

# Bharat Heavy Electricals Limited

## Tiruchirappalli 620 014

### Annexure C- Terms & Conditions of the Enquiry

#### Enquiry No 15025000XX

**Note:** This Annexure has to be mandatorily filled & signed by the manufacturer (or) mill 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><b>Pre-Qualification Criteria:</b></p> <p>1.1 Technical: <b><u>Applicable</u></b></p> <p>1.2 Financial: <b><u>Applicable</u></b></p> <p>1.3 Integrity Pact: <b><u>Applicable</u></b></p> <p>1.4 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>1.5 Customer Approval: <b><u>Not Applicable</u></b></p> <p>Based on Techno-Commercial acceptance in the Enquiry, un-approved bidders if any will be taken up for customer approval. Bids of Techno-Commercially qualified and customer approved bidders alone will be considered for Part II evaluation.</p> <p><b>Explanatory Notes for the PQR:</b></p> <p>i. 'Supplied' in <b>PQR – 1.1</b> means, bidder should have delivered the items indicated in PQR. Bidder shall submit the relevant documents against the above PQRs inclusive of Purchase order (wherein PO no., date, etc. is legible) along with proof of supply (i.e. - Completion Certificate / Copy of Invoices / LR Copies / Store Receipt Vouchers / Payment Advice etc.) in the respective attachments in their offer in support of PQR. The “Contract” referred in Technical PQR may be Rate Contract / Framework Agreement / Purchase Order / Work Order.</p> <p>ii. Bidder to submit Audited Balance Sheet and Profit and Loss Account for the respective years as indicated against Financial Turnover <b>PQR – 1.2</b> above along with all annexures.</p> <p>iii. In case of audited Financial Statements have not been submitted for all the three years as indicated against Financial Turnover PQR above, then the applicable audited statements submitted by the bidders against the requisite three years, will be averaged for three years i.e. total divided by three.</p> <p>iv. If Financial Statements are not required to be audited statutorily, then instead of audited Financial Statements, Financial Statements are required to be certified by Chartered Accountant.</p> <p>v. 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>vi. Price Bids of only those bidders shall be opened who stand qualified after compliance of <b>PQR – 1.1 to 1.5</b></p>	

02	<p><b>Scope of Supply:</b> Supply of Seamless Steel Tube of specification SA213T91 on F.O.R. Destination Basis. <b>Length acceptable: 9000, 9500, 10000, 10500, 11000, 11500, 12000 mm.</b> <b>However, each tube bundle should consist of the same length tubes.</b> Unloading of materials at Destination / Site shall be in BHEL's scope.</p>	
03A	<p><b>Price Basis:</b> <u>Indigenous suppliers:</u> Price in INR should be quoted for F.O.R. Destination (BHEL / Trichy Store)</p>	
03B	<p><b><u>Bid Submission:</u></b></p> <ol style="list-style-type: none"> <li>Tender is hosted in EPS (E-Procurement System) portal &amp; offer is to be submitted through EPS portal only.</li> <li>Offer is to be submitted on Two Part Bid basis (Technical bid + Price bid) only through BHEL's NIC E-Procurement portal (<a href="https://eprocurebhel.co.in">https://eprocurebhel.co.in</a>) before the tender due date. Sealed cover bids / E-Mails / fax / manual offers will not be accepted.</li> <li>Scanned copy of filled in Annexures, Technical Deviation Format etc shall be uploaded in the EPS portal during Part I bid submission.</li> <li>At its option, BHEL may consider extending the due date of the tender opening. Sufficient notice would be given by BHEL for such extensions and it will be published as corrigendum in the following websites, <ul style="list-style-type: none"> <li><a href="https://eprocurebhel.co.in">https://eprocurebhel.co.in</a></li> <li><a href="https://www.bhel.com/tender/">https://www.bhel.com/tender/</a></li> </ul> </li> <li>Any clarification on Techno-Commercial requirements can be obtained from BHEL before tender opening. As per BHEL's Policy, BHEL cannot allow price impact post Part I opening for the requirement / scope of supply which is a part of the Enquiry. Hence, requirements / documents shall be thoroughly read before submission of the bid. In case of any query / un-clarity on any of the clause / requirements, please get them clarified from BHEL before submission of bid. No deviation &amp; request regarding un-clarity / contradictory conditions / ambiguity of Techno-Commercial requirements would be entertained after opening of Part I bid.</li> <li>Any values indicated anywhere other than in Part II bid even if covered in any form in the Part I bid will not be considered for evaluation. Bids shall be strictly as per the Part II template and should not be subjected to any correlation or indirect interpretations. Bids shall fulfil all the above requirements failing which the bid may be summarily rejected as a whole or as part thereof. Rates are to be quoted strictly as per Part II template taking care of all Techno-Commercial requirements of the Enquiry. Bidders shall furnish their most competitive offer after thoroughly understanding the Techno-Commercial requirements and confirming to meet the same.</li> <li>BHEL shall not be responsible for wrong quotes, missing attachments, blank file uploads etc in E-Procurement portal. Bidders shall exercise at most caution while submission of bids to avoid any chances of bid rejection. Quoting abnormally low rates which are unworkable or withdrawal of bid after Part II bid opening or after issue of Purchase Order within validity of the tender will be construed as tampering of BHEL's tender process and action as deemed necessary shall be invoked as per BHEL's extant policies and guidelines.</li> <li>Bid should be submitted only as per the Unit of Measurement (UOM) specified in the Enquiry.</li> </ol>	

	<ul style="list-style-type: none"> <li>i. Bidders are instructed not to wait till last minute for tender submission. BHEL shall not be responsible for any E-Procurement system related issues and bidder's inability to submit the offers at the last minute.</li> <li>j. Bids including all enclosures and supporting documents like catalogues, pamphlets, etc., shall be submitted / uploaded in English language only. If the documents submitted have other than English language, translation of the same shall be provided for evaluation.</li> <li>k. Offers for partial quantities of a given item is not acceptable to BHEL. While bidders can quote for some or all the tendered Schedules, no bidder shall quote for partial quantity of any given Schedule. Such partial offer would not be considered for that Schedule.</li> </ul>	
<b>03C</b>	<p><b><u>E-Tender Participation Requirements- Authorization for participation in EPS portal with DSC:</u></b></p> <ul style="list-style-type: none"> <li>a. Either Principal or authorized agent shall register their Digital Signature Certificate (DSC) (Class 3- SHA2- 2048 BIT- SIGNING &amp; ENCRYPTION).</li> <li>b. Suppliers are advised to go through the FAQ available in the web portal (<a href="https://eprocurebhel.co.in">https://eprocurebhel.co.in</a>).</li> <li>c. DSC shall be registered for the authorized person and all transaction done using that DSC against our tenders shall be taken as valid communication and shall be binding on principal / agent and is valid legally.</li> </ul> <p><b>For Indian Agent-</b> In case of agents participating / registering their DSC (of authorized person), it will be at the sole authorization of principal to their agents to participate on their behalf and all transactions done using that DSC against our tenders shall be known as valid communication and shall binding on principal and is legally valid.</p>	
<b>03D</b>	<p><b><u>Price Terms:</u></b></p> <ul style="list-style-type: none"> <li>a. Bidders are requested to submit their offer on <b>Firm Price</b> basis only.</li> <li>b. Price Variation Clause (PVC) is not applicable for the Enquiry.</li> <li>c. Conditional offers if any will not be accepted and will be rejected.</li> </ul>	
<b>03E</b>	<p><b><u>Currency of Quote:</u></b></p> <ul style="list-style-type: none"> <li>a. Bidder shall indicate the currency of quote. Accepted currency INR.</li> <li>b. If there is any discrepancy in the terms quoted in Techno-Commercial Bid and Price Bid, the terms as per the Techno-Commercial Bid (Part I) shall hold good and the commercial term quoted in Price Bid (Part II) shall not be considered.</li> </ul>	
<b>03F</b>	<p><b><u>Bid Validity:</u></b></p> <ul style="list-style-type: none"> <li>a. Bid shall be valid for 60 days from the date of Part I bid opening for price finalization.</li> <li>b. Post Part I bid opening, quoted rates cannot be changed on any grounds.</li> </ul>	
<b>03G</b>	<p><b><u>Evaluation Criteria:</u></b></p> <p>Currency of evaluation for the Enquiry shall be "INR". Bids will be evaluated on total landed cost on 'FOR' destination BHEL Trichy stores basis. Evaluation process is as detailed below:</p> <p><b><u>Indigenous Suppliers:</u></b></p> <p><b>Total Landed Cost = FOR rate in INR (A) + Applicable taxes (B) + Loading for payment term &amp; LD (C) - Applicable input tax credit (D)</b></p> <ul style="list-style-type: none"> <li>a. Indigenous suppliers shall submit their bid on Free on Road (FOR) destination BHEL Trichy stores basis in INR.</li> <li>b. GST and any other charges quoted by indigenous suppliers will be added to the base price.</li> <li>c. Loading for payment terms &amp; non-acceptance of Liquidated Damages (LD) will be added on the FOR value for arriving the landed cost to BHEL.</li> <li>d. Input credit is availed for GST (SGST, CGST / IGST) and hence the same will be excluded for arriving at the landed cost to BHEL.</li> </ul>	

	<p>Note:</p> <ol style="list-style-type: none"> <li>In the course of evaluation, if more than one bidder happens to occupy L1 status, effective L1 will be decided by soliciting discounts from the respective L1 bidders. In case more than one bidder happens to occupy the L1 status even after soliciting discounts, the L1 bidder shall be decided by a toss / draw of lots, in the presence of the respective L1 bidders or their representatives. Ranking will be done accordingly. BHEL's decision in such situations shall be final and binding.</li> <li>BHEL reserves the right to invite L1 bidder for price negotiation if the L1 rate arrived is not acceptable.</li> </ol>	
<b>03H</b>	<p><b>REVERSE AUCTION</b></p> <p>RA is not applicable for this tender.</p>	
<b>03I</b>	<p><b>Customer Approval:</b></p> <p>Not applicable</p>	
<b>04</b>	<p><b>Taxes &amp; Duties:</b></p> <p><b>4.1</b> 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 &amp; services consumed and output goods &amp; 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 <b>GST</b> on output supply (goods / service) and TDS / TCS as per Income Tax Act shall be as per following clauses.</p> <p><b>4.2 GST (Goods and Services Tax)</b></p> <p><b>4.2.1</b> GST as applicable on output supply (goods / services) are excluded from Supplier / Vendor's scope; therefore, contractor's price / rates shall be <b>exclusive</b> of GST. 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.</p> <p><b>4.2.2</b> The admissibility of GST, taxes and duties referred in this chapter or elsewhere in the contract shall be limited to direct transactions between BHEL &amp; its Supplier / Vendor. BHEL shall not consider GST on any transaction other than the direct transaction between BHEL &amp; its Supplier / Vendor.</p> <p><b>4.2.3</b> 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.</p> <p><b>4.2.4</b> 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.</p> <p><b>4.2.5</b> 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.</p>	

**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:-

- 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 / altered / 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





	<p>Delivery period for the Enquiry will be <b>45 days from PO date. Any bidder quote more than 45 days from the PO date as delivery period, bidders offer will not be considered and offer will be rejected commercially.</b></p> <p><b>Note:</b></p> <p>a) If the delivery of supply as detailed above gets delayed beyond the delivery period, the Supplier / Vendor shall request for a delivery extension and BHEL at its discretion may extend the Contract. However, if any 'Delivery extension' is granted to the Supplier / Vendor for completion of supply, due to backlog attributable to the Supplier / Vendor, then it shall be without prejudice to the rights of BHEL to impose LD for the delays attributable to the Supplier / Vendor.</p> <p>b) In case BHEL increase the quantity during currency of the contract in line with quantity variation clause (as per relevant Clause No of the GeM Bidding Document), delivery extension shall be given for supply of these additional quantity.</p>				
08	<p><b>Transit Insurance:</b></p> <p>Transit insurance shall be as indicated below:</p> <p><u>a. Indigenous suppliers:</u></p> <p>1. Transit Insurance of material is in <b>Vendors</b> scope. <b>Vendor</b> shall insure the material at their cost for transportation.</p>				
09	<p><b>Payment Terms:</b></p> <p>a) Payment term for the Enquiry will be as indicated below:</p> <p><u>1. Indigenous suppliers:</u></p> <p><b>i) For Non-MSE Bidders, 100% payment shall be released within 90 days from the date of material acceptance.</b></p> <p><b>ii) For MSE Bidders, 100% payment shall be released within 45 days from the date of gate entry.</b></p> <p><b>iii) For Medium Enterprises Bidders, 100% payment shall be released within 60 days from the date of material acceptance.</b></p> <p><b><u>Payment through SUVIDHA portal (for indigenous suppliers)</u></b></p> <p>Suppliers are required to submit class 3 digitally signed tax invoices along with other billing documents as per the tender/PO. All the documents shall be uploaded in SUVIDHA portal <a href="https://suvidha.bhel.in/suvidha/">https://suvidha.bhel.in/suvidha/</a>, upon dispatch itself, for streamlined processing of payment. In the event that any discrepancies are identified in the documents submitted, BHEL will communicate the details through the portal/mail. Suppliers/Contractors may track payment status of their invoices in the portal.</p> <p><b>Date for reckoning payment due date,</b></p> <p><u>a. Indigenous suppliers:</u></p> <p>1. 100% payment for MSE bidder: Due date will be considered from the date of vehicle entry BHEL Trichy</p> <p>2. 100% payment for Non-MSE bidder: Due date will be considered from the date of receipt and acceptance of materials.</p> <p><b>No Interest Payable to Contractor</b></p> <p>No interest shall be payable on the security deposit or any other money due to the Supplier.</p>				
10	<p><b>Documents Required for Bill Processing:</b></p> <p>The following documents are required to be sent with Material Dispatch / Billing Documents:</p> <table><tr><td>Indigenous suppliers</td></tr><tr><td>1. Original Tax Invoice (As per Cl. No. 4 above) in duplicate.</td></tr><tr><td>2. Signed copy of E-Invoice in duplicate (if applicable)</td></tr></table>	Indigenous suppliers	1. Original Tax Invoice (As per Cl. No. 4 above) in duplicate.	2. Signed copy of E-Invoice in duplicate (if applicable)	
Indigenous suppliers					
1. Original Tax Invoice (As per Cl. No. 4 above) in duplicate.					
2. Signed copy of E-Invoice in duplicate (if applicable)					

	3. Delivery Challan / Packing List 4. Original consignee copy of LR 5. Original site acknowledged LR 6. Copy of E-Way Bill 7. Original Inspection Report (IR) and quality documents (as per approved QP / PO) 8. Original IBR Booklet 9. Warranty Certificate		
11	<b>Bank Details for EMD &amp; Performance Security Submission:</b> For Electronic Fund Transfer, the details are as below: a) Name of the Beneficiary: <b>Bharat Heavy Electricals Limited</b> b) Bank Particulars (Details of respective executing region): Name of the Company- <b>Bharat Heavy Electricals Ltd</b> Address of the Company- <b>BHEL HPBP Trichy, Tiruchirappalli, Tamil Nadu 620 014.</b> Name of the bank- <b>State Bank of India</b> Bank branch- <b>Heavy Electricals, Kailasapuram Branch</b> City- <b>Tiruchirappalli</b> Branch Code- <b>01363</b> Account Number- <b>10891588977</b> Account Type- <b>CC</b> IFSC Code- <b>SBIN0001363</b> MICR Code- <b>620002004</b>		
12	<b>Earnest Money Deposit: <u>Not applicable</u></b> <b>12.1</b> Every tender must be accompanied by the prescribed amount of Earnest Money Deposit (EMD) in the manner described herein. <ul style="list-style-type: none"> <li>i EMD shall be furnished before tender opening / along with the offer in full as per the amount indicated in the NIT.</li> <li>ii The EMD up to an amount of Rs. .... is to be paid only in the following forms: <ul style="list-style-type: none"> <li>a) Electronic Fund Transfer credited in BHEL account (before tender opening).</li> <li>b) Banker's cheque/ Pay order/ Demand draft, in favour of 'Bharat Heavy Electricals Limited' and payable at Regional HQ issuing the tender (along with offer).</li> <li>c) Fixed Deposit Receipt (FDR) issued by Scheduled Banks/ Public Financial Institutions as defined in the Companies Act (FDR should be in the name of the Contractor, a/c BHEL marking lien in favour of BHEL) (along with offer). The Fixed Deposit in such cases shall be valid for a period of 45 (forty-five) days beyond the final bid validity period.</li> <li>d) Bank Guarantee from any of the Scheduled Banks. In such cases shall be valid for a period of 45 (forty-five) days beyond the final bid validity period.</li> <li>e) <b>Insurance Surety Bonds.</b> In case the EMD is more than Rs. Two lakh and in case of foreign bidders, it may be in the form of a bank guarantee (in equivalent Foreign Exchange amount, in case of foreign bidders) issued / confirmed from any of the scheduled commercial bank in India in the prescribed format. The EMD shall remain valid for a period of 45 (forty-five) days beyond the final bid validity period.</li> </ul> </li> <li>iii No other form of EMD remittance shall be acceptable to BHEL.</li> </ul> <b>12.2</b> EMD by the Bidder will be forfeited as per NIT conditions, if: <ul style="list-style-type: none"> <li>i. The bidder withdraws or amends its/his tender or impairs or derogates from the tender in any respect within the period of validity of the tender or if the successful bidder fails to furnish the required performance security within the specified period mentioned in the Tender.</li> </ul>		



	<p>ii. EMD by the Bidder shall be withheld in case any action on the tenderer is envisaged under the provisions of extant "Guidelines on Suspension of business dealings with suppliers / contractors" and shall be forfeited in case of suspension</p> <p><b>12.3</b> Subject to Clause 12.2 above, EMD of the unsuccessful bidders shall be returned at the earliest after expiry of the final bid validity period and latest by the 30th day after the award of the contract. However, in case of two packet or two stage bidding, EMD of unsuccessful bidders during first stage i.e., technical evaluation etc. shall be returned within 30 days of declaration of result of first stage i.e. technical evaluation etc.</p> <p><b>12.4</b> EMD of successful Bidder shall be refunded on conclusion of the order / receipt of a performance security as mentioned in NIT.</p> <p><b>12.5</b> EMD shall not carry any interest.</p> <p><b>12.6</b> MSE / KVIC / ACASH / WDO / Colr Board / TRIFED / Kendriya Bhandar / Turnover above 500 Cr / BIS License holders / Central PSU / State PSU / Startups as recognized by Department for Promotion of Industry and Internal Trade (DPIIT) shall be exempted from payment of EMD.</p>	
<b>13</b>	<p><b>Performance Security: <u>Not Applicable</u></b></p> <p><b>13.1</b> Successful bidder awarded the contract should deposit <b>5%</b> of the contract value as performance security towards fulfilment of all contractual obligations, including warranty obligations.</p> <p><b>13.2</b> Performance Security is to be furnished within 14 days after issuance of Contract / PO and should remain valid for a period of 60 (sixty) days beyond the date of completion of all contractual obligations of the Supplier / Vendor, including warranty obligations.</p> <p><b>13.3 Modes of deposit:</b></p> <p>a) Performance security may be furnished in the following forms:</p> <ul style="list-style-type: none"> <li>i. Local cheques of Scheduled Banks (subject to realization) / Pay Order / Demand Draft / Electronic Fund Transfer in favour of 'Bharat Heavy Electricals Limited' and payable at Regional HQ</li> <li>ii. Bank Guarantee from Scheduled Banks / Public Financial Institutions as defined in the Companies Act. The Bank Guarantee should be in the prescribed format of BHEL.</li> <li>iii. Securities available from Indian Post offices such as National Savings Certificates, Kisan Vikas Patras etc. (held in the name of Contractor furnishing the security and duly endorsed / hypothecated / pledged, as applicable, in favour of BHEL).</li> <li>iv. Insurance Surety Bond.</li> </ul> <p>Note: BHEL will not be liable or responsible in any manner for the collection of interest or renewal of the documents or in any other matter connected therewith.</p> <p>b) In case of GTE tenders, the performance security should be in the same currency as the contract and must conform to Uniform Rules for Demand Guarantees (URDG 758) - an international convention regulating international securities.</p> <p><b>13.4</b> The performance security will be forfeited and credited to BHEL's account in the event of a breach of contract by the Supplier / Vendor as provided herein or elsewhere in the Contract / PO.</p> <p><b>13.5</b> Performance Security shall be refunded to the Supplier / Vendor without interest, after the Supplier / Vendor duly performs and completes the contract in all respects but not later than 60(sixty) days of completion of all such obligations including the warranty under the contract.</p> <p><b>13.6</b> The Performance Security shall not carry any interest.</p> <p><b>13.7</b> There is no exemption of Performance security deposit submission for MSE Vendors.</p>	

	<b>Requirement of Performance Security is a mandatory tender condition and bids deviating from the same will be rejected.</b>	
<b>14</b>	<p><b>Breach of Contract, Remedies and Termination:</b></p> <p><b>14.1</b> The following shall amount to breach of contract:</p> <ol style="list-style-type: none"> <li>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.</li> <li>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</li> <li>III. The Supplier / Vendor delivers equipment / material not of the contracted quality.</li> <li>IV. The Supplier / Vendor fails to replace the defective equipment / material / component as per guarantee clause.</li> <li>V. Withdrawal from or abandonment of the work by the Supplier / Vendor before completion as per contract.</li> <li>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.</li> <li>VII. Non-compliance to any contractual condition or any other default attributable to Supplier / Vendor.</li> <li>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.</li> <li>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.</li> <li>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.</li> </ol> <p><b>Note-</b> 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.</p> <p>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.</p> <p><b>14.2 Remedies in case of Breach of Contract</b></p> <ol style="list-style-type: none"> <li>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.</li> <li>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</li> </ol>	

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.
- 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.
- 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.

**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.

**LD against delay in executed supply in case of Termination of Contract:**

	<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. <b>Let the value of executed supply till the time of termination of contract= X</b></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. <math>T2=[1-(X/Y)] \times T1</math></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><b>Bill to / Ship to Address:</b></p> <p>Bill to address: Bharat Heavy Electricals Limited, High Pressure Boiler Plant, Tiruchirappalli, Tamil Nadu 620 014.</p> <p>Ship to address:</p> <p><u>a. Indigenous suppliers:</u></p> <p>BHEL HPBP Trichy, Tiruchirappalli, Tamil Nadu 620 014.</p>																
16	<p><b>Guarantee / Warranty:</b></p> <p>Guarantee period for Supply of tendered items shall be <b>24</b> calendar months from the date of last dispatch.</p>																
17	<p><b>Micro and Small Enterprises (MSE):</b></p> <p>Any Bidder falling under MSE category shall furnish the following details &amp; submit documentary evidence / Govt. Certificate etc. in support of the same along with their Techno-Commercial offer.</p> <table><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><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></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 &amp; DC, MSME) only if they submit along with the offer, attested copies of either Udyam Registration. 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> <p>b. Material entry date (Gate Entry date) will be considered for payment due date calculation (when no objections are raised by BHEL). If such objection(s) is raised within 15 days of zero date / last closure of objection and payment due date will be</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																	

	<p>accordingly revised considering date on which vendor has successfully replied against objection as zero date.</p> <p>c. As per the public procurement policy notified by the central government, micro and small enterprises quoting within the price band of L1 +15% shall be allowed to supply a portion of the requirement up to 25% of the tender value subject to condition that such enterprises bring down their price to L1 price where L1 price is from other than a micro and small enterprise. If L1 offer is from a micro / small enterprise, this provision will not be applicable.</p> <p>d. Present tendered requirements will be considered as splittable. In case MSE preference is to be operated, supply up to 25% of total tender value will be done on MSE supplier subject to counter offer acceptance by the MSE supplier.</p>													
18	<p><b>Liquidated Damage:</b></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><b>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, @ 1% of the contract value of delayed quantity per week or part of the week of delayed period as pre-estimated damages not exceeding 15% of the contract value without any controversy / dispute of any sort whatsoever.</b></p> <p>For reckoning of Liquidated Damages if any-</p> <p>a. <u>Indigenous suppliers (for both MSE &amp; Non-MSE bidders):</u></p> <ul style="list-style-type: none"> <li>Vehicle Entry / Gate Entry date will be considered for dispatch to BHEL Trichy stores.</li> </ul>													
19	<p><b>Integrity Pact (IP): <i>Applicable</i></b></p> <p>a) IP is a tool to ensure that activities and transactions between the Company and its Bidders / Supplier / Vendor are handled in a fair, transparent and corruption free manner. Following Independent External Monitors (IEMs) on the present panel have been appointed by BHEL with the approval of CVC to oversee implementation of IP in BHEL.</p> <table border="1"> <thead> <tr> <th>Sl No</th><th>IEM</th><th>Email</th></tr> </thead> <tbody> <tr> <td>1</td><td>Dr. Sarat Kumar Acharya, Ex-CMD, NLC</td><td><a href="mailto:iem1@bhel.in">iem1@bhel.in</a></td></tr> <tr> <td>2</td><td>Shri R. Mukundan, IRPS (Retd.)</td><td><a href="mailto:iem2@bhel.in">iem2@bhel.in</a></td></tr> <tr> <td>3</td><td>Shri Madan Lal Meena, IAS (Retd.)</td><td><a href="mailto:iem3@bhel.in">iem3@bhel.in</a></td></tr> </tbody> </table> <p>b) The IP as enclosed with the tender is to be submitted (duly signed by authorized signatory) along with techno-commercial bid (Part-I, in case of two / three part bid). Only those bidders who have entered into such an IP with BHEL would be competent to participate in the bidding. In other words, entering into this Pact would be a preliminary qualification.</p> <p>c) Please refer Section-8 of IP for Role and Responsibilities of IEMs. In case of any complaint arising out of the tendering process, the matter may be referred to any of the above IEM(s). All correspondence with the IEMs shall be done through email only.</p> <p><b>Note:</b>  <i>No routine correspondence shall be addressed to the IEM (phone / post / email) regarding the clarifications, time extensions or any other administrative queries, etc. on the tender issued.</i></p>	Sl No	IEM	Email	1	Dr. Sarat Kumar Acharya, Ex-CMD, NLC	<a href="mailto:iem1@bhel.in">iem1@bhel.in</a>	2	Shri R. Mukundan, IRPS (Retd.)	<a href="mailto:iem2@bhel.in">iem2@bhel.in</a>	3	Shri Madan Lal Meena, IAS (Retd.)	<a href="mailto:iem3@bhel.in">iem3@bhel.in</a>	
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3	Shri Madan Lal Meena, IAS (Retd.)	<a href="mailto:iem3@bhel.in">iem3@bhel.in</a>												

	<i>All such clarification / issues shall be addressed directly to the tender issuing (procurement) department's officials whose contact details are as per Clause no. 28 below.</i>	
<b>20</b>	<p><b>Preference to Make in India:</b></p> <p>"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 (Preference to Make in India), Order 2017 dated 19.07.2024 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.</p> <p><b>23.1 Compliance to Restrictions under Rule 144 (xi) of GFR 2017:</b></p> <p>i. Any bidder from a country which shares a land border with India will be eligible to bid in this tender only if the bidder is registered with the Competent Authority. The Competent Authority for the purpose of this Clause shall be the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT).</p> <p>ii. "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.</p> <p>iii. "Bidder from a country which shares a land border with India" for the purpose of this Clause means:-</p> <ol style="list-style-type: none"> <li>An entity incorporated established or registered in such a country; or</li> <li>A subsidiary of an entity incorporated established or registered in such a country; or</li> <li>An entity substantially controlled through entities incorporated, established or registered in such a country; or</li> <li>An entity whose beneficial owner is situated in such a country; or</li> <li>An Indian (or other) agent of such an entity; or</li> <li>A natural person who is a citizen of such a country; or</li> <li>A consortium or joint venture where any member of the consortium or joint venture falls under any of the above.</li> </ol> <p>iv. The beneficial owner for the purpose of (iii) above will be as under:</p> <ol style="list-style-type: none"> <li>In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.</li> </ol> <p>Explanation:</p> <ol style="list-style-type: none"> <li>"Controlling ownership interest" means ownership of or entitlement to more than twenty-five per cent of shares or capital or profits of the company.</li> <li>"Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements.</li> </ol> <ol style="list-style-type: none"> <li>In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership.</li> <li>In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more</li> </ol>	



	<p>juridical person has ownership of or entitlement to more than fifteen percent of the property or capital or profits of the such association or body of individuals.</p> <p>4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;</p> <p>5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.</p> <p>(i) The bidder shall provide undertaking for their compliance to this Clause, in the format provided in Annexure-13.</p> <p>(ii) Registration of the bidder with Competent Authority should be valid at the time of submission of bids and at the time of acceptance of the bids.</p> <p>6. Present tendered requirements will be considered as non-splittable at item level in case the quantity against individual item (Schedule basis) is 1 No / Set. Accordingly, MII preferences if applicable will be operated on non-splittable basis at item level (Schedule basis) for these cases.</p>	
<b>21</b>	<p><b>Settlement of Dispute:</b></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 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.</p> <p><b>21.1 Conciliation:</b></p> <p>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 <a href="http://www.bhel.com">www.bhel.com</a>).</p> <p><b>Note:</b> 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.</p>	

## **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**.

**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**.

**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.

**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.

**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

	<p>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><b>21.2.10</b> 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><b>21.3 In case of Contract with Public Sector Enterprise (PSE) or a Government Department, the following shall be applicable:</b></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 &amp; Excise Departments), such dispute or difference shall be taken up by either party for resolution through AMRCD (Administrative Mechanism for Resolution).</p>	
<b>22</b>	<p><b>Jurisdiction:</b></p> <p>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><b>Governing Laws:</b></p> <p>The contract shall be governed by the Law for the time being in force in the Republic of India.</p>	
<b>23</b>	<p><b>Force Majeure:</b></p> <p><b>23.1</b> "Force Majeure" shall mean circumstance which is:</p> <ol style="list-style-type: none"> <li>beyond control of either of the parties to contract,</li> <li>either of the parties could not reasonably have provided against the event before entering into the contract,</li> <li>having arisen, either of the parties could not reasonably have avoided or overcome, and</li> <li>not substantially attributable to either of the parties and Prevents the performance of the contract, such circumstances include but shall not be limited to: <ol style="list-style-type: none"> <li>War, hostilities, invasion, act of foreign enemies.</li> <li>Rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war.</li> <li>Riot, commotion or disorder by persons other than the contractor's personnel and other employees of the contractor and sub-contractors.</li> <li>Strike or lockout not solely involving the contractor's personnel and other employees of the contractor and sub-contractors.</li> <li>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.</li> <li>Natural catastrophes such as earthquake, tsunami, volcanic activity, hurricane or typhoon, flood, fire, cyclones etc.</li> <li>Epidemic, pandemic etc.</li> </ol> </li> </ol> <p><b>23.2</b> 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><b>23.3</b> 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</p>	

	<p>writing of the occurrence of such event and the circumstances thereof within 15 (fifteen) days after the occurrence of such event.</p> <p><b>23.4</b> 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><b>23.5</b> Delay or non-performance by either party hereto caused by the occurrence of any event of Force Majeure shall not</p> <ol style="list-style-type: none"> <li>Constitute a default or breach of the Contract.</li> <li>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.</li> </ol> <p><b>23.6</b> 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>	
<b>24</b>	<p><b>Non-Disclosure Agreement:</b></p> <p>The bidders shall enter into the Non-Disclosure Agreement separately. (Annexure 7 attached).</p>	
<b>25</b>	<p><b>Cartel Formation:</b></p> <p>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>	
<b>26</b>	<p><b>Fraud Prevention Policy:</b></p> <p>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 <a href="http://www.bhel.com">http://www.bhel.com</a> 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>	
<b>27</b>	<p><b>Suspension of Business Dealings with Suppliers / Contractors:</b></p> <p>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 <a href="http://www.bhel.com">www.bhel.com</a>.</p> <p>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 <a href="http://www.bhel.com">www.bhel.com</a> and / or under applicable legal provisions. Guidelines for suspension of business dealings is available in the webpage: <a href="http://www.bhel.com/vender_registration/vender.php">http://www.bhel.com/vender_registration/vender.php</a>.</p>	

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><tr><td>Shri M Kannan</td><td>Shri. K Udayakumar</td></tr><tr><td>Manager / MM / RM BHEL HPBP Trichy Phone No: +91-0431-257-8558 E-Mail: mkn@bhel.in</td><td>Sr. Manager / MM / RM BHEL HPBP Trichy Phone No: +91-0431-257- 7030 E-Mail: udayakumar.k@<a href="mailto:udayakumar.k@bhel.in">bhel.in</a></td></tr></table>	Shri M Kannan	Shri. K Udayakumar	Manager / MM / RM BHEL HPBP Trichy Phone No: +91-0431-257-8558 E-Mail: mkn@bhel.in	Sr. Manager / MM / RM BHEL HPBP Trichy Phone No: +91-0431-257- 7030 E-Mail: udayakumar.k@ <a href="mailto:udayakumar.k@bhel.in">bhel.in</a>	
Shri M Kannan	Shri. K Udayakumar					
Manager / MM / RM BHEL HPBP Trichy Phone No: +91-0431-257-8558 E-Mail: mkn@bhel.in	Sr. Manager / MM / RM BHEL HPBP Trichy Phone No: +91-0431-257- 7030 E-Mail: udayakumar.k@ <a href="mailto:udayakumar.k@bhel.in">bhel.in</a>					
29	<p><b>Order of Precedence:</b></p> <p>In the event of any ambiguity or conflict between the Tender Documents, the order of precedence shall be in the order below:</p> <p>a. Amendments / Clarifications / Corrigenda / Errata etc. issued in respect of the tender documents by BHEL.</p> <p>b. Terms &amp; Conditions of the Enquiry</p> <p>c. Special Terms &amp; Conditions of the Enquiry</p>					
30	<p><b>Note:</b></p> <p>1. 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.</p> <p>2. 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.</p> <p>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.</p> <p>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.</p> <p>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 <a href="http://www.bhel.com">www.bhel.com</a>.</p> <p>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.</p> <p>7. Any disparity to terms and conditions indicated above and offer submitted, terms and conditions as indicated in ATC and above shall stand valid. Bidder terms and conditions which are in conflict will be ignored and will not be taken into consideration by BHEL.</p>					
31	<p><b>Set-Off Clause:</b></p> <p>BHEL shall have the right to recover any money, which in the sole opinion of BHEL is due from the Contractor, from any money due to the Contractor under this Contract or any other contract or from the Security Deposit &amp; bank Guarantee's, if any, furnished by the Contractor under this Contract or any other contract.</p>					
32	<p><b>Role of Agents</b></p> <p>a. BHEL strongly discourages the engagement of Agents by foreign principals to deal with BHEL in BHEL's tenders.</p>					

	<p>b. In case of foreign suppliers representing through their Indian / foreign agents, agency agreement should be submitted failing which their offer is liable for rejection. Agency agreement requirements attached as separate file and full compliance to it shall be ensured while submitting the same.</p> <p>c. BHEL due to business reasons would ban, would have banned Indian agents from dealing with BHEL. Any foreign principal who engages such a banned agent, or an employee of the banned agency, or any other person connected with the banned agency at any time during the tender proceedings would be disqualified from the tender proceedings. The decision of BHEL in this regard shall be final and be binding on the OEM. Hence in their own interests, prospective tenderers may check with BHEL. The list of banned firms is available on BHEL website <a href="http://www.bhel.com">www.bhel.com</a>.</p> <p>Suppliers / principals proposing to deal with BHEL by engaging and through an Indian Agent does so at their own risk. BHEL shall in no way be responsible for any consequences that may arise to the foreign principal on account of the antecedents / actions of their Indian agent.</p>	
33	<p><b><u>Conflict of Interest:</u></b></p> <p>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. <b>The bidder found to have a conflict of interest shall be disqualified.</b> A bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if:</p> <p>a) they have controlling partner (s) in common; <b>or</b></p> <p>b) they receive or have received any direct or indirect subsidy/ financial stake from any of them; <b>or</b></p> <p>c) they have the same legal representative/agent for purposes of this bid; <b>or</b></p> <p>d) they have relationship with each other, directly or through common third parties, <u>that puts them in a position to have access to information about or influence on the bid of another Bidder</u>; <b>or</b></p> <p>e) 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. <u>However, this does not limit the inclusion of the components / sub-assembly / Assemblies from one bidding manufacturer in more than one bid</u>; <b>or</b></p> <p>f) 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 authorize only one agent / dealer. There can be only one bid from the following:</p> <ol style="list-style-type: none"> <li>1. The principal manufacturer directly or through one Indian agent on his behalf; and</li> <li>2. Indian/foreign agent on behalf of only one principal; <b>or</b></li> </ol> <p>h) 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 should quote. Similar restrictions would apply to closely related sister companies. Bidders must proactively declare such sister / common business / management units in same / similar line of business in the format given in Annexure H.</p>	
34	<p><b>Restrictions for Procurement from a country sharing its land border with India:</b></p> <p>For this procurement, Public Procurement Order dated 23.02.2023 regarding restrictions under rule 144 (xi) of General Financial Rules 2017 from DoE is applicable. In case of subsequent Orders issued, the same shall be applicable even if issued after issue of this NIT</p>	
	<p><b>Enclosure:</b></p> <ol style="list-style-type: none"> <li>1. Annexure 1: Check List</li> <li>2. Annexure 2: Offer forwarding letter / tender submission letter</li> <li>3. Annexure 3: No Deviation Certificate</li> </ol>	



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|--|---|--|
|  | <ol style="list-style-type: none"><li>4. Annexure 4: Declaration regarding Insolvency / Liquidation / Bankruptcy Proceedings</li><li>5. Annexure 5: Declaration by Authorized Signatory</li><li>6. Annexure 6: Declaration by Authorized Signatory regarding Authenticity of submitted documents</li><li>7. Annexure 7: Non-Disclosure Certificate</li><li>8. Annexure 8: Integrity Pact</li><li>9. Annexure 10: Declaration reg. Related Firms &amp; their areas of Activities</li><li>10. Annexure 11: Declaration for relation in BHEL</li><li>11. Annexure 12: Declaration reg. minimum local content in line with revised public procurement</li><li>12. Annexure 13: Declaration regarding compliance to Restrictions under Rule 144 (xi) of GFR 2017</li><li>13. Annexure 14: Bank Account Details for E-Payment</li><li>14. Annexure 15: Power of Attorney for submission of tender</li><li>15. Pre-Qualification Requirement (PQR)</li><li>16. Annexure C- Terms &amp; Conditions of the Enquiry</li></ol> |  |
| <div style="text-align: right;">Signature and Seal</div> |   |  |