

# ON BIDDER LETTER HEAD

**To Be Submitted along with Technical Bid**

**Date:**

To,

M/s Bharat Heavy Electricals Ltd.  
Electronics Division, Mysore Road, Bangalore  
– 560026

**Sub: Model Clause / Certificate as per Annex-III (Tenders) of Restrictions Under Rule 144 (XI) of the General Financial Rules (GFRs) 2017, Dated 23.07.2020.**

**Ref: BHEL Tender / RFQ / NIT Number .....**

I (authorized signatory for M/s ..... ) have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India, we certify that this bidder M/s ..... [Vendor Name & address] is not from such a country or, if from such a country, has been registered with the competent authority. We hereby certify that we fulfill all requirements in this regard and is eligible to be considered [attach evidence of valid registration certificate with competent authority].

For M/s .....

Authorized & Competent Signatory  
(With Company Seal & Signature)

# ON BIDDER LETTER HEAD

**To Be Submitted along with Technical Bid**

Date: -----

M/s Bharat Heavy Electricals Limited  
Electronics Division, Mysore Road,  
Bangalore-560026

**Sub: Model clause/Certificate as per clause no. 9(a) of Revised Public Procurement (Preference to Make in India) Order 2017 of DPIIT dtd 16.09.2020**

Ref: BHEL TENDER/RFQ NO./NIT NUMBER-----

I----- (Authorized signatory for M/s-----)  
a 'Class-I Local Supplier'/'Class-II Local Supplier' at the time of tender, bidding, or solicitation hereby confirm that the item meets the Local Content requirement for 'Class-I Local Supplier'/'Class-II Local Supplier' (***Tick the appropriate option & cut the other one***)

The Local Content percentage is -----

The Address is as below, where Local Content/Value addition is made:

[Factory Address]

For M/s .....

Authorized & competent Signatory  
(with company seal & Name)

**(On Company Letter Head)**

FORM NO. 10F

[See sub-rule (1) of rule 21AB]

Information to be provided under sub-section (5) of section 90 or sub-section (5) of section 90A of the  
Income-tax Act, 1961

I..... son/daughter of Mr ..... in the capacity of..... (Designation) do provide  
the following information, relevant to the previous year **2021-22** in case of ..... for the purposes  
of sub-section (5) of section 90/section 90A:-

Sl.No.	Nature of information	Details
(i)	Status (individual; company, firm etc.) of the assessee	Company
(ii)	Permanent Account Number (PAN) of the assessee if allotted	
(iii)	Nationality (in the case of an individual) or Country or specified territory of incorporation or registration (in the case of others)	.....
(iv)	Assessee's tax identification number in the country or specified territory of residence and if there is no such number, then, a unique number on the basis of which the person is identified by the Government of the country or the specified territory of which the assessee claims to be a resident	.....
(v)	Period for which the residential status as mentioned in the certificate referred to in sub-section (4) of section 90 or sub-section (4) of section 90A is applicable	<b>2021-22</b>
(vi)	Address of the assessee in the country or territory outside India during the period for which the certificate, mentioned in (v) above, is applicable	..... ..... .....

I have obtained a certificate to in sub-section (4) of section 90 of sub-section (4) of section 90A from the Government of..... (name of country or specified territory outside India)

Signature:.....  
Name:.....  
Address:.....  
Email ID:.....  
Contact Number.....  
Permanent Account Number:.....

Verification

I..... do hereby declare that to the best of my knowledge and belief what is stated above is correct complete and is truly stated. Verified today the..... day of.....

Signature of the person providing the information

Place:.....

(On Company Letter Head)

**No Business Connection or Permanent Establishment Certificate**

Date

To

Bharat Heavy Electricals Limited  
Electronics Division, PB NO. 2606,  
Mysore Road, Bangalore  
India - 560026

Sir,

Sub: No Business Connection or Permanent Establishment declaration for FY **2021-22**

This is to certify that ..... (Name of the supplier) is a company incorporated in .....(country ) and does not have any business connection in India as per the provision of Section 9 of the Income Tax Act 1961 or any Permanent Establishment as defined in Article 5 of the India and .....(country) DTAA.

We hereby certify that we will notify BHEL in case of any change in the status as certified above.

**For** .....

**Authorised Signatory**

*(Note – Please refer definition of the Business Connection on reverse and Permanent Establishment in the relevant DTAA)*

"Business connection" as defined in Section 9 of the Income Tax Act shall include any business activity carried out through a person who, acting on behalf of the non-resident,—

- (a) has and habitually exercises in India, an authority to conclude contracts on behalf of the non-resident or habitually concludes contracts or habitually plays the principal role leading to conclusion of contracts by that non-resident and the contracts are—
  - (i) in the name of the non-resident; or
  - (ii) for the transfer of the ownership of, or for the granting of the right to use, property owned by that non-resident or that non-resident has the right to use; or
  - (iii) for the provision of services by the non-resident; or
- (b) has no such authority, but habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident; or
- (c) habitually secures orders in India, mainly or wholly for the non-resident or for that non-resident and other non-residents controlling, controlled by, or subject to the same common control, as that non-resident:

Provided that such business connection shall not include any business activity carried out through a broker, general commission agent or any other agent having an independent status, if such broker, general commission agent or any other agent having an independent status is acting in the ordinary course of his business :

Provided further that where such broker, general commission agent or any other agent works mainly or wholly on behalf of a non-resident (hereafter in this proviso referred to as the principal non-resident) or on behalf of such non-resident and other non-residents which are controlled by the principal non-resident or have a controlling interest in the principal non-resident or are subject to the same common control as the principal non-resident, he shall not be deemed to be a broker, general commission agent or an agent of an independent status

For the removal of doubts, it is hereby clarified with explanation-2A, that the significant economic presence of a non-resident in India shall constitute "business connection" in India and "significant economic presence" for this purpose, shall mean—

- (a) transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed; or
- (b) systematic and continuous soliciting of business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means:

Provided that the transactions or activities shall constitute significant economic presence in India, whether or not,—

- (i) the agreement for such transactions or activities is entered in India; or
- (ii) the non-resident has a residence or place of business in India; or
- (iii) the non-resident renders services in India:

Thresholds for the purposes of significant economic presence.

11UD. (1) For the purposes of clause (a) of Explanation 2A to clause (i) of sub-section (1) of section 9, the amount of aggregate of payments arising from transaction or transactions in respect of any goods, services or property carried out by a non-resident with any person in India, including provision of download of data or software in India during the previous year, shall be two crore rupees;

(2) For the purposes of clause (b) of Explanation 2A to clause (i) of sub-section (1) of section 9, the number of users with whom systematic and continuous business activities are solicited or who are engaged in interaction shall be three lakhs.

**ON BIDDER LETTER HEAD WITH DULY SIGNED & STAMPED  
(Sample Draft for Techno –Comml BID)**

<b>RFQ NO:NKBE000---</b>		<b>DUE ON: -----</b>
<b>BHEL Techno-Commercial Terms</b>	<b>Standard Terms as per BHEL</b>	<b>Bidder's Reply</b>
Mat Code As per RFQ <b>(Please put BHEL Mat Code)</b>	Quantity- As per RFQ <b>(Please Mentioned RFQ Qty)</b>	SPQ- MOQ- Offered Qty- Offered MPN- Make for Offered MPN- <b>(If required please put additional Annexure)</b>
* HSN/SAC : 8543		Please specify HSN Code
<b>Quoted Currency for the MPN</b>	<i>If we find different prices for the same Mat Code (after opening Price BID), we will consider the Lowest price only (out of all different prices) for the entire quantity.</i>	Please specify
<b>Lead Time from date of PO</b>	<i>Delivery Schedule from Date of PO</i>	Please specify in Weeks
<b>LD/Penalty Clause</b>	<i>Penalty for delayed delivery is applicable for this Enquiry.</i>	Accepted /Not Accepted  <b>(if any bidder will not accept penalty clause, suitable Loading will be applied on the bidder's offer during final evaluation of the tender)</b>
<b>Delivery terms</b>	<i>DDL-Bangalore (Mandatory for Indian Vendors) EXW- FCA</i>	Please specify Clearly
Payment terms	100% against SIGHT DRAFT with 45 days Credit- (Foreign Vendors)  100% within 45Days Credit after receipt & accept of material (Indian Vendor)	Accepted /Not Accepted  <b>(if any bidder will not accept BHEL Payment terms, suitable Loading will be applied on the bidder's offer during final evaluation of the tender)</b>
MSE	If Applicable <b>Documents for claiming MSE need to submit along with Technical BID</b>	Please Specify the Registration & attached the required documents
Validity of the Vendor's Offer from Date of Opening of the Tender (Technical BID)	<b>90 Days</b>	Please specify <b>(By Default Validity of the Offer will be considered as 90Days)</b>

# ON BIDDER LETTER HEAD WITH DULY SIGNED & STAMPED (Sample Draft for Techno – Comml BID)

Certificate of Conformance	To be provided along with item shipment	Accepted /Not Accepted <b>(if not accepted, please specify)</b>
CoC as per 12SAE35REV04/ 12SAE40REV01 at Bidder Letter Head	<b>For OEM/Authorized: Annex.2 of 12SAE35 Rev04 doc if vendor is OEM/Authorized.</b>  <b>For Non-Authorized Vendor:</b> <b>1) CoC as per Annex 3</b> <b>2) Sub vendor's packing list and 3) Vendor</b> <b>certificate linking BHEL PO and Sub</b> <b>vendor's packing list ——— This will</b> <b>avoid delay in clearing the QS inspection.</b> <b>Pl ensure this while supply the material</b>	Accepted /Not Accepted <b>(if not accepted, please specify)</b>
Date Code towards Supplied Material	As per BHEL RFQ	Accepted /Not Accepted <b>(if not accepted, please specify)</b>
Packaging	As per RFQ	Accepted /Not Accepted <b>(if not accepted, please specify)</b>
<b>GFR-2020(Mandatory)-Applicable for this RFQ</b>	Model Clause / Certificate as per Annex-III (Tenders) of Restrictions Under Rule 144 (XI) of the General Financial Rules (GFRs) 2017, Dated 23.07.2020. <b><a href="https://www.mea.gov.in/">https://www.mea.gov.in/</a></b>	Attached/Not Attached <b>(Please attached after filled &amp; duly signed)</b>
<b>MII-2020-Not Applicable for this RFQ</b>	Model Clause / Certificate as per clause 9 (a) of Revised Public Procurement (Preference to Make in India Order, 2017 of DPIIT dated 16.09.2020. <b><a href="https://dipp.gov.in/public-procurements">https://dipp.gov.in/public-procurements</a></b>	Attached/Not Attached <b>(Please attached after filled &amp; duly signed)</b>
GeM (Government E- Marketplace) Seller ID for Indian Bidder only	As per Circular No 6/9/2020-PPD dt 24.08.2020 from Ministry of Finance: For placing the Purchase order for exceeding Rs. 25 Lakhs, Indian Bidder should mandatory have GEM Seller ID. Vendor kindly ensure the same. ( <a href="https://gem.gov.in">https://gem.gov.in</a> ).	Specify the GeM Seller ID <b>(For Indian Bidder only)</b>
<b>Reverse Auction</b>	BHEL shall be resorting to Reverse Auction (RA) (Guidelines as available on <a href="http://www.bhel.com">www.bhel.com</a> ) for this tender. On bidder request through e-mail, the document shall be shared. RA shall be conducted among the Techno-Commercially qualified bidders. Price bids of all techno-commercially qualified bidders shall be opened and same shall be considered for RA. In case any bidder(s) do(es) not participate in online Reverse Auction, their sealed envelope price bid along with applicable loading, if any, shall be considered for ranking.”	Not Applicable for this RFQ
<b>Note:</b>  if any Vendor's offer not found in line with BHEL Standard Terms, suitable Loading will be applied on the vendor's offer during final evaluation of the tender.		

## RFQ TERMS & CONDITIONS

### Following points are to be noted before submitting your offer.

1- Important Notice: Request you to go through terms and conditions before submitting quote.

a) INSTRUCTIONS TO BIDDERS/SELLERS (**Doc No :BHEL:EDN:ITB-SHOP: Rev 04**) available at <https://edn.bhel.com/assets/img/rfq/ITBGCC.pdf> (RFQ-PO Terms & Conditions)

b) GENERAL CONDITIONS OF CONTRACT FOR PURCHASE (**Doc no: BHEL: EDN: GCC-SHOP: Rev 02**) available at <https://edn.bhel.com/assets/img/rfq/ITBGCC.pdf> (RFQ-PO Terms & Conditions)

c) Any other specific Terms and Conditions mentioned.

d) **FOR THIS PROCUREMENT, PUBLIC PROCUREMENT (PREFERENCE TO MAKE IN INDIA)**, Order 2017 dated 15.06.2017, 28.05.2018 and revision dated 16<sup>th</sup> September 2020 and subsequent Orders issued by the respective Nodal Ministry shall be applicable even if issued after issue of this NIT but before finalization of contract/PO against this NIT.

In the event of any Nodal Ministry prescribing higher or lower percentage of purchase preference and/or local content in respect of this procurement, same shall be applicable.

<https://dipp.gov.in/public-procurements>

e) **FOR THIS PROCUREMENT (GFR)**, Restrictions under Rule 144(xi) of the General Financial Rules (GFRs), 2017- Dept. of Expenditure OM No.6/18/2019-PPD dated 23rd July, 2020 and subsequent Orders issued by the respective Nodal Ministry shall be applicable even if issued after issue of this NIT but before finalization of contract/PO against this NIT.

<https://www.mea.gov.in/>

#### f) **PURCHASE PREFERENCE FOR MSE VENDORS:**

MSE vendors quoting within a price band of L1 + 15% shall be allowed to supply up to 25% of the requirement against this tender provided: -

i. The MSE vendor matches the L1 price. ii. L1 price is from a non MSE vendor.

iii. L1 price will be offered to the vendor nearest to L1 in terms of price ranking (L2 - nearest to L1). In case of non-acceptance by the MSE vendor (L2), next ranking MSE vendor will be offered who is within the L1 + 15% band (if L3 is also within 15% band).

iv. 3% of the 25% will be earmarked for women owned MSEs.

v. 25% of the 25% (i.e., 6.25% of the total enquired quantity) will be earmarked for SC/ST owned MSE firms provided conditions as mentioned in (i) & (ii) are fulfilled.

vi. In case where no SC/ST category firms are meeting the conditions mentioned in (i) and (ii) or have not participated in the tender, the 6.25% of earmarked quantity for SC/ST owned MSE firms will be distributed among the other eligible MSE vendors who have participated in the tender.

vii. In case after the bid opening it is seen that no MSE has become L1, then depending on the nature of the item, if it is not possible to split the tendered items/quantities on account of reasons like customer contract requirements of supplying one make for a given project or technical reasons like the tendered item being a system etc., then BHEL would not counter offer the L1 prices even though there may be MSE bidders within the +15% band of L1. Such information that tendered quantity will not be split shall be indicated in the RFQ.

2- Bidders should mention GSTN number of the place of supply and HSN (Harmonized System of Nomenclature)/SAC (Services Accounting Code) number in the offer. In case both supply and service are involved, GSTN no of the place of supply for services shall also be mentioned separately in the offer if different.

3- This is TWO PART BID tender. BIDDERS are requested to send "Techno Commercial Bid" AND "Price BID" separately. For more details, please refer point 2.b in attached RFQ Terms and conditions document

4- Penalty for delayed delivery is applicable for this Enquiry. If it is not mentioned explicitly it will be assumed as acceptance.

5- Offers with ADVANCE PAYMENT are liable for rejection

6- If only "Sight Draft" is mentioned it will be considered as "Sight Draft with 45 days"

7- In case of not interested in submitting quotation, please send the regret letter which is essential for our records.

8- Please indicate complete part number in your quotation and make, else your quotation might be rejected.

9- **Please quote for our RFQ quantity and for MOQ (if any). Offers with high MOQ may not be accepted.**

10- Material has to be supplied in manufacturer's pack in sealed condition (Refurbished/ pulled out parts are not accepted).

11- The evaluation currency for this RFQ shall be INR.

12- Documents Required from Foreign Bidders: -

#### **I - Documents needed for consignments to be picked**

1. Airfreight request format.
2. Invoice
3. Packing list
4. PO copy

#### **II - Documents to be submitted to SBI & Soft copy of the same to be shared to concerned purchase officer,**

1. Covering letter
2. Invoice
3. Packing list
4. AWB

#### **III - Tax compliance documents – Every Financial Year.**

1. Form 10F – shall be furnished electronically and shall be verified in the manner prescribed under sub-rule (1) of Rule 131
2. No PE/BC
3. Tax Residency Certificate (TRC)

13- **SUVIDHA Portal:** -

***" For goods / works / services on Indian Suppliers / Contractors: Irrespective of the value of the invoice amount, the supplier/ contractor should necessarily upload the invoice details on BHEL SUVIDHA portal at <https://suvidha.bhel.in/suvidha/>, prior to despatch/raising invoice. All documents as per contract checklist , along with additional documents (if any), must be uploaded on the portal. It is mandatory that tax invoices with a net amount (including taxes) exceeding Rs five lakhs uploaded on the portal are digitally signed using a Class 3 Digital Signature Certificate (DSC) issued by a licensed Certifying Authority. Submission of invoice document in hard copy is allowed for invoices with a net amount (including taxes) equal to and upto Rs five lakhs in case the requirement for digitally signed invoice is not explicitly mentioned in the contract checklist . The Invoice will not be accepted in absence of the above."***

**14- Conflict of interest:** - "A bidder shall not have conflict of interest with other bidders. Such conflict of interest can lead to anti-competitive practices to the detriment of Procuring Entity's interests. The bidder found to have a conflict of interest shall be disqualified. A bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if:

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

## 15. Force Majeure:

15.1. "Force Majeure" shall mean circumstance which is:

- a) beyond control of either of the parties to contract,
- b) either of the parties could not reasonably have provided against the event before entering into the contract,
- c) having arisen, either of the parties could not reasonably have avoided or overcome, and
- d) is not substantially attributable to either of the parties and Prevents the performance of the contract.

Such circumstances include but shall not be limited to:

- i) War, hostilities, invasion, act of foreign enemies.
- ii) Rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war.
- iii) Riot, commotion or disorder by persons other than the contractor's personnel and other employees of the contractor and sub-contractors.
- iv) Strike or lockout not solely involving the contractor's personnel and other employees of the contractor and sub-contractors.
- v) Encountering munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, except as may be attributable to the contractor's use of such munitions, explosives, radiation or radio- activity.
- vi) Natural catastrophes such as earthquake, tsunami, volcanic activity, hurricane or typhoon, flood, fire, cyclones etc.
- vii) Epidemic, pandemic etc.

15.2. 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.

15.3. 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.

- 15.4. 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.
- 15.5. 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.
- 15.6. 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, Supplier/Vendor cannot consider deemed short-closure after 1 year of imposition of Force Majeure.

## 16. SETTLEMENT OF DISPUTE:

If any dispute or difference of any kind whatsoever shall arise between BHEL and the Supplier/Vendor, arising out of the contract for the performance of the work whether during the progress of contract termination, abandonment or breach of the contract, it shall in the first place referred to Designated Engineer for amicable resolution by the parties. Designated Engineer (to be nominated by BHEL for settlement of disputes arising out of the contract) who within 60 days after being requested shall give written notice of his decision to the contractor. Save as hereinafter provided, such decision in respect of every matter so referred shall forthwith be given effect to by the Supplier/Vendor who shall proceed with the work with all due diligence, whether he or BHEL desires to resolve the dispute as hereinafter provided or not.

If after the Designated Engineer has given written notice of this decision to the party and no intention to pursue the dispute has been communicated to him by the affected party within 30 days from the receipt of such notice, the said decision shall become final and binding on the parties. In the event the Supplier/Vendor being dissatisfied with any such decision or if amicable settlement cannot be reached then all such disputed issues shall be resolved through conciliation in terms of the BHEL Conciliation Scheme 2018 as per Clause 16.1.

### 16.1. CONCILIATION:

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

#### Note:

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

### 16.2. ARBITRATION:

#### 16.2.1.

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 15.1 herein above or otherwise) in respect of any dispute or difference; arising out of the formation, breach, termination, validity or execution of the Contract; or, the respective rights and liabilities of the Parties; or, in relation to interpretation of any provision of the Contract; or, in any manner touching upon the Contract (hereinafter referred to as the 'Dispute'), then, either Party may, refer the disputes to Arbitral Institution "**Arbitration & Conciliation Centre, Bengaluru (Domestic & International)**" and such dispute to be adjudicated by Sole Arbitrator

appointed in accordance with the **Arbitration Centre - Karnataka (Domestic and International) Rules, 2012.**

16.2.2.

A party willing to commence arbitration proceeding shall invoke Arbitration Clause by giving notice to the other party in terms of section 21 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the 'Notice') before referring the matter to arbitral institution. The Notice shall be addressed to the Head of the Region, Power Sector/ Unit, BHEL, executing the Contract and shall contain the particulars of all claims to be referred to arbitration with sufficient detail and shall also indicate the monetary amount of such claim including interest, if any.

16.2.3.

After expiry of 30 days from the date of receipt of aforesaid notice, the party invoking the Arbitration shall submit that dispute to the "**Arbitration & Conciliation Centre, Bengaluru (Domestic & International)**" and that dispute shall be adjudicated in accordance with their respective Arbitration Rules **Arbitration Centre - Karnataka (Domestic and International) Rules, 2012.** The matter shall be adjudicated by a Sole Arbitrator who shall necessarily be a Retd. Judge having considerable experience in commercial matters to be appointed/nominated by the respective institution. The cost/expenses pertaining to the said Arbitration shall also be governed in accordance with the Rules of the respective Arbitral Institution. The decision of the party invoking the Arbitration for reference of dispute to a specific Arbitral institution for adjudication of that dispute shall be final and binding on both the parties and shall not be subject to any change thereafter. The institution once selected at the time of invocation of dispute shall remain unchanged.

16.2.4.

The fee and expenses shall be borne by the parties as per the Arbitral Institutional rules.

16.2.5.

The Arbitration proceedings shall be in English language and the seat and venue of Arbitration shall be in Bengaluru, Karnataka only.

16.2.6.

Subject to the above, the provisions of Arbitration & Conciliation Act 1996 and any amendment thereof shall be applicable. All matters relating to this Contract and arising out of invocation of Arbitration clause are subject to the exclusive jurisdiction of the Court(s) situated at Bengaluru, Karnataka only.

16.2.7.

Notwithstanding any reference to the Designated Engineer or Conciliation or Arbitration herein, a. the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree. Settlement of Dispute clause cannot be invoked by the Contractor, if the Contract has been mutually closed or 'No Demand Certificate' has been furnished by the Contractor or any Settlement Agreement has been signed between the Employer and the Contractor.

16.2.8.

It is agreed that Mechanism of resolution of disputes through arbitration shall be available only in the cases where the value of the dispute is less than Rs. 10 Crores.

16.2.9.

In case the disputed amount Claim, Counter claim including interest is Rs. 10 crores and above, the parties shall be within their rights to take recourse to remedies other than Arbitration, as may be available to them under the applicable laws after prior intimation to the other party. Subject to the aforesaid conditions, provisions of the Arbitration and Conciliation Act, 1996 and any statutory modifications or re-enactment thereof as amended from time to time, shall apply to the arbitration proceedings under this clause.

16.2.10.

In case, multiple arbitrations are invoked (whether sub-judice or arbitral award passed) by any party to under this contract, then the cumulative value of claims (including interest claimed or awarded) in all such arbitrations shall be taken in account while arriving at the total claim in dispute for the subject contract for the purpose of clause 15.2.9. Disputes having cumulative value of less than 10 crores shall be resolved through arbitration and any additional dispute shall be adjudicated by the court of competent jurisdiction.

16.2.11.

**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. 05/0003/2019-FTS-10937 dated 14-12-2022 as amended from time to time.

## **17. JURISDICTION:**

This contract shall be governed by the Law for the time being in force in the Republic of India.

Indian laws both substantive and procedural, for the time being in force, including modifications thereto, shall govern the Contract. In case of any suit or other legal proceedings arising under or relating to this Contract, the courts at Bengaluru, Karnataka only shall have the Jurisdiction.

## **18. BREACH OF CONTRACT, REMEDIES AND TERMINATION:**

### **18.1. BREACH OF CONTRACT:**

The following shall amount to breach of contract:

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

**Note:**

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

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

**18.2. REMEDIES IN CASE OF BREACH OF CONTRACT:**

- i. Wherein the period as stipulated in the notice issued under clause 17.1 has expired and Supplier/Vendor has failed to remedy the breach, BHEL will have the right to terminate the contract on the ground of "Breach of Contract" without any further notice to contractor.
- ii. Upon termination of contract, BHEL shall be entitled to recover an amount equivalent to 10% of the Contract Value for the damages on account of breach of contract committed by the Supplier/Vendor. This amount shall be recovered by way of encashing the security instruments like performance bank guarantee etc. available with BHEL against the said contract. In case the value of the security instruments available is less than 10% of the contract value, the balance amount shall be recovered from other financial remedies (i.e. available bills of the Supplier/Vendor, retention amount, from the money due to the Supplier/Vendor etc. with BHEL) or the other legal remedies shall be pursued.
- iii. wherever the value of security instruments like performance bank guarantee available with BHEL against the said contract is 10% of the contract value or more, such security instruments to the extent of 10% contract value will be encashed. In case no security instruments are available or the value of the security instruments available is less than 10% of the contract value, the 10% of the contract value or the balance amount, as the case may be, will be recovered in all or any of the following manners:
- iv. In case the amount recovered under sub clause (a) above is not sufficient to fulfil the amount recoverable then; a demand notice to deposit the balance amount within 30 days shall be issued to Supplier/Vendor.
- v. If Supplier/Vendor fails to deposit the balance amount within the period as prescribed in demand notice, following action shall be taken for recovery of the balance amount:
  - a. from dues available in the form of Bills payable to defaulted Supplier/Vendor against the same contract.
  - b. If it is not possible to recover the dues available from the same contract or dues are insufficient to meet the recoverable amount, balance amount shall be recovered from any money(s) payable to Supplier/Vendor under any contract with other Units of BHEL including recovery from security deposits or any other deposit available in the form of security instruments of any kind against Security deposit or EMD.
  - c. In-case recoveries are not possible with any of the above available options, Legal action shall be initiated for recovery against defaulted supplier/Vendor.
- vi. It is an agreed term of contract that this amount shall be a genuine pre-estimate of damages that BHEL would incur in completion of balance contractual obligation of the contract through any other agency and BHEL will not be required to furnish any other evidence to the Supplier/Vendor for the purpose of estimation of damages.
- vii. In addition to the above, imposition of liquidated damages, debarment, termination, de-scoping, short-closure, etc., shall be applied as per provisions of the contract.

**Note:**

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

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

**19. OVER RUN CHARGES**

No Overrun charges are applicable.

## 20. ORDER OF PRECEDENCE

The Purchase Order along with its Annexures the NIT, its amendments /corrigendum's shall all together constitute the entire contract between the Parties and shall be complementary to one another. In case of any contradiction, the order of precedence shall be as below:

- a. Purchase Order along with its Annexures
- b. Amendments/Clarifications/Corrigenda/Errata etc. issued in respect of the tender documents by BHEL.
- c. NIT

## 21. OTHER POINTS

Vendor should follow the agreed tender term (Cl. no. 28.0 of NIT) strictly: -- "The offers of the bidders who are on the banned list as also the offer of the bidders, who engage the services of the banned firms, shall be rejected. The list of banned firms is available on BHEL web site [www.bhel.com](http://www.bhel.com)".

All other terms & conditions not covered here shall be as per those specified in the tender document (NIT) along with TCNs including Technical Specification, Specific Conditions of Contract & General Conditions of Contract.

- i. In case of negotiation, validity of offer shall be 60 days from receipt of revised /negotiated final price or 90 days from Part-I opening, whichever is later.
- ii. Offers with shorter validity than above are liable to be rejected.

## 22. 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.

## 23. LIQUIDATED DAMAGE

Liquidated Damages, wherever referred under this Tender/Agreement, shall mean and refer to the damages, not in the nature of penalty, which the contractor agrees to pay in the event of delay in delivery of supplies, breach of contract etc. as the case may be.

Liquidated Damages leviable upon the Supplier/Vendor is a sum which is agreed by the parties as a reasonable and genuine pre-estimate of damages which will be suffered by BHEL on account of delay/breach on the part of the Supplier/Vendor.

If the Seller/Service Provider fails to deliver any or all of the Goods/Services within the original/re-fixed delivery period(s) specified in the contract/PO, the Buyer/BHEL will be entitled to deduct/recover the Liquidated Damages for the delay, unless covered under Force Majeure conditions aforesaid, @ 0.5% of the contract value of delayed quantity per week or part of the week of delayed period as pre-estimated damages not exceeding 10% of the contract value of delayed quantity without any controversy/dispute of any sort whatsoever.

# COMMERCIAL TERMS & CONDITIONS

To be mandatory filled in YES/No or Not applicable (NA)		(YES/No/NA)	Remarks (if, any)
1	<b>Payment terms:</b> (For any deviation Loading factor will be applicable above the quoted rate)		
1.A	<b>For Quote in INR:</b> BHEL standard payment terms is <u>100% direct payment with 45 days credit from the date of Receipt of material for Door delivery to BHEL stores.</u>		
1.B	<b>For Quote in other than INR:</b> BHEL standard payment terms is <u>100% of PO value will be paid against Usance draft of 45 days from the date of AWB/BOL on submission of complete set of documents.</u>		
2	<b>Delivery Terms:</b>		
2.A	<b>For Quote in INR:</b> Delivery Terms: BHEL Standard delivery is <u>BHEL DDL-EDN BANGALORE:</u>		
2.B	<b>For Quote in other than INR:(Vendor to mention INCO Terms like FCA/EX-Works)</b>		
3	<b>Penalty terms for Delayed Delivery:</b> 10% loading factor for not accepting the penalty.		
3.1	BHEL standard Penalty Terms is accepted for delayed delivery		
4	<b>Offer validity: 90 Days</b>		
5	<b>Delivery lead time (In Weeks)</b>		
6	<b>GFR Certificate attached</b>		
7	<b>MII Certificate attached</b>		
8	<b>Other terms &amp; Conditions as per NIT</b>		
9	<b>Mention the Government E-Marketplace (GeM) Seller ID (Mandatory for placing PO worth Rs. 25 Lakhs &amp; above) Applicable for only INDIAN VENDORS</b>		
10	<b>PO Delivery:- As per Vendor Quoted Delivery or RFQ Indicated Delivery whichever is later.</b>		

**Note-1:** MII certificate: For this tender, Non-Local supplier whose local content is less than 20% are eligible to participate. Purchase preference for MII will be given to class –I Local supplier. Please refer GOI circular No. P-45021/2/2017-PP (BE-II) dtd. 16/09/2020 for detail of purchase preference. For vendors not submitting MII Document, it will be considered as 0% local content.