



GENERAL TERMS AND CONDITIONS FOR RFQ

1. **APPLICABLE CONDITIONS:**

These General Terms and Conditions for RFQ apply to all enquiries, tenders, requests for quotations, orders and agreements concerning the supply of goods and the rendering of related services (hereinafter referred to as "deliveries") to Bharat Heavy Electricals Limited, Solar Business Division (hereinafter referred to as "BHEL" or the Purchaser) or its projects / customers. Any deviations from or additions to these General Terms and Conditions for Purchase require Purchaser's express written consent. The general terms of business or sale of the Seller shall not apply to the Contract. Acceptance or receipt of shipments or services or effecting payment shall not mean that the general terms of business or sale of the Seller have been accepted by the Purchaser. Purchase orders, Orders, agreements and amendments thereto shall be binding if made or confirmed by the Purchaser in writing.

2. **DEFINITIONS:**

Throughout these conditions and in the specifications, the following terms shall have the meanings as assigned hereunder, unless the subject matter or the context requires otherwise.

- Purchaser means Bharat Heavy Electricals Limited (a Central Public Sector Enterprise) incorporated under the Companies Act, 1956 having its registered office at BHEL House, Siri Fort, New Delhi-110049, India acting through its Unit Solar Business Division at Bangalore and shall be deemed to include its successors and assigns. It may also be referred to as BHEL.
- Seller means the person, firm, company or organization on whom the Purchase Order is placed and shall be deemed to include the sellers successors, permitted assigns, representatives, heirs, executors and administrators, as the case may be. It may also be referred to as Contractor, Supplier or Vendor.
- Contract shall mean and include the Purchase Order (also referred to as the Order or PO), letter of intent (LOI) / letter of acceptance or award (LOA) along with tender / offer / bid submitted by the Seller, the General Conditions of Contract and Special Conditions of Contract for Purchase, Specifications, Inspection / Quality Plan, Schedule of Prices and Quantities, Drawings, if any enclosed or to be provided and the samples or patterns if any to be provided under the provisions of the Contract, by the Purchaser or his representative. Any conditions or terms stipulated by the tenderer / bidder in the tender / offer / bid or subsequent letters shall not form part of the Contract unless specifically accepted in writing by the Purchaser.
- Parties to the Contract shall mean the Seller and the Purchaser and Party shall mean either the Seller or the Purchaser.

3. **ORDER OF PRECEDENCE:**

In case of any inconsistency or contradiction between any of the documents, the order of precedence shall be as per following:

- Purchase Order
- LOI / LOA
- Special Conditions of Contract
- General Conditions of Contract
- Technical Specification / QAP

4. **INTERPRETATION:**

In the contract, except where the context requires otherwise:-

- words indicating one gender include all genders;
- words indicating the singular also include the plural and words indicating the plural also include the singular;
- provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing, and
- "Written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record.

5. **ORDERING AND CONFIRMATION OF ORDER:**

The Seller shall send the acceptance of the LOI / Purchase Order within two weeks or such other period as specified/agreed by BHEL from the date of LOI / Purchase Order. Purchaser reserves the right to revoke the order placed if the order acceptance differs from the original order placed. Purchaser shall only be bound after it has agreed explicitly in writing to be in agreement with the deviations. The acceptance of deliveries or supplies by Purchaser as well as payments made in this regard shall not imply acceptance of any deviations. The Purchase order will be deemed to have been accepted by the Seller, if no communication to the contrary is received within two weeks (or the time limit as specified / agreed by the Purchaser) of the receipt of the order.

6. **EXECUTION:**

The Seller shall execute the whole contract in the most approved, substantial and workman like manner as per the contracted terms. The Seller shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the terms of the Contract.

7. **PROGRESS REPORTS AND DOCUMENTATION:**

After receipt of Purchase Order, seller should submit required documents like drawings, bill of materials, datasheets, catalogues, quality plan, test procedure, type test report, O & M Manuals and / or any other relevant documents as per Specification / Purchase Order, as indicated in the Purchase order. At any stage within the contract period, the seller shall notify of any error, fault or other defect found in BHEL's documents / specifications or any other items for reference. If and to the extent that (taking account of cost and time) any seller exercising due care would have discovered the error, fault or other defect when examining the documents / specifications before submitting the tender, the time for completion shall not be extended.

However if errors, omissions, ambiguities, inconsistencies, inadequacies or other defects are found in the seller's documents, they shall be corrected at his cost, notwithstanding any consent or approval. The Seller shall submit periodic reports as to the progress in execution of the contract and in such form as may be called for by the Purchaser. The submission and acceptance of such reports shall not prejudice the rights of the Purchaser in any manner.

8. **VALIDITY OF OFFER:**

Vendors' offers shall be submitted valid for 90 days from Tender opening.

9. **PRODUCT INFORMATION, DRAWINGS AND DOCUMENTS:**

The Seller shall, as per agreed date / s but not later than the date of delivery, provide information and drawings which are necessary to permit the Purchaser to use, erect, commission, operate and maintain the product. Such information and drawings shall be supplied in the number of copies agreed upon.

10. **NON-DISCLOSURE AND INFORMATION OBLIGATIONS:**

The Seller shall provide Purchaser with all information pertaining to the delivery in so far as it could be of importance to Purchaser. The Seller shall not reveal any confidential information (including price) in relation to the contract in general and those which it may acquire from the purchaser during the course of execution of the contract in particular, to its own employees not involved with the tender / Contract & its execution and delivery or to third parties, or make use of such information pertaining to any data, designs, drawings, specifications and other information furnished to it by the Purchaser, unless Seller seeks a permission to do so from the Purchaser and the Purchaser has agreed to this in writing beforehand. The Seller shall not be entitled to use the Purchaser's name in advertisements and other commercial publications without prior written permission from Purchaser.

11. **INTELLECTUAL PROPERTY RIGHTS; LICENSES:**

If any patent design, trade mark, copyright, trade secret or any other intellectual property rights apply to the products / goods supplied, or delivery or accompanying documentation, Purchaser or its Customer shall be entitled to the legal use thereof free of charges by means of a non-exclusive, assignable, transferrable, sub-licensable, worldwide, perpetual license as duly granted by the owner or licensor of such right. All intellectual property rights that arise or developed during or due to the execution of the contract or delivery of the goods by the Seller and by its employees or third parties involved by the Seller for performance of the Contract belong to Purchaser. The Seller is obliged under the contract to do everything necessary to obtain or establish the above mentioned rights in favour of Purchaser. The Seller guarantees that the execution of the contract including goods and its delivery does not infringe any of the intellectual property rights of third parties. The Seller shall do everything necessary to obtain or establish the alternate acceptable arrangement pending resolution of such (alleged) claims by third parties, if any. The Seller agrees to indemnify, defend, and hold harmless Purchaser, its officers, employees, agents, representatives, successors, assigns, or any of the Purchaser's customers buying or using the goods or services, against any actual or alleged infringement of such intellectual property interests or claims by third parties in this regard and shall reimburse Purchaser for any liabilities, damages, penalties, injuries, claims, demands, actions, costs and expenses (including, without limitation, reasonable legal and other professional fees and expenses) suffered as a result thereof.

12. **INSPECTION AND TESTING:**

Prior written notice of at least 7 days shall be given along with internal test certificates / COC and applicable test certificates. Materials will be inspected by BHEL-SBD/CQS or BHEL nominated Third Party Inspection Agency (TPIA) or BHEL authorized Inspection Agency or Customer / Consultant or jointly by BHEL & Customer / consultant. All tests have to be conducted as applicable in line with approved Quality plan or QA Checklist or Purchase specification and original reports shall be furnished to BHEL for verification / acceptance for issue of dispatch clearance. All costs related to inspections & re-inspections shall be borne by vendor. Whether the Contract provides for tests on the premises of the vendor or any of his Sub-contractor/s, vendor shall be responsible to provide such assistance, labour, materials, electricity, fuels, stores, apparatus, instruments as may be required and as may be reasonably demanded to carry out such tests efficiently. Cost of any type test or such other special tests shall be borne by BHEL only if specifically agreed to in the purchase order.

13. **QUALITY AND CONDITION OF THE DELIVERY:**

The Seller shall guarantee that the delivery:-

- Is of good quality and free from defects and in the case of services rendered that they are performed by skilled personnel and that new materials are used;
- corresponds exactly with the provisions of the Contract, the reasonable expectations of Purchaser regarding the characteristics, quality and reliability of the delivery;
- is suitable for the purpose for which it is intended by its very nature or which is evident from the specifications or the Contract;
- Complies with legal requirements applicable in India and other (international) Government regulations, as applicable.
- Complies with the customary norms and standards in the relevant branch of trade or industry.

The Seller shall be responsible for compliance with applicable technical, safety, quality, environmental requirements and other regulations in relation to its products, packaging, and raw and ancillary materials.

14. **PACKAGING AND DISPATCH:**

The seller shall package the deliverables safely and carefully and pack them suitably in all respects considering the peculiarity of the material for normal safe transport by Sea / Air / Rail / Road to its destination suitably protected against loss, damage, corrosion in transit and the effect of tropical salt laden atmosphere. The packages shall be provided with fixtures / hooks and sling marks as may be required for easy and safe handling by mechanical means. Each package must be marked with consignee name, P.O Number, BHEL material code, Package No., Gross weight & Net weight, Dimensions (L x B x H) and seller's name. The packing shall allow for easy removal and checking of goods on receipt and comply with carries conditions of packing or established trade practices. Packing list of goods inside each package with P.O item no. & Quantity must also be fixed securely outside the box to indicate the contents. If any consignment needs special handling instruction, the same shall be clearly marked with standard symbols / instructions. Hazardous material should be notified as such and their packing, transportation and other protection must conform to relevant regulations.

15. DELIVERY:

Delivery shall be as per Purchase Order delivery terms. Trade terms such as DDL, FOR, EXW, FOB, CFR etc., if stipulated in the order shall be construed in accordance with the version of the INCOTERMS applicable at the time of ordering, without prejudice to the provisions contained in these conditions. The delivery date(s) or delivery period(s) as stipulated in the Contract shall be firm and binding and shall apply to the entire delivery for each PO item. Partial shipments may, however, be permitted by the purchaser.

16. PENALTY:

The time or period of delivery as stipulated in the schedule of delivery shall be deemed to be the essence of the contract. Should circumstances arise whereby the deadline for an agreed delivery date(s) or period(s) is expected to be exceeded, the seller shall inform purchaser hereof without delay. If delay in delivery is caused by any of the circumstances mentioned in clause 27 (Force Majeure) or which are caused exclusively by the acts of purchaser, the purchaser shall extend the time for delivery by a period which is reasonable having regard to all the circumstances in the case.

In the event of delay in agreed contractual delivery as per Purchase Order, penalty @ 0.5 % (half percent) per week or part thereof but limited to a max of 10% (ten percent) value of delayed portion (basic material cost) will be applicable. Delivery will commence from the date of document approval by customer / BHEL or date of issue of manufacturing clearance, whichever is later in case s where such approval/manufacturing clearance is applicable as per PO. Where pre shipment inspection is applicable, the date for which inspection call is issued by vendor along with test certificates / test reports / Certificate of Conformance / calibration reports, as proof of completion of manufacturing will be treated as date of deemed delivery for penalty calculation. In the absence of furnishing such document indicated above as proof of completion of manufacturing along with inspection call, actual date of inspection will be considered as date of deemed delivery and BHEL will not be responsible for delay in actual date of inspection. Penalty for delayed documentation/delayed delivery, if applicable, shall be deducted at the time of first payment. If penalty is applicable for duration of less than a week, penalty @ 0.5% (half percent) of the basic material value will be deducted. Imposition, recovery or settlement of this penalty shall not affect any rights of the purchaser to claim enforcement of specific performance of the contract, compensation and/or to terminate the contract.

Purchaser reserves the right to recover from the Seller/Contractor, as agreed liquidated damages and not by way of penalty, a sum equivalent to half (½) percent of the undelivered portion per week or part thereof, subject to a maximum of ten (10) percent of the contract price excluding elements of taxes, duties and freight, if the Seller/ Contractor fails to deliver any part of the ordered stores within the period stipulated in the Order/Contract.

NOTE:

1. LR date for "Ex-works" contract and Gate Entry of material at BHEL/ Site for "FOR" contract shall be reckoned for levying LD as per contract.
2. In case of any amendment/revision, LD shall be linked to the amended/revised contract value and delivery date(s).
3. If Order/ Contract involves two or more Units/ Sets/ Lots, then Liquidated Damages shall be for order/ contract value of the delayed Unit/ Set/ Lot, provided delivery stipulated in the Order/ Contract is Unit/ Set/ Lot wise, however total LD amount shall be limited to 10% of total order value (excluding taxes, duties and freight).

Purchaser reserves the right to purchase from elsewhere on account of and at the risk and cost of Seller/Contractor, with notice to Seller/Contractor, the stores due for delivery but not so delivered, or their equivalent without cancelling the Order/Contract in respect of stores not yet due for delivery. The manner and method of such purchase shall be at the discretion of the Purchaser. Purchaser reserves the right to cancel the Order/Contract or a portion thereof for the stores not so delivered at the risk and cost of the Seller/Contractor and the Seller/Contractor shall be liable to the Purchaser for any excess cost thereof. The actual excess cost incurred for such purchases will be recovered from the bidder. Seller/Contractor shall continue performance of the Order/Contract, under all circumstances, to the extent not cancelled.

17. ASSIGNMENT OF RIGHTS & OBLIGATIONS: SUBCONTRACTING:

Vendor is not permitted to subcontract the delivery or any part thereof to third party or to assign the rights and obligations resulting from this agreement in whole or in part to third parties without prior written permission from BHEL.

Any permission or approval given by BHEL shall, however, not absolve the vendor of the responsibility of his obligations under the Contract.

18. TRANSFER OF OWNERSHIP, TITLE AND RISK:

The risk for the delivery remains with the Seller until the goods are delivered at the agreed place and acknowledged by the Purchaser/his authorized representative.

19. PRICE, INVOICING AND PAYMENT:

The agreed prices are fixed prices in the currency as specified in the Purchase Order. They shall include packing, forwarding, loading and carriage to the place specified by the Purchaser and are inclusive of all applicable taxes, duties etc. except for those specifically agreed between the Seller and Purchaser. Further, Seller shall indemnify and hold harmless Purchaser from all claims and liabilities, damages, penalties, injuries, claims, demands, actions, costs and expenses (including, without limitation, reasonable legal and other professional fees and expenses) arising from Seller's failure to report or pay any taxes, tariffs or duties for which Seller is responsible. The method of invoicing shall be without prejudice to the parties' agreement as to the place of performance. Indian Agent's commission if payable and so specified in the Purchase Order shall be paid in Indian Rupees, considering the SBI TT selling exchange rate prevailing on the date of Purchase Order, after successful completion of the contract. If so stipulated in the order, the Seller shall furnish, on receipt of the Purchase Order or along with order acknowledgement, the Billing break-up of prices (BBU) for approval by the Purchaser in respect of the major items / components going into the equipment. This BBU is required by the Purchaser for admitting the claims of the Seller if part shipments are contemplated and also to facilitate custom clearance after payment of applicable duties in case of imports. Purchaser shall be entitled to suspend payment for as long as required supporting documents / details remain outstanding and any consequential demurrage / wharfage shall be to the account of the Seller. Payment does not imply in any respect whatsoever a waiver of Purchaser's right to performance of the Contract. Purchaser is entitled to set off claimable debts against claimable liabilities with the Seller by means of a set off note.

20. CONTRACT VARIATIONS; INCREASE OR DECREASE IN THE SCOPE OF SUPPLY:

The purchaser may vary the contracted quantities during execution, due to exigencies of project requirements with mutual consent of the seller.

21. REVERSE AUCTION

As per SCC

22. GUARANTEE / WARRANTY:

Wherever required, and so provided in the specifications / Purchaser Order, the Seller shall guarantee that the goods supplied shall comply with the specifications laid down, for materials, workmanship and performance. If within the guarantee period, the delivery is found to be non-compliant including those with the stipulations in Clause 12 (Quality and Condition of Delivery) of these Conditions, the Seller shall, for its own account, replace, repair, or re-execute the delivery at Purchaser's discretion when first requested to do so within two weeks or mutually agreed period, without prejudice to Purchaser's other legal rights. If the Seller continues to default on its obligations, Purchaser has the right to proceed to replace, repair or re-execute the order at the Seller's expense, with or without help from third parties. Purchaser shall notify the Seller of the exercise of this right in advance where possible. Unless otherwise specified, guarantee period shall be minimum 12 months from the date of commissioning or 18 months from the date of supply whichever is earlier. The guarantee period shall be extended by the period during which the goods are not in compliance with the stipulations in Clause 12 (Quality and Condition of Delivery). A guarantee period as described above shall apply afresh to replaced, repaired or re-executed parts of a delivery. The decision of the Purchaser in regard to the Seller's liability under this clause shall be conclusive. This clause shall survive termination / completion of contract.

23. SHORTAGES / REPLACEMENTS:

In the event of shortage on receipt of goods and / or on opening of packages at BHEL, all such shortages shall be made good within a reasonable time that BHEL may allow from such intimation and free of cost.

24. TRANSIT DAMAGES:

In the event of receipt of goods in damaged condition or having found them so upon opening of packages at BHEL Supplier shall make good of all such damages within a reasonable time from such intimation by BHEL. In case BHEL raises an insurance claim, the cost of material limited to insurance settled amount less handling charges will be reimbursed.

25. REJECTION / REPLACEMENT:

The Seller shall arrange replacement / repair under its obligation under the contract within two weeks from the date of intimation or mutually agreed period. The rejected goods shall be taken away by the Seller and replaced on DDP (Delivered duty Paid)/ FOR - BHEL Stores / designated destination basis within such period. In the event of the Seller's failure to comply, Purchaser may take appropriate action including disposal of rejections and replacements, at the cost and risk of the Seller. In case defects attributable to Seller are detected during processing of the goods at purchaser's / his subcontractor works, the Seller shall be responsible for replacement / repair of the goods as required by the Purchaser at Seller's cost. In such cases expiry of guarantee/warranty will not be applicable.

26. CANCELLATION / TERMINATION OF CONTRACT:

- a. Purchaser shall have the right to completely or partially terminate the Contract by means of written notice to that effect without prejudicing its other rights and remedies, in an event of default by the Seller :- Events of default:-
 - (i) The Seller fails to perform within the time specified in the Contract or any extension thereof;
 - (ii) The Seller defaults on one or more of the obligations or program of work as contained in the Contract.
 - (iii) The Seller is declared bankrupt or insolvent or is ordered to be wound up, its business has been shut down or liquidated, a substantial part of its assets have been attached, or the business has been transferred to a third party. In case of partnership firm any dissolution of partnership shall be also considered as an event of default.
 - (iv) Any misrepresentation or hiding of material fact if detected at a later stage
 - (v) The delivery is rejected after inspection or re-inspection.
 - (vi) Export license not granted to Seller by the concerned Government.
 - (vii) Incapacity of seller for any other reason to deliver or perform the contract.

BHEL shall have the right to cancel / foreclose the Order / Contract, wholly or in part, in case it is constrained to do so, on account of any decline, diminution, curtailment or stoppage of the business. In the event of termination, the risk and liability attached to the items already delivered but not of use to Purchaser, as determined by Purchaser, remains with the Seller. Such items shall then be at the Seller's disposal and they are to be collected or removed by the Seller. The Seller shall immediately refund any payments in respect of such items if already made by the Purchaser before the termination, and in any case not later than 30 days.
- b. In the event of termination due to reasons or defaults by the Seller, the Purchaser may at his option procure from any source, on such terms and in such manner as he deems appropriate, goods not delivered or others of similar description where goods exactly complying are not readily procurable, in the opinion of the Purchaser, which opinion shall be final, at the risk and cost of the Seller and the Seller shall be liable to the Purchaser for any risks and excess cost. The cost of purchases made by the Purchaser at the risk and cost of the Seller shall be worked out as per Cl. No. 38 (RISK & COST) and related services procured from alternate source / s. Provided, however, that the Seller shall continue the performance of the Contract to the extent not cancelled or terminated under the provisions of this clause. The Seller shall on no account be entitled to any gain on such re-purchases by the Purchaser.
- c. Termination of the Contract, from whatever cause arising, shall be without prejudice to the rights of the parties accrued under the Contract up to the time of termination.

27. FORCE MAJEURE:

Notwithstanding anything contained in the purchase order or any other document relevant thereto, neither party shall be liable for any failure or delay in performance to the extent said failures or delays are caused by the „Act of God,, and occurring without its fault or negligence, provided that, force majeure will apply only if the failure to perform could not be avoided by the exercise of due care and vendor doing everything reasonably possible to resume its performance. A party affected by an event of force majeure shall give the other party written notice, with full details as soon as possible and in any event not later than three (3) calendar days of the occurrence of the cause relied upon. If force majeure applies, dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused. Notwithstanding above provisions, Purchaser shall reserve the right to cancel the order / Contract, wholly or partly, in order to meet the overall project schedule and make alternative arrangements for completion of deliveries and other schedules. Purchaser may takeover partly processed material at a mutually agreed price.

28. MICRO & SMALL & MEDIUM ENTERPRISES:

As Extant regulations of Govt. of India titled "Public Procurement Policy for Micro & Small Enterprises (MSE's)" will be applicable.

29. PPP-MII POLICY:

"As per public procurement (Preference to Make in India) guidelines of Govt. of India, "For this procurement, the local content to categorize a supplier as a class I local supplier/class II local supplier/Non local supplier and purchase preference to class I local supplier, is as defined in Public Procurement (Reference to Make in India). Order 2017 dated 04.06.2020 issued by DPIIT. In case of subsequent orders issued by the nodal ministry, changing the definition of local content for the items of the NIT, the same shall be applicable even if issued after issue of this NIT, but before opening of part-II bids against this NIT". Make in India declaration certificate is enclosed. Suppliers are proposed to submit signed & stamp copy of the same along with their offer.

30. TAXES AND DUTIES:

As per Extant regulations of Govt. of India

31. INDEMNIFICATION:

Vendor is fully responsible for ensuring that all legal compliances and safety guidelines are followed in course of the contract. Notwithstanding any other clause herein to the contrary, the Seller shall indemnify, hold and save harmless, and defend, at its own expense, the Purchaser, its officials,

agents, servants and employees from and against all suits, claims, demands, and liability of any nature or kind, including their costs and expenses, arising out of acts or omissions of the Seller, or the Seller's employees, officers, agents or sub- contractors, in the performance of this Contract. This provision shall extend, inter alia, to claims and liability in the nature of employee's compensation and products liability. The obligations under this clause do not lapse upon termination of this Contract.

32. NON-WAIVER OF DEFAULTS:

If any individual provision of the Contract is invalid, the other provisions shall not be affected.

The failure of Purchaser,

a. To enforce any of the terms and conditions of the Contract.

Or

b. To exercise any right or privilege granted to Purchaser.

Under the Contract or under law shall not release the Seller from any of the warranties or obligations under the Contract and shall not be construed as a waiver thereof and the same shall continue in full force and effect.

33. LIMITATION OF LIABILITY:

Vendor's liability towards this contract is limited to a maximum of 100% of the contract value and consequential damages are excluded. However the limits of liability will have no effect in cases of criminal negligence or wilful misconduct. The total liability of Vendor for all claims arising out of or relating to the performance or breach of the Contract or use of any Products or Services or any order shall not exceed the total Contract price.

34. SETTLEMENT OF DISPUTES:

Except as otherwise specifically provided in the Purchase Order, decision of BHEL shall be binding on the vendor with respect to all questions relating to the interpretation or meaning of the terms and conditions and instructions herein before mentioned and as to the completion of supplies / work / services, other questions, claim, right, matter or things whatsoever in any way arising out of or relating to the contract, instructions, orders or these conditions or otherwise concerning the supply or the execution or failure to execute the order, whether arising during the schedule of supply / work or after the completion or abandonment thereof. Any disputes or differences among the parties shall to the extent possible be settled amicably between the parties thereto, failing which the disputed issues shall be settled through arbitration. Vendor shall continue to perform the contract, pending settlement of dispute(s).

35. ARBITRATION CLAUSE:

In case amicable settlement is not reached in the event of any dispute or difference arising out of the execution of the Contract or the respective rights and liabilities of the parties or in relation to interpretation of any provision in any manner touching upon the Contract, such dispute or difference shall (except as to any matters, the decision of which is specifically provided for therein) be referred by either party to the sole arbitration of an Arbitrator appointed by the Unit head of Solar Business Division of BHEL. Vendor shall have no objection even if the Arbitrator so appointed is an employee of BHEL or has ever dealt / had to deal with any matter relating to this Contract. Subject as aforesaid the provisions of the Arbitration and Conciliation Act, 1996 of India or any statutory modification or re-enactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceedings under this clause. It is a term of contract that the party initiating arbitration shall specify the dispute or disputes to be referred to arbitration under this clause together with the amount or amounts claimed in respect of each such dispute. The venue for the arbitration shall be Bangalore, India. The award of the arbitrator shall be a speaking award and shall be final, conclusive and binding on all parties to this contract.

a. The cost of Arbitration shall be borne equally by the parties.

b. Notwithstanding the existence of any dispute or difference or any reference for the arbitration, the Seller shall proceed with and continue without hindrance the performance of the work under the Contract with due diligence and expedition in a professional manner.

36. APPLICABLE LAWS AND JURISDICTION OF COURTS:

The Contract shall be governed by the substantive laws of India. This contract shall be construed and interpreted in accordance with the laws of India and shall have exclusive jurisdiction of courts in Bangalore, Karnataka State, India.

37. CONCILIATION CLAUSE:

The Conciliation Scheme 2018 attached as Annexure-A shall be applicable. The Signed & Stamped copy of the same to be attached along with the offer as a mark of acceptance.

38. SETTLEMENT OF DISPUTES / ARBITRATION:

In case of any dispute arising out of as in connection with this contract, the same shall be referred to arbitration under Arbitration & Conciliation Act 1996 of a sole arbitrator who shall be appointed by mutual consent of the parties. The seat & venue of arbitration shall be Bangalore. The proceedings shall be conducted in English. The Governing law of contract shall be the substantive law of India.

39. RISK & COST:

Risk & Cost Clause, in line with Conditions of Contract may be invoked in any of the following cases:

Contractor/ supplier's poor progress of the work vis-à-vis execution timeline as stipulated in the Contract, backlog attributable to contractor/ supplier including unexecuted portion of work/ supply does not appear to be



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executable within balance available period (#) considering its performance of execution.

Withdrawal from or abandonment of the work by contractor before completion of the work as per contract.

Non completion of work/ Non-supply by the Contractor/ supplier within scheduled completion/delivery period as per Contract or as extended from time to time, for the reasons attributable to the contractor/ supplier.

Termination of Contract on account of any other reason (s) attributable to Contractor/ Supplier.

Assignment, transfer, subletting of Contract without BHEL's written permission resulting in termination of Contract or part thereof by BHEL. Non-compliance to any contractual condition or any other default attributable to Contractor/ Supplier.

Reasonable notice shall be given for rectification of the breach. In case of non-rectification during this notice period, Purchaser shall Invoke the Risk and Cost.

RISK & COST

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.

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, contract quantities pertaining to portion of work withdrawn shall be considered as 'Balance scope of work/supply' for calculating Risk & Cost amount.

LD against delay in executed work/supply in case of Termination of Contract LD against delay in executed work/supply shall be calculated in line with LD clause of the contract for the delay attributable to contractor/ supplier. For this purpose, contract value shall be taken as Executed Value of 30work/supply for the purpose of limiting maximum LD value.

Method for calculation of "LD against delay in executed work/supply" is given below.

1. 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/ supplier= T1

2. Let the value of executed work/supply till the time of termination of contract= X

3. Let the Total Executable Value of work/supply for which inputs/fronts were made available to contractor/ supplier and were planned for execution till termination of contract = Y

4. Delay in executed work/supply attributable to contractor/supplier i.e. $T2 = (1 - X/Y) \times T1$

5. LD shall be calculated in line with LD clause of the Contract for the delay attributable to contractor/ supplier taking "X" as Contract Value and "T2" as delay attributable to contractor/ supplier.

Note: Incase portion of work/supply is withdrawn; no LD shall be applicable for portion of work/supply withdrawn.

40. DECLARATION BY BIDDER REGARDING PROTECTION OF COMMERCIAL INTERESTS OF BHEL:

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

41. DEALING WITH BANNED SUPPLIERS/ CONTRACTORS IN BHEL:

Offers of the bidders, who are on the banned/hold list, as also the offers 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 website www.bhel.com.

42. NOTE:

Delivery Challans & Invoices /Service Entry Sheet in the format as specified under GST laws mentioning your GSTIN No, item HSN/SAC No should accompany supply.

- GST portion of invoice shall be released only upon vendor declaring such invoice in his GSTR-1 return and receipt of goods/services and tax and confirmation of payment of GST thereon by vendor on GSTN Portal.
- Bank Guarantee of appropriate value may be obtained from vendor which shall be valid at least one month after the confirmation of payment date by vendor on GST portal and receipt of Tax invoice and receipt of goods, whichever is later. [If (a) above could not be complied]
- In case GST credit is delayed/denied to BHEL due to non/delayed receipt of goods and/or tax invoice or expiry of timeline prescribed in GST law for availing such ITC, or any other reasons not attributable to BHEL, GST amount shall be recoverable from vendor along with interest levied/BG of appropriate value may be obtained from vendor alternatively payment covering GST portion including interest thereon shall be release to vendor only upon completion of these requirements.
- In case vendor delays declaring such invoice in his return & GST credit by BHEL is denied or reversed subsequently as per GST law, GST amount paid by BHEL towards such ITC reversal as per GST Law shall be recoverable from vendor/contractor along with interest levied/leviable be obtained from vendor alternatively payment covering GST portion including interest thereon shall be released to vendor only upon completion of these requirements.

43. ETHICS IN BUSINESS DEALINGS & 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."

44. GENERAL TERMS:

That any non-exercise, forbearance or omission of any of the powers conferred on BHEL and /or any of its authorities will not in any manner constitute waiver of the conditions hereto contained in these presents. That the headings used in this agreement are for convenience of reference only. That all notices etc., to be given under the Purchase order shall be in writing, type script or printed and if sent by registered post or by courier service to the address given in this document shall be deemed to have been served on the date when in the ordinary course, they would have been delivered to the addressee.

Format for Self Certification under preference to MAKE IN INDIA (MII) order

Certificate

In line with Government Public Procurement Order No. P-45021/2/2017-PP (BE-II) dated 04.06.2020, we hereby certify that we M/s _____ (supplier name) are local supplier. The percentage of local content in the items _____ offered by us against Enquiry No. _____ is _____ % (percentage).

Details of location at which local value addition will be made is as follows:

We also understand, false declarations will be in breach of the Code of Integrity under Rule 175(1)(i)(h) of the General Financial Rules for which a bidder or its successors can be debarred for up to two years as per Rule 151 (iii) of the General Financial Rules along with such other actions as may be permissible under law.

Sign & Stamped of the supplier