	GENERAL CONDITIONS OF CONTRACTS (GCC) Procurement of Goods and Services from indigenous Suppliers		
Rudrapur	BHEL CFP RUDRAPUR, MATERIALS MANAGEMENT DEPT.	Rev No.	00

- 1. Liquidated Damages for delayed delivery:** In case of delay in execution of contract/purchase order beyond the delivery period stipulated in the said contract/purchase order, a penalty of 0.5% on the value of delayed portion of supply (inclusive of basic rate, taxes, duties, freight & insurance as applicable) per week of delay shall be levied on Supplier.

Maximum limit of Liquidated damages shall be **10% of total purchase order value (inclusive of basic rate, taxes, duties, freight & insurance as applicable)**. In case of quoting any deviation from the above LD clause, **the offer shall be loaded in comparison statement for un-accepted portion of LD, maximum up to 10% of total purchase order value (inclusive of basic rate, taxes, duties, freight & insurance as applicable)**. **GST shall also be charged on LD amount as per applicable rate and tax invoice shall be issued by BHEL.**

Note :

i) In case of any amendment or revision in contract/Purchase order, the LD shall be linked to the amended / revised Purchase Order / Contract value and delivery / completion time / schedule, as applicable.


ii) If, delay is not attributable to the supplier, delay analysis with documentary evidence may be submitted by the supplier at the earliest but not later than six months from the end of the financial year in which the payment is withheld.

Based on the above details / documents submitted by the supplier, BHEL shall take final decision and if considered appropriate by BHEL, withheld amount (full or part as the case may be) shall be released, otherwise, full or balance withheld amount shall be treated as deduction of Liquidated Damages (LD) towards delayed delivery.

Liquidated Damages = 0.5 % X Delay in Nos. of Weeks X Quantity *(Basic Rate + P&F + Freight + Other charges, if any + Taxes & Duties) + Applicable GST.

- 2. Reverse Auction: Not Applicable to this NIT.**

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	GENERAL CONDITIONS OF CONTRACTS (GCC) Procurement of Goods and Services from indigenous Suppliers		
Rudrapur	BHEL CFP RUDRAPUR, MATERIALS MANAGEMENT DEPT.	Rev No.	00

- 3. Risk Purchase Clause:** If the supplier fails to deliver the **whole or any part of the goods or services** within the stipulated delivery period mentioned in the Purchase order, BHEL shall be entitled to terminate the contract and to purchase the same or “the best and the nearest available substitute” from elsewhere at the risk and cost of the seller either the whole or any part of the goods/Services. In case of deviation or non-acceptance of Risk Purchase clause, offer shall be liable for rejection. **Risk & Cost Amount payable by Supplier or recoveries in-lieu of Risk Purchase may be recovered from supplier by encashing/invoking Bank Guarantee, Security Deposits available with BHEL against the same or any other contract or may be adjusted against dues payable to supplier by BHEL against other purchase orders/contracts/work orders etc by any unit/region etc. of BHEL.**

Risk and Cost against Balance Work:

Risk & Cost Amount= [(A-B) + (A x H/100)]

Where,

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

B= Value of Balance scope of Work/ Supply (*) as per rates of old contract being paid to the contractor/ supplier 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/ supply)**


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/ Supply

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.

Suspension of Business Dealings: Action shall be taken as per extant BHEL “**Guidelines for Suspension of Business Dealings with Suppliers/Contractors AA/MM/SB/01 Rev.02 Dated 22.07.2016**” against Supplier as well their agents who either fail to perform or are in default without any reasonable cause like force majeure, cause loss of business/money/reputation, indulge in malpractices, cheating, bribery, fraud or any other misconduct or formation of cartels so as to influence the bidding processor influence the price, tempering with tender process etc. Further details in this regard can be accessed through BHEL website www.bhel.com.

Signature and seal of Bidder

	GENERAL CONDITIONS OF CONTRACTS (GCC) Procurement of Goods and Services from indigenous Suppliers		
Rudrapur	BHEL CFP RUDRAPUR, MATERIALS MANAGEMENT DEPT.	Rev No.	00

- 4. Fraud Prevention Policy:** The Bidder along with its associate/ collaborators/ sub-contractors/ sub-vendors/ consultants/ service providers shall strictly adhere to BHEL Fraud Prevention Policy displayed on BHEL website <http://www.bhel.com> and shall immediately bring to the notice of BHEL Management about any fraud or suspected fraud as soon as it comes to their notice."
- 5. Conciliation Clause:** The Parties i.e. BHEL and Supplier agree that 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 or the Memorandum of Understanding (delete whichever is inapplicable), 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 to be appointed by competent authority of BHEL from the BHEL Panel of Conciliators.

Notes:


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

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 **Annexure A** to this GCC.

The **Annexure A** together with it's appendices will be treated as if the same is part and parcel hereof and shall be as effectual as if set out herein in the GCC.

The Contractor/Seller etc. to Agreement/Contract/MoU etc, agrees that the Purchaser BHEL may make any amendments or modifications to the provisions stipulated in the Annexure A to this GCC from time to time and confirms that it shall be bound by such amended or modified provisions of the Annexure A with effect from the date as intimated by BHEL to it.


Signature and seal of Bidder

	GENERAL CONDITIONS OF CONTRACTS (GCC) Procurement of Goods and Services from indigenous Suppliers		
Rudrapur	BHEL CFP RUDRAPUR, MATERIALS MANAGEMENT DEPT.	Rev No.	00

6. Arbitration:

- a) In case amicable settlement is not reached between the Parties, in respect of any dispute or difference or claim or controversy arising out of the formation, breach, termination, validity or execution of the Contract(or Agreement) or the respective rights and liabilities of the parties or in relation to interpretation of any provision of the Contract or in any manner touching upon the Contract, then, either party may, by a notice in writing to the other Party refer such dispute or difference or controversy of claim, (except as to any matters, the decision of which is specifically provided for therein) to the sole arbitration by the arbitrator appointed by Head/In-Charge of the BHEL Unit/Division/Region.
- b) The Arbitrator shall pass a reasoned award and the award of the Arbitrator shall be final and binding upon the parties to the dispute.
- c) Subject as aforesaid, the provisions of Arbitration and Conciliation Act 1996 (India), or other statutory modifications of re-enactments thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceeding under this clause. The seat of arbitration shall be at Component Fabrication Plant, Rudrapur, Distt. Udham Singh Nagar, Uttarakhand.
- d) In case of Contract with Public Sector Enterprise (PSE) or a Government Department, the following shall be applicable:
- e) In the event 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 to be nominated by the Secretary to the Government of India in-charge of the Department of Public Enterprises. The Arbitration and Conciliation Act, 1996 shall not be applicable to arbitration under this clause. 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.
- f) Notwithstanding the existence of any dispute or differences and/or reference for the arbitration, the Supplier shall proceed with and continue without hindrance the performance of its obligations under this Contract with due diligence and expedition in a professional manner.

Signature and seal of Bidder

	GENERAL CONDITIONS OF CONTRACTS (GCC) Procurement of Goods and Services from indigenous Suppliers		
Rudrapur	BHEL CFP RUDRAPUR, MATERIALS MANAGEMENT DEPT.	Rev No.	00


7. Benefits to MSE Suppliers as per MSME Act 2006 and Public Procurement Policy 2012:

MSE suppliers can avail the intended benefits only if they submit along with the offer, attested copies of either EM-II certificate having deemed validity (five years from the date of issue of acknowledgement in EM II) or valid NSIC certificate or EM-II certificate along with attested copy of a CA certificate (Format enclosed at Annexure-I where deemed validity of EM-II certificate of five years has expired) applicable for the relevant financial year (latest audited) or **Udyog Aadhar Memorandum (UAM)**. Date to be reckoned for determining the deemed validity will be the date of bid opening (Part 1 in case of two part bid). Non submission of such documents will lead to consideration of their bid at par with other bidders. No benefit shall be applicable for this enquiry if any deficiency in the above-required documents are not submitted before price bid opening. If the tender is to be submitted through e-procurement portal, then such documents are to be uploaded on the portal. **Bidder are also advised to declare their UAM No. in their offer and on invoice to get benefit of MSE Act 2006.**

8. Force Majeure

If at any time during the currency of this contract, the performance in whole or in part, by either party of any obligations under this contract shall be prevented or delayed by reason, of any war, hostilities, acts of the public enemy, civil commotion, sabotage, fires, explosions, epidemics, quarantine, restrictions or acts of GOD (hereinafter referred to as events), then provided notice of happening of any such events is given by either party to other within ten days from the date of occurrence thereof, neither party shall reason of such events be entitled to terminate this contract nor shall either party have any such nonperformance and delay is resumed as soon as practicable after such events has come to an end or ceased to exist. If the performance in whole or part of any obligation under this contract is prevented or delayed by reason or any such event, claims for extension of time shall be granted for period considered reasonable by the purchaser subject to prompt notification by the seller to the purchaser of the particulars of the events and supply to the purchaser if required of any supporting evidence. Any waiver of time in respect of partial installment shall not be deemed to be a waiver of time in respect of remaining deliveries.

Signature and seal of Bidder

	GENERAL CONDITIONS OF CONTRACTS (GCC) Procurement of Goods and Services from indigenous Suppliers		
Rudrapur	BHEL CFP RUDRAPUR, MATERIALS MANAGEMENT DEPT.	Rev No.	00

11. Conditions for rejection of offers:

Following is the list of situations which would lead to rejection of offer/s. This list is not exhaustive but only indicative. BHEL reserve the right to reject one or all offers without assigning any reason. The decision of BHEL will be final in this regard.

- a. If the offer fails to meet the technical requirements/specifications of the tendered item/s.
- b. If the offer does not meet the commercial terms & conditions, such as but not limited to delivery period specified in the tender, Delivery terms, payment terms, Liquidated damages, Risk Purchase, cancellation clause etc., including the load factors specified in the tender.
- c. If the bidder fails to respond to clarification sought, within a reasonable period. In case of doubts / lack of clarity on the technical and commercial offer of the bidder, BHEL will seek clarifications.
Bidders are required to respond completely to such BHEL's queries within 3 working days unless otherwise agreed to in writing by BHEL for period beyond 3 days. If supplier fails to respond within 3 working days or maximum 2 working days on a reminder thereon, the offer of such bidders will be automatically dis-qualified in the tender without further recourse to informing the bidder.
- d. If any of the conditions listed below are applicable to the bidder, the offer is liable to be rejected:

9. BHEL prefers to directly deal with all manufacturer/OEM and discourages use of agents/authorized dealers etc. However, if insisted by manufacture/OEM, in a tender, either the agents/authorized dealer on behalf of the manufacture/OEM or the manufacture/OEM itself can bid but both cannot bid simultaneously for the same item/product in the same tender. If an agent submits bid on behalf of the manufacture/OEM, the same agent shall not submit a bid on behalf of another manufacture/OEM in the same tender for the same item/product. On violation of this clause, all offers submitted by manufacture/OEM shall be liable for rejection. Manufacture/OEM are to ensure that their agents do not represent any other manufacturer/OEM in the same tender.

10. Explanation: some of terms used above are clarified here.

- I. BHEL – Bharat Heavy Electricals Limited
- II. Supplier/Seller – Bidder on which Purchase order is placed by BHEL for supply of materials.
- III. MSE - Micro and Small Scale Enterprises as per MSME Act 2006.

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