

(ON RS.100/- NON - JUDICIAL STAMP PAPER)
PERFORMANCE BANK GUARANTEE
~~PROFORMA FOR SECURITY-CUM PERFORMANCE GUARANTEE~~

1. This deed of Guarantee made this _____ day of _____ 200 ____ by _____ Bank Ltd., _____ in favour of Bharat Heavy Electricals Limited, Transmission Business Group, Industry Sector, Lodhi Road, New Delhi - 110 003 having their registered office at BHEL House, Siri Fort, New Delhi - 110 049.
2. Whereas M/s _____ (here in after called the Contractor / Seller) have entered into a Contract bearing No. _____ dated _____ (herein after called the Contract) for supply / erection of M/s Bharat Heavy Electricals Limited (hereinafter called the Company).
3. And whereas the said Contract Inter-alia provides that the Contractor / Seller shall pay to the company a sum of Rs. _____ only, towards Security deposit-Cum-Performance Guarantee in the for and manner therein specified.
4. And whereas the Seller/Contractor have approached _____ Bank Limited (hereinafter referred to as the Guarantor) and at their request and in consideration of the arrangement arrived at between the Contractor and the Guarantor, the Guarantor has agreed to give the Guarantee as herein after mentioned in favour of the Company.

NOW THIS DEED WITNESSES AS FOLLOWS :

5. The Guarantor by the hand of Mr. _____ and its lawfully and fully constituted attorney and do hereby guarantee the due and faithful performance of the said contract and do hereby irrevocably undertake and promise to pay the Company without any demur merely on demand made by them a sum not exceeding Rs. _____ only in case the Company sustains any loss or damage by reason of any breach, default, by the Contractor / Seller of any of the terms conditions, stipulations or undertakings or any one of them contained in the said contract and the tender documents attached hereto and for payment of any moneys payable by the Contractor/ Seller to the Company under the terms and conditions of the said contract. The decision of the company regarding the breach, default, loss, damage or payment shall be conclusive and binding in the guarantor irrespective of the fact whether the contractor/seller admits or denies such claims or questions its correctness in any court, tribunal or arbitration proceedings or before any other authority.

(Contd....2.)

6. The company shall have the fullest liberty without effecting in any way the liability of the Guarantor under this Guarantee, from time to time to vary any of the terms and conditions of the contract or extend time by the Seller/Contractor or to postpone for any time and from time to time any of the powers exercisable by its against the Seller/Contractor and either to enforce or forbear from enforcing any of terms and conditions governing the contract or securities available to the Company and the guarantor shall not be released from its liability under these presents by any exercise by the company of the liberty with reference to the matters aforesaid or by reason of time being given to the seller or any other forbearance, act or omission on the part of the company or any indulgence by the company to the Seller/Contractor or of any other matter or thing whatsoever which under the law relating to sureties, would but for this provision have the effect of so releasing the Guarantor/contractor from its liability under this Guarantee.
7. This Guarantee shall remain in full force and effect and the Guarantor shall be liable under the same irrespective of any concession or time being granted by the company to the contractor in or for fulfilling the said contract and this Guarantee shall remain in full force irrespective of any change in terms, conditions, stipulations or any variations in the terms of contract irrespective of whether notice of such change and / or variation is given to the Guarantor or not and the claim to receive such notice of any change and or variation of the terms/or conditions of the contract is hereby specifically waived by the Guarantor.
8. The Guarantor here in contained shall not be determined prejudiced or effected by the liquidation or winding up or insolvency of or change in the constitution of the contractor but shall in all respects and for all purposes be binding and operative until all payments or all moneys due or that may hereafter become payable to the company are paid in respect of any liability or obligation of the contractor under the contract.
9. The Guarantor further agree that the Guarantee herein contained shall remain in full force and effect during the period that would be taken for the commencement of the contract till end of the contract and its claim satisfied or discharged and till the company certified that the terms and conditions of the contract have been fully and properly carried out by the seller and accordingly discharges this Guarantee, subject, however, that the company shall have no claim under this guarantee after _____ months from the date of completion of the guarantee has been served on the guarantor before the expiry of the said period in which case the same shall be enforceable against the Guarantor not with standing the fact that the same is enforced after expiry of said period.

The Guarantor undertake not to revoke this Guarantee during the period it is in force except with the previous consent of the company in writing and agree that any liquidation or winding up or insolvency or dissolution or any change in the constitution of the Seller or the guarantor shall not discharge the Guarantor's liability here under.

(Contd.....3.)

It shall not be necessary for the company to proceed against the seller before proceeding against the Guarantor and the Guarantee herein contained shall be enforceable against them not with standing any security which the company may have obtained or obtained from the seller shall at the time when proceedings are taken against the Guarantor here under be outstanding or unrealised.

The Guarantor hereby declares that it has power to execute this Guarantee and the executant has full powers to do so on its behalf under the power of attorney dated _____ granted to him by the proper authorities of the Guarantor.

10. Not withstanding anything here in before contained, our liability under this Guarantee is restricted to Rs. _____ (Rs. _____ only) and will expire on _____ and unless a claim in writing is presented to us or an action or suit to enforce the claim is filed against us, within six months from the date, all our rights shall be forfeited and we shall be relieved and discharged from all our liabilities there under.

IN WITNESS whereof the _____ (Bank) have hereunto set and subscribed their hands the day, month and year first above written.

SIGNED FOR AND ON
BEHALF OF THE BANK

WITNESSESS

Name and Address

Signature

1.

2.