

2023

# **Volume-IC: GENERAL CONDITIONS OF CONTRACT (GCC) - Modified**

Bharat Heavy Electricals Limited  
Power Sector – Southern Region  
5x800 MW Yadadri TPS



# 1. Chapter-1: General Instructions to tenderer

## 1.1. Dispatch Instruction:

- 1.1.1. 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. (For E-Tender, bidders shall use electronic Signature viz Digital Signature Certificate while uploading on the e-procurement portal. 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.
- 1.1.2. 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.
- 1.1.3. 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 submitted 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 qualified to participate in the bidding. Entering into this pact shall be a preliminary qualification.

## 1.2. Submission of tenders:

- 1.2.1. The tenderers must submit their tenders to Officer inviting tender as per instructions in the NIT.
- 1.2.2. Tenders submitted by post (i.e. by 'REGISTERED POST / by COURIER') shall be sent 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 Email shall be considered as per terms of NIT. E-Tenders shall be submitted through E-Procurement portal as per instruction in NIT. Tenderers to upload offers well in advance in order to avoid last minute congestion in e-procurement website. However, after submission of the tender, the tenderer can re-submit revised tender but before due date and time of submission of tender as notified.
- 1.2.3. Tenders shall be opened by Officer of BHEL at the time and date as specified in the NIT, in the presence of such of those tenderers or their authorized representatives who would like to be present (In case of Manual Tenders). BHEL reserves the right to go ahead with opening of the Tender even in case of no representative is present on the specified date and time. For e-tenders, bidders may mark their presence online through provisions available in e-procurement portal.
- 1.2.4. Tenderers whose bids are found techno commercially qualified shall be informed about 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 (In case of Manual Tenders). BHEL's decision in this regard shall be final and binding.

- 1.2.5. Before submission of Offer, 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.

The tenderer may get aware about weather conditions, contingencies & other circumstances which may influence or affect their tender prices. Invariable of inspection by the tenderer, the tenderer shall be considered deemed acquainted with all site conditions such as rain patterns, hazardous conditions, soil patterns, local factors etc. Tenderer to have satisfied himself in all respect before quoting his rates and no claim will be entertained later on the grounds of lack of knowledge of any of these conditions.

### 1.3. Languages:

- 1.3.1. The tenderer shall quote the rates in English language and international numerals. These rates shall be entered in figures as well as in words. Tenderers are requested to refer the clauses of NIT/ Vol-II "Price Bid" for more details. For the purpose of the tenders, the metric system of units shall be used.
- 1.3.2. 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:

- 1.4.1. **Price Bid Opening:** During opening of price bids (submitted through conventional method or through E-mail or through E-Procurement system), 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.
- 1.4.2. **Reverse Auction:** In case of Reverse Auction, the successful bidder shall undertake to execute the work as per overall price offered by him during the Reverse Auction process. **(Guidelines as available on [www.bhel.com](http://www.bhel.com) on "supplier registration page").**

### 1.5. Qualification of tenders:

- 1.5.1. 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.
- 1.5.2. Offers from tenderers who do not have proven and established experience in the field shall not be considered.
- 1.5.3. The offers of the bidders who are on the banned/ hold list and also the offer of the bidders, who engage the services of the banned/ hold firms, shall be rejected. The list of banned/ hold firms is available on BHEL web site [www.bhel.com](http://www.bhel.com). (Refer clause 28.0 of NIT).
- 1.5.4. 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:

- 1.6.1. 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.
- 1.6.2. 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 and 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.

- 1.6.3. 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 like TDS certificates, labour license, etc. for the said job.
- 1.6.4. Assessing Bidder's Capacity for executing the current tender shall be as per Notice Inviting Tender.
- 1.6.5. Price Bids of shortlisted bidders shall only be opened either through the conventional/electronic price bid opening with/without Reverse Auction, at the discretion of BHEL. Unless specified otherwise in the tender, the L1 bidder amongst all the shortlisted bidders shall be considered for award. However, the L1 bidder shall have no claim on the award & BHEL reserves the right to award the tender at its sole discretion.
- 1.6.6. Price Bids of unqualified bidders shall not be opened. Reasons for rejection shall be intimated in due course after issue of LOI/ LOA to successful bidder either through system generated e-mail or through letter/ e-mail.
- 1.6.7. Void.

**1.7. Data to be enclosed - Not Applicable**

**1.8. Authorization and Attestation:**

Tenders shall be signed by a person duly authorized/empowered to do so, for which a Power of Attorney is to be submitted along with the tender offer. For company, a Power of Attorney (as per format in NIT) shall be submitted.

**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 before tender opening / along with the offer in full as per the amount indicated in the NIT.
  - ii. The EMD is to be paid only in the following forms:
    - (a) Cash deposit as permissible under the extant Income Tax Act (before tender opening).
    - (b) Electronic Fund Transfer credited in BHEL account (before tender opening).
    - (c) Banker's cheque / Pay order / Demand draft, in favour of 'Bharat Heavy Electricals Limited' and payable at Regional HQ issuing the tender (along with offer).
    - (d) Fixed Deposit Receipt (FDR) issued by Scheduled Banks/ Public Financial Institutions as defined in the Companies Act (FDR should be in the name of the Contractor, a/c BHEL) (along with offer). The Fixed Deposit in such cases shall be valid for at least six months from the due date of tender submission.

In case EMD amount is more than Rs. Two Lakhs, Tenderer has the option to submit Rs. Two lakhs in the forms described above in clause no. 1.9.1. (a) to (d) and the remaining amount over and above Rs. Two Lakhs in the form of Bank Guarantee from Scheduled Bank (along with the Offer). The Bank Guarantee in such cases shall be valid for at least six months from the due date of tender submission. The Bank Guarantee format for EMD shall be in the prescribed formats.
  - iii. No other form of EMD remittance shall be acceptable to BHEL.
- 1.9.2. EMD by the Tenderer will be forfeited as per NIT conditions, if:

- i. After opening the tender and within the offer validity period, the tenderer revokes his tender or makes any modification in his tender which is not acceptable to BHEL.
- ii. The Contractor fails to deposit the required Security deposit or commence the work within the period as per LOI/ LOA/ Contract.

EMD by the tenderer shall be withheld in case any action on the tenderer is envisaged under the provisions of extant "Guidelines on Suspension of business dealings with suppliers/ contractors" and forfeited/ released based on the action as determined under these guidelines.

- 1.9.3. EMD shall not carry any interest.
- 1.9.4. EMD given by all unsuccessful tenderers shall be refunded normally within fifteen days of award of work.
- 1.9.5. Cash portion of EMD of successful tenderer will be retained as part of Security Deposit. EMD submitted in the form of Bank Guarantee/ FDR shall be retained by BHEL until the receipt of at least 50% of the Security Deposit.

#### **1.10. Security Deposit:**

- 1.10.1. Upon acceptance of Tender, the successful Tenderer should deposit the required amount of Security Deposit towards fulfilment of any obligations in terms of the provisions of the contract. The total amount of Security Deposit will be 5% of the contract value.

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

Note: In case of small value contracts not exceeding Rs. 20 lakhs, work can be started before the required Security Deposit is collected. However, payment can be released only after collection/ recovery of initial 50% Security Deposit.

- 1.10.3. The balance amount to make up the required Security Deposit of 5% of the contract value may be accepted in the following forms.

- i. Cash (as permissible under the extant Income Tax Act).
- ii. Local cheques of Scheduled Banks (subject to realization)/ Pay Order/ Demand Draft/ Electronic Fund Transfer in favour of BHEL.
- iii. Securities available from Indian Post offices such as National Savings Certificates, Kisan Vikas Patras etc. (held in the name of Contractor furnishing the security and duly endorsed/ hypothecated/ pledged, as applicable, in favour of BHEL).
- iv. Bank Guarantee from Scheduled Banks/ Public Financial Institutions as defined in the Companies Act. The Bank Guarantee format for Security Deposit shall be in the prescribed formats.
- v. Fixed Deposit Receipt issued by Scheduled Banks/ Public Financial Institutions as defined in the Companies Act (FDR should be in the name of the Contractor, a/c BHEL).
- vi. Security deposit can also be recovered at the rate of 10% of the gross amount progressively from each of the running bills of the contractor till the total amount of the required security deposit is collected. However, in such cases at least 50% of the required Security Deposit, including the EMD, should be deposited in any form as prescribed before start of the work and the balance 50% may be recovered from the running bills as described above.

**Note:** 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 the awarded / accepted value, the Security Deposit shall be correspondingly enhanced 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. Contract value for the purpose of operating the increased value of Security Deposit due to Quantity Variation, shall be exclusive of Price Variation Clause, Over Run Compensation and Extra works done on manday rates.
  - iii. The recoveries made from running bills (cash deduction towards balance SD amount) can be released against submission of equivalent Bank Guarantee in acceptable form, but only once, before completion of work, with the approval of competent authority of BHEL.
- 1.10.6. The validity of Bank Guarantees towards Security Deposit shall be initially up to the completion period as stipulated in the Letter of Intent/ Award + Guarantee Period + 3 months, and the same shall be kept valid by proper renewal by the contractor 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 upon fulfilment of contractual obligations as per terms of the contract including completion of Guarantee Period after deducting all expenses / other amounts due to BHEL under the contract / other contracts entered into with them by BHEL.

#### **1.12. Bank Guarantees:**

Where ever Bank Guarantees are to be furnished/submitted by the contractor, the following shall be complied with;

- 1.12.1. Bank Guarantees shall be from Scheduled Banks / Public Financial Institutions as defined in the Companies Act. Bank Guarantees issued by Co-Operative Banks/ Financial Institutions shall not be accepted.
- 1.12.2. The Bank Guarantees shall be as per prescribed formats.
- 1.12.3. It is the responsibility of the bidder to get the Bank Guarantees revalidated/extended for the required period 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.
- 1.12.4. In case extension/further extensions of any Bank Guarantees are not required, the bidders shall ensure that the same is explicitly endorsed by the Construction Manager and submitted to the Regional HQ issuing the LOI/LOA.
- 1.12.5. 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.
- 1.12.6. 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.
- 1.12.7. The Original Bank Guarantee shall be submitted to Subcontracting Department of the respective Region of BHEL.

#### **1.13. Void**

#### **1.14. Void**

#### **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 tenders, unsolicited tenders, 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. **Void**
- 1.15.4. **Void**
- 1.15.5. **Void**
- 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. **Void**
- 1.15.8. **Void**
- 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's Construction Manager/Site in charge. 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, in case of Conventional/ Paper bid.
- 1.15.11. Unsolicited discount received after the due date and time of Bid Submission 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.

**1.16. Void**

**2. Chapter-2:**

**2.1. Void**

**2.2. Void**

**2.3. Issue of Notice:**

**2.3.1. Service of notice on contractor:**

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.

### **2.3.2. Service of notice on BHEL:**

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.

### **2.4. Use of Land:**

No land belonging to BHEL or their Customer under temporary possession of BHEL shall be occupied by the contractor without written permission of BHEL.

### **2.5. Void**

### **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/specification 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/specification 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, along with statutory documents, in prescribed format 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 format 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 Claim" 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.

## **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.

In case of inadequate manpower deployed by the contractor, BHEL reserves the right to deploy additional manpower through any other agency for expediting the activities in the interest of the project. Supplied manpower shall be put on job by the contractor and payments and other statutory compliances related to manpower shall be the contractor's responsibility. In case of contractor's failure to fulfill his obligations in respect of manpower, BHEL reserves the right to take necessary action as per contract conditions.

### **2.7.2.**

- 2.7.2.1. To terminate the contract or withdraw portion of work and get it done through other agency, at the risk and cost of the contractor after due notice of a period of 14 days' by BHEL in any of the following cases:

- i) Contractor's poor progress of the work vis-à-vis execution timeline as stipulated in the Contract, backlog attributable to contractor including unexecuted portion of work does not appear to be executable within balance available period considering its performance of execution.
- ii) Withdrawal from or abandonment of the work by contractor before completion of the work as per contract.
- iii) Non-completion of work by the Contractor within scheduled completion period as per Contract or as extended from time to time, for the reasons attributable to the contractor.
- iv) Termination of Contract on account of any other reason (s) attributable to Contractor.
- v) Assignment, transfer, subletting of Contract without BHEL's written permission.
- vi) Non-compliance to any contractual condition or any other default attributable to Contractor.

To meet the expenses over and above the Liquidated damages/penalties arising out of "Risk & Cost" as explained below. BHEL shall recover the amount from any money due from Contractor, or 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.

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

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

Where,

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

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

H = Overhead Factor to be taken as 5

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

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

Difference of Contract Quantities and Executed Quantities as on the date of issue of Letter for 'Termination of Contract', shall be taken as balance scope of Work for calculating risk & cost amount. Contract quantities are the quantities as per original contract. If, Contract has been amended, quantities as per amended Contract shall be considered as Contract Quantities. Items for which total quantities to be executed have exceeded the Contract Quantities based on drawings issued to contractor from time to time till issue of Termination letter, then for these items total Quantities as per issued drawings would be deemed to be contract quantities. Substitute/ extra items whose rates have already been approved would form part of contract quantities for this purpose. Substitute/ extra items which have been executed but rates have not been approved, would also form part of contract quantities for this purpose and rates of such items shall be determined in line with contractual provisions. However, increase in quantities on account of additional scope in new tender shall not be considered for this purpose.

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

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

LD against delay in executed work shall be calculated in line with LD clause (iv) below, for the delay attributable to contractor. For limiting the maximum value of LD, contract value shall be taken as Executed Value of work till termination of contract. Method for calculation of "LD against delay in executed work in case of termination of contract" is given below.

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

2.7.2.2. In case Contractor fails to deploy the resources as per requirement, BHEL can deploy own/hired/otherwise arranged resources at the risk and cost of the contractor and recover the expenses incurred from the dues payable to contractor. Recoveries shall be actual expenses incurred plus 5% overheads.

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

Following sequence shall be applicable for recoveries from contractor:

- (a) Dues available in the form of Bills payable to contractor, SD, BGs against the same contract.
- (b) Demand notice for deposit of balance recovery amount shall be sent to contractor, if funds are insufficient to effect complete recovery against dues indicated in (a) above.

- (c) If contractor fails to deposit the balance amount to be recovered within the period as prescribed in demand notice, following action shall be taken for balance recovery:
  - (i) Dues payable to contractor against other contracts in the same Region shall be considered for recovery.
  - (ii) If recovery cannot be made out of dues payable to the contractor as above, balance amount to be recovered, shall be informed to other Regions/Units for making recovery from the Unpaid Bills/Running Bills/SD/BGs/Final Bills of contractor.
  - (iii) In-case recoveries are not possible with any of the above available options, Legal action shall be initiated for recovery against contractor.
- 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 5% on all such payments along with interest as defined elsewhere in the GCC.
- 2.7.6. While every endeavour will be made by BHEL to this end, they (BHEL) 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. BHEL may permit or direct contractor to demobilize and remobilize at a future date as intimated by BHEL in case of following situations for reasons other than Force majeure conditions and not attributable to contractor:
  - (i) Suspension of work(s) at a Project either by BHEL or Customer,  
or
  - (ii) Where work 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 three months

In such cases, charges towards demobilization and remobilization shall be as decided by BHEL after successful remobilization by contractor at site, and decision of BHEL shall be final and binding on the contractor. After remobilization, all conditions as per contract shall become applicable. In case Contractor does not remobilize with adequate resources or does not start the work within the period as intimated, then BHEL reserves the right to get the balance works done at the Risk & Cost of the Contractor. Duration of the contract/time extension shall be revised 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 on its own or contractor's request at its discretion may consider to short close the contract in any of the following cases:
  - (a) The balance works (including but not limited to Trial Operation, PG Test etc.) are minor vis a vis the scope of work envisaged as per the contract.
  - (b) There has been no significant work in past 6 months OR no significant work is expected in next 6 months (example in Hydro projects or in projects where work has stopped due to reasons beyond the control of BHEL).

- (c) The balance works cannot be done within a reasonable period of time as they are dependent on unit shut down or on other facilities of customer or any other such reasons not attributable to the contractor.

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 (or estimated value of services to be provided for carrying out milestone/stage payments like Trial Operation/PG Test etc.) as decided by BHEL, shall however be reduced from the final contract value.

**Note:** The Contractor shall not be eligible for any compensation on account of Quantity Variation arising out of short-closure of contract as per clause no. 2.7.8 (b) above.

**2.7.9. Liquidated Damage/ Penalty:**

At the end of total work completion as certified by BHEL Engineer, and upon analysis of the total delay, the portion of time extensions attributable to (i) Contractor alone, (ii) Force majeure conditions, and (iii) BHEL, shall be worked out. The total period of time extensions shall be the sum of (i), (ii) and (iii) above and shall be equal to period between the scheduled date of completion and the actual date of completion of contract. LD shall be imposed/levied for the portion of time extensions solely attributable to contractor and recoverable from the dues payable to the contractor.

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 for which LD is applicable shall be worked out based on portion of time extension granted solely attributable to contractor at the end of the contract. Contract Value for this purpose, shall be the final executed value exclusive of Extra Works executed on Manday rate basis and Supplementary/ Additional Items.

In case of LD recovery, the applicable GST shall also be recovered from contractor.

**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, Notifications 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, Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act 1996, The Building and Other Construction Workers' Welfare Cess Act 1996 and other Acts, Rules, and Regulations for labour/workers as applicable and as may be enacted by the State Government and Central Govt. during the tenure of the Contract and having force or jurisdiction at Site. The Contractor

- shall also comply with provisions of and give all such notices to the local Governing Body, Police and other relevant Authorities 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 for engaging contract labour as required from the concerned Authorities based on the certificate (Form- V or as applicable) issued by the Principal Employer/Customer.
- 2.8.5. The contractor shall pay and bear all taxes, fees, license charges, Cess, duties, deposits, tolls, royalties, commission or other charges which may be leviable on account of his operations in executing the contract.
- 2.8.6. **Void.**
- 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 behaviour 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/equipment/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 / equipment / 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. Contractor shall create awareness amongst their workforce by helping & encouraging in opening bank accounts and to encourage them to adopt digital mode of transactions. While releasing wages/ salary to their workers/ supervisors/ staff, Contractor shall comply with the GOI's guidelines for maximizing such transactions through Non-Cash / digital means.
- 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.
- 2.8.24. The Contractor to note that some of BHEL's T&Ps/MMDs may not be insured. The Contractor will take necessary precautions and due care to protect the same while in his custody from any damage/ loss till the same is handed over back to BHEL. In case the damage / loss is due to carelessness/ negligence on the part of the contractor, the Contractor is liable to get them repair/ replaced immediately and in case of his failure to do so within a reasonable time, BHEL will reserve the right to recover the loss from the contractor.
- 2.8.25. For all works having contract value of Rs. 5,00,000/- or above, BHEL shall recover the amount of compensation paid to victim(s) by BHEL towards loss of life/ permanent disability due to an accident which is attributable to the negligence of contractor, agency or firm or any of its employees as detailed below.

- (a) **Victim:** Any person who suffers permanent disablement or dies in an accident as defined below.
- (b) **Accident:** Any death or permanent disability resulting solely and directly from any unintended and unforeseen injurious occurrence caused during the manufacturing/ operation and works incidental thereto at BHEL factories/ offices and precincts thereof, project execution, erection and commissioning, services, repairs and maintenance, trouble shooting, serving, overhaul, renovation and retrofitting, trial operation, performance guarantee testing undertaken by the company or during any works/ during working at BHEL Units/ Offices/ townships and premises/ Project Sites.
- (c) Compensation in respect of each of the victims:
  - i. In the event of death or permanent disability resulting from Loss of both limbs: Rs. 10,00,000/ (Rs. Ten Lakh).
  - ii. In the event of other permanent disability: Rs.7,00,000/- (Rs. Seven Lakh)
- (d) **Permanent Disablement:** A disablement that is classified as a permanent total disablement under the proviso to section 2 (I) of the Employee's Compensation Act, 1923.

2.8.26. Contractor shall be fully responsible for their T&Ps and other material mobilized at site. In any case, BHEL shall not be liable for any damage/loss/misuse of any item(s) belong to the contractor.

## **2.9. Execution Plan, Progress Monitoring, Monthly Review and Performance Evaluation:**

2.9.1. A tentative plan/ programme for completion of the contractual scope of work as per the time schedule given in the contract shall be made jointly by BHEL and Contractor, before commencement of work. The above programme shall be supported by month wise deployment of resources viz Manpower, T&P, Consumables, etc. Progress will be reviewed periodically (Daily/Weekly/Monthly) vis-à-vis this jointly agreed programme. Subsequently, every month, quarterly rolling plan will be made by BHEL based on budgeted targets. Monthly plan in F-14 format shall be drawn from this Quarterly plan. Monthly plan shall necessarily include activities required for achieving targets/ milestones unless inputs/ fronts are not available. While planning and arriving on asking rate all available inputs shall be taken into consideration. Vendor will be required to execute the monthly plan in that month in addition to make full efforts to minimize the cumulative shortfall attributable to him up to the month. BHEL may require monthly work plan up to one and half times of average monthly value and demand matching manpower.

Where, Average Monthly Value = Total Contract Value (as per latest revision) / Period of Contract (in months)

Provided, this requirement is reflected in the rolling quarterly plan two months in advance.

If the Contractor refuses to sign the F-14 format, those F-14 formats requiring Contractor's signature shall be deemed to have been signed and accepted by the Contractor, if communicated to the Contractor through email or any other mode as stated in clause 2.3.1.

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 as above, availability of inputs/fronts etc., and constraints if any, as per prescribed formats (i.e. Form F-14). Manpower, T&P and consumable reports as per prescribed formats shall be submitted by contractor every month. Release of RA Bills shall be contingent upon certification by BHEL Site Engineer of the availability of the above prescribed formats duly filled in and signed.

- 2.9.3. 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
- 2.9.4. Performance of the Contractor shall be assessed as per prescribed formats and shall form the basis for 'Assessment of Capacity of Bidder' for Tenders where the Contractor is a bidder. BHEL reserves the right to revise the evaluation formats during the course of execution of the works.

**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. Time being the essence of the contract, 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.
- 2.11.2. Based on the F-14 formats, the works balance at the end of original contract period less the backlog attributable to the contractor shall be quantified, and the number of months of 'Time extension' required for completion of the same shall be jointly worked out. Within this period of 'Time extension', the contractor is bound to complete the portion of backlog attributable to the contractor. Any further 'Time extension' or 'Time extensions' at the end of the previous extension shall be worked out similarly.
- 2.11.3. However, if any 'Time extension' is granted to the contractor to facilitate continuation of work and completion of contract, due to backlog attributable to the contractor alone, then it shall be without prejudice to the rights of BHEL to impose penalty / LD for the delays attributable to the contractor, in addition to any other actions BHEL may wish to take at the risk and cost of contractor.
- 2.11.4. Planning, progress monitoring, monthly review and performance monitoring shall be carried out as per Clause 2.9 of GCC.

**2.12. Overrun Compensation: Not applicable for this tender.**

**2.13. Interest Bearing Recoverable Advance: Not applicable for this tender.**

**2.14. Quantity Variation:**

**2.14.1. Variation in Final Executed Contract Value:**

The quantities given in the contract are tentative and may change to any extent (both in plus side and minus side). No compensation becomes payable in case the variation of the final executed contract value is within the limits of Minus (-) 15% of awarded contract value. Also, no compensation becomes payable in case the contract gets partially executed/ short closed/ terminated/ work withdrawn under Rights of BHEL mentioned in Clause 2.7 of GCC. In case of work terminated / short closed under clause 2.7.4 of GCC, compensation may be considered only if BHEL receives compensation from customer.

Compensation due to variation of final executed contract 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 awarded Contract Value due to quantity variation specified above, the Contractor will be eligible for compensation @ 15% of the difference between the lower limit of the awarded contract value and the actual executed contract value.

- (ii) In case the finally executed contract value increases above the awarded Contract Value due to quantity variation, the Contractor is not eligible for any compensation.

**2.14.2. Variation in Individual Quantities of BOQ Item(s):**

The quantities given in the contract are tentative and may change to any extent (both in plus side and minus side). No compensation becomes payable in case the variation of the quantity of individual BOQ item(s) is within the limits of Plus (+) 100% of the quantity in the original price schedule.

In case executed quantity for a particular BOQ item(s) exceeds two times the quantity in the original price schedule (100% increase), then the revision in rates for such BOQ item(s) for the quantity in excess of two times the quantity in the original price schedule including any subsequent increase in quantity, may be considered based on request from the Contractor, however, BHEL decision in this regard shall be final. Revised rates for subject BOQ item (s) shall be worked out on the basis of prevailing market rates mutually agreed between BHEL and Contractor. PVC/ ORC will not be applicable for these revised rates.

**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 equipment, 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. 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.
- 2.15.3. 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.
- 2.15.4. 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.
- 2.15.5. 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. 108/- per man hour.

- 2.15.6. 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 on extra works.
- 2.15.7. **Extra Works for Civil Packages** shall be regulated as follows:

- (i) Rates for Extra Works arising due to (1) non availability of BOQ (Rate Schedule), OR (2) change in Specifications of materials/works (3) rectification / modification / dismantling & re-erecting etc. due to no fault of Contractor, shall be in the order of the following:
  - (a) Item rates are to be derived from similar nature of items in the BOQ (Rate Schedule) with applicable escalation derived from All India Consumer Price Index for Whole Sale Commodities.
  - (b) As per latest edition of CPWD-DSR with applicable escalation derived from All India Consumer Price Index for Whole Sale Commodities OR Notification issued by the office of CPWD for 'Cost Index' in that Region where the project is being executed with applicable escalation derived from All India Consumer Price Index for Whole Sale Commodities, whichever is less.
  - (c) Item rates are to be worked out on the basis of market rates prevailing on the date of execution mutually agreed between BHEL and Contractor.
- (ii) PVC and ORC will not be applicable for (i) above.

## **2.16. Supplementary Items:**

### **2.16.1. For NON Civil Works:**

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, rates shall be derived 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 (i) above does not exist, then BHEL / site may derive the percentage breakup / rates to suit the type of work.

### **2.16.2. For Civil Works:**

- (i) Rates for Supplementary Works / Additional Works arising out due to additions / alterations in the original scope of works as per contract subject to certification of BHEL Engineer shall be worked out as under:
  - (a) Item rates which are available in existing BOQ (Rate Schedule) shall be operated with applicable escalation derived from All India Consumer Price Index for Whole Sale Commodities.
  - (b) Items of works which are not available in existing BOQ shall be operated as an 'Extra Works' and rate shall be derived as per clause no 2.15.7.
- (ii) Execution of Supplementary Works / Additional Works through the Contractor shall be at the sole discretion of BHEL, and shall be considered as part of executed contract value for the purpose of Quantity Variation as per clause 2.14.
- (iii) BHEL Engineer's decision regarding fixing the rate as above is final and binding on the contractor.
- (iv) PVC and ORC will not be applicable for (i) above.

## **2.17. Price Variation Compensation: Not applicable for this tender.**

## **2.18. Insurance:**

- 2.18.1. BHEL / their customer shall arrange for insuring the materials / properties of BHEL / customer covering the risks during transit, storage, erection and commissioning.
- 2.18.2. It is the sole responsibility of the contractor to insure his materials, equipment, 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.

- 2.18.3. 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.
- 2.18.4. The contractor will take necessary precautions and due care to protect the material, while in his custody from any damage / loss due to theft or otherwise till the same is taken over by BHEL or customer. For lodging / processing of insurance claim, the contractor will submit necessary documents. BHEL will recover the loss including the deductible franchise 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.

## **2.19. Void.**

## **2.20. Force Majeure:**

- 2.20.1. "Force Majeure" shall mean circumstance which is: a) beyond a party's control, b) The party could not reasonably have provided against before entering into the contract, c) Having arisen, such party could not reasonably have avoided or overcome, and d) Is not substantially attributable to the other party. Such circumstances include but not limited to;
- (i) Exceptionally adverse climatic conditions at the site which are unforeseeable having regard to climate data available or published in the country for the geographical location of the site.
  - (ii) War, hostilities (whether war be declared or not), invasion, act of foreign enemies.
  - (iii) Rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war.
  - (iv) Riot, commotion or disorder by persons other than the contractor's personnel and other employees of the contractor and sub-contractors.
  - (v) Strike or lockout not solely involving the contractor's personnel and other employees of the contractor and sub-contractors.
  - (vi) 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.
  - (vii) Natural catastrophes such as earthquake, tsunami, volcanic activity, hurricane or typhoon, flood, fire, cyclones etc.
- 2.20.2. 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.
- 2.20.3. 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.
- 2.20.4. The party who has given such notice shall be excused from the performance or punctual performance of its 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.

2.20.5. Delay or non-performance by either party hereto caused by the occurrence of any event of Force Majeure shall not

- (i) Constitute a default or breach of the Contract.
- (ii) 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.

2.20.6. 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, Contractor cannot consider deemed short-closure after 1 year of imposition of Force Majeure.

## **2.21. Arbitration & Conciliation:**

### **2.21.1. Arbitration:**

- (i) Except as provided elsewhere in this Contract, in case Parties are unable to reach amicable settlement (whether by Conciliation to be conducted as provided in Clause 2.21.2 herein below 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, commence arbitration in respect of such Dispute by issuance of a notice in terms of section 21 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the 'Notice'). The Notice shall be addressed to the Head of the Power Sector Region issuing the Contract and shall contain the particulars of all claims to be referred to arbitration in sufficient detail and shall also indicate the monetary amount of such claim. Within 60 days of receipt of the complete Notice, the Head of the BHEL Power Sector Region issuing the Contract shall offer names of three proposed Arbitrators to the invoking Party advising to choose any one of the three names to be appointed as Sole Arbitrator. On getting confirmation from the invoking Party regarding the Arbitrator chosen from among the names so offered, the Head of the BHEL Power Sector Region issuing the Contract, shall appoint such chosen person as the Sole Arbitrator for conducting the arbitration. The language of arbitration shall be English.

The Arbitrator shall pass a reasoned award.

Subject as aforesaid, the provisions of Arbitration and Conciliation Act 1996 (India) or statutory modifications or re-enactments thereof and the rules made thereunder as in force from time to time shall apply to the arbitration proceedings under this clause. The seat of arbitration shall be \_\_\_\_\_ (the place from where the contract is Issued). The Contract shall be governed by and be construed as per provisions of the laws of India. Subject to this provision 2.21.1.1 regarding ARBITRATION, the principal civil court exercising ordinary civil jurisdiction over the area where the seat of arbitration is located shall have exclusive jurisdiction over any DISPUTE to the exclusion of any other court.

- (ii) 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 commercial contract(s) between Central Public Sector Enterprises (CPSEs)/ Port Trusts inter se and also between CPSEs and Government Departments / Organizations (excluding disputes concerning Railways, Income Tax, Customs & Excise Departments), such dispute or difference shall be taken up by either party for resolution through AMRCD (Administrative Mechanism for Resolution of CPSEs Disputes) as mentioned in DPE OM No. 4(1)/2013-DPE(GM)/FTS-1835 dated 22-05-2018 as amended from time to time.

- (iii) The cost of arbitration shall initially be borne equally by the Parties subject to the final allocation thereof as per the award/order passed by the Arbitrator.
- (iv) Notwithstanding the existence of any dispute or differences and / or reference for the arbitration, the Contractor shall proceed with and continue without hindrance the performance of its obligations under this Contract with due diligence and expedition in a professional manner unless the dispute inter-alia relates to cancellation, termination or short-closure of the Contract by BHEL.

#### **2.21.2. Conciliation:**

If at any time (whether before, during or after the arbitral or judicial proceedings), any Disputes (which term shall mean and include any dispute, difference, question or disagreement arising in connection with construction, meaning, operation, effect, interpretation or breach of the agreement, contract), which the Parties are unable to settle mutually, arise inter-se the Parties, the same may, be referred by either party to Conciliation to be conducted through Independent Experts Committee (IEC) to be appointed by competent authority of BHEL from the BHEL Panel of Conciliators.

##### **Notes:**

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

The proceedings of Conciliation shall broadly be governed by Part-III of the Arbitration and Conciliation Act 1996 or any statutory modification thereof and as provided in Procedure 2.3 to this GCC. The Procedure 2.3 together with its Formats will be treated as if the same is part and parcel hereof and shall be as effectual as if set out herein in this GCC.

The Contractor hereby agrees that BHEL may make any amendments or modifications to the provisions stipulated in the Procedure 2.3 to this GCC from time to time and confirms that it shall be bound by such amended or modified provisions of the Procedure 2.3 with effect from the date as intimated by BHEL to it.

#### **2.21.3. No Interest Payable to Contractor:**

Notwithstanding anything to the contrary contained in any other document comprising in the Contract, no interest shall be payable by BHEL to Contractor on any moneys or balances including but not limited to the Security Deposit, EMD, Retention Money, RA Bills or the Final Bill, or any amount withheld and/or appropriated by BHEL etc., which becomes or as the case may be, is adjudged to be due from BHEL to Contractor whether under the Contract or otherwise.

#### **2.22. Retention Amount:**

- 2.22.1. Retention amount shall be 5% of executed contract value and shall be recovered at the rate of 5% from each running bill admitted, including PVC bills. Alternatively, BG, in line with clause 1.12 of GCC, equivalent to 5% of contract value against retention amount can also be submitted before payment of first RA bill. The validity of the said BG shall be initially for the contract period & shall be extended, if required up to acceptance of final bill. In case of increase in contract value, additional BG for 5% of differential amount shall be submitted by contractor before payment of next RA bill due. In case, contractor opts cash deduction from RA bills in the beginning & subsequently offers to submit BG later on, then refund of deducted retention amount may be permitted against submission of equivalent BG only once during the contract period.

- 2.22.2. Refund of retention amount shall be as follows:

100% retention amount/ BG against retention amount shall be released along with final bill after deduction of all expenses/ other amounts due to BHEL under the contract/ other contracts entered in to with them (contractor) by BHEL.

## **2.23. Payments:**

### **2.23.1. Running Account Bills (RA Bills):**

- (i) These are for interim payments when the contracts are in progress. The bills for such interim payments are to be prepared by Contractor in prescribed formats (RA Bill forms).
- (ii) Payments shall be made according to the extent of work done as per measurements taken up to the end of the calendar month and in line with the terms of payments described in the Tender documents.
- (iii) Recoveries on account of electricity, water, statutory deductions etc. are made as per terms of contract.
- (iv) Full rates for the work done shall be allowed only if the quantum of work has been done as per the specifications stipulated in the contract. If the work is not executed as per the stipulated specifications, BHEL may ask the contractor to redo the work according to the required specifications, without any extra cost. However, where this is not considered necessary 'OR' where the part work is done due to factors like non-availability of material to be supplied by BHEL 'OR' non availability of fronts 'OR' non availability of drawings, fraction payment against full rate, as is considered reasonable, may be allowed with due regard for the work remaining to be done. BHEL decision in this regard will be final and binding on the contractor.
- (v) In order to facilitate part payment, BHEL at its discretion may further split the contracted rates/percentages to suit site conditions, cash flow requirements according to the progress of work, subject to following:
  - (a) Provided no 'part' payment is recommended till 25% of work in the item rate is executed.
  - (b) Payment of item rate to be made in not more than three instalments, last stage payment to be not lower than 20% of the item rate.

### **2.23.2. Final Bill:**

Final Bill' is used for final payment on closing of Running Account for works or for single payment after completion of works. 'Final Bill' shall be submitted as per prescribed format after completion of works as per scope and upon material reconciliation, along with the following:

- (i) 'No Claim Certificate' by Contractor.
- (ii) Clearance certificates where ever applicable viz. Clearance Certificates from Customer, various Statutory Authorities like Labour department, PF Authorities, Commercial Tax Department etc.
- (iii) Indemnity Bond as per prescribed format.

BHEL shall settle the final bills after deducting all liabilities of Contractor to BHEL.

## **2.24. Performance Guarantee for Workmanship:**

- 2.24.1. 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 Technical 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 Security Deposit.

2.24.2. BHEL shall release the Security Deposit subject to the following

- (i) Contractor has submitted 'Final Bill'
- (ii) Guarantee period as per contract has expired
- (iii) Contractor has furnished 'No Claim Certificate' in specified format.
- (iv) BHEL Site Engineer/Construction Manager has furnished the 'No Demand Certificate' in specified format.
- (v) Contractor has carried out the works required to be carried out by him during the period of Guarantee and all expenses incurred by BHEL on carrying out such works is included for adjustment from the Security Deposit refundable.

**2.25. Closing of Contracts:**

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

**2.26. 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.

**2.27. Void.**

**2.28. Void.**