

COMMERCIAL TERMS AND CONDITIONS

- 1.0 GENERAL** : The words incorporating singular shall include plural and vice-versa, in the words importing masculine gender shall include feminine and vice-versa and the words importing persons shall include bodies; corporate, limited liability companies, partnership and other legal entities.
- 2.0 BANK CHARGES** : Unless otherwise specified, the Bank charges, if any, shall be to the account of Seller/Contractor.
- 3.0 PRICES** : Prices are net F.O.R. destination inclusive of freight, handling, packing charges, transit insurance etc. and shall remain FIRM without any variation till completion of the contract.
- 4.0 QUALITY** : All Systems/goods/services supplied/rendered shall be brand new and conform to the contract technical specifications and/or be strictly in accordance with approved samples/drawings. Where there is no specifications, sample or drawings, Systems/goods/services shall be of the best quality.
- 5.0 CHANGE OF ORDER** : No changes to this order/contract are permitted unless authorised in writing and signed by competent authority of this office.
- 6.0 LOCATION & CONSIGNEE** : Complete Systems/goods will be consigned to DH (PEM – IT), PPEI Building, HRDI&ESI Complex, Plot No. 25, Sector 16A, NOIDA – 201 301, who will co-ordinate the installation and commissioning activities.
- 7.0 PAYMENT TERMS:**
- a. The contract shall commence w.e.f. the date of successful installation of license at both client and server end.
 - b. Payment of 70% of the License amount shall be made after the successful installation of licenses at both client and server end.
 - c. Payment of 10% of the License amount shall be made after the completion of one year after the successful installation of licenses.
 - d. Payment of 10% of the License amount shall be made after the completion of two year after the successful installation of licenses.
 - e. Payment of 10% of the License amount shall be made after the completion of three year after the successful installation of licenses.

- f. Annual Technical Support amount shall be paid quarterly at the end of the quarter.
- g. 100% Training amount shall be made after the successful completion of two days training program in BHEL premise in NCR region and participation in certification exam.

8.0 **MODE OF PAYMENT** : Payment will be made by way of Electronic Fund Transfer.

9.0 **INTEREST** : No interest, whatsoever, shall be payable by the purchaser on any amount due to the Seller/Contractor by the purchaser.

10.0 **DELIVERY**: 30 days from the date of PO.

11.0 **VARIATION**: The prices shall remain firm for any increase or decrease in order quantities upto plus or minus 30%. The purchaser shall have the right to increase or decrease quantities upto the above extent and Seller/Contractor shall be bound to accept the same at the contracted prices without any escalation.

12.0 **INDEMNITY**:

Seller/Contractor shall fully indemnify and keep indemnified the Purchaser against all claims, viz.

- a) which may be made in respect of the use of System/Item(s)/services supplied/rendered by the Seller/Contractor, for infringement of any rights protected by patent, registration of designs or trademarks.
- b) any other claims of whatsoever nature arising during the course and out of the execution of this Order/Contract

In the event of any such claims being made against the purchaser, Purchaser will inform the Seller/Contractor who shall at his own risk and cost either settle any such dispute or conduct any litigation that may arise there from.

13.0 **CONFIDENTIALITY** : Seller/Contractor shall, at all times, undertake to maintain complete confidentiality of all data, information, software, drawings & documents, etc. belonging to the purchaser and also of the Systems, procedures, reports, input documents, manuals, results and any other company documents discussed and/or finalised during the course of execution of the order/contract.

14.0 **LIQUIDATED DAMAGES** : The parties hereto agree that timely delivery is the essence of the order/contract. If the Seller/Contractor fails to complete the projects within the time period stipulated in the order/contract or within any extension of time granted by the purchaser, purchaser shall be under no obligation to accept the goods. However, if accepted, liquidated Damages at the

rate of half percent per week of delay or part thereof shall be levied on the value of goods delayed limited to ten percent of the total order/contract value excluding elements of taxes and duties, without prejudice to any other relief or compensation due to the purchaser under any other condition of the order/contract.

- 15.0 FORCE MAJEURE** : Seller/Contractor shall not be responsible for delay in delivery resulting from acts/events beyond his control provided notice of the happening of any such act/event is given by the Seller/Contractor to the purchaser within 15 days from the date of its occurrence. Such acts/events shall include but not be limited to acts of God, war, floods, earthquakes, strikes, lockouts, epidemics, riots, fire or Governmental regulations superimposed after the date of order/contract.

16.0 TERMINATION OF THE ORDER/CONTRACT

- 16.1** The purchaser reserves the right to terminate the order/contract, either wholly or in part, in case he is obliged to do so on account of any decline, diminution, curtailment or stoppage of his business and in that event, the Seller/Contractor shall have no claim for compensation against the purchaser on account of such cancellation.

- 16.2 Purchaser reserves the right to terminate the order/contract, either wholly or in part, upon situations arising due to non-compliance of stipulations of the Order/contract, by the Seller/Contractor, at the risk and cost of the Seller/Contractor.

- 17.0 PATENTS & TRADEMARKS** : Seller/Contractor shall at all times indemnify the Purchaser against all claims which may be made in respect of the Systems/goods/Software supplied by the Seller/Contractor, for infringement of any right protected by patent, registration of designs or trademarks and legality of usage of Software. In the event of any such claims being made against the Purchaser, Purchaser will inform the Seller/Contractor who shall at his own cost either settle any such dispute or conduct any litigation that may arise there from.

- 18.0 SUB-CONTRACTING** : Order/contract or any part thereof shall not be sub-contracted, assigned or otherwise transferred without prior written consent of the purchaser.

19.0 SETTLEMENT OF DISPUTES

- 19.1 Except as otherwise specifically provided in the Order/Contract, all disputes concerning questions of the facts arising under the Order/Contract, shall be decided by the purchaser, subject to written appeal by the Seller/Contractor to the purchaser, whose decision shall be final to the parties hereto.

19.2 Any disputes or differences shall be to the extent possible settled amicably between the parties hereto, failing which the disputed issues shall be settled through arbitration.

19.3 However, the Seller/Contractor shall continue to perform the Order/Contract, pending settlement of dispute(s).

20.0 ARBITRATION

In the event of any dispute or difference arising out of the execution of the order/contract or the respective rights and liabilities of the parties, such dispute or difference shall (except as to any matters, the decision of which is specifically provided for therein) be referred to the arbitration of the person appointed by the competent authority of the Purchaser.

Subject as aforesaid, the provisions of Arbitration and Conciliation Act, 1996 (India) or statutory modifications or re-enactments thereof and the rules made there under and for the time being in force shall apply to the arbitration proceedings under this clause. The venue of arbitration shall be NCR Region, India.

21.0 **LAWS GOVERNING THE CONTRACT: The Order/Contract shall be executed and governed by the laws of India and the courts of India alone shall have jurisdiction in respect of any matter arising under or in connection with the Order/Contract.**

22.0 **JURISDICTION OF COURT** : The jurisdiction to decide any disputes in the Contract shall be at Noida under any circumstances.

23.0 **SUBMISSION OF INVOICE** : All Invoices shall be submitted along with specified documents **in triplicate** to IT Department, BHEL-PEM, PPEI Building, HRDI & ESI Complex, Plot No. 25, Sector 16A, NOIDA – 201 301.

24.0 **ACCEPTANCE**: Letter of Seller/Contractor's acceptance of the LOI/Order/Contract shall be sent to IT DEPARTMENT, BHEL-PEM, PPEI BUILDING, HRDI & ESI COMPLEX, PLOT NO. 25, SECTOR 16A, NOIDA – 201301, within 10 days from the date of LOI/Order/Contract. Purchaser shall reserve the right to cancel the LOI/Order/Contract in case the letter of acceptance is not received within ten days. Purchaser will not be responsible for any postal delays.

25.0 **RECOVERY OF OUTSTANDING AMOUNT** : In the event of any amount of money being outstanding at any point in time against the Seller/Contractor, due to excess payment or any other reason, whatsoever, in the present order/contract or any other order/contract, the outstanding amount shall be recovered from the payments due to the Seller/Contractor or at any other appropriate time and manner/mode as deemed fit by the Purchaser at its sole discretion.

