

Format – Hold harmless letter

Dear Sirs,

In consideration of the Associate having issued the Deed of Joint Understanding (DJU) dated -----in favour of National Thermal Power Corporation (NTPC) regarding “Coal handling plant for the Thermal Power Project (3 x 660 MW) for Stacker-cum-reclaimer and associated equipment”. Bharat Heavy Electricals Ltd. (BHEL) hereby undertakes and agrees to indemnify and hold harmless the Associate under this Hold Harmless Letter, from and against any claims, liabilities, actions, proceedings, losses, penalties, costs and expenses (including any and all attorney’s or legal fees and court costs in connection therewith) incurred by the Associate and in any way arising out of pursuant to, or by reason of the aforesaid Deed of Joint Undertaking, regardless of whether such claims, liabilities, actions, proceedings, losses, penalties, costs and expenses are related to or caused by any act or omission of the Associate except only for liabilities, costs and expenses to be borne by the Associate and for the Associate’s fulfillment of its obligations under the DJU solely related to a direct claim by NTPC to the Associate of a breach by the Associate in its scope of work under the Subcontract(s). Furthermore in the event that NTPC proceeds against the Associate, BHEL hereby agrees that the Associate will have no responsibility for any amount or liability that exceeds the limitation of liability set forth in the BHEL/Associate Subcontract(s) and BHEL also hereby agrees to be fully responsible immediately and not in the form of reimbursement to Associate for any amount or liability that exceeds the limitation of liability set forth in the BHEL/Associate Subcontract(s). Further this Agreement (Hold Harmless Letter) shall not affect, however, any claims by BHEL and liability of Associate (if any) related to or arising in any way out of any design, material or equipment provided by the Associate to BHEL or NTPC pursuant to a separate contractor agreement for a project other than “Coal handling plant for the Thermal Power project (3 X 660 MW) for Stacker-cum-reclaimer and associated equipment” or any act, omission, or negligence of Associate during or related to the performance of such

separate contracts to agreements, all of which shall be subject to in all respects to the terms and conditions of such separate contract or agreement.

BHEL further agrees to the following:

1. BHEL shall sign a contract (s) with NTPC on the “Coal handling plant for Thermal Power Project (3 X 660 MW) for Stacker-cum-reclaimer and associated equipment” with the prior consent/mutual agreement with the Associate concerning the terms and conditions of the Contract, engineering and technical advisory services which might be required from the Associate and the Performance Guarantees/parameters to be included in the Contract and defining the areas of work to be done by the Associate under its Subcontract(s).
2. BHEL will promptly inform the Associate of any event under the Contract with NTPC which may affect the Associate’s obligations to NTPC under the Deed of Joint Undertaking. BHEL will inform and allow Associate at their option to attend all meetings with NTPC regarding such events on “Coal handling plant for Thermal Power Project (3 X 660 MW) for Stacker-cum-reclaimer and associated equipment”.
3. BHEL shall indemnify and hold harmless, the Associate and on demand forthwith pay back the en-cashed Bank Guarantee amount by NTPC in respect of non performance or non compliance of the equipments other than the equipment supplied by the Associate for this project.
4. BHEL agrees that under no circumstances shall the Associate have liability for the same claim under both the Subcontract with BHEL and the DJU with NTPC, which has been satisfied by the Associate (liability discharged by the Associate). Accordingly BHEL shall not make claim under the Subcontract for the same claim, which NTPC has made against the Associate under the DJU, or in any manner arising out of or pursuant thereto, for the same claim that BHEL has previously made on the Associate under the Subcontract, BHEL shall indemnify and hold the Associate harmless from any such claim made by NTPC on the Associate.

5. BHEL hereby represents and warrants to the Associate that:
- (a) It has full power and authorities to enter to execute and deliver this Agreement and to perform the obligations required to be performed by it there under.
 - (b) This Agreement and the performance by BHEL of its obligations here under are legal, valid, binding and enforceable without exception against BHEL in accordance with the terms of this Agreement when executed by the undersigned.
 - (c) The undersigned is fully authorized to execute this Agreement on behalf of BHEL.
 - (d) BHEL is an independent legal entity with power and authority to enter into contracts solely on its own behalf under the applicable laws of India and general principles of Contract law.
 - (e) BHEL is not an agent, representative or delegate of the Government of India.
 - (f) The Government of India is not a party to this Agreement and has no rights here under.
6. The parties hereto shall use their best efforts to resolve amicably all disputes arising between them relating to the terms of this Agreement/Hold Harmless Letter or interpretation thereof. In the event of any negotiable settlement not taking place, all disputes arising out or resulting from this Agreement shall be settled by Arbitration and such arbitration shall be governed by the Indian Arbitration and Conciliation Act 1996 for the time being in force. The laws of India shall be applicable for the construction and interpretation of this Agreement/Hold Harmless Letter and the venue of arbitration shall be at New Delhi. The arbitration shall be conducted in English language. The award to be given by the arbitrator shall be a written award, which shall be final and binding on the parties hereto.

IN WITNESS WHEREOF, BHEL has through its authorized representative, set its hand on this day of June 2011.

Bharat Heavy Electricals Ltd.
(BHEL)

BY:

Title:

AGREED AND ACCEPTED

(ASSOCIATE)

By:

Title:

WITNESS: