

**BHARAT HEAVY ELECTRICALS LIMITED
TIRUCHIRAPPALLI-620 014.**

Buyer Added Bid Specific Additional Terms & Conditions (ATC)

Note: This Annexure has to be mandatorily filled & signed by the Bidder and submitted along with Technical bid.

Any deviation to the below mentioned terms shall be stated specifically in the comments column for each term and also in case of acceptance to our terms, it will be construed that the whole term is understood and agreed in totality without any deviation. (If otherwise mentioned).

| SI No | BHEL Requirements | Supplier Comments |
|-------|---|-------------------|
| 01 | <p>PRE-QUALIFICATION CRITERIA:</p> <p>1.1 Technical Pre-Qualification criteria (Technical) for this enquiry is given in Annexure-A (available along with the Specification document)</p> <p>1.2 Bidder must not be admitted under Corporate Insolvency Resolution Process or Liquidation as on date, by NCLT or any adjudicating authority/authorities, and shall submit undertaking (Annexure-4) to this effect.</p> <p>The Bidder / Vendor has to compulsorily meet all the requirements as per the PQC (Clause 1.1 & 1.2 above) to get qualified for consideration of their offer for the Tendered items. The vendor has to submit supporting documents as indicated in PQC without which the offer will not be considered for evaluation. If the vendor does not meet the PQC requirements, offer of such BIDDER / VENDOR offer will be rejected.</p> <p>Note:</p> <p>a. Credentials furnished by the bidder against "PRE-QUALIFYING CRITERIA" shall be verified from the issuing authority for its authenticity. In case, any credential (s) is/are found to be spurious, offer of the bidder is liable to be rejected. BHEL reserves the right to initiate any further action as per extant guidelines for Suspension of Business Dealings as applicable in BHEL.</p> <p>b. Price Bids of only those bidders shall be opened who stand qualified after compliance of PQC and are techno commercially qualified.</p> | |
| 02 | <p>SCOPE OF SUPPLY:</p> <p>Supply of items shall be as per technical specifications indicated in the enquiry. Technical specification requirements are available in Specification document for the item(s).</p> | |
| 03 | <p>PRICE BASIS:</p> <p>The quote shall be of FOR-BHEL STORES (Consignee address) basis inclusive of all charges like packing & forwarding, Freight & Insurance etc., Unloading of materials at Destination/Site shall be in Supplier's Scope.</p> <p>The offer shall be valid until 120 days from the date of bid opening. The quoted / finalised rates shall be Firm till execution of the supplies. Offer with PVC clause will not be considered.</p> | |
| 04 | <p>TAXES & DUTIES:</p> <p>4.1 The Supplier/Vendor shall pay all (save the specific exclusions as enumerated in this clause) taxes, fees, license, charges, deposits, duties, tools, royalty, commissions, other charges, etc. which may be levied on the input goods & services consumed and output goods & services delivered in course of his operations in executing the contract. In case BHEL is forced to pay any of such taxes/duties, BHEL shall have the right to recover the same from his bills or otherwise as deemed fit along with the applicable overheads @5% and interest on the total value (i.e. amount paid by BHEL + overhead).</p> <p>However, provisions regarding GST on output supply (goods/service) and TDS/TCS as per Income Tax Act shall be as per following clauses.</p> | |

4.2 GST (Goods and Services Tax)

4.2.1 Rate quoted in GeM Portal should be on FOR destination basis inclusive of all taxes, P&F, Freight etc. Reimbursement of GST is subject to compliance of following terms and conditions. BHEL shall have the right to deny payment of GST and to recover any loss to BHEL on account of tax, interest, penalty etc. for non-compliance of any of the following condition.

4.2.2 The admissibility of GST, taxes and duties referred in this chapter or elsewhere in the contract shall be limited to direct transactions between BHEL & its Supplier/Vendor. BHEL shall not consider GST on any transaction other than the direct transaction between BHEL & its Supplier/Vendor.

4.2.3 Supplier/Vendor shall obtain prior written consent of BHEL before billing the amount towards such taxes. Where the GST laws permit more than one option or methodology for discharging the liability of tax/levy/duty, BHEL shall have the right to adopt the appropriate one considering the amount of tax liability on BHEL/Client as well as procedural simplicity with regard to assessment of the liability. The option chosen by BHEL shall be binding on the Contractor for discharging the obligation of BHEL in respect of the tax liability to the Supplier/Vendor.

4.2.4 Supplier/Vendor has to submit GST registration certificate of the concerned state. Supplier/Vendor also needs to ensure that the submitted GST registration certificate should be in active status during the entire contract period.

4.2.5 Supplier/Vendor has to issue Invoice/Debit Note/Credit Note indicating HSN/SAC code, Description, Value, Rate, applicable tax and other particulars in compliance with the provisions of relevant GST Act and Rules made thereunder.

4.2.6 Supplier/Vendor has to submit GST compliant invoice within the due date of invoice as per GST Law. In case of delay, BHEL reserves the right of denial of GST payment if there occurs any hardship to BHEL in claiming the input thereof. In case of goods, Supplier/Vendor has to provide scan copy of invoice & GR/LR/RR to BHEL before movement of goods starts to enable BHEL to meet its GST related compliances. Special care should be taken in case of month end transactions.

4.2.7 Supplier/Vendor has to ensure that invoice in respect of such services which have been provided/completed on or before end of the month should not bear the date later than last working day of the month in which services are performed.

4.2.8 Subject to other provisions of the contract, GST amount claimed in the invoice shall be released on fulfilment of all the following conditions by the Supplier/Vendor:

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- a) Supply of goods and/or services have been received by BHEL.
- b) Original Tax Invoice has been submitted to BHEL.
- c) Supplier/Vendor has submitted all the documents required for processing of bill as per contract/ purchase order/ work order.
- d) In cases where e-invoicing provision is applicable, Supplier/Vendor is required to submit invoice in compliance with e-invoicing provisions of GST Act and Rules made thereunder.
- e) Supplier/Vendor has filed all the relevant GST return (e.g. GSTR-1, GSTR-3B, etc.) pertaining to the invoice submitted and submit the proof of such return along with immediate subsequent invoice. In case of final invoice/ bill, contractor has to submit proof of such return within fifteen days from the due date of relevant return.
- f) Respective invoice has appeared in BHEL's GSTR - 2A for the month corresponding to the month of invoice and in GSTR-2B of the month in which such invoices has been reported by the contractor along with status of ITC availability as "YES" in GSTR-2B. Alternatively, BG of appropriate value may be furnished which shall be valid at least one month beyond the due date of confirmation of relevant payment of GST on GSTN portal or sufficient security is available to adjust the financial impact in case of any default by the Supplier/Vendor.
- g) Supplier/Vendor has to submit an undertaking confirming the payment of all due GST in respect of invoices pertaining to BHEL.

4.2.9 Any financial loss arises to BHEL on account of failure or delay in submission of any document as per contract/purchase order/work order at the time of submission of Tax invoice to BHEL, shall be deducted from Supplier/Vendor's bill or otherwise as deemed fit.

4.2.10 TDS as applicable under GST law shall be deducted from Supplier/Vendor's bill.

4.2.11 Supplier/Vendor shall comply with the provisions of e-way bill wherever applicable. Further wherever provisions of GST Act permits, all the e-way bills, road permits etc. required for transportation of goods needs to be arranged by the contractor.

4.2.12 Supplier/Vendor shall be solely responsible for discharging his GST liability according to the provisions of GST Law and BHEL will not entertain any claim of GST/interest/penalty or any other liability on account of failure of Supplier/Vendor in complying the provisions of GST Law or discharging the GST liability in a manner laid down thereunder.

4.2.13 In case declaration of any invoice is delayed by the vendor in his GST return or any invoice is subsequently amended/altere/deleted on GSTN portal which results in any adverse financial implication on BHEL, the financial impact thereof including interest/penalty shall be recovered from the Supplier/Vendor's due payment.

4.2.14 Any denial of input credit to BHEL or arising of any tax liability on BHEL due to non-compliance of GST Law by the Supplier/Vendor in any manner, will be recovered along with liability on account of interest and penalty (if any) from the payments due to the Supplier/Vendor.

4.2.15 In the event of any ambiguity in GST law with respect to availability of input credit of GST charged on the invoice raised by the contractor or with respect to any other matter having impact on BHEL, BHEL's decision shall be final and binding on the Supplier/Vendor.

4.2.16 Variation in Taxes & Duties:

Any upward variation in GST shall be considered for reimbursement provided supply of goods and services are made within schedule date stipulated in the contract or approved extended schedule for the reason solely attributable to BHEL. However downward variation shall be subject to adjustment as per actual GST applicability.

In case the Government imposes any new levy/tax on the output service/goods after price bid opening, the same shall be reimbursed by BHEL at actual. The reimbursement under this clause is restricted to the direct transaction between BHEL and its Supplier/Vendor only and within the contractual delivery period only.

In case any new tax/levy/duty etc. becomes applicable after the date of Bidder's offer but before opening of the price Bid, the Bidder/ Supplier/Vendor must convey its impact on his price duly substantiated by documentary evidence in support of the same before opening of price bid. Claim for any such impact after opening the price bid will not be considered by BHEL for reimbursement of tax or reassessment of offer.

4.3 Income Tax:

TDS/TCS as applicable under Income Tax Act, 1961 or rules made thereunder shall be deducted/collected from Supplier/Vendor's bill.

4.4 Supplier HSN Code & Applicable GST % of the enquired item (To be filled by Supplier)

[Redacted]

05

MATERIAL DISPATCH CLEARANCE CERTIFICATE (MDCC):

Applicable / Not Applicable.

06

INSPECTION / INSPECTION & TESTING AT SUPPLIERS WORKS: BHEL reserves the right to inspect the material during manufacturing and also to get

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| | <p>tested the material under dispatch from third party. The test results of third party test shall be final and binding on the Supplier/Vendor.</p> <p>BHEL will reserve the right to inspect/test the material during/after manufacturing at suppliers' works, and/or at BHEL Site. In case of rejection at any stage, Supplier/Vendor shall be liable to replace the materials at his own cost.</p> | |
| 07 | <p>DELIVERY:</p> <p>100 % Quantity shall be delivered within 45 Days from the date of PO</p> <p>NOTE:</p> <p>a) If the delivery of supply as detailed above gets delayed beyond the delivery period, LD will be applicable in line with LD clause No. 18 below.</p> <p>b) In case BHEL increase the quantity during currency of the contract in line with Option Clause of GeM bidding document, delivery period for the additional quantity shall be maintained same as original order and to be calculated from the date of order for the additional quantity.</p> | |
| 08 | <p>TRANSIT INSURANCE:</p> <p>Transit Insurance of material is in <i>Vendor's scope</i>. Vendor shall insure the material at their cost for transportation.</p> | |
| 09 | <p>PAYMENT TERMS:</p> <p>a) As per the approved guidelines of BHEL Trichy</p> <p>i) FOR NON MSME Bidders, 100% payment within 90 days from the date of acceptance of material at BHEL stores (against submission of billing documents & Subjected to Material acceptance by BHEL)</p> <p>ii) FOR MSE Bidders, 100% payment within 45 days from the date of vehicle/gate entry at BHEL stores (against submission of billing documents & Subjected to Material acceptance by BHEL).</p> <p>iii) FOR MEDIUM ENTERPRISES Bidders, 100% payment within 60 days from the date of acceptance of material at BHEL stores (against submission of billing documents & Subjected to Material acceptance by BHEL).</p> <p>For MSE supplier: In case of objection raised by BHEL due to Non availability / Discrepancy in invoice/Dispatch documents, Rejection of material etc. the payment due date shall be calculated from the date of closure of objections by the suppliers.</p> <p>However, GST amount shall be reimbursed in line with compliance to Cl. No. 4 (Taxes & Duties) above.</p> <p>b) NO INTEREST PAYABLE TO CONTRACTOR</p> <p>No interest shall be payable on the security deposit or any other money due to the Supplier.</p> | |

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| 10 | <p>DOCUMENTS REQUIRED FOR BILL PROCESSING:</p> <ul style="list-style-type: none"> • Original Tax Invoices (As per Cl. No. 4 above). 2 invoices are required either in Original hard copies or Digitally Signed Soft copies • GeM invoice • Lorry Receipt Copy/Courier Docket/Speed post docket as applicable • E-way bill Part A • E-way bill Part B • Warranty/Guarantee Certificate (if applicable) • Test Certificates (if applicable) • Credit note for the rejected/shortage material (if applicable). Original hard copy or Digitally Signed Soft copy is required. Original invoice number to be indicated in the credit note as reference invoice number. <p>Note: Suppliers are required to upload their invoice and other relevant documents to the SUVIDHA portal.</p> <p>SUVIDHA portal for Supply Invoices: Link- https://suvidha.bhel.in/suvidha/index1.jsp Enter Your Registered Permanent Account Number (PAN) in SUVIDHA portal to Proceed for uploading invoice documents</p> <p>Registration of all supply invoices, irrespective of the invoice amount, is mandatory in SUVIDHA.</p> <p>For net invoice amount exceeding ₹5 lakhs (including taxes): <i>Upload of Class 3 Digitally Signed Tax Invoice is mandatory. All other documents as per the PO checklist must also be uploaded. However, if any other digitally signed document is specified in the PO checklist, then Class 3 Digitally Signed document is mandatory for uploading</i></p> <p>For net invoice amount up to ₹5 lakhs (including taxes): <i>Upload of all documents as per the PO checklist is mandatory. All Documents can be uploaded without a digital signature. However, if a digitally signed document is specified in the PO checklist but a non-digitally signed version is uploaded, the hard copy must be submitted.</i></p> | |
| 11 | <p>BANK DETAILS FOR EMD & PERFORMANCE SECURITY SUBMISSION: EMD & PERFORMANCE SECURITY are not applicable to this tender</p> | |
| 12 | <p>EARNEST MONEY DEPOSIT: Applicable / Not Applicable.</p> | |
| 13 | <p>PERFORMANCE SECURITY: Applicable / Not Applicable.</p> | |
| 14 | <p>BREACH OF CONTRACT, REMEDIES AND TERMINATION:</p> <p>14.1 The following shall amount to breach of contract:</p> <ol style="list-style-type: none"> 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.

14.2 Remedies in case of Breach of Contract.

- i. Wherein the period as stipulated in the notice issued under clause 14.1 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.
- vi. In-case recoveries are not possible with any of the above available options, Legal action shall be initiated for recovery against defaulted supplier/Vendor.

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| | <p>vii. 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.</p> <p>viii. 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.</p> <p>Note: 1) 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.</p> <p>LD against delay in executed supply in case of Termination of Contract:</p> <p>LD against delay in executed supply shall be calculated in line with LD clause no. 18.0 below, for the delay attributable to Supplier/Vendor. For limiting the maximum value of LD, contract value shall be taken as Executed Value of supply till termination of contract.</p> <p>Method for calculation of "LD against delay in executed supply in case of termination of contract" is given below.</p> <p>i. Let the time period from scheduled date of start of supply till termination of contract excluding the period of Hold (if any) not attributable to contractor = T1</p> <p>ii. Let the value of executed supply till the time of termination of contract = X</p> <p>iii. Let the Total Executable Value of supply for which inputs/fronts were made available to Supplier/Vendor and were planned for execution till termination of contract = Y</p> <p>iv. Delay in executed supply attributable to Supplier/Vendor i.e. $T2 = [1 - (X/Y)] \times T1$</p> <p>v. LD shall be calculated in line with LD clause (clause 18.0) of the Contract for the delay attributable to Supplier/Vendor taking "X" as Contract Value and "T2" as period of delay attributable to Supplier/Vendor.</p> | |
| 15 | <p>BILL TO/ SHIP TO ADDRESS: Bill to Address: <i>BHARAT HEAVY ELECTRICALS LTD, HIGH PRESSURE BOILER PLANT, TIRUCHHIRAPPALLI – 620014 TAMIL NADU, INDIA</i> <i>GSTIN: 33AAACB4146P2ZL</i> Ship to Address: <i>Manager / Stores In-charge, Ward 15 / BHEL Stores, HPBP, BHEL Trichy – 620 014.</i></p> | |
| 16 | <p>GUARANTEE/WARRANTY: Applicable / Not Applicable.</p> | |

| 17 | <p>MICRO AND SMALL ENTERPRISES (MSE):</p> <p>Any Bidder falling under MSE category shall furnish the following details & submit Udyam Certificate in support of the same along with their techno-commercial offer.</p> <table border="1" data-bbox="169 226 1323 392"> <thead> <tr> <th>Type under MSE</th> <th>UDYAM No</th> <th>SC/ST Owned</th> <th>Women Owned</th> <th>Others (Excluding SC/ST/Women)</th> </tr> </thead> <tbody> <tr> <td>Micro</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Small</td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table> <p>Note: If the bidder does not furnish the above, offer shall be processed construing that the bidder is not falling under MSE category.</p> <p>a) MSE suppliers can avail the intended benefits in respect of the procurements related to the Goods and Services only (Definition of Goods and Services as enumerated by Govt. of India vide Office Memorandum F. No. 21(8)/2011-MA dtd. 09/11/2016 office of AS & DC, MSME) only if they submit along with the offer, copy of Udyam Registration Certificate with QR code. Date to be reckoned for determining the deemed validity will be the last date of Technical Bid submission. Non-submission of supporting document in GeM portal will lead to consideration of their bids at par with other bidders. No benefits shall be applicable for this enquiry if the above required documents are not uploaded at the time of bid submission. Documents submitted by the bidder shall be verified by BHEL for rendering the applicable benefits.</p> | Type under MSE | UDYAM No | SC/ST Owned | Women Owned | Others (Excluding SC/ST/Women) | Micro | | | | | Small | | | | | |
|----------------|--|----------------|-------------|--------------------------------|-------------|--------------------------------|-------|--|--|--|--|-------|--|--|--|--|--|
| Type under MSE | UDYAM No | SC/ST Owned | Women Owned | Others (Excluding SC/ST/Women) | | | | | | | | | | | | | |
| Micro | | | | | | | | | | | | | | | | | |
| Small | | | | | | | | | | | | | | | | | |
| 18 | <p>LIQUIDATED DAMAGE:</p> <p>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.</p> <p>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.</p> <p>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 total contract value without any controversy/dispute of any sort whatsoever.</p> <p>Note: Vehicle/Gate entry date at consignee location will be considered for LD calculation (I.e. LD will be calculated for the Period from Contract delivery due date to date of Vehicle/Gate entry date at BHEL Stores).</p> | | | | | | | | | | | | | | | | |
| 19 | <p>INTEGRITY PACT (IP): Applicable / Not Applicable.</p> | | | | | | | | | | | | | | | | |
| 20 | <p>PREFERENCE TO MAKE IN INDIA: NOT Applicable</p> | | | | | | | | | | | | | | | | |
| 21 | <p>SETTLEMENT OF DISPUTE:</p> <p>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.</p> <p>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</p> | | | | | | | | | | | | | | | | |

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 21.1

21.1 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)).

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.

21.2 ARBITRATION:

21.2.1 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 14.1 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 **Madras High Court, Arbitration Centre (MHCAC)** and such dispute to be adjudicated by Sole Arbitrator appointed in accordance with the Rules of said Arbitral Institution.

21.2.2 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 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.

21.2.3 After expiry of 30 days from the date of receipt of aforesaid notice, the party invoking the Arbitration shall submit that dispute to the Arbitral Institution- **Madras High Court, Arbitration Centre (MHCAC)**- and that dispute shall be adjudicated in accordance with their respective Arbitration Rules. 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 **Madras High Court, Arbitration Centre (MHCAC)**- 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.

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

21.2.5 The Arbitration proceedings shall be in English language and the seat of Arbitration shall be **Trichy**.

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| | <p>21.2.6 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 Trichy.</p> <p>21.2.7 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.</p> <p>21.2.8 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.</p> <p>21.2.9 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.</p> <p>21.2.10 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 14.2.9. 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.</p> <p>21.3 In case of Contract with Public Sector Enterprise (PSE) or a Government Department, the following shall be applicable:</p> <p>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</p> | |
| 22 | <p>JURISDICTION Subject to clause 21 of this contract, the Civil Court having original Civil Jurisdiction at Tiruchirappalli, Tamil Nadu shall alone have exclusive jurisdiction in regard to all matters in respect of the Contract.</p> <p>GOVERNING LAWS The contract shall be governed by the Law for the time being in force in the Republic of India.</p> | |
| 23 | <p>FORCE MAJEURE 23.1 "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) 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.</p> | |

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| | <p>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.</p> <p>vi. Natural catastrophes such as earthquake, tsunami, volcanic activity, hurricane or typhoon, flood, fire, cyclones etc.</p> <p>vii. Epidemic, pandemic etc.</p> <p>23.2 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.</p> <p>23.3 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.</p> <p>23.4 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.</p> <p>23.5 Delay or non-performance by either party hereto caused by the occurrence of any event of Force Majeure shall not</p> <ul style="list-style-type: none"> 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. <p>23.6 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.</p> | |
| 24 | <p>NON-DISCLOSURE AGREEMENT: The bidders shall enter into the Non-disclosure agreement separately. (Annexure 7 attached).</p> | |
| 25 | <p>CARTEL FORMATION 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.</p> | |
| 26 | <p>FRAUD PREVENTION POLICY 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.</p> | |
| 27 | <p>SUSPENSION OF BUSINESS DEALINGS WITH SUPPLIERS / CONTRACTORS: The offers of the bidders who are under suspension as also the offers of the bidders, who engage the services of the banned firms / principal / agents, shall be rejected. The list of banned firms is available on BHEL website www.bhel.com. If any bidder / supplier / contractor during pre-tendering / tendering / post tendering / award /execution / post-execution stage indulges in any act, including but not limited to, mal-practices, cheating, bribery, fraud or and other misconduct or formation of cartel so as to influence the bidding process or influence the price or tampers the tendering process or acts or omits in any manner which tantamount to an offence punishable under any provision of the Indian Penal Code, 1860(Bhartiya Nyaya Samhita 2023) or any other law in force in India, or does anything which is actionable under the Guidelines for Suspension of Business dealings, action may be taken against such bidder / supplier / contractor as per extant guidelines of the company available on www.bhel.com and / or under applicable legal provisions. Guidelines for suspension of business dealings is available in the webpage: http://www.bhel.com/vender_registration/vender.php.</p> | |

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| 28 | <p>Bid should be free from correction, overwriting, using corrective fluid, etc. Any interlineation, cutting, erasure or overwriting shall be valid only if they are attested under full signature(s) of person(s) signing the bid else bid shall be liable for rejection. In the event of any Technical or Commercial queries, the same may please be addressed to the following BHEL concerned before Part I opening-</p> <table border="1" data-bbox="201 255 1315 394"> <tr> <td data-bbox="201 255 753 293">M. Shyamala Devi</td> <td data-bbox="753 255 1315 293">G. Subhashini</td> </tr> <tr> <td data-bbox="201 293 753 353">Manager/MM/PSS, BHEL Trichy – 620014</td> <td data-bbox="753 293 1315 353">DGM/MM/Services, BHEL Trichy – 620014</td> </tr> <tr> <td data-bbox="201 353 753 394">shamalam@bhel.in / 0431 257 5347</td> <td data-bbox="753 353 1315 394">subhashini@bhel.in / 0431 257 4032</td> </tr> </table> | M. Shyamala Devi | G. Subhashini | Manager/MM/PSS, BHEL Trichy – 620014 | DGM/MM/Services, BHEL Trichy – 620014 | shamalam@bhel.in / 0431 257 5347 | subhashini@bhel.in / 0431 257 4032 | |
| M. Shyamala Devi | G. Subhashini | | | | | | | |
| Manager/MM/PSS, BHEL Trichy – 620014 | DGM/MM/Services, BHEL Trichy – 620014 | | | | | | | |
| shamalam@bhel.in / 0431 257 5347 | subhashini@bhel.in / 0431 257 4032 | | | | | | | |
| 29 | <p>ORDER OF PRECEDENCE: In the event of any ambiguity or conflict between the Tender Documents, the order of precedence shall be in the order below:</p> <ol style="list-style-type: none"> Amendments/Clarifications/Corrigenda/Errata etc. issued in respect of the tender documents by BHEL. Buyer Added Bid Specific ATC GeM Bid Technical Conditions of Contract (TCC) GeM GTC | | | | | | | |
| 30 | <p>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:</p> <ol style="list-style-type: none"> they have controlling partner (s) in common; or they receive or have received any direct or indirect subsidy financial stake from any of them; or they have the same legal representative/agent for purposes of this bid; or 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 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 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: <ol style="list-style-type: none"> The principal manufacturer directly or through one Indian agent on his behalf; and Indian/foreign agent on behalf of only one principal; or 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 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 shall quote. Similar restrictions would apply to closely related sister companies. Bidder must proactively declare such sister/common business/management units in same/similar line of business. | | | | | | | |
| 31 | <p>Note:</p> <ol style="list-style-type: none"> In the event of our customer order covering this tender being cancelled /placed on hold /otherwise modified, BHEL would be constrained to accordingly cancel / hold / modify the tender at any stage of execution. BHEL may negotiate the L1 rate, if not meeting our budget / estimated cost. BHEL may re-float the tender opened, if L1 price is not acceptable to BHEL even after negotiation. Any deviation from the conditions specified in TECHNO-COMMERCIAL TERMS AND CONDITIONS will lead to rejection of offer. | | | | | | | |

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| | <ol style="list-style-type: none"> 3. Any change in applicable rates of Tax or any other statutory levies (Direct / Indirect) or any new introduction of any levy by means of statute and its corresponding liability for the deliveries beyond the agreed delivery date for reasons not attributable to BHEL will be to vendors account. BHEL will not reimburse the same and any subsequent claim in this respect will be summarily rejected. 4. BHEL reserves its right to reject an offer due to unsatisfactory past performance by the respective Vendor in the execution of any contract to any BHEL project / Unit. 5. The offers of the bidders who are under suspension and also the offers of the bidders, who engage the services of the banned firms /principal/agents, shall be rejected. The list of banned firms is available on BHEL web site www.bhel.com. 6. Recovery / deduction as applicable as per Direct and Indirect taxes as notified by Govt. Of India from time to time will be made and information/certificate for such deduction/recoveries shall be provided by BHEL to the vendor. 7. Any other conditions which might have been quoted by the seller and are in contravention to the terms prescribed in the Enquiry documents and which have not been specifically accepted in by purchaser will not be applicable to the contract. | |
| 32 | <p>Single Packet / Two Packet Bid System</p> <p>a. In case of Single packet bid system,</p> <ol style="list-style-type: none"> i. Evaluation will be on total value basis. The supplier shall quote for all the items in the enquiry ii. All vendors who submitted financial bids will be ranked at the time of the opening of the financial bids. iii. On opening the bids, initial ranking will be made based on the offered prices of all the suppliers, but their bids may or may not be Technically Suitable. iv. Submitted bids will be evaluated based on the ranking at the time the bids are opened. As it is not mandatory for the buyer to evaluate all the bids in the single packet bid process, so buyer can evaluate the minimum number of bids as per the Splitting or MSE/MII Purchase Preference (if applicable). v. In case of rejection of offer(s) on evaluation, only the remaining offers will be considered for final ranking and order will be processed accordingly. vi. There will not be any RA (Reverse Auction). Hence suppliers to quote their best price while submitting their offer itself. <p>b. In case of Two packet bid system,</p> <ol style="list-style-type: none"> i. Evaluation will be on Item wise/Total value wise/Group wise total as applicable as per the enquiry. ii. In case of Total value wise evaluation, the supplier shall quote for all the items in the enquiry. Else the offer will be rejected. iii. In case of Item wise evaluation, the supplier may quote either for all the items or only for the item(s) that they wish to participate. iv. In case of Group wise total evaluation, the supplier may quote either for all the groups or only for the group(s) they wish to participate. But to quote all the items in that/those groups in which they are participating. In case of deviation, offer will be rejected for the particular group(s) against which offer was not submitted for all the items. | |
| 33 | <p>Enclosure: <i>(All the annexure documents shall be submitted in your letter head with sign and seal)</i></p> <p>Annexure-1: Check List. Annexure-3: No Deviation Certificate Annexure-4: Declaration regarding Insolvency/Liquidation/Bankruptcy Proceedings Annexure-6: Declaration by Authorized Signatory regarding Authenticity of submitted Documents Annexure-7: Non-Disclosure Certificate Annexure-10: Declaration reg. Related Firms & their areas of Activities</p> | |

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| | Annexure-11: Declaration for relation in BHEL Annexure-13: Declaration regarding compliance to Restrictions under Rule 144 (xi) of GFR 2017 Annexure-19: Declaration regarding Conflict of Interest | |
| 34 | In case of any queries before bid submission, the supplier may reach us @ shamalam@bhel.in | |
| Signature and seal | | |