracts if indicated in NIT. This integrity pact shall be issued as part of the Tender documents and shall be returned by the bidder along with Techno-commercial bid duly filled, signed and stamped by the authorized signatory who signs the bid. Only those vendors / bidders who have entered into such an IP with BHEL shall be considered competent to participate in the bidding. Entering into this pact shall be a preliminary qualification.

1.2. SUBMISSION OF TENDERS

- i) The tenderers must submit their tenders to Officer inviting tender as per instructions in the NIT
- ii) Tenders submitted by post shall be sent by 'REGISTERED POST ACKNOWLEDGEMENT DUE / by COURIER' and shall be posted with due allowance for any postal/courier delays. BHEL takes no responsibility for delay, loss or non-receipt of tenders sent by post/courier. The tenders received after the specified time of their submission are treated as 'Late Tenders' and shall not be considered under any circumstances. Offers received by Fax/Email/Internet shall be considered as per terms of NIT.
- iii) Tenders shall be opened by authorised Officer of BHEL at his office at the time and date as specified in the NIT, in the presence of such of those tenderers or their authorised representatives who may be present
- iv) .Tenderers whose bids are found techno commercially qualified shall be informed the date and

time of opening of the Price Bids and such Tenderers may depute their representatives to witness the opening of the price bids. BHEL's decision in this regard shall be final and binding.

- v) Before tendering, the tenderers are advised to inspect the site of work and the environments and be well acquainted with the actual working and other prevalent conditions, facilities available, position of material and labour, means of transport and access to Site, accommodation, etc. No claim will be entertained later on the grounds of lack of knowledge of any of these conditions.

1.3. LANGUAGE

- i) The tenderer shall quote the rates in English language and international numerals. These rates shall be entered in figures as well as in words. For the purpose of the tenders, the metric system of units shall be used.
- ii) All entries in the tender shall either be typed or written legibly in ink. Erasing and over-writing is not permitted and may render such tenders liable for rejection. All cancellations and insertions shall be duly attested by the tenderer.

1.4. PRICE DISCREPANCY:

If there are differences between the rate given by the tenderer in words and figures or in amount worked out by him, the following procedure for evaluation and award shall be followed:

- i) When there is a difference between the rates in figures and in words, the rates which corresponds to the amounts worked out by the contractor, shall be taken as correct
- ii) When the amount of an item is not worked out by the contractor or it does not correspond with the rate written either in figure or in words, then the rate quoted by the contractor in words shall be taken as correct
- iii) When the rate quoted by the contractor in figures and words tallies but the amount is not worked out correctly, the rate quoted by the contractor shall be taken as correct and not the amount.
- iv) In case of lumpsum bids, if there is any difference between the amount in figures and in words, the amount quoted by the bidder in words shall be taken as correct.
- v) In case of omission in quoting any rate for one or more items, the evaluation shall be done considering the highest quoted rate obtained against the respective items by other tenderers for the subject tender. If the tenderer becomes L-1, the notional rates for the omission items shall be the lowest rates quoted for the respective items by the other tenderers for the subject job and the 'Total quoted price (loaded for omissions)' shall be arrived at. However the over all price remaining the same as quoted originally, the rates for all the items shall be reduced item wise in proportion to the ratio of 'Original' total price' and 'Total quoted price (loaded for omissions)''.
- vi) In case of Reverse Auction, no plea on account of omission of any rate shall be entertained by BHEL. The successful bidder shall undertake to execute the work as per overall price offered by him during the Reverse auction process. In case of omission of rates, the rates for all the items shall reduced item wise in proportion to the ratio of 'Total quoted price (loaded for omissions)' and price offered during Reverse Auction process. Total quoted price (loaded for omissions) shall be in line with the manner described in sl no v above

1.5. QUALIFICATION OF TENDERERS

- i) Only tenderers who have previous experience in the work of the nature and description detailed in the Notice Inviting Tender and/or tender specification are expected to quote for this work duly detailing their experience along with offer.
- ii) Offers from tenderers who do not have proven and established experience in the field shall not be considered
- iii) .Offers from tenderers who are under suspension (banned) by any Unit/Region/Division of BHEL

- iv) shall not be considered.
- iv) Offers from tenderers who do not comply with the latest guidelines of Ministry/Commissions of Govt of India shall not be considered.

1.6. EVALUATION OF BIDS

- i) Technical Bids submitted by the tenderer will be opened first and evaluated for fulfilling the Pre Qualification criteria and other conditions in NIT/Tender documents, based on documentary evidences submitted along with the offer
- ii) In case the same qualifying experience is claimed by more than one agency, then the agency who has executed the work as per documentary evidence submitted shall only be qualified. Scope of qualifying work should be totally with the agency who has executed and in case it is only labour+consumables without T&P, then the responsibility of execution is assigned to the first agency and not to the agency who has executed only as labour supply contractor. Further, BHEL reserves the right to ask for further proofs including submission of TDS certificates for the said job
- iii) In case the qualifying experience is claimed by private organizations based on Work Order and completion certificates from another private organization, BHEL reserves the right to ask for further proofs including submission of TDS certificates for the said job
- iv) Price Bids of shortlisted bidders shall be opened either through the conventional price bid opening or through electronic Reverse Auction, at the discretion of BHEL

1.7. DATA TO BE ENCLOSED

Full information shall be given by the tenderer in respect of the following. Non-submission of this information may lead to rejection of the offer.

- i) **INCOME TAX PERMANENT ACCOUNT NUMBER**
Certified copies of Permanent Account Numbers as allotted by Income Tax Department for the Company/Firm/Individual Partners, etc. shall be furnished along with tender.
- ii) **ORGANIZATION CHART**
The organization chart of the tenderer's organization, including the names, addresses and contact information of the Directors/Partners shall be furnished along with the offer.
- iii) An attested copy of the Power of Attorney, in case the tender is signed by an individual other than the sole proprietor
- iv) **IN CASE OF INDIVIDUAL TENDERER:**
His / her full name, address and place & nature of business.
- v) **IN CASE OF PARTNERSHIP FIRM**
The names of all the partners and their addresses, A copy of the partnership deed/instrument of partnership duly certified by the Notary Public shall be enclosed.
- vi) **IN CASE OF COMPANIES:**
- Date and place of registration including date of commencement certificate in case of Public Companies (certified copies of Memorandum and articles of Association are also to be furnished).
 - Nature of business carried on by the Company and the provisions of the Memorandum relating thereof.

1.8 AUTHORISATION AND ATTESTATION

Tenders shall be signed by a person duly authorized/empowered to do so. An attested copy of the Power of Attorney, in case the tender is signed by an individual other than the sole proprietor shall be submitted along with the tenders

1.9 EARNEST MONEY DEPOSIT

1.9.1 Every tender must be accompanied by the prescribed amount of Earnest Money Deposit (EMD) in the manner described herein.

- i) EMD shall be furnished along with the offer in full as per the amount indicated in the Special Conditions of Contract / NIT
- ii) EMD is to be paid in cash (as permissible under Income Tax Act), Pay order or Demand Draft in favour of 'Bharat Heavy Electricals Limited' and payable at Regional HQ issuing the tender.
- iii) No other form of EMD remittance shall be acceptable to BHEL
- iv) Bidder may opt to deposit "One Time EMD" of Rs. 2.0 lakhs (Rupees Two lakhs only) with BHEL:Power Sector Region HQ issuing the tender, which will enable them to participate in all the future tender enquiries in respect of Erection and Commissioning services issued from the respective office. Interested bidders may clearly send their consent for converting the present EMD into a "One Time EMD" in their offer.
 - Note : The 'One Time EMD' cannot be withdrawn by the tenderers within 3 years from the date of deposit, under any circumstances. The Tenderer who wishes to withdraw after three years will not be allowed to submit 'One Time EMD' again.
- v) Bidders who have already deposited such "One Time EMD" of Rs. 2.00 lakh are exempted from submission of EMD for this tender. However a copy of 'One Time EMD' certificate issued by BHEL Regional HQ issuing the tender shall be enclosed along with the offer.

1.9.2 EMD by the bidder will be forfeited as per Tender Documents if

- i) After opening the tender, the bidder revokes his tender within the validity period or increases his earlier quoted rates.
- ii) The bidder does not commence the work within the period as per LOI/Contract. In case the LOI / contract is silent in this regard then within 15 days after award of contract.

1.9.3 EMD shall not carry any interest.

1.9.4 In the case of unsuccessful bidders, the Earnest Money will be refunded to them within a reasonable time after acceptance of award by successful tenderer.

1.10 SECURITY DEPOSIT

1.10.1 Upon acceptance of Tender, the successful Tenderer should deposit the required amount of Security Deposit for satisfactory completion of work, as per the rates given below:

SN	Contract Value	Security Deposit Amount
1	Up to Rs. 10 lakhs	10% of Contract Value
2	Above Rs. 10 lakhs upto Rs.50 lakhs	1 lakh + 7.5% of the Contract Value exceeding Rs. 10 lakhs.
3	Above Rs. 50 lakhs	Rs 4 lakhs + 5% of the Contract Value exceeding Rs. 50 lakhs.

1.10.2 The security Deposit should be furnished before start of the work by the contractor.

1.10.3 Security Deposit may be furnished in any one of the following forms

- i) Cash (as permissible under the Income Tax Act)
- ii) Pay Order / Demand Draft in favour of BHEL.
- iii) Local cheques of scheduled banks, subject to realization.
- iv) Securities available from Post Offices such as National Savings Certificates, Kisan Vikas Patras etc. (Certificates should be held in the name of Contractor furnishing the security and duly pledged in favour of BHEL and discharged on the back).
- v) Bank Guarantee from Scheduled Banks / Public Financial Institutions as defined in the Companies Act. The Bank Guarantee format for SD shall be in the prescribed proforma (Format GCC-1).
- vi) Fixed Deposit Receipt issued by Scheduled Banks / Public Financial Institutions as defined in the Companies Act. The FDR should be in the name of the contractor, A/C BHEL, duly discharged on the back.
- vii) Security deposit can also be recovered at the rate of 10% from the running bills. However in such cases at least 50% of the Security Deposit should be deposited in any form as prescribed before start of the work and the balance 50% may be recovered from the running bills.
- viii) EMD of the successful bidder can be converted and adjusted against the cash portion of Security Deposit excepting for such bidders who have remitted One Time EMD.

NOTE: Acceptance of Security Deposit against Sl. No. (iv) and (vi) above will be subject to hypothecation or endorsement on the documents in favour of BHEL. However, BHEL will not be liable or responsible in any manner for the collection of interest or renewal of the documents or in any other matter connected therewith.

1.10.4 The Security Deposit shall not carry any interest.

1.10.5 In case the value of work exceeds / reduces from the awarded / accepted value, the Security Deposit shall be correspondingly enhanced / reduced as given below:

- i) The enhanced part of the Security Deposit shall be immediately deposited by the Contractor or adjusted against payments due to the Contractor.
- ii) There will be no reduction in Security Deposit value in case of variation in contract value upto the lower limit specified in Quantity variation clause. In case of reduction of contract value beyond the lower limit specified in Quantity Variation clause, then the Security Deposit shall be re adjusted in proportion.
- iii) In case of reduction, the reduced Contract value shall be certified by Site Engineer after ascertaining / freezing of BOQ / Drawings from the Design / Engineering Centre. The reduced SD value can only be considered after taking into account the cumulative liabilities of the Contractor to BHEL at that particular point in time, and the adequacy of the securities held by BHEL to meet such liabilities and the performance of the contract in general. In such cases, the revised value of SD shall be worked out only after execution of not less than the lower limit of the revised scope of work/contract value as per quantity variation clause, and as justified by the Site Engineer. This reduction in value of security deposit shall not entitle the contractor to any amendment of Contract and shall be operated at the discretion of BHEL
- iv) Contract value for the purpose of operating the reduced/increased value of Security deposit, shall be exclusive of Price Variation Clause and Over Run Compensation

1.10.6 The validity of Bank Guarantees towards Security Deposit shall be initially upto the completion period as stipulated in the Letter of Intent/Award + 3 months, and the same shall be kept valid by proper renewal till the acceptance of Final Bills of the Contractor, by BHEL

1.10.7 BHEL reserves the right of forfeiture of Security Deposit in addition to other claims and penalties in the event of the Contractor's failure to fulfil any of the contractual obligations or in the event of termination of contract as per terms and conditions of contract. BHEL reserves the right to set off the Security Deposit against any claims of other contracts with BHEL.

1.11 RETURN OF SECURITY DEPOSIT

Security Deposit shall be released to the contractor after deducting all expenses / other amounts due to BHEL under the contract / other contracts entered into with them on completion of the following:

- i) Submission of final bill in the prescribed format duly signed by the contractor along with 'No Claim Certificate' and 'Work Completion Certificate from BHEL Engineers and settlement of the bills by BHEL with respect to all liabilities of contractor to BHEL.
- ii) Submission of Clearance Certificates from Customer and from various Statutory Authorities viz. Labour Department, PF Authorities, Commercial Tax Department, etc.

1.12 BANK GUARANTEE

- i) It is the responsibility of the bidder to get the Bank Guarantees revalidated/extended for the required period (subject to a minimum period of six months), as per the advice of BHEL Site Engineer / Construction Manager. BHEL shall not be liable for issue of any reminders regarding expiry of the Bank Guarantees.
- ii) In case extension/further extensions of any Bank Guarantees are not required, the bidders shall ensure that the same is explicitly conveyed through the Construction Manager to Regional HQ issuing the tender
- iii) In case the Bank Guarantees are not extended before the expiry date, BHEL reserves the right to invoke the same by informing the concerned Bank in writing, without any advance notice/communication to the concerned bidder.
- iv) Bidders to note that any corrections to Bank Guarantees shall be done by the issuing Bank, only through an amendment in an appropriate non judicial stamp paper.
- v) Bidders to ensure that the Bank Guarantees submitted are exactly as per format given in the Tender documents.
- vi) The Original Bank Guarantee shall be sent directly by the Bank to BHEL under Registered Post (Acknowledgement Due), addressed to the Subcontracting Department of the respective Region.
- vii) Acceptance of Bank Guarantees shall be as per BHEL guidelines issued from time to time

1.13 VALIDITY OF OFFER

The rates in the Tender shall be kept open for acceptance for a minimum period of **SIX MONTHS** from the last date for submission of Tenders. In case BHEL (Bharat Heavy Electricals Ltd) calls for negotiations, such negotiations shall not amount to cancellation or withdrawal of the original offer which shall be binding on the tenderers.

1.14 EXECUTION OF CONTRACT AGREEMENT

The successful tenderer's responsibility under this contract commences from the date of issue of the Letter of Intent by Bharat Heavy Electricals Limited. The Tenderer shall submit an unqualified

acceptance to the Letter of Intent/Award within the period stipulated therein.

The successful tenderer shall be required to execute an agreement in the prescribed form, with BHEL, within a reasonable time after the acceptance of the Letter of Intent/Award, and in any case before releasing the first running bill. The contract agreement shall be signed by a person duly authorized/empowered by the tenderer. The expenses for preparation of agreement document shall be borne by BHEL.

1.15 REJECTION OF TENDER AND OTHER CONDITIONS

- 1.15.1 The acceptance of tender will rest with BHEL which does not bind itself to accept the lowest tender or any tender and reserves to itself full rights for the following without assigning any reasons whatsoever:-
- a. To reject any or all of the tenders.
 - b. To split up the work amongst two or more tenderers as per NIT
 - c. To award the work in part if specified in NIT
 - d. In case of either of the contingencies stated in (b) and (c) above, the time for completion as stipulated in the tender shall be applicable.
- 1.15.2 Conditional and unsolicited tenders, tenders containing absurd or unworkable rates and amounts, tenders which are incomplete or not in the form specified or defective or have been materially altered or not in accordance with the tender conditions, specifications etc., are liable to be rejected.
- 1.15.3 Tenders are liable to be rejected in case of unsatisfactory performance of the tenderer with BHEL, or tenderer under suspension (hold/banning /delisted) by any unit / region / division of BHEL or tenderers who do not comply with the latest guidelines of Ministry/Commissions of Govt of India. The decision of BHEL will be final in this regard.
- 1.15.4 If a tenderer who is a proprietor expires after the submission of his tender or after the acceptance of his tender, BHEL may at their discretion, cancel such tender. If a partner of a firm expires after the submission of tender or after the acceptance of the tender, BHEL may then cancel such tender at their discretion, unless the firm retains its character.
- 1.15.5 BHEL will not be bound by any Power of Attorney granted by changes in the composition of the firm made subsequent to the execution of the contract. They may, however, recognise such power of Attorney and changes after obtaining proper legal advice, the cost of which will be chargeable to the contractor concerned.
- 1.15.6 If the tenderer deliberately gives wrong information in his tender, BHEL reserves the right to reject such tender at any stage or to cancel the contract if awarded and forfeit the Earnest Money/Security Deposit/any other money due.
- 1.15.7 Canvassing in any form in connection with the tenders submitted by the Tenderer shall make his offer liable to rejection.
- 1.15.8 Should a tenderer in the case of a firm or company one or more of its

partners/shareholders/Directors have a relation or relatives employed in BHEL, the authority inviting tender shall be informed of the fact along with the offer as per Format GCC3. Failing to do so, BHEL may, at its sole discretion, reject the tender or cancel the contract and forfeit the Earnest Money/Security Deposit.

- 1.15.9 The successful tenderer should not sub-contract part or complete work detailed in the tender specification undertaken by him without written permission of BHEL. The tenderer is solely responsible to BHEL for the work awarded to him.
- 1.15.10 The Tender submitted by a techno commercially qualified tenderer shall become the property of BHEL who shall be under no obligation to return the same to the bidder. However unopened price bids and late tenders shall be returned to the bidders
- 1.15.11 Unsolicited discounts received after opening of Tender (Techno Commercial Bid) shall not be considered for evaluation. However, if the party who has submitted the unsolicited discount/rebate becomes the L-1 party, then the awarded price i.e contract value shall be worked out after considering the discount so offered.
- 1.15.12 BHEL shall not be liable for any expenses incurred by the bidder in the preparation of the tender irrespective of whether the tender is accepted or not.

CHAPTER-2

2.1 **DEFINITION:** The following terms shall have the meaning hereby assigned to them except where the context otherwise requires

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|-------|---|
| i) | BHEL shall mean Bharat Heavy Electricals Limited (of the respective Power Sector Region inviting the Tender), a company registered under Indian Companies Act 1956, with its Registered Office at BHEL HOUSE, SIRI FORT, NEW DELHI – 110 049, or its Power Sector Regional Offices or its Authorised Officers or its Site Engineers or other employees authorised to deal with any matters with which these persons are concerned on its behalf. |
| ii) | “EXECUTIVE DIRECTOR” or ‘GROUP GENERAL MANAGER’ or “GENERAL MANAGER (Incharge)” or “GENERAL MANAGER” shall mean the Officer in Administrative charge of the respective Power Sector Region. |
| iii) | “COMPETENT AUTHORITY” shall mean Executive Director or Group General Manager or General Manager (Incharge) or General Manager or BHEL Officers who are empowered to act on behalf of the Executive Director or General Manager (Incharge) or General Manager of BHEL. |
| iv) | “ENGINEER” or “ENGINEER IN CHARGE” shall mean an Officer of BHEL as may be duly appointed and authorized by BHEL to act as “Engineer” on his behalf for the purpose of the Contract, to perform the duty set forth in this General Conditions of Contract and other Contract documents. The term also includes ‘CONSTRUCTION MANAGER’ or ‘SITE INCHARGE’ as well as Officers at Site or at the Headquarters of the respective Power Sector Regions. |
| v) | “SITE” shall mean the places or place at which the plants/equipments are to be erected and services are to be performed as per the specification of this Tender. |
| vi) | “CLIENT OF BHEL” or “CUSTOMER” shall mean the project authorities with whom BHEL has entered into a contract for supply of equipments or provision of services. |
| vii) | “CONTRACTOR” shall mean the successful Bidder/Tenderer who is awarded the Contract and shall include the Contractor’s successors, heirs, executors, administrators and permitted assigns. |
| viii) | “CONTRACT” or “CONTRACT DOCUMENT” shall mean and include the Agreement of Work Order, the accepted appendices of Rates, Schedules, Quantities if any, General Conditions of Contract, Special Conditions of Contract, Instructions to the Tenderers, Drawings, Technical Specifications, the Special Specifications if any, the Tender documents, subsequent amendments mutually agreed upon and the Letter of Intent/Acceptance issued by BHEL. Any conditions or terms stipulated by the contractor in the tender documents or subsequent letters shall not form part of the contract unless, specifically accepted in writing by BHEL in the Letter of Intent/Award and incorporated in the agreement. |
| ix) | “GENERAL CONDITIONS OF CONTRACT” shall mean the ‘Instructions to Tenderers’ and ‘General Conditions of Contract’ pertaining to the work for which above tenders have been called for. |
| x) | “TENDER SPECIFICATION” or “TENDER” or “TENDER DOCUMENTS” shall mean General Conditions, Common Conditions, Special Conditions, Price Bid, Rate Schedule, Technical Specifications, Appendices, Annexures, Corrigendums, Amendments, Formats, Site information, |

	etc and drawings pertaining to the work for which the tenderers are required to submit their offers. Individual specification number will be assigned to each Tender Specification.
xi)	“LETTER OF INTENT” shall mean the intimation by a Letter/Fax/email to the tenderer that the tender has been accepted in accordance with provisions contained in the letter. The responsibility of the contractor commences from the date of issue of this letter and all terms and conditions of the contract are applicable from this date.
xii)	“COMPLETION TIME” shall mean the period by ‘date/month’ specified in the ‘Letter of Intent/Award’ or date mutually agreed upon for handing over of the intended scope of work, the erected equipment/plant which are found acceptable by the Engineer, being of required standard and conforming to the specifications of the Contract.
xiii)	“PLANT” shall mean and connote the entire assembly of the plant and equipments covered by the contract.
xiv)	“EQUIPMENT” shall mean equipment, machineries, materials, structural, electricals and other components of the plant covered by the contract.
xv)	“TESTS” shall mean and include such test or tests to be carried out on the part of the contractor as are prescribed in the contract or considered necessary by BHEL, in order to ascertain the quality, workmanship, performance and efficiency of the contractor or part thereof.
xvi)	“APPROVED”, “DIRECTED” or “INSTRUCTED” shall mean approved, directed or instructed by BHEL.
xvii)	“WORK or CONTRACT WORK” shall mean and include supply of all categories of labour, specified consumables, tools and tackles and Plants required for complete and satisfactory site transportation, handling, stacking, storing, erecting, testing and commissioning of the equipments to the entire satisfaction of BHEL.
xviii)	“SINGULAR AND PLURALS ETC” words carrying singular number shall also include plural and vice versa, where the context so requires. Words imparting the masculine Gender shall be taken to include the feminine Gender and words imparting persons shall include any Company or Associations or Body of Individuals, whether incorporated or not.
xix)	“HEADING” – The heading in these General Conditions are solely for the purpose of facilitating reference and shall not be deemed to be part thereof or be taken as instructions thereof or of the contract.
xx)	“MONTH” shall mean calendar month unless otherwise specified in the Tender.
xxi)	Day’ or ‘Days’ unless herein otherwise expressly defined shall mean calendar day or days of twenty four (24) hours each. A week shall mean continuous period of seven (7) days.
xxii)	“COMMISSIONING” shall mean the synchronisation testing and achieving functional operation of the Equipment with associated system after all initial adjustments, trials, cleaning, re-assembly required at site if any, have been completed and Equipment with associated system is ready for taking into service.

xxiii)	“WRITING” shall include any manuscript type written or hand written or printed statement or electronically transmitted messages, under the signature or seal or transmittal of BHEL.
xxiv)	“TEMPORARY WORK” shall mean all temporary works for every kind required in or for the execution, completion, maintenance of the work.
xxv)	‘CONTRACT PRICE’ or ‘CONTRACT VALUE’ shall mean the sum mentioned in the LOI/LOA/Contract Agreement subject to such additions thereto or deductions there from as may be made under provisions hereinafter contained
xxvi)	“COMMENCEMENT DATE” or “START DATE” shall mean the commencement/start of work at Site as per terms defined in the Tender!
xxvii)	“SHORT CLOSING” or “FORE CLOSING” of Contract shall mean the premature closing of Contract, for reasons not attributable to the contractor and mutually agreed between BHEL and the contractor
xxviii)	“TERMINATION” of Contract shall mean the pre mature closing of contract due to reasons as mentioned in the contract
xxix)	“DE MOBILISATION” shall mean the temporary winding up of Site establishment by Contractor leading to suspension of works temporarily for reasons not attributable to the contractor
xxx)	“RE MOBILISATION” shall mean the resumption of work with all resources required for the work after demobilization.
2.2	<p>LAW GOVERNING THE CONTRACT AND COURT JURISDICTION</p> <p>The contract shall be governed by the Law for the time being in force in the Republic of India. The Civil Court having original Civil Jurisdiction at Delhi for PSNR, at Kolkata for PSER, at Nagpur for PSWR and at Chennai for PSSR, shall alone have exclusive jurisdiction in regard to all claims in respect of the Contract. No other Civil Court shall have jurisdiction in case of any dispute, under this contract</p>
2.3	<p>ISSUE OF NOTICE</p> <p>2.3.1 <u>Service of notice on contractor</u> Any notice to be given to the Contractor under the terms of the contract shall be served by sending the same by Registered Post / Speed Post to or leaving the same at the Contractor’s last known address of the principal place of business (or in the event of the contractor being a company, to or at its Registered Office). In case of change of address, the notice shall be served at changed address as notified in writing by the Contractor to BHEL. Such posting or leaving of the notice shall be deemed to be good service of such notice and the time mentioned to the condition for doing any act after notice shall be reckoned from the date so mentioned in such notice.</p> <p>2.3.2 <u>Service of notice on BHEL</u> Any notice to be given to BHEL in-charge/Region under the terms of the Contract shall be served by sending the same by post to or leaving the same at BHEL address or changed address as notified in writing by BHEL to the Contractor.</p>
2.4	<p>USE OF LAND</p> <p>No land belonging to BHEL or their Customer under temporary possession of BHEL shall be occupied by the contractor without written permission of BHEL.</p>
2.5	<p>COMMENCEMENT OF WORK</p>

- 2.5.1 The contractor shall commence the work as per the time indicated in the Letter of Intent from BHEL and shall proceed with the same with due expedition without delay.
- 2.5.2 If the contractor fails to start the work within stipulated time as per LOI or as intimated by BHEL, then BHEL at its sole discretion will have the right to cancel the contract. The Earnest Money and/or Security Deposit with BHEL will stand forfeited without any further reference to him without prejudice to any and all of BHEL's other rights and remedies in this regard.
- 2.5.3 All the work shall be carried out under the direction and to the satisfaction of BHEL.
- 2.6 MEASUREMENT OF WORK AND MODE OF PAYMENT:**
- 2.6.1 All payments due to the contractors shall be made by e mode only, unless otherwise found operationally difficult for reasons to be recorded in writing
- 2.6.2 For progress running bill payments: - The Contractor shall present detailed measurement sheets in triplicate, duly indicating all relevant details based on technical documents and connected drawings for work done during the month/period under various categories in line with terms of payment as per contract. The basis of arriving at the quantities, weights shall be relevant documents and drawings released by BHEL. These measurement sheets shall be prepared jointly with BHEL Engineers and signed by both the parties.
- 2.6.3 These measurement sheets will be checked by BHEL Engineer and quantities and percentage eligible for payment under various groups shall be decided by BHEL Engineer. The abstract of quantities and percentage so arrived at based on the terms of payment shall be entered in Measurement Book and signed by both the parties.
- 2.6.4 Based on the above quantities, contractor shall prepare the bills in prescribed Proforma and work out the financial value. These will be entered in Measurement Book and signed by both the parties. Payment shall be made by BHEL after effecting the recoveries due from the contractor.
- 2.6.5 All recoveries due from the contractor for the month/period shall be effected in full from the corresponding running bills unless specific approval from the competent authorities is obtained to the contrary.
- 2.6.6 Measurement shall be restricted to that portion of work for which it is required to ascertain the financial liability of BHEL under this contract.
- 2.6.7 The measurement shall be taken jointly by persons duly authorized on the part of BHEL and by the Contractor.
- 2.6.8 The Contractor shall bear the expenditure involved if any, in making the measurements and testing of materials to be used/used in the work. The contractor shall, without extra charges, provide all the assistance with appliances and other things necessary for measurement.
- 2.6.9 If at any time due to any reason whatsoever, it becomes necessary to re-measure the work done in full or in part, the expenses towards such re measurements shall be borne by the contractor unless such re measurements are warranted solely for reasons not attributable to contractor.
- 2.6.10 Passing of bills covered by such measurements does not amount to acceptance of the completion

of the work measured. Any left out work has to be completed, if pointed out at a later date by BHEL.

- 2.6.11 Final measurement bill shall be prepared in the final bill proforma prescribed for the purpose based on the certificate issued by BHEL Engineer that entire works as stipulated in tender specification has been completed in all respects to the entire satisfaction of BHEL. Contractor shall give unqualified "No Dues" and "No Demand" Certificate. All the tools and tackles loaned to him should be returned in satisfactory condition to BHEL. The abstract of final quantities and financial values shall also be entered in the Measurement Books and signed by both parties to the contract. The Final Bill shall be prepared and paid within a reasonable time after completion of work. **After the payment of final bill only the guarantee obligation percentage will remain unpaid which shall be released in accordance with clause 2.18.**

2.7 RIGHTS OF BHEL

BHEL reserves the following rights in respect of this contract during the original contract period or its extensions if any, as per the provisions of the contract, without entitling the contractor for any compensation.

- 2.7.1 To withdraw any portion of work and/or to restrict/alter quantum of work as indicated in the contract during the progress of work and get it done through other agencies to suit BHEL's commitment to its customer or in case BHEL decides to advance the date of completion due to other emergent reasons/ BHEL's obligation to its customer.
- 2.7.2 To terminate the contract or get any part of the work done through other agency or deploy BHEL's own/hired/otherwise arranged resources , at the risk and cost of the contractor after due notice of a period of two weeks by BHEL. in the event of:-
- i) Contractor's continued poor progress
 - ii) Withdrawal from or abandonment of the work before completion of the work
 - iii) Contractor's inability to progress the work for completion as stipulated in the contract
 - iv) Poor quality of work
 - v) Corrupt act of Contractor
 - vi) Insolvency of the Contractor
 - vii) Persistent disregard to the instructions of BHEL
 - viii) Assignment, transfer, sub-letting of contract without BHEL's written permission
 - ix) Non fulfillment of any contractual obligations
- 2.7.3 To meet the expenses including BHEL overheads of 30% & Liquidated damage/penalties arising out of "Risk & Cost" as explained above under Sl.No. 2.7.2. BHEL shall recover the amount from any money due from Contractor, from any money due to the Contractor including Security Deposit or by forfeiting any T&P or material of the contractor under this contract or any other contract of BHEL or by any other means or any combination thereof
- 2.7.4 To terminate the contract or to restrict the quantum of work and pay for the portion of work executed in case BHEL's contract with their customer are terminated for any reason, as per mutual agreement.
- 2.7.5 To effect recovery from any amounts due to the contractor under this or any other contract or in any other form, the moneys BHEL is statutorily forced to pay to anybody, due to contractor's failure to fulfill any of his obligations. BHEL shall levy overheads of 15% on all such payments.

- 2.7.6 While every endeavour will be made by BHEL to this end, they cannot guarantee uninterrupted work due to conditions beyond their control. The Contractor will not be normally entitled for any compensation/extra payment on this account unless otherwise specified elsewhere in the contract.
- 2.7.7 In case the execution of works comes to a complete halt or reaches a stage wherein worthwhile works cannot be executed and there is no possibility of commencement of work for a period of not less than two months, due to reasons not attributable to the contractor and other than Force Majeure conditions, BHEL may consider permitting the contractor to de mobilize forthwith and re mobilize at an agreed future date. Cost of such demobilization/remobilization shall be mutually agreed. ORC in such cases shall not be applicable for the period between the period of demobilization and re mobilisation. The duration of contract/time extension shall accordingly get modified suitably. In case of any conflict, BHEL decision in this regard shall be final and binding on the contractor.
- 2.7.8 In the unforeseen event of inordinate delay in receipt of materials, drawings, fronts, etc, due to which inordinate discontinuity of work is anticipated, BHEL at its discretion may consider contractor's request to short close the contract, provided that the balance works are minor vis a vis the scope of work envisaged as per the contract. At the point of requesting for short closure, contractor shall establish that he has completed all works possible of completion and he is not able to proceed with the balance works due to constraints beyond his control. In such a case, the estimated value of the unexecuted portion of work as mutually agreed, shall however be reduced from the final contract value. Contract value for this purpose shall mean executed contract value plus value of unexecuted portion of work as per rate schedule.

2.7.9 **LIQUIDATED DAMAGES/PENALTY**

If the contractor fails to maintain the required progress of work which results in delay in the completion of the work as per the contractual completion period, BHEL shall have the right to impose Liquidated Damage/Penalty at the rate of 0.5% of the contract value, per week of delay or part thereof subject to a maximum of 10% of the contract value. For this purpose, the period of delay shall be the delay attributable to the Contractor for the completion of work as per contract. Contract Value for this purpose, shall be the final executed value net of taxes if quoted separately, ORC, Extra Works executed on Manday rate basis, Supplementary/Additional Items.

2.8 **RESPONSIBILITIES OF THE CONTRACTOR IN RESPECT OF LOCAL LAWS, EMPLOYMENT OF WORKERS ETC.**

The following are the responsibilities of the contractor in respect of observance of local laws, employment of personnel, payment of taxes etc. The subcontractor shall fully indemnify BHEL against any claims of whatsoever nature arising due to the failure of the contractor in discharging any of his responsibilities hereunder:

- 2.8.1 As far as possible, Unskilled Workers shall be engaged from the local areas in which the work is being executed.
- 2.8.2 The contractor at all times during the continuance of this contract shall, in all his dealings with local labour for the time being employed on or in connection with the work, have due regard to all local festivals and religious and other customs.

- 2.8.3 The contractor shall comply with all applicable State and Central Laws, Statutory Rules, Regulations etc. such as Payment of Wages Act, Minimum Wages Act, Workmen Compensation Act, Employer's Liability Act, Industrial Disputes Act, Employers Provident Act, Employees State Insurance Scheme, Contract Labour (Regulation and Abolition) Act 1970, Payment of Bonus & Gratuity Act and other Acts, Rules and Regulations for labour as may be enacted by the Government during the tenure of the Contract and having force or jurisdiction at Site. The Contractor shall also give to the local Governing Body, Police and other relevant Authorities all such notices as may be required by the Law.
- 2.8.4 The contractor shall obtain independent License under the Contract Labour (Regulations and Abolition Act, 1970) as required from the concerned Authorities based on the certificate (Form-V) issued by the Principal Employer/Customer
- 2.8.5 The contractor shall pay all taxes, fees, license charges, deposits, duties, tolls, royalties, commission or other charges which may be leviable on account of his operations in executing the contract.
- 2.8.6 While BHEL would pay the inspection fees and Registration fees of Boiler/Electrical Inspectorate, all other arrangements for site visits periodically by the Inspectorate to site, Inspection certificate etc. will have to be made by contractor. However, BHEL will not make any payment to the Inspectorate in connection with contractor's Welders/Electricians qualification tests etc.
- 2.8.7 Contractor shall be responsible for provision of Health and Sanitary arrangements (more particularly described in Contract Labour Regulation & Abolition Act), Safety precautions etc. as may be required for safe and satisfactory execution of contract.
- 2.8.8 The contractor shall be responsible for proper accommodation including adequate medical facilities for personnel employed by him.
- 2.8.9 The contractor shall be responsible for the proper behavior and observance of all regulations by the staff employed by him.
- 2.8.10 The contractor shall ensure that no damage is caused to any person/property of other parties working at site. If any such damage is caused, it is responsibility of the contractor to make good the losses or compensate for the same.
- 2.8.11 All the properties/equipments/components of BHEL/their Client loaned with or without deposit to the contractor in connection with the contract shall remain properties of BHEL/their Client.
- 2.8.12 The contractor shall use such properties for the purpose of execution of this contract. All such properties/equipments/components shall be deemed to be in good condition when received by the contractor unless he notifies within 48 hours to the contrary. The contractor shall return them in good condition as and when required by BHEL/their Client. In case of non-return, loss, damage, repairs etc, the cost thereof as may be fixed by BHEL Engineer will be recovered from the contractor
- 2.8.13 In case the contractor is required to undertake any work outside the scope of this contract, the rates payable shall be those mutually agreed upon if the item rates are not mentioned in existing contract

- 2.8.14 Any delay in completion of works/or non achievement of periodical targets due to the reasons attributable to the contractor, the same may have to be compensated by the contractor either by increasing manpower and resources or by working extra hours and/or by working more than one shift. All these are to be carried out by the contractor at no extra cost.
- 2.8.15 The contractor shall arrange, coordinate his work in such a manner as to cause no hindrance to other agencies working in the same premises.
- 2.8.16 All safety rules and codes applied by the Client/BHEL at site shall be observed by the contractor without exception. The contractor shall be responsible for the safety of the equipment/material and works to be performed by him and shall maintain all light, fencing guards, slings etc. or other protection necessary for the purpose. Contractor shall also take such additional precautions as may be indicated from time to time by the Engineer with a view to prevent pilferage, accidents, fire hazards. Due precautions shall be taken against fire hazards and atmospheric conditions. Suitable number of Clerical staff, watch and ward, store keepers to take care of equipment/materials and construction tools and tackles shall be posted at site by the contractor till the completion of work under this contract.

The contractor shall arrange for such safety devices as are necessary for such type of work and carry out the requisite site tests of handling equipment, lifting tools, tackles etc. as per prescribed standards and practices.

Contractor has to ensure the implementation of Health, Safety and Environment (HSE) requirements as per directions given by BHEL/Customer. The contractor has to assist in HSE audit by BHEL/Customer and submit compliance Report. The contractor has to generate and submit record/reports as per HSE plan/activities as per instruction of BHEL/Customer

- 2.8.17 The contractor will be directly responsible for payment of wages to his workmen. A pay roll sheet giving all the payments given to the workers and duly signed by the contractor's representative should be furnished to BHEL site for record purpose, if so called for.
- 2.8.18 In case of any class of work for which there is no such specification as laid down in the contract, such work shall be carried out in accordance with the instructions and requirements of the Engineer.
- 2.8.19 Also, no idle charges will be admissible in the event of any stoppage caused in the work resulting in contractor's labour and Tools & Plants being rendered idle due to any reason at any time.
- 2.8.20 The contractor shall take all reasonable care to protect the materials and work till such time the plant/equipment has been taken over by BHEL or their Client whichever is earlier.
- 2.8.21 The contractor shall not stop the work or abandon the site for whatsoever reason of dispute, excepting force majeure conditions. All such problems/disputes shall be separately discussed and settled without affecting the progress of work. Such stoppage or abandonment shall be treated as breach of contract and dealt with accordingly
- 2.8.22 The contractor shall keep the area of work clean and shall remove the debris etc. while executing day-to-day work. Upon completion of work, the contractor shall remove from the vicinity of work, all scrap, packing materials, rubbish, unused and other materials and deposit them in places specified by the Engineer. The contractor will also demolish all the hutments,

sheds, offices, etc. constructed and used by him and shall clean the debris. In the event of his failure to do so, the same will be arranged to be done by the Engineer and the expenses recovered from the contractor.

- 2.8.23 The contractor shall execute the work in the most substantial and workman like manner in the stipulated time. Accuracy of work and timely execution shall be the essence of this contract. The contractor shall be responsible to ensure that the quality, assembly and workmanship conform to the dimensions and clearance given in the drawings and/ or as per the instructions of the Engineer.

2.9 PROGRESS MONITORING, MONTHLY REVIEW AND PERFORMANCE EVALUATION

- 2.9.1 A detailed plan/programme for completion of the contractual scope of work shall be jointly agreed between BHEL and Contractor before commencement of work. The above programme shall be supported by monthwise deployment of resources viz Manpower, T&P, Consumables, etc. Progress will be reviewed periodically (Daily/Weekly/Monthly) vis a vis this jointly agreed programme. The Contractor shall submit periodical progress reports (Daily/Weekly/Monthly) and other reports/information including manpower, consumables, T&P mobilization etc as desired by BHEL.
- 2.9.2 Monthly progress review between BHEL and Contractor shall be based on the agreed programme, availability of inputs/fronts etc, and constraints if any. The burden of proof that the causes leading to any shortfall is not due to any reasons attributable to the contractor is on the contractor himself. The monthly progress review shall record shortfalls attributable to (i) Contractor, (ii) Force Majeure Conditions, and (iii) BHEL
- 2.9.3 Quarterly performance of the contractor shall be assessed as per relevant formats and shall form the basis of 'Performance Evaluation' of the Contractor.

2.10 TIME OF COMPLETION

- 2.10.1 The time schedule shall be as prescribed in the Contract. The time for completion shall be reckoned from the date of commencement of work at Site as certified by BHEL Engineers
- 2.10.2 The entire work shall be completed by the contractor within the time schedule or within such extended periods of time as may be allowed by BHEL under clause 2.11

2.11 EXTENSION OF TIME FOR COMPLETION

- 2.11.1 If the completion of work as detailed in the scope of work gets delayed beyond the contract period, the contractor shall request for an extension of the contract and BHEL at its discretion may extend the Contract. Depending upon the balance amount of work left out, the number of months of 'Time Extension' required for completion shall be worked out based on monthly reviews jointly signed with the contractor during the contract period.
- 2.11.2 The 'Time Extension' required for completion shall clearly spell out the portion of time attributable to (i) Contractor, (ii) Force Majeure Conditions, and (iii) BHEL, and shall be exhausted in the same order
- 2.11.3 A joint programme shall be drawn for the balance amount of work to be completed during the period of 'Time Extension', along with matching resources to be deployed by the contractor. Review of the programme and record of shortfall shall be done every month of the extended period in the same manner as is done for the regular contract period.

- 2.11.4 During the extended period, contractor shall maintain their resources as per mutually agreed program
- 2.11.5 In case the completion of balance works gets delayed beyond the extended period, the contractor shall request for subsequent extension and BHEL at its discretion may agree for the extension. Depending upon the amount of work balance, the number of months of subsequent 'Time Extension' required for completion shall be worked out based on monthly reviews jointly signed with the contractor during such extended period. Further actions shall be as per clauses 2.11.2 to 2.11.4
- 2.11.6 The cumulative of portions of 'Time Extensions' attributable to Contractor shall be considered as the period of delay attributable to the Contractor for the completion of work as per contract.

2.12 OVERRUN COMPENSATION

- 2.12.1 The contractor shall be entitled for Over Run Compensation (ORC) for portion of 'Time Extension' attributable to BHEL, in the manner as described herein below.
- 2.12.2 Rates of ORC payable per month shall be as per following
- For a period of one year after completion of original contract period:**
 - 5% of {(Value of work balance at the end of original contract period) divided by (original contract period in months)} rounded off to the next Rs 1000.
 - For a period of one year after 'a' above:**
 - 5% of {(Value of work balance at the end of : original contract period+12 months) divided by (original contract period in months)} rounded off to the next Rs 1000
 - Step b to be repeated for every subsequent years considering the value of work balance at the start of the year in consideration, rounded off to the next Rs 1000
 - Values so arrived at 'a', 'b' and 'c' are subject to maximum of Rs 5.0 lakhs per month and minimum of Rs 50,000/- per month.
- 2.12.3 Payment of ORC shall be regulated as follows:
- ORC shall be paid only for the portion of Time extensions attributable to BHEL
 - Payment of ORC is subject to Contractor maintaining minimum resources as per agreed program and certified by BHEL
 - Total Over Run Compensation shall be limited to 10% of the executed contract value excluding PVC, ORC, Supplementary/Additional Items and Extra Works done on Manday rate basis
- 2.12.4 Example for ORC for delays attributable to BHEL (All Values in Rs Lakhs)

SI No	Particulars	Case I	Case II	Case III	Case IV
1	Contract Value	15000	6000	300	100
2	Original Contract period in Months	36	30	24	12
3	ORC for Year-1	37 th - 48 th month	31 st – 42 nd month	25 th -36 th month	13 th -24 th month
3.1	Value of work balance at the end of original contract period	6000 i.e. 40%	1500 i.e. 25%	90 i.e. 30%	40 i.e. 40%
3.2	ORC calculated	8.333333	2.5	0.1875	0.16666

	@ 5% of (sl no 3.1 / sl no 2)				
3.3	ORC rounded off to next 1000	8.34	2.5	0.19	0.17
3.4	ORC payable (upper limit of Rs 5.0 lakhs, AND Lower limit of Rs 0.50 Lakhs)	5.0	2.5	0.5	0.5
4	ORC for Year-2	49 th – 60 th month	43 rd –54 th month	37 th –48 th month	25 th –36 th month
4.1	Value of work balance at the end of original contract period + 12 months	3000 i.e. 20%	600 i.e 10%	60 i.e. 20%	20 i.e. 20%
4.2	ORC calculated @ 5% of (sl no 4.1 / sl no 2)	4.16666	1.0	0.125	0.08333
4.3	ORC rounded off to next 1000	4.17	1.0	0.13	0.09
4.4	ORC payable (upper limit of Rs 5.0 lakhs, AND Lower limit of Rs 0.50 Lakhs)	4.17	1.0	0.50	0.50

2.13 INTEREST BEARING RECOVERABLE ADVANCES

- 2.13.1 Normally no advance is payable to the contractor. However, advance payment in exceptional circumstances shall be interest bearing and secured through an equivalent Bank Guarantee and shall be limited to a maximum of 5% of contract value.
- 2.13.2 In exceptional circumstances, with due justification, Competent Authority of BHEL is empowered to approve proposals for payment of additional interim interest bearing advance against matching Bank Guarantee, for resource augmentation towards expediting work for project implementation.
- 2.13.3 Payment and recovery of Interest Bearing Recoverable advance shall be at the sole discretion of BHEL and shall not be a subject matter of arbitration.
- 2.13.4 The rate of interest applicable for the above advances shall be the prime lending rate of State Bank of India prevailing at the time of disbursement of the advance + 2%, on the monthly reducing balance, and such rate will remain fixed till the total advance amount is recovered
- 2.13.5 Unadjusted amount of advances paid shall not exceed 5% of the total contract value at any point of time. Recovery of advances shall be made progressively from each Running Bill, such that the advance amounts paid along with the interest is fully recovered by the time the contractor's billing reaches 80% of contract value.
- 2.13.6 Recovery rate per month shall be on higher of the two options given below:
- 10% of Running Bill
 - {Principal amount of Additional Advance outstanding + unadjusted portion of earlier advance + estimated interest } divided by { 80% of estimated contract value less value of work billed upto date}
- 2.13.7 Contractor to submit Bank Guarantee as per format GCC-4 for each of the advance and shall be valid for at least one year or the recovery duration or the balance contract period which ever is later. In case the recovery of dues does not get completed within the aforesaid BG period, the contractor shall renew the BG or submit fresh BG for the outstanding amount and the remaining recovery period.
- 2.13.8 BHEL is entitled to make recovery of the entire outstanding amount in case the contractor fails to

comply with the BG requirement

2.14 QUANTITY VARIATION

2.14.1 The quoted rates shall remain firm irrespective of any variations in the individual quantities. No compensation becomes payable in case the variation of the final executed contract value is within the limits of :

a) Plus (+) or Minus (-) 30% of contract value in case of Civil or Structural or Civil & Structural or Electrical or CI or Electrical & CI Packages

b) Plus (+) or Minus (-) 10% of contract value in case of Mechanical and all other Packages

c) Variations limits as specified in 'a' or 'b' above for respective components in case of Composite Packages.

2.14.2 Compensation due to variation of final executed value in excess of the limits defined in clause above, shall be as follows:

i) In case the finally executed contract value reduces below the lower limit of quantity variation specified above for the respective packages, the contractor will be eligible for compensation @ 15% of the difference between the lower limit of the contract value and the actual executed value.

ii) In case the finally executed contract value increases above the upper limit of quantity variation specified above for the respective packages, there will be no revision in the rates within the contract period.

2.15 EXTRA WORKS

2.15.1 All rectifications/modifications, revamping, and reworks required for any reasons not due to the fault of the contractor, or needed due to any change in deviation from drawings and design of equipments, operation/maintenance requirements, mismatching, or due to damages in transit, storage and erection/commissioning, and other allied works which are not very specifically indicated in the drawings, but are found essential for satisfactory completion of the work, will be considered as extra works.

2.15.2 Each Extra works requiring less than 50 manhours shall be considered as minor and shall be carried out by the contractor free of cost. Each Extra work requiring more than 50 man hours will be considered for payment on man hour basis in excess of 50 hours. The decision of BHEL shall be final and binding on the contractor. Example:

i) Extra work requiring 45 manhours : Work considered minor and to be executed free of cost by Contractor

ii) Extra Work requiring 125 Manhours : 75 Manhours (125-50 =75) considered for payment subject to acceptance of work as extra by BHEL.

2.15.3 Extra works arising on account of the contractor's fault, irrespective of time consumed in rectification of the damage/loss, will have to be carried out by the contractor free of cost. Under such circumstances, any material and consumable required for this purpose will also have to be arranged by the contractor at his cost.

2.15.4 All the extra work should be carried out by a separately identifiable gang, without affecting routine activities. Daily log sheets in the pro-forma prescribed by BHEL should be maintained and shall be signed by the contractor's representative and BHEL engineer. No claim for extra work will be considered/entertained in the absence of the said supporting documents i.e. daily log sheets. Signing

of log sheets by BHEL engineer does not necessarily mean the acceptance of such works as extra works.

2.15.5 BHEL retains the right to award or not to award any of the major repair/rework/modification/rectification/fabrication works to the contractor, at their discretion without assigning any reason for the same

2.15.6 After eligibility of extra works is established and finally accepted by BHEL engineer/designer, payment will be released on competent authority's approval at the following rate.

MAN-HOUR RATE FOR ELIGIBLE EXTRA WORKS: Single composite average labour man-hour rate, including overtime if any, supervision, use of tools and tackles and other site expenses and incidentals, consumables for carrying out any major rework/repairs/rectification/modification/fabrication as certified by site as may arise during the course of erection, testing, commissioning or extra works arising out of transit, storage and erection damages, payment, if found due will be at Rs 50/- per man hour.

2.15.7 The above composite labour man hour rate towards extra works shall remain firm and not subject to any variation during execution of the work. PVC will not be applicable for extra works. Rate revision, Over Run Charges/compensation etc will not be applicable due to extra works.

2.16 SUPPLEMENTARY ITEMS

Supplementary items are items/works required for completion of entire work but not specified in the scope of work. Subject to certification of such items/works as supplementary items by BHEL Engineer, payments shall be regulated on the basis of any one of the following on mutual agreement,

- i) Based on percentage breakup/rates indicated for similar/nearby items
- ii) In case above does not exist, then BHEL/site may derive the percentage breakup/rates to suit the type of work

2.17 PRICE VARIATION COMPENSATION

2.17.1 In order to take care of variation in cost of execution of work on either side, due to variation in the index of LABOUR, DIESEL and ELECTRODE, Price Variation Formula as described herein shall be applicable

2.17.2 80% component of Contract Value shall be permitted to be adjusted for variation in various relevant indices during execution of work. The remaining 20% shall be treated as fixed component

2.17.3 The basis for calculation of price variation in each category, their component, Base Index, Base Date of accounting shall be as under:

SL NO.	CATEGORY	BASE INDEX	COMPONENT ('K')		
			CIVIL PACKAGES (With OR without STRUCTURES)	MECHANICAL PACKAGES	LABOUR ORIENTED PACKAGES (***)
A)	LABOUR (ALL CATEGORIES)	'MONTHLY ALL-INDIA AVERAGE CONSUMER PRICE INDEX NUMBERS FOR INDUSTRIAL WORKERS' published by Labour Bureau, Ministry of Labour and	40	60	75

		Employment, Government of India. (Website: labourbureau.nic.in)			
B)	HIGH SPEED DIESEL OIL	Name of Commodity : HSD OIL. Type : INDIVIDUAL COMMODITY (See Note below)	5	5	5
C)	WELDING ELECTRODE	Name of Commodity : ELECTRODES Type: INDIVIDUAL COMMODITY (See Note below)		15	
D)	CEMENT	Name of Commodity : CEMENT Type: INDIVIDUAL COMMODITY (See Note below)	15		
E)	IRON & STEEL	Name of Commodity : a1. IRON & STEEL Type: GROUP ITEM (See Note below)	20		

Note: As per the 'MONTHLY WHOLE SALE PRICE INDEX' for the respective Commodity and Type, published by Office of Economic Adviser, Ministry of Commerce and Industry, Government of India. (Website : www.eaindustry.nic.in)

2.17.4 Payment/recovery due to variation in index shall be determined on the basis of the following notional formula without any initial absorption, in respect of the identified components viz LABOUR, HIGH SPEED DIESEL OIL, ELECTRODE, CEMENT, IRON & STEEL

$$A = K \times R \times \frac{(X_N - X_0)}{X_0}$$

Where

A = Amount to be paid/recovered due to variation in the Index for Labour, Electrode, High Speed Diesel Oil, Cement and Iron & Steel

K = Percentage component applicable for Labour, Electrode, High Speed Diesel Oil, Cement and Iron & Steel.

- Predominantly 'Labour Oriented' works include Material Handling & Management, Insulation, Painting, Electrical and CI or a combination thereof, which are separately tendered and awarded,
- For Composite packages (i.e. Civil+Mechanical+Electrical/CI or Civil+Mechanical or Mechanical+Electrical/CI), the components for various categories shall be as per respective packages
- For Civil packages (With or without Structures), in case Cement and/or Steel if provided free of cost, then the respective component to be added to 'labour' component.

R = Value of work done for the billing month (Excluding Taxes and Duties if payable extra)

XN = Revised Index No for Labour, Electrode, High Speed Diesel Oil, Cement and Iron & Steel for the billing month under consideration

Xo = Index no for Labour, Electrode, High Speed Diesel Oil, Cement and Iron & Steel as on the Base date.

2.17.5 **Base date shall be calendar month of the date of opening of Tender.**

2.17.6 PVC shall not be applicable to ORC, Supplementary/Additional Items, Extra works executed on manday rates basis.

2.17.7 The contractor shall furnish necessary monthly bulletins for the necessary indices from the relevant websites along with his Bills.

2.17.8 The contractor will be required to raise the bills for price variation payments on a monthly basis along with the running bills irrespective of the fact whether any increase/decrease in the index for relevant categories has taken place or not. In case there is delay in publication of bulletins (final figure), the provisional values as published can be considered for payments and arrears shall be paid/recovered on getting the final values.

- 2.17.9 The Total Quantum of Price Variation amount payable/recoverable shall be regulated as follows:
- i) PVC shall not be applicable for the first 12 (twelve) months from the date of opening of Tender.
 - ii) Subject to (i) above, PVC for the period up to original contract period shall be as per prevailing indices for respective categories
 - iii) PVC for the period beyond original contract period shall be as follows:
 - a) Initially PVC shall be provisionally paid as per indices indicated against sl no (i) of the table below.
 - b) At the end of completion of contract when the months of extensions attributable to (i) Contractor, (ii) Force majeure Conditions, (iii) BHEL, are assessed, PVC shall be regulated as per Table below and any balance shall be paid/recovered.
 - iv) Total PVC payable is limited to 10% of executed Contract value
 - v) Executed Contract value for the purpose of operation of PVC is exclusive of Overrun charges, Supplementary/Additional Items, Taxes and Duties if payable extra, Extra works done on Manday rate basis, etc.
 - vi) The quantum of price variation amount per month shall be restricted to the ceiling percentage for each RA Bill Amount. The final adjusted amount of PVC shall be paid along with the final Bill.

Table for Applicability of PVC Indices

SI No	Applicable PVC Indices	For the Number of Months of Extension attributable to
i	Frozen at the average of monthly indices for respective categories for the period defined below:- ➤ Start month: Month of actual start of work ➤ Ending Month : End of original contract period (month) reckoned from date of start of work	Contractor
ii	Frozen at the indices obtaining at the end of the original contract period (month), reckoned from date of start of work	Force Majeure Conditions
iii	As prevailing for the number of months up to end of extended contract period	BHEL

2.17.10 Example for PVC

PVC calculation for 3 different cases of execution for a typical contract of 15 months
(All dates/data in Months)

SI No	Particulars	As per Contract	As per Actual		
			Case-I	Case-II	Case-III
1	Start of Work (Start of Contract)	1 st Month	1 st Month	10 th Month	18 th Month
2	Contractual Completion	15	15	25	33
3	Actual Completion		25	35	43
4	Total delay (in Months)		10	10	10
5	Delay due to Contractor (say 6 months)		16 th to 21 st Month	26 th to 31 st Month	34 th to 39 th Month
6	Delay due to Force Majeure Conditions		22 nd Month	32 nd Month	40 th Month

	(say 1 month)				
7	Delay due to BHEL (say 3 months)		23 rd to 25 th Month	33 rd to 35 th Month	41 st to 43 rd Month
8	PVC start (from)	13 th Month	13 th Month	13 th Month	18 th Month
9	PVC upto (Contractual completion period with respective Monthly Indices)	15 th Month	15 th Month	25	33
10	PVC for period of delay due to contractor (for period of six months)	NA	Average of respective indices from 1 st to 15 th Month	Average of respective indices from 10 th to 25 th Month	Average of respective indices from 18 th to 33 rd Month
11	PVC for period of delay due to Force Majeure Conditions (for period of one month)	NA	Respective Indices frozen at 15 th Month	Respective Indices frozen at 25 th Month	Respective Indices frozen at 33 rd Month
12	PVC for period of delay due to BHEL (for period of three months)	NA	Respective Indices for the months 23 to 25	Respective Indices for the months 33 to 35	Respective Indices for the months 41 to 43

2.18 PERFORMANCE GUARANTEE FOR WORKMANSHIP

- 2.18.1 Even though the work will be carried out under the supervision of BHEL Engineers the Contractor will be responsible for the quality of the workmanship and shall guarantee the work done for a period of twelve months from the date of commencement of guarantee period as defined in Special Conditions of Contract, for good workmanship and shall rectify free of cost all defects due to faulty erection detected during the guarantee period. In the event of the Contractor failing to repair the defective works within the time specified by the Engineer, BHEL may proceed to undertake the repairs of such defective works at the Contractor's risk and cost, without prejudice to any other rights and recover the same from the Guarantee money which will be due for payment after completion of guarantee period as per terms of contract.
- 2.18.2 The Guarantee money shall be 5% of contract value executed and shall be recovered at the rate of 5% of the gross value of each Running Bill admitted
- 2.18.3 BHEL shall release the guarantee money along with the settlement of Final Bill or completion of Guarantee period whichever is later.

2.19 INSURANCE

- 2.19.1 BHEL/their customer shall arrange for insuring the materials/properties of BHEL/customer covering the risks during transit, storage, erection and commissioning.
- 2.19.2 It is the sole responsibility of the contractor to insure his materials, equipments, workmen, etc. against accidents and injury while at work and to pay compensation, if any, to workmen as per Workmen's compensation Act. The work will be carried out in a protected area and all the rules and regulations of the client /BHEL in the area of project which are in force from time to time will have to be followed by the contractor.
- 2.19.3 If due to negligence and or non-observation of safety and other precautions by the contractors, any accident/injury occurs to the property / manpower belong to third party, the contractor shall have to pay necessary compensation and other expense, if so decided by the appropriate authorities.

2.19.4 If due to contractor's carelessness, negligence or non-observance of safety precautions, damage to BHEL's /Customer's property and personnel should occur and if BHEL is unable to recover in full the cost from the insurance Company, the same including the "Deductible Franchise" will be recovered from the contractor.

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

2.20 STRIKES & LOCKOUT

2.20.1 The contractor will be fully responsible for all disputes and other issues connected with his labour. In the event of the contractor's labour resorting to strike or the Contractor resorting to lockout and if the strike or lockout declared is not settled within a period of one month, BHEL shall have the right to get the work executed through any other agencies and the cost so incurred by BHEL shall be deducted from the Contractor's bills.

2.20.2 For all purposes whatsoever, the employees of the contractor shall not be deemed to be in the employment of BHEL

2.21 FORCE MAJEURE

The following shall amount to Force Majeure:-

2.21.1 Acts of God, act of any Government, War, Sabotage, Riots, Civil commotion, Police action, Revolution, Flood, Fire, Cyclones, Earth quake and Epidemic and other similar causes over which the contractor has no control.

2.21.2 If the contractor suffers delay in the due execution of the contractual obligation due to delays caused by force majeure as defined above, the agreed time of completion of the job covered by this contract or the obligations of the contractor shall be extended by a period of time equal to period of delay, provided that on the occurrence of any such contingency, the contractor immediately reports to BHEL in writing the causes of delay and the contractor shall not be eligible for any compensation.

2.22 ARBITRATION & RECONCILIATION

2.22.1 In the event of any dispute or difference arising out of the execution of the Contract or the respective rights and liabilities of the parties or in relation to interpretation of any provision by the Contractor in any manner touching upon the Contract, such dispute or difference shall (except as to any matters, the decision of which is specifically provided for therein) be referred to BHEL/In charge(Region) who will appoint General Manager/BHEL as Arbitrator

The award of the Arbitrator shall be binding upon the parties to the dispute

Subject as aforesaid, the provisions of Arbitration and Reconciliation Act 1996 (India) or statutory modifications or re enactments thereof and the rules made there under and for the time being in force shall apply to the arbitration proceedings under this clause. The venue of the arbitration shall be the place from which the contract is issued or such other place as the Arbitrator at his discretion may determine

2.22.2 In case of Contract with Public Sector Enterprise (PSE) or a Government Department, the following shall be applicable :

In the event of any dispute or difference relating to the interpretation and application of the provisions of the Contract, such dispute or difference shall be referred to by either party to the arbitration of one of the arbitrators in the department of public enterprises. The award of the arbitrator shall be binding upon the parties to the dispute, provided, however, any party aggrieved by such award may make further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law and Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary or Additional Secretary when so authorized by the Law Secretary, whose decision shall bind the parties hereto finally and conclusively.

2.22.3 The cost of arbitration shall be borne equally by the parties.

2.22.4 Work under the contract shall be continued during the arbitration proceedings

2.23 **REVERSE AUCTION:**

BHEL reserves the right to go for Reverse Auction for Price Bid Opening by BHEL appointed service provider, instead of opening the submitted sealed price bid in the conventional way. The Business Rules for Reverse Auction shall be as per BHEL guidelines issued from time to time. In the case of resorting to Reverse Auction, (a) BHEL reserve the right to open the sealed bid of the bidder who becomes the winner after reverse auction is over. (b) BHEL reserve the right to open all the sealed bids of the qualified bidders after reverse auction is over, if reverse auction is not successful or no bid is received during reverse auction.

2.24 **CLOSING OF CONTRACTS**

The Contract shall be considered completed and closed upon completion of all contractual obligations and settlement of Final Bill or completion of Guarantee period whichever is later. Upon closing of Contract, BHEL shall issue a completion certificate as per standard format, based on specific request of Contractor.

2.25 **SUSPENSION OF BUSINESS DEALINGS**

BHEL reserves the right to take action against Contractors who either fail to perform or Tenderers/Contractor who indulge in malpractices, by suspending business dealings with them in line with BHEL guidelines issued from time to time.

2.26 **OTHER ISSUES**

2.26.1 Value of Non judicial Stamp Paper for Bank Guarantees and for Contract Agreement shall be not less than Rs 100/- unless otherwise required under relevant statutes.

2.26.2 In case of any conflict between the General Conditions of Contract and Special Conditions of Contract, provisions contained in the Special Conditions of Contract shall prevail.

2.26.3 Unless otherwise specified in NIT, offers from consortium/JVs shall not be considered.

2.26.4 BHEL may not insist for signing of Contract Agreements in respect of Transportation, Low value and short time period contracts like providing services for Hot water flushing, Chemical Cleaning, etc

2.27 INTERPRETATIONS/CLARIFICATIONS AND REVISIONS

2.27.1 Director (P) shall constitute a Committee every year, for deliberations, interpretations/clarifications for implementation, and for revisions of this General Conditions of Contract. The Committee shall consist of a Chairman and members as per the following:

- **Chairman** : Head of Subcontracts of Power Sector Region on rotation basis
- **Members (total 3)** : Heads of Subcontracts, Project Management and Finance, each one from the other three Power Sector Regions

2.27.2 Based on the decision of the Committee, necessary clarifications shall be issued by the Head of Subcontracting of the Power Sector Region who is officiating as Chairman

2.27.3 Committee shall endeavour to revise the General Conditions of Contract once every two years for refinement, standardization or for aligning with contemporary requirements.

2.27.4 The Chairman of Committee shall be the custodian of all approvals and original documents and shall pass on the same to the next incoming Chairman.