

BHARAT HEAVY ELECTRICALS LIMITED
TRANSMISSION BUSINESS GROUP,
NOIDA



CONDITIONS OF CONTRACT
FOR
TESTING AND COMMISSIONING
WORK

BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP, NOIDA
Conditions of Contract for Testing & Commissioning Works

INDEX

S.No.	Description	Page No.
A.0	GENERAL INSTRUCTIONS TO TENDERERS	04 – 21
A.1.0	Procedure for submission of Sealed Tenders	4
A.2.0	Procedure for evaluation of Price Bids	4
A.12.0	Data to be enclosed	5
A.13.0	Earnest Money Deposit	7
A.14.0	Authorization and Attestation	8
A.15.0	Validity of Offer	8
A.16.0	Execution of Contract	8
A.17.0	Security Deposit	8
A.19.0	Rejection of Tender and Other conditions	10
Annex-A	Details of work executed/ Being Executed	13
Annex-B	Declaration sheet	14
Annex-C	Checklist and Schedule of General Particulars	15
Annex-D	Contract Agreement	16
Annex-E	Form of BG for Security Deposit	18
Annex-F	Revised offer in lieu of Deviation withdrawal	20
Annex-G	BG confirmation letter from Banker	21
B.0	GENERAL TERMS AND CONDITIONS	22-38
B.1.0	Definitions	23
B.2.0	Law governing the contract and Court Jurisdiction	25
B.3.0	Issue of Notice	25
B.4.0	Use of Land	26
B.5.0	Commencement of Work	26
B.7.0	Rights of BHEL	26
B.8.0	Responsibility of Contractor in respect of local laws	28
B.9.0	Responsibility of Contractor in respect of Safety	31
B.10.0	Consequences of Cancellation	33
B.11.0	Insurance	34
B.12.0	Strikes and Lockouts	35
B.13.0	Force Majeure	35
B.15.0	Arbitration	35
B.16.0	Variations and Valuations of variations	37

SECTION- A

GENERAL

INSTRUCTIONS TO

TENDERERS

BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP, NOIDA
Conditions of Contract for Testing & Commissioning Works

SECTION - A

GENERAL INSTRUCTIONS AND INFORMATION FOR TENDERER

A.1.0 : PROCEDURE FOR SUBMISSION OF SEALED TENDERS

The tenderer must submit their tenders as required in two parts in separate sealed covers prominently superscribed as Part-I, Technical Bid and Part-II, Price Bid and also indicating on each of the covers the tender specification number and due date and time as mentioned in the tender enquiry.

These two separate covers I and II (Part - I and Part - II) shall together be enclosed in third envelope (Cover - III) along with EMD and this sealed cover shall be superscribed and submitted.

PART - I (TECHNICAL -BID) COVER - I:

Excepting rate schedule, all other schedules, data sheets and other details called for in the specifications including offer letter containing techno commercial conditions, if any, shall be enclosed in Part - I Technical Bid only.

PART - II (PRICE - BID) COVER - II:

Rate/Price Schedule only shall be given in this part - II "Price Bid".

A.2.0 : PROCEDURE FOR EVALUATION OF PRICE BID

The following shall be Evaluation Procedure of the prices offered :-

PAYMENT TERMS:

To be as per Tender Specifications and no deviations acceptable.

Any other conditions put forth by the tenderer which is not as per Tender Specifications, if considered, shall be suitably loaded.

A.3.0 This tender specification as whole, furnishing all the details and other documents as required in the following pages, shall be duly signed and stamped and sent in a sealed cover superscribing the name of work as given in the tender enquiry.

A.4.0 The tender shall be addressed to **OFFICER INVITING THE TENDER AS INDICATED IN THE TENDER ENQUIRY.**

BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP, NOIDA
Conditions of Contract for Testing & Commissioning Works

- A.5.0 Tenders submitted by post shall be sent as “**REGISTERED POST ACKNOWLEDGEMENT DUE**” and shall be posted with due allowance for any postal delay. The tenders received after the due date and time of opening are liable to be rejected. Telegraphic offers and offers received by Telex/Fax may not be considered.
- A.6.0 Tenders shall be opened by the concerned officers of BHEL at the time, date and venue as specified in the tender notice.
- A.7.0 The tenderer shall closely pursue all the clauses, specifications and drawings indicated in the Tender Documents before quoting. Should the tenderer have any doubt about the meaning of any portion of the Tender Specifications or find discrepancies/omission in the drawings or the tender documents issued are incomplete or shall require clarification on any of the technical aspect, scope of work etc., he shall at once contact the authority inviting the tender for clarification before submission of the tender.
- A.8.0 Before tendering, the tenderer are advised to inspect the site of work and the environments and be acquainted with the actual working and other prevalent conditions, facilities available, position of material and labour. No claim will be entertained later on the grounds of lack of knowledge.
- A.9.0 Tenderer must fill up all the schedules and furnish all the required information as per the instructions given in various sections of the tender specification. Each and every page of the Tender Specification must be **SIGNED AND STAMPED AND SUBMITTED ALONG WITH THE OFFER** by the tenderer in token of complete acceptance thereof. The information furnished shall be complete by itself.
- A.10.0 The tenderer shall quote the rates in English Language and international numerals. Total price offered should be entered in figures as well as in words. In case of difference in price between words and figures, the price in words will be treated as valid price. For the purpose of the tender, the metric system of units shall be used.
- A.11.0 All entries in the tender shall be typed or be written in ink. Erasers and overwriting are not permitted and may render such tender liable to summary rejection. All cancellations and insertions shall be duly attested by the tenderer.
- A.12.0 **DATA TO BE ENCLOSED:**
- A.12.1 An attested copy of the Power of Attorney, in case the tender is signed by an individual other than the sole proprietor, shall be attached.

BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP, NOIDA
Conditions of Contract for Testing & Commissioning Works

A.12.2 IN CASE OF INDIVIDUAL : His full name, experience, address and nature of business.

or

IN CASE OF PARTNERSHIP FIRMS : The names of all the partners with address and their experience. A copy of the partnership deed / instrument of partnership duly certified by the Notary Public shall be enclosed.

or

IN CASE OF COMPANIES : Date and place of registration including date of commencement certificate in case of Public Companies and the nature of business carried on by the company. Certified copies of Memorandum and Articles of Association are also to be furnished. Also indicate names, addresses and experience of the Directors.

A.12.3 Three years financial turn over (certified), present commitments with all orders in hand, value of total order, value completed, and balance with completion dates as per Annexure-A.

A.12.4 **ORGANISATION CHART & MANPOWER DEPLOYMENT:**

The organisation pattern and the manpower that are totally available with him & that will be deployed by the tenderer for this work as per proforma at Annexure-A of technical specification shall be submitted.

A.12.5 Declaration sheet as per proforma enclosed at Annexure-B.

A.12.6 Checklist as per proforma enclosed at Annexure-C.

A.12.7 Certificate from schedule Bank to prove his financial capacity to undertake the work or solvency certificate from the concerned Government Authority.

A.12.8 A certificate of Income Tax/Sales Tax verification from the appropriate authority in the forms prescribed duly indicating annual turnover. These certificates shall be valid for one year from the date of issue or for the period prescribed therein for all tenders submitted during the period.

A.12.9 In addition to the above, the particulars required elsewhere in the tender documents.

A.12.10 NOTE: In terms of clauses A.12.1 to A.12.9 above, all the data required to be enclosed with the tender need to be furnished neatly typed, signed & stamped in the

**BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP, NOIDA**

Conditions of Contract for Testing & Commissioning Works

given formats only (in the form of separate sheets) failing which the tender may be considered as incomplete and is liable for rejection. Documentary proof wherever necessary also need to be enclosed.

A.13.0 EARNEST MONEY DEPOSIT

- A.13.1 "Every Tender must be accompanied by the Earnest Money Deposit as specified in NIT in Pay order or Demand Draft only"
- A.13.2 Deleted.
- A.13.3 Demand Draft or Pay order : From State Bank of India/ Nationalised Banks in favour of Bharat Heavy Electricals Limited, payable at New Delhi.
- A.13.4 Deleted
- A.13.5 Tenders received without Earnest Money in full or in the manner prescribed above will not be considered.
- A.13.6 **EMD of the successful tenderer shall be converted and adjusted against the security deposit.**
- A.13.7 In the case of unsuccessful tenderer the Earnest Money will be refunded to them after finalisation of the tender.
- A.13.8 BHEL reserves the right of forfeiture of Earnest Money Deposit in case the successful tenderer:
- (a) After opening of tender, revokes / withdraw his tender within the validity period revises / alters his earlier quoted rates / conditions.
 - (b) Fails to communicate unqualified acceptance of Letter of Intent within fifteen days from the date of issue of Letter of Intent.
 - (c) Fails to submit 50% of the total Security Deposit before start of the work.
 - (d) Fails to start the work as may be indicated in the Letter of Intent/ Work Order.

Please refer special conditions of contract.

BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP, NOIDA
Conditions of Contract for Testing & Commissioning Works

A.14.0 AUTHORISATION AND ATTESTATION:

A.14.1 Tenders shall be signed by persons duly authorised / empowered to do so. Certified copies of such authority and relevant documents shall be submitted along with the tenders.

A.15.0 VALIDITY OF OFFER:

A.15.1 THE OFFER SHALL BE KEPT OPEN FOR ACCEPTANCE FOR A MINIMUM PERIOD OF FOUR MONTHS FROM THE DATE OF OPENING OF TENDERS. In case the BHEL calls for negotiations, such negotiations shall not amount to cancellation or withdrawal of the original offer which shall be binding on the tenderer.

A.16.0 EXECUTION OF CONTRACT :

A.16.1 The successful tenderer's responsibility under this contract commences from the date of issue of the Letter of Intent by BHEL. The successful tenderer shall be required to execute an agreement in the prescribed form as per Annexure-D with BHEL within a reasonable time after the acceptance of his tender and in any case before submitting the first bill for payment. The expenses for completion, stamping and registration of the agreement with prescribed authority if necessary, shall be borne by the contractor.

A.17.0 SECURITY DEPOSIT:

~~"Upon acceptance of tender, the successful tenderer must deposit the Security Deposit before commencement of work. The rate of Security Deposit will be as below :~~

Work upto Rs. 10 Lakhs	: 10%
Above Rs. 10 Lakhs upto Rs. 50 Lakhs	: Rs.1Lakh+7.5% of the amount exceeding Rs. 10 Lakh
Above Rs. 50 Lakhs	: Rs. 4 Lakh + 5 % of the amount exceeding Rs. 50 Lakh

A.17.1 The Security Deposit should be deposited in any one of the following forms:

- i) Cash (as permissible under the Income Tax Act).
- ii) Pay Order, Demand Draft in favour of BHEL.
- iii) Local cheques of scheduled banks, subject to realization.

**BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP, NOIDA**

Conditions of Contract for Testing & Commissioning Works

- iv) Securities available from Post Offices such as National Savings Certificates, Kisan Vikas Patras etc.

(Certificates should be held in the name of Contractor furnishing the security and duly pledged in favour of BHEL and discharged on the back).

- v) Bank Guarantee from scheduled Banks/ Public Financial Institutions as defined in the Companies Act. The Bank Guarantee format should be as per prescribed proforma (Annexure- E). Bank Guarantee from Co-operative bank will not be accepted.
- vi) Fixed Deposit receipt issued by Scheduled Bank / Public Financial Institutions as defined in the Companies Act. The FDR should be in the name of the contractor, A/C BHEL, duly discharged on the back.
- vii) Security deposit can also be recovered at the rate of 10% from the running bills. However in such cases at least 50% of the Security Deposit should be collected before start of the work and the balance 50% may be recovered from the running bills.
- viii) The security deposit shall not carry any interest.
- ix) Security deposit shall not be refunded to the contractor except in accordance with the terms of the contract.
- x) The Head of Unit may waive the Security Deposit in respect of Public Sector Undertaking particularly on a reciprocal basis.

Note : 1) Acceptance of Security Deposit against Sl. No. (iv) and (vi) above will be subject to hypothecation or endorsement on the documents in favour of BHEL. However, 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.

- 2) The BG shall be submitted only through the Banker and direct submission by the party will not be accepted. Along with the BG, the Bank shall also furnish a letter of confirmation (format as per Annexure –G for the BG issued).
- 3) The validity of the Bank Guarantee furnished towards Security Deposit shall be up to three months more than the period of completion of work as stipulated in the LOI/WO and the same will be kept valid by proper renewal till the completion of the work.

BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP, NOIDA
Conditions of Contract for Testing & Commissioning Works

- A.17.2 If the value of the work done at any time exceeds the accepted agreement value, Security Deposit shall be correspondingly enhanced and the extra Security Deposit shall be immediately deposited by the contractor or recovered from the payments due to him.
- A.17.3 Failure to deposit the Security Deposit within the stipulated time, may lead to forfeiture of EMD and cancellation of the award of work.
- A.17.4 BHEL reserves the right of forfeiture of Security Deposit in addition to other claims and penalties in the event of the contractor's failure to fulfil any of the contractual obligations or in the event of termination of contract as per terms and conditions of the contract. BHEL reserves the right to set off the Security Deposit, against any claims of any other contracts with BHEL.
- A.17.5 **Security deposit will be returned after successful completion of all activities of each projects covered under this rate contract.**

Please refer special conditions of contract.

A.19.0 REJECTION OF TENDER & OTHER CONDITIONS:

- A.19.1 The decision of acceptance of tender will rest with BHEL, which does not bind itself to accept the lowest tender or any tender and reserves to itself full rights for the following without assigning any reasons whatsoever:
- a) To reject any or all of the tenders.
 - b) To split up the work amongst two or more Tenderer.
 - c) To award the work in part.
 - d) Negotiate with L2 for award of part OR full work when BHEL feels that L1 will not be able to meet the contractual obligation including completion schedule to the satisfaction of BHEL.
 - e) In either of the contingencies stated in (b) and (c) above to modify the time for completion suitably.
- A.19.2 Conditional and unwitnessed tenders, tenders containing absurd or unworkable rates and amounts, tenders which are incomplete or otherwise considered defective and tenders not in accordance with the tender conditions, specifications etc. are liable to be rejected.

BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP, NOIDA
Conditions of Contract for Testing & Commissioning Works

- A.19.3 In case of any adverse information is received concerning performance, capability or conduct of the tenderer after issue of tender enquiry, BHEL reserves the right to reject the offer at any stage as deemed fit.
- A.19.4 Offers with inadequate Tools & Plants, Manpower Deployment Plan, Method Statement are liable for rejection.
- A.19.5 In case the present commitments of the tenderer is such that award of further work is likely to affect performance in the work under this tender, its offer is liable for rejection.
- A.19.6 If a tenderer expires after the submission of his tender or after the acceptance of his tender, BHEL may at its discretion, cancel such tender. If a partner of a firm expires after the submission of the tender or after the acceptance of the tender, BHEL may cancel such tender at its discretion unless the firm retains its character.
- A.19.7 BHEL will not be bound by any Power of Attorney granted by the tenderer or by changes in the composition of the firm made subsequent to the execution of the contract. BHEL may, however, recognise such Power of Attorney and changes after obtaining proper legal advice, the cost of which will be chargeable to the contractor concerned.
- A.19.8 If the tenderer deliberately gives wrong information in his tender, BHEL reserves the right to reject such tender at any stage or to cancel the contract, if awarded, and forfeit the Earnest Money/Security Deposit/ any other money due.
- A.19.9 Canvassing in any form in connection with the tender is strictly prohibited and the tenders submitted by the contractors who resorts to canvassing are liable to be rejected.
- A.19.11 Should a tenderer or contractor or in the case of a firm or company of contractors/one or more of its Partners/ share holders/Directors have a relation or relations employed in BHEL, the authority inviting tender shall be informed to the fact along with the offer, failing this, BHEL may, at its sole discretion reject the tender or cancel the contract and forfeit the Earnest Money/Security Deposit.
- A.19.12 The successful tenderer should not sub-contract the part of complete work detailed in the tender specifications without written permission of BHEL. The tenderer is solely responsible to BHEL for the work awarded to him.

BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP, NOIDA
Conditions of Contract for Testing & Commissioning Works

- A.19.13 IT WOULD BE PREFERRED THAT YOUR OFFER IS WITHOUT ANY DEVIATION w.r.t. TENDER SPECIFICATIONS AND THE SAME MAY BE CLEARLY MENTIONED ON THE COVERING LETTER ACCOMPANYING THE TECHNICAL BID. Offers with deviations are likely to be rejected. However if the bidder insists on any technical or commercial deviations, from the specification and/or tender conditions, the price implication if any, of withdrawing the deviations must be submitted along with the price bid in a separate sealed envelope superscribed “Price Implication for withdrawal of deviations”. No price implication for withdrawal of deviation shall be accepted at a later date, after the opening of technical bid.

BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP, NOIDA
Conditions of Contract for Testing & Commissioning Works

ANNEXURE - A

DETAILS OF WORK EXECUTED / BEING EXECUTED

A) WORK EXECUTED

SL. NO.	FINANCIAL YEAR	CUSTOMER	DESCRIPTION OF WORK	TOTAL ORDER VALUE	REMARKS

B) WORK BEING EXECUTED

SL. NO.	CUSTOMER	DESCRIPTION OF WORK	TOTAL VALUE	VALUE OF THE PORTION COMPLETED	ACTUAL START DATE	EXPECTED COMPLETION DATE	REMARKS

**(SIGNATURE OF TENDERER)
WITH STAMP**

BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP, NOIDA
Conditions of Contract for Testing & Commissioning Works

ANNEXURE -B

DECLARATION SHEET

I hereby certify that all the information and data furnished by me with regard to this Tender Specification No. are true and complete to the best of my knowledge. I have gone through the specification, conditions and stipulations in detail and agree to comply with the requirements and intent of specifications.

(SIGNATURE OF TENDERER)
WITH STAMP

BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP, NOIDA
Conditions of Contract for Testing & Commissioning Works

ANNEXURE – C

CHECKLIST & SCHEDULE OF GENERAL PARTICULARS

NOTE: Tenderers are requested to fill in the following details and no column should be left blank.

- | | | | |
|-----|---|---|---------|
| 1. | Name & Address of the Tenderer | : | |
| 2. | Telegraphic/telex address | : | |
| 3. | Phone/Fax No. (Office) | : | |
| 4. | Name & designation of the official of the tenderer to whom all the references shall be made | : | |
| 5. | Tenderer's Proposal No. & date | : | |
| 6. | Whether EMD submitted (by cash/
Bank Guarantee/Bank Draft) | : | By..... |
| 7. | Validity of offer/rates quoted for four months from the date of opening of tender | : | Yes/No |
| 8. | Attested copy of power of attorney as per Clause-A.12.1 | : | Yes/No |
| 9. | Solvency Certificate submitted as per Clause-A.12.9 | : | Yes/No |
| 10. | Income Tax/Sales Tax Certificate submitted as per Clause-A.12.10 | : | Yes/No |
| 11. | Details of work executed/being executed as per Annexure-A | : | Yes/No |
| 12. | Declaration sheet as per Annexure-B | : | Yes/No |

Date

(SIGNATURE OF TENDERER)
WITH STAMP

WITNESS : (Signature with full particulars)

- 1.
- 2.

BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP, NOIDA
Conditions of Contract for Testing & Commissioning Works

ANNEXURE - D

CONTRACT AGREEMENT

CONTRACT NO. :
LETTER OF INTENT NO. :
WORK ORDER NO. :

1. The Contract Agreement entered into the day of, 20... (..... day oftwo thousand and.....) at New Delhi between M/S BHARAT HEAVY ELECTRICALS LIMITED, TRANSMISSION BUSINESS GROUP, Noida, having its Registered Office at BHEL House, Siri Fort, New Delhi - 110 049 (hereinafter called the FIRST PARTY which expression shall include their executors, administrators, successors and permitted assigns)

AND

M/S (hereinafter called the SECOND PARTY which expression shall include their executors, administrators, successors and permitted assigns).

2. And whereas the FIRST PARTY called for the offer for the work of..... as per approved specifications, drawings and quality plan at as per Tender Specification No....., dated
3. Whereas the SECOND PARTY submitted their offer No. dated against above.
4. Whereas the FIRST PARTY has accepted the offer referred to above & issued Letter of Intent No....., dt..... and also detailed Work Order No..... dt
5. Whereas the SECOND PARTY has agreed to work as Sub-Contractor of the FIRST PARTY on the conditions specified in the Tender Specifications at a contract price of Rs.....(Rupees.....)
6. Now, therefore it is hereby mutually agreed to by and between the parties hereto as under :
- a) The SECOND PARTY shall execute the works of at on the conditions specified in Tender Specifications of FIRST PARTY and Letter of Intent referred to herein before at a total contract price of Rs..... (Rupees)
- b) That the SECOND PARTY shall organise all activities and mobilisation of facilities so that the work specified herein before is completed byas per the time bound programme mentioned in the Tender Specifications.

BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP, NOIDA
Conditions of Contract for Testing & Commissioning Works

- c) That all disputes arising out of or relating to this agreement shall be referred to the sole Arbitrator as per arbitration clause mentioned in the Tender Specifications. The Arbitrator from time to time with the consent of the parties enlarge the time for making and publishing award without reference to the court for the purpose.
 - d) That the jurisdiction in all suits or claims arising out of this agreement shall be of New Delhi Courts only.
 - e) The Following documents shall form part of this agreement :-
 - i)
 - ii)
 - iii)
 - iv)
 - v)
 - vi)
7. Deviation Limit : As per special conditions of contract.
8. Terms of Payment : The terms of payment applicable to this contract shall be those covered under Point No.... of Work Order dt. and as per Tender Specifications.
9. Abandoning the work : In the event of the SECOND PARTY abandoning the work, FIRST PARTY reserves the right to get the unfinished work done at the risk and cost of the SECOND PARTY.
10. All other terms and conditions shall be as stipulated in the Tender Documents.
11. This contract agreement consists.... pages.

IT WITNESS WHEREOF, the parties have signed this agreement on the date, month and year first above written in presence of:

For and on Behalf of
(FIRST PARTY)

WITNESS (WITH ADDRESS)

For and on Behalf of
(SECOND PARTY)

- 1.
- 2.

BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP, NOIDA
Conditions of Contract for Testing & Commissioning Works

ANNEXURE - E

MODEL FORM OF BANK GUARANTEE (FOR SECURITY DEPOSIT)

1. In consideration of the Bharat Heavy Electricals Limited, having its Registered Office at BHEL House, Siri Fort, New Delhi-110 049 through its Unit/Division at Industry Sector-TBG, Noida hereinafter called BHEL, having agreed to exempt..... (hereinafter called "the said contractor(s)") from the demand, under the terms and conditions of the LOI/WO, dated ... made between BHEL and M/s..... for the work of (Name of work) (hereinafter called "the said Agreement") of Security Deposit / mobilisation advance for the due fulfilment by the said contractor(s) of the terms and conditions contained in the said Agreement, on production of Bank Guarantee for Rs.... (Rupees..... only). We, (indicate the name of the Bank) (hereinafter referred to as "Bank") at the request of the contractor(s) do hereby undertake to pay to BHEL an amount not exceeding Rs..... against any loss or damage caused to or suffered or would be caused to or suffered by BHEL, by reason of a breach by the said contractor(s), of any of the terms of conditions contained in the said agreement.
2. We, (indicate the name of the Bank) do hereby undertake to pay the amounts due and payable under this guarantee without any demur, merely on a demand from BHEL, stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by BHEL by reason of breach by the said contractor(s) of any of the terms or condition(s) failure to perform the said agreement or by reason of the contractor(s) failure to perform the said agreement. Any such demand made on the Bank shall be conclusive as regards the amount due and payable by Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs.....
 - b) We, (indicate the name of the Bank) undertake to pay BHEL any money so demanded not withstanding any dispute or disputes raised by the Contractor(s) in any suit or proceeding pending before any court or Tribunal relating there to, our liability under these presents being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge of our liability for payment there under and the contractor(s) shall have no claim against us for making such payment.
 - c) We,(indicate the name of the Bank) further agree that the guarantee herein after contained shall remain in full force and effect during the period that would be taken for the performance of the said agreement & that it shall continue to be enforceable till all the dues of BHEL under or by virtue of the said agreement have been fully paid and its claims satisfied or discharged or till BHEL certifies that the terms and conditions of the said agreement have been fully and properly carried out by the said contractor(s) & accordingly discharges this guarantee. Unless a demand or claim under this guarantee is made on us in writing on or before..... we shall be discharged from all liability under this guarantee thereafter.

BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP, NOIDA
Conditions of Contract for Testing & Commissioning Works

5. We,.....(indicate the name of the Bank) further agree with BHEL that BHEL shall have the fullest liberty without our consent & without affecting in any manner our obligations hereunder to vary any of the terms & conditions of the said agreement or to extend time performance by the said contractor(s) from time to time or to postpone for any time or from time to time any of the powers exercisable by BHEL against the said contractor(s) and to forbear or enforce any of the terms and conditions relating to the said agreement & we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said contractor(s) or for any forbearance, act or omission on the part of BHEL or any indulgence by BHEL to said contractor(s) or by any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effected of so relieving us.
6. This guarantee will not be discharged due to the change in the constitution of the Bank or the Contractor(s).
7. We,(indicate the name of the Bank) lastly undertake not to revoke this guarantee during its currency except with the previous consent of BHEL in writing.

Dated the Day of20...

For(indicate the name of the Bank)

WITNESS : 1)

2)

(SIGNATURE OF BANK REPRESENTATIVE WITH SEAL)

NOTE

1. The above format is drawn upon the model form jointly evolved by the Reserve Bank of India, the Indian Banks Association and the Ministry of Finance, Government of India as circulated by Indian Banks Association, Bombay vide their letter No. LA/14-61/808, dated 01.05.1980.
2. As such no deviations are acceptable.

BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP, NOIDA
Conditions of Contract for Testing & Commissioning Works

ANNEXURE - F

**REVISED PRICE OFFER IN LIEU OF WITHDRAWAL OF DEVIATIONS/
CLARIFICATIONS OFFERED BY BHEL DURING TECHNICAL DISCUSSION**

Sl. No.	Clause Ref.	Description of Deviation/ Clarification	Whether Increase/ Decrease in Price	Unit Rate (if applicable)	Total Increase/ Decrease	Remarks

NOTE: Total increase or decrease in total price shall be indicated either in percentage or in value (Rs.).

**(SIGNATURE OF TENDERER)
WITH STAMP**

BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP, NOIDA
Conditions of Contract for Testing & Commissioning Works

ANNEXURE -G

(On Bank's Letter Head)

To,

AGM (Finance)
Bharat Heavy Electricals Limited,
Transmission Business Group
5th floor, Advant Navis IT Business Park,
Plot no. 7, Sector-142, Expressway Noida,
Noida – 201305 (U.P.)

Ref & Date

Sub : Confirmation of Bank Guarantee no. <<BG No.>>

We are a Scheduled Bank other than Co-operative sector Bank under the RBI Act 1934. The aforesaid << BG No.>> for Rs. <<BG Amount>>/ (In Words Also) and valid up to <<validity date>> is issued by us on behalf of M/s << Beneficiary's Name>> in favour of BHARAT HEAVY ELECTRICALS LTD.

The format of the Bank guarantee is strictly as per the format prescribed by M/s BHEL and the stamp papers forming part of the BG are as per the state rules extant.

The signatures to the Bank Guarantee are duly authorised.

Thanking you,

For & On behalf of
Name of the Bank & Seal

(Please Sign here)

SECTION-B

GENERAL TERMS AND **CONDITIONS**

BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP, NOIDA
Conditions of Contract for Testing & Commissioning Works

SECTION - B
GENERAL TERMS AND CONDITIONS

- B.1.0 The following terms shall have the meaning hereby assigned to them except where the context requires otherwise:-
- B.1.1 BHEL (or B.H.E. Ltd.) shall mean Bharat Heavy Electricals Limited, a Company registered under Indian Companies Act 1956, with its Registered Office at BHEL House, Siri Fort, New Delhi-110 049 or its Authorised Officers or its Engineer or other Employees authorised to deal with any matters with which these persons are concerned.
- B.1.2 "GENERAL MANAGER" shall mean the Officer in Administrative charge of the Contracting Unit of BHEL.
- B.1.3 "ENGINEER" OR "ENGINEER-IN-CHARGE" shall mean Engineer deputed by BHEL. The term includes "Deputy General Manager, Construction Manager, Resident Engineer, Assistant Site Engineer of BHEL/at the site as well as the officers in charge at Head Office.
- B.1.4 "SITE" shall mean the place or places at which the plants/equipments are to be erected and services are to be performed as per the specification of this tender.
- B.1.5 "CLIENTS OF BHEL" or "CUSTOMER/OWNER" shall mean the organisation to whom BHEL is responsible for this work.
- B.1.6 "CONTRACTOR" or "ETC CONTRACTOR" shall mean the individual, firm or Company who enters into this Contract with BHEL and shall include their executors, administrators, successors and assigns.
- B.1.7 "CONTRACT" or "CONTRACT DOCUMENT" shall mean and include the agreement, the work order, the accepted appendices of rates, Schedules of Quantities, if any, General Terms and Conditions of Contract, Special Conditions of Contract, Instructions to Tenderer, the drawings, the Technical Specifications, the Special Specifications, if any, the tender documents and the Letter of Intent\Accepting Letter issued by BHEL. Any conditions or terms stipulated by the tenderer in the tender documents or subsequent letters shall not form part of the Contract unless specifically accepted in writing by BHEL in the Letter of Intent and incorporated in the Agreement.

BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP, NOIDA

Conditions of Contract for Testing & Commissioning Works

- B.1.8 "GENERAL CONDITIONS OR CONTRACT" shall mean the "Instructions and Information for Tenderer and General Terms and Conditions" pertaining to the work detailed.
- B.1.9 "TENDER SPECIFICATIONS" shall mean the Special Conditions, Technical Specifications, Appendices, Site Information and drawings pertaining to the work for which the tenderer are required to submit their offer. Individual Specification Numbers will be assigned to each technical specifications.
- B.1.10 "TENDER DOCUMENTS" shall mean the General Terms and Conditions and Tender Specifications.
- B.1.11 "LETTER OF INTENT" shall mean the intimation by a letter/telegram/telex/ fax to the tenderer that the tender has been accepted in accordance with provisions contained in the letter. The responsibility of the contractor commences from the date of issue of this letter and all the terms and conditions of contract are applicable from this date.
- B.1.12 "COMPLETION TIME" shall mean the period by date specified in the Letter of Intent/Work Order or date mutually agreed upon for handing over of the erected equipment/plant which are found acceptable by the Engineer being of required standard and conforming to the specifications of the contract.
- B.1.13 "ZERO DATE" shall mean the planned commencement date of work under this tender and shall be date of issue of Letter of Intent.
- B.1.14 "PLANT OR PROJECT OR SWITCHYARD" shall mean and connote the entire assembly of the plant and equipments covered by the contract.
- B.1.15 "EQUIPMENT" shall mean all equipments, machineries, materials, structural, electrical and other components of the plant covered by the contract.
- B.1.16 "TESTS" shall mean and include such test or tests to be carried out by the contractor as are prescribed in the contract or considered necessary by BHEL, in order to ascertain the quality, workmanship, performance and efficiency of the contracted work or part thereof.
- B.1.17 "APPROVED" "DIRECTED" or "INSTRUCTED" shall mean approved, directed or instructed by BHEL.

BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP, NOIDA
Conditions of Contract for Testing & Commissioning Works

- B.1.18 "WORK OR CONTRACT WORK" shall mean and include supply of all categories of labour, specified consumables, tools and tackles required for complete and satisfactory site transportation, handling, stacking, storing, civil and electrical works, erection, testing & commissioning of the equipment to the entire satisfaction of BHEL.
- B.1.19 "SINGULAR AND PLURAL" etc. words carrying singular number shall also include plural and vice versa, where the context so requires. Words imparting masculine gender shall be taken to include the feminine gender and words imparting persons shall include any Company or Association or Body or Individuals, whether incorporated or not.
- B.1.20 "HEADINGS" The headings in these General Conditions are solely for the purpose of facilitating reference and shall not be deemed to be part thereof or be taken into consideration in the interpretation of construction thereof or the contract.
- B.1.21 "MONTH" shall mean calendar month.
- B.1.22 "WRITING" shall include any manuscript typewritten or printed statement under the signature or seal as the case may be.

B.2.0 LAW GOVERNING THE CONTRACT & COURT JURISDICTION:

The Contract shall be governed by the Law for the time being enforce in the Republic of India. The Civil Court at New Delhi having ordinary Original Civil Jurisdiction shall alone have exclusive jurisdiction in regard to all claims in respect of this contract.

B.3.0 ISSUE OF NOTICE:

The contractor shall furnish to the Engineer, the name, designation and address of his authorised agent and all complaints, notices, communications and references shall be deemed to have been duly given to the Contractor, if delivered to the Contractor or his authorised agent and shall be deemed to have been so given in the case of posting on the day on which they would have reached such address in the ordinary course of post or at which they were so delivered or left.

BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP, NOIDA
Conditions of Contract for Testing & Commissioning Works

B.4.0 USE OF LAND:

No land belonging to BHEL or its customer under temporary possessions of BHEL shall be occupied by the contractor without the written permission of BHEL.

B.5.0 COMMENCEMENT OF WORK:

B.5.1 On receipt of intimation of readiness of site and requirement of resources for testing, contractor shall deploy his testing team within one week and submit his plan of action within ten days from receipt of intimation to site & TBTS Headquarter.

B.5.2 If the successful tenderer fails to commence the work within the stipulated time, BHEL, at its sole discretion will have the right to cancel the Letter of Intent/work order/ Contract. His Earnest Money and/or Security Deposit will stand forfeited without any further reference to him without prejudice to any and all of BHEL's other rights and remedies in this regard.

B.5.3 All the works shall be carried out under the direction and to the satisfaction of BHEL/Customer/Owner.

B.5.4 The transported equipment, erected/constructed plant or work performed under the contract, as the case may be, shall be taken over when it has been completed in all respect and/or satisfactorily put into operation at site.

B.6.0 Deleted :

B.7.0 RIGHTS OF BHEL:

BHEL reserves to itself the following rights in respect of this Contract without entitling the Contractor for any compensation.

B.7.1 To get the work done through another agency at the risk and cost of the Contractor, in the event of poor progress, or the contractor's inability to progress the work for completion as stipulated in the Contract, poor quality of work, persistent disregards of instructions of BHEL, assignment, transfer, subletting of the contracted work without written permission of BHEL, non fulfilment of any contractual obligations etc. and to claim/recover compensation for such losses from the contractor including BHEL's supervision charges and overheads from Security Deposit/other dues.

**BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP, NOIDA**

Conditions of Contract for Testing & Commissioning Works

- B.7.2 To withdraw any portion of work and/or to restrict/alter quantum of work as indicated in the contract during the progress of construction and get it done through other agency and/or by departmental labour to suit BHEL's commitment to its customer or in case BHEL decides to advance the date of completion period due to other emergent reasons/BHEL's obligations to its customer.
- B.7.3 To terminate the contract after due notice and forfeit Security Deposit and recover the loss sustained in getting the balance work done through other agencies in addition to liquidated damages/penalty in the events of
- a) Contractor's continued poor progress.
 - b) Withdrawal from or abandonment of the work before completion of the work.
 - c) Corrupt or illegal act of the Contractor.
 - d) Insolvency of the Contractor.
 - e) Persistent disregard of the instructions of BHEL.
 - f) Assignment, transfer, subletting of the contract work without BHEL's written permission.
 - g) Non-fulfilment of any contractual obligations.
- B.7.4 To recover any moneys due from the Contractor, from any moneys due to the contractor under this or any other contract or from the Security Deposit.
- B.7.5 To claim compensation for losses sustained including BHEL's supervision charges & overheads in case of termination of Contract and to levy Liquidated Damage/Penalty for delay in completion of work, at the rate of $\frac{1}{2}\%$ (Half percent) of the contract value per week of delay or part thereof subject to ceiling of 10 % of the contract value.
- B.7.6 To terminate the Contract or to restrict the quantum of work and pay only for the portion or work done in case BHEL's contract with its customer is terminated/alterd/deferred/disputed/frustrated for any reasons.
- B.7.7 To effect recoveries from any amounts due to the Contractor under this or any other contract or in any other form the moneys which BHEL is forced to pay to anybody due to contractor's failure to fulfil any of his obligations. Also, under this Clause BHEL can deduct a sum of up to 5% (Max.) of Contract Value if Contractor is unable to provide calibrated test & measuring instruments to the satisfaction of 'ENGINEER'. But this in no way relieves the contractor from arranging the test & measuring instruments / equipment as required for completion of work without affecting the quality of work and meeting any contractual obligation whatsoever.

**BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP, NOIDA**

Conditions of Contract for Testing & Commissioning Works

- B.7.8 To restrict or increase the quantity and nature of work to suit site requirements, since the tender specification is based on preliminary documents and quantities furnished therein are indicative and approximate and the rates quoted shall not be subject to revision.
- B.7.9 To deploy BHEL's skilled and unskilled workmen in case of emergency/poor progress/deficiency in skill on the part of the employees of the contractor and to recover the expenditure on account of the same from the moneys due to the contractor.
- B.7.10 While every endeavour will be made by BHEL to this end, BHEL can not guarantee uninterrupted work due to conditions beyond its control. The contractor will not be entitled to any compensation/extra payment on this account. No idle labour charges will be payable by BHEL in any case.
- B.7.11 In the event of any dispute of technical nature, the decision of BHEL shall be final and binding on the Contractor.
- B.8.0 **RESPONSIBILITY OF THE CONTRACTOR IN RESPECT OF LOCAL LAWS, EMPLOYMENT OF WORKERS ETC:**

The following are the responsibilities of the Contractor in respect of observance of local laws, employment of personnel, payment of taxes etc.

- B.8.1 The Contractor at all times during the currency of this contract, shall in all his dealings with the local labour for the time being employed on or in connection with the work, have due regard to all local festivals, religious and other customs.
- B.8.2 The contractor shall comply with all State and Central Laws, Statutory Rules, Regulations etc., such as : The payment of wages to, The Minimum Wages Act, The Workmen Compensation Act, The Employees Liability Act, The Industrial Dispute Act, The Employees Provident Fund Act, Employees State Insurance Scheme, The Contract Labour (Regulations & Abolition) Act 1970 and other Acts, Rules and Regulations for labour as may be enacted by the Government during the tenure of the contract and having in force or jurisdiction at site. The Contractor shall give to the local Governing Body, Police and other concerned Authorities all such notice as may be required under law.
- B.8.3 The contractor, as required, will obtain independent license under the Contract Labour (Regulations and Abolition) Act 1970 from the concerned authorities based on the certificate (Form-V) issued by the Principal Employer/Customer.

BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP, NOIDA

Conditions of Contract for Testing & Commissioning Works

- B.8.4 The Contractor shall pay all taxes, fees, license charges, deposits, duties, tolls, royalty, commissions or other charges which may be Leviable on account of any of his operations connected with this contract. The contractor should be registered contractor under Sales/Works/ Commercial/Trade Tax of the concerned state. The contractor should have to get the contract registered immediately after award of works as per rules and regulations of the State Government. The contractor will apply for composite rate of Works Tax if allowed by the rules of the state. The contractor will file regular return as per rules of the state & will provide all information to BHEL which is required for assessment of Sales/Works Tax of the concerned project. In case BHEL is forced to make any of such payments, BHEL shall recover the same from the contractor either from moneys due to him or otherwise as deemed fit.
- B.8.5 Arrangements for the periodical visits of inspection agencies such as Electrical Inspector etc. to site, inspection certificates etc. will have to be made by the contractor at his cost. The contractor will also meet all expenses in connection with his welder's qualification/ re-qualification tests etc.
- B.8.6 The Contractor shall be responsible for proper accommodation including adequate medical facilities for the personnel employed by him.
- B.8.7 The Contractor shall be responsible for the proper behaviour and observance of all regulations by the staff employed by him.
- B.8.8 The contractor shall ensure that no damage is caused to any person/property of other parties working at site. If any such damage is caused, it shall be the responsibility of the contractor to make good the losses or compensate them.
- B.8.9 All the properties/equipment/components of BHEL/its customer loaned with or without deposit, to the contractor, shall remain the properties of BHEL/its customer. The contractor shall use such properties for the purpose of execution of this contract. All such properties/equipment/components shall be taken to in good condition unless notified to the contrary by the contractor within 48 Hrs. The Contractor shall return them in good conditions as and when required by BHEL/its customer. In case of non-return, loss, damage repairs etc., the cost thereof, as may be fixed by the Engineer, will be recovered from the contractor.
- B.8.10 It shall not be obligatory on the part of BHEL to supply any tools and tackles or materials other than those specifically agreed to be given by BHEL. However, depending upon availability/possibility, BHEL/its customer's equipment and other materials may be made available to the contractor on payment of the hire charges as fixed by them, subject to the conditions laid down by BHEL/its Customer from time to time. Unless paid in advance, such hire and other charges shall be recovered from out of dues to the contractor or Security Deposit in one instalment.

BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP, NOIDA

Conditions of Contract for Testing & Commissioning Works

- B.8.11 The Contractor shall fully indemnify and keep indemnified BHEL/its customer against all claims of whatsoever nature arising during the course of execution of this contract.
- B.8.12 In case the contractor is required to undertake any work outside the scope of this contract, the amount payable shall be as may be mutually agreed upon.
- B.8.13 Any delay in completion of works or non-achievement of periodical targets, due to reasons attributable to the contractor, will have to be compensated by the contractor either by increased manpower and resources or by working extra hours or more than one shift at no extra cost to BHEL.
- B.8.14 The contractor shall execute the work under the conditions usual to such construction work and in conjunction with numerous other operations at site and proceed in a manner that shall help in the progress of work at site as a whole.
- B.8.15 The contractor will be directly responsible for payment of wages to his workmen. A pay roll sheet giving details of all payments made to the workmen duly signed by the contractor's representative should be furnished to BHEL, along with each Running Account Bill. Also, Contractor shall display wages paid by him as per The Minimum Wages Act.
- B.8.16 In case of any class of work for which there is no specification laid down in the contract, such work shall be carried out in accordance with the instructions and requirements of the Engineer.
- B.8.17 No levy, payment or charges made or imposed shall be impeached by reason of any clerical error or by reason of any mistake in the amount levied, demanded or charged.
- B.8.18 No idle labour charges will be admissible in the event of any stoppage of work resulting in the contractor's workmen being rendered idle due to any reason any time.
- B.8.19 The contractor shall not stop work or abandon the site for whatsoever reason or dispute, excepting for force majeure conditions. All problems/disputes shall be separately discussed and settled without effecting the progress of work. Stoppage or abandonment of work, other than under force majeure conditions, shall be treated as breach of work of contract and dealt with accordingly.
- B.8.20 The contractor shall execute the work in the most substantial and workman like manner in the stipulated time. Accuracy of work and timely execution shall be the essence of this contract. The contractor shall be responsible to ensure that the quality, assembly and workmanship conform to the dimensions and clearance given in the drawings and/or as per instructions of the Engineers.

BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP, NOIDA
Conditions of Contract for Testing & Commissioning Works

B.8.21 The contractor shall furnish progress reports on work at regular intervals as required by the Engineer.

B.9.0 RESPONSIBILITIES OF CONTRACTOR IN RESPECT OF SAFETY OF MEN, EQUIPMENT, MATERIAL & ENVIRONMENT:

B.9.1 All safety rules and codes applied by BHEL/its customer at site shall be observed by the contractor and his workmen without exception. The contractor shall be responsible for the safety of the equipment/materials and work to be performed by him and shall maintain all lights, fencing guards, signs etc. or other protections necessary for the purpose. Contractor shall also take such additional precautions as may be indicated from time to time by the Engineer, with a view to prevent pilferage, accidents, fire hazards etc. and suitable number of clerical staff, watch and ward, store keepers to take care of equipment, materials and construction tools and tackles shall be posted at site by the contractor till the completion of the work under this contract. The contractor shall arrange for such safety devices as are necessary for this type of work and carry out the requisite site tests of handling equipment, lifting tools, tackles etc. as per usual standards and practices.

B.9.2 The contractor shall provide to its work force and ensure the use of required personal protective equipment as found necessary & as directed by the authorised BHEL officials in line with latest Amendments / Revisions of various Indian Standards.

- i) Safety helmets conforming to IS-2925 : 1984.
- ii) Safety belts conforming to IS-3521 : 1983.
- iii) Safety shoes conforming to IS-1989 : 1978.
- iv) Eye and face protection devices conforming to IS-8520 : 1977 and IS-8940 : 1978.
- v) Hand and body protection devices conforming to IS-2573 : 1975, IS-6994 : 1973, IS-8807 : 1978 and IS-8519 : 1977.

B.9.3 All tools, tackles, fitting appliances, testing instruments, scaffolds, cradles, safety nets, ladders, equipment, etc. used by the contractor shall be of safe design and construction and maintained in good condition. However BHEL officials shall have the right to ban use of any of them or get them tested at their discretion.

All test & measuring instruments to be pre-calibrated through certifying agency before use.

BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP, NOIDA

Conditions of Contract for Testing & Commissioning Works

All electrical equipment, connections and wiring for construction power, its distribution and use shall conform to the relevant requirements of Indian Electricity Act and Rules. Only electricians licensed by the appropriate statutory authority shall be employed by the contractor to carry out electrical works.

- B.9.4 All electrical appliances including portable electric tools used by contractor shall have safe plugging system to source of power and be appropriately earthed.
- B.9.5 The contractor shall not use any hand lamp energised by electric power with supply voltage of more than 240 volts. For work in confined spaces, lighting shall be arranged with power source of not more than 240 volts.
- B.9.6 Where it becomes necessary to provide and/or store petroleum products, explosives, chemicals and liquid or gaseous fuel or any other substance that may cause fire or explosion, the contractor shall be responsible for carrying out such provision and/or storage in accordance with the rules and regulations laid down in the relevant Government Acts, such as Petroleum Act, Explosive Act, Petroleum and Carbides of Calcium Manual of the Chief Controller of Explosives, Government of India etc. Prior approval of the authorised BHEL official at the site shall also be taken by the contractor in all such matters.
- B.9.7 The contractor shall arrange at his cost appropriate illumination as required at all work spots for safe working, when natural day light may not be adequate for clear visibility.
- B.9.8 In case of a fatal or disabling injury/accident to any person at construction sites pertaining to this work, the victim and/or his/her dependents shall be compensated by the contractor as per statutory requirements. However, if considered necessary, BHEL shall have the right to impose appropriate financial penalty on the contractor & recover the same from payments due to the contractor for suitably compensating the victim and/or his/her dependents. Before imposing any such penalty, appropriate enquiry shall be held by BHEL giving opportunity to the contractor to present his case.
- B.9.9 In case of any damage to property due to lapse by the contractor, BHEL shall have the right to recover the cost of such damages from the payments due to the contractor.
- B.9.10 In case of any delay in the completion of a job due to mishaps attributable to lapses by the contractor, BHEL shall have the right to recover cost of such delay from the payments due to the contractor, after notifying the contractor suitably and giving him opportunity to present his case.

**BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP, NOIDA**

Conditions of Contract for Testing & Commissioning Works

- B.9.11 If contractor fails to improve the standards of safety in its operation to the satisfaction of BHEL after being given reasonable opportunity to do so and/or if the contractor fails to take appropriate safety precautions or to provide necessary safety devices and equipment or to carry out instructions regarding safety issued by the authorised BHEL official, BHEL shall have the right to take the corrective steps at the risk and cost of the contractor after giving appropriate notice indicating the steps that would be taken by BHEL.
- B.9.12 The contractor shall submit report of all accidents, fires, property damaged & dangerous occurrences connected with his area of work or caused due to his action/ inaction, to the authorised BHEL official immediately after such occurrence, but in any case not later than 12 hours of the occurrence.
- B.9.13 During the course of construction, alteration or repairs scrap lumbars with protruding nails, sharp edges etc. and all other debris including combustibles scrap shall be kept cleared from working areas, passage ways and stairs in and around site.
- B.9.14 The contractor shall be responsible for the safe storage of his radioactive sources if same have been permitted to use.
- B.9.15 All contractor's supervisory personnel and sufficient number of workmen shall be trained for fire fighting and first aid duties and shall be assigned specific duties. Enough number of such trained personnel must be available during the tenure of the contract.
- B.9.16 Before commencing the work, the contractor shall appoint/nominate a responsible officer to supervise implementation of all safety measures and liaison with BHEL Engineer at site.
- B.9.17 If safety record of the contractor in execution of the awarded job is to the satisfaction of Safety Department of BHEL, issue of an appropriate certificate to recognise the safety performance of the contractor may be considered by BHEL after completion of the job.
- B.10.0 **CONSEQUENCES OF CANCELLATION:**
- B.10.1 Whenever BHEL exercises its authority to terminate the contract/withdraw a portion of work, the work may be got completed by any other means at the contractor's risk and cost provided that in the event of the cost of completion (as certified by the Engineer which shall be final and binding on the contractor) being less than the contract value, the advantage shall accrue to BHEL. If the cost of completion exceeds the money due to the Contractor under the Contract, the Contractor shall either pay the excess amount demanded by BHEL or the same

BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP, NOIDA
Conditions of Contract for Testing & Commissioning Works

shall be recovered from the contractor. This will be in addition to the forfeiture of Security Deposit as per relevant clauses.

- B.10.2 In case BHEL completes the work under the provisions of this clause, the cost of such completion to be taken into account for determining the excess cost to be charged to the contractor shall consist of cost of materials purchased and/or labour provided by BHEL with an addition of such percentage to cover supervision and establishment charges as may be decided by BHEL.
- B.11.0 **INSURANCE:**
- B.11.1 BHEL/its customer shall arrange for insuring the project materials/properties of BHEL/its customer covering the risks during transit, storage, construction, erection and commissioning.
- B.11.2 It shall be the sole responsibility of the Contractor to insure his workmen against risks of accident and injury while at work as required by the relevant rules and to pay compensation, if any, to them as per Workmen's Compensation Act. The Contractor shall also insure his staff against accidents. The work will be carried out in a protected area and all the rules and regulations of BHEL/its client in the project area which are in force from time to time will have to be followed by the contractor.
- B.11.3 If due to negligence and/or non-observance of safety and other precautions any accident/injury occurs to any other person/public, the contractor shall pay necessary compensation and other expenses, if so decided by the appropriate authority.
- B.11.4 It shall be the responsibility of the contractor to provide security and insurance claim related information/reports, FIRs etc. for the equipment/material belonging to BHEL/its customer and handed over to the contractor for transportation/erection/ construction till these are taken over by BHEL after erection/construction or are returned to BHEL/its customer's store.
- B.11.5 If due to Contractor's carelessness, negligence, non-observance of safety precautions, improper security arrangements, damage to BHEL/its Customer's property and/or personnel should occur, and if BHEL is unable to recover its claim from the Insurance Company, the deficit will be recovered from the Contractor.

BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP, NOIDA
Conditions of Contract for Testing & Commissioning Works

B.12.0 STRIKES & LOCKOUTS:

B.12.1 The Contractor will be solely responsible for all disputes & other issues connected with his workmen. In the event of the contractor's workmen resorting to strike or the contractor resorting to lockout and if the strike or the lockout so declared is not settled within a period of one month, BHEL shall have the right to get the work executed by employing its own men or through other agencies or both. The cost incurred by BHEL in this regard shall be recovered from the Contractor.

B.12.2 For any purpose whatsoever, the employees of the contractor shall not be deemed to be in the employment of BHEL/its Customer.

B.13.0 FORCE MAJEURE:

B.13.1 The following shall amount to force majeure conditions:-

Acts of God, Act of any Government, war, Sabotage, riots, civil Commotion, Police Action, Revolution, Flood, Fire Cyclone, Earthquake, Epidemic and other similar causes over which the contractor has no control.

B.13.2 If the contractor suffers delay in the due execution of the contract, due to delays caused by force majeure conditions, as defined above, the agreed time of completion of the work covered by this contract may be extended by a reasonable period of time in consultation and after agreement of BHEL's clients / owner, provided that on the occurrence of any such contingency, the Contractor immediately reports to BHEL in writing the causes of delay. The Contractor shall not be eligible for any compensation on this account.

B.14.0 **Deleted**

B.15.0 ARBITRATION:

~~B.15.1 Except where otherwise provided for in the contract all questions & disputes relating to the meaning of the specification designs, drawings and instruction herein before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings specifications, estimates, instructions, orders of these conditions or otherwise concerning the works, of the execution or failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof shall be referred to the sole arbitration of the Head, BHEL (TBG), Noida and if the Head, BHEL (TBG), Noida is unable or unwilling to act, to the sole arbitration of some other person *appointed by the Head, BHEL (TBG) willing to act as such arbitrator.~~

**BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP, NOIDA**

Conditions of Contract for Testing & Commissioning Works

There will be no objection if the arbitrator so appointed is an employee of BHEL and that he had to deal with the matters to which the contract relates and that in the course of his duties as such he had expressed views on all or any of the matters in dispute or difference. The arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason such as Head, BHEL (TBG) as aforesaid at the time of such transfer vacation of office or inability to act shall appoint (see note) another person to act as arbitrator in accordance with the terms of the contract such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. It is also a term of this contract that no person other than a person appointed by such Head, BHEL (TBG) as aforesaid should act as arbitrator and if for any reason that is not possible the matter is not to be referred to arbitration at all, in all cases where the amount of the claim dispute is Rs.50,000/- (Rupees fifty thousand) and above the arbitrator shall give reasons for the award.

Subject as aforesaid the provisions of the arbitration Act, 1940 or any statutory modification or re-enactment thereof and the rules made there under and the time being in force shall apply to the arbitration proceeding under this clause.

It is a term of the contract that the party involving arbitration shall specify the dispute or disputes to be referred to arbitration under this clause together with the amounts claimed in respect of each dispute.

The arbitrator (s) may from time to time with consent of the parties enlarge the time for making and publishing the award.

The work under the contract shall, if reasonably possible, continue during the arbitration proceedings and no payment due or payable to the contractor shall be withheld on account of such proceedings.

The Arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties fixing the date of the first hearing.

The Arbitrator shall give a separate award in respect of each dispute or difference referred to him.

The Venue of arbitration shall be such place as may be fixed by the Arbitrator in his sole discretion.

The award of the arbitrator shall be final, conclusive and binding all parties to this contract.

Laws governing the Contract:

Please refer special conditions of contract.

BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP, NOIDA
Conditions of Contract for Testing & Commissioning Works

B.16.0 VARIATIONS AND VALUATIONS:

B.16.1 QUANTITIES:

The quantities set out in the Bill of Quantities are the estimated quantities of the work but they are not to be taken as the actual and correct quantities of the works to be executed by the Contractor in fulfilment of his obligations under the Contract.

B.16.2 VARIATIONS:

B.16.2.1 The Engineer shall have power to make any variation of the form, quantity of the Works or any part thereof that may in his opinion be necessary and for that purpose or if for any other reason it shall in his opinion be desirable shall have power to order the Contractor to do and Contractor shall do any of the following:-

- a) Increase or decrease the quantity of any work included in the contract.
- b) Omit any such work.
- c) Change the character or quality or kind of any such work.
- d) Execute additional work of any kind necessary for the completion of the works and no such variation shall in any way vitiate or invalidate the contract but the value (if any) of all such variation shall be taken into account in ascertaining the amount of the Contract Price.
- e) Restrict the extent of work of any item covered under “Bill of Quantity”.

B.16.2.2 Orders for Variations to be in writing. No such variation shall be made by the contractor without an order in writing of the Engineer provided that, no order in writing shall be required for increase or decrease in the quantity of any work where such increase or decrease is not the result of an order given under this clause but is the result of the quantities exceed in for being less than those stated in the Bill of Quantities. Provided also that if for any reason the Engineer shall consider it desirable to give any such order verbally the Contractor shall comply with such order and any confirmation in writing of such verbal order given by the

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TRANSMISSION BUSINESS GROUP, NOIDA
Conditions of Contract for Testing & Commissioning Works

Engineer whether before or after the carrying out of the order shall be deemed to be an order in writing within the meaning of this clause. Provided further that if the contractor shall confirm in writing to the Engineer any verbal order of the Engineer and such confirmation shall not be contradicted in writing by the Engineer, it shall be deemed to be an order in writing by the Engineer.

B.16.3 VALUATION OF VARIATIONS:

The Engineer shall determine the amount (if any) which in his opinion should be added to or deducted from the sum named in the Contract in respect of any extra or additional work done or work omitted by his order. All such work shall be valued at the rates set out in the Contract if in the opinion of the Engineer the same shall be applicable. If the contract shall not contain any rates applicable to the extra or additional work then suitable prices shall be derived from the nearest item of BOQ or arrived at from the actual cost of manpower utilised (the cost of T&P and testing equipment etc. are not to be taken into account for arriving at the rates of additional/extra works) plus 10% for contractor's OH and profit. The rates for manpower shall be as per the minimum wages applicable for the project area.

B.16.4 POWER OF ENGINEER TO FIX RATES:

If the nature or amount of any omission or addition relative to the nature or amount of the whole of the contract work or to any part thereof shall be such that in the opinion of the Engineer the rate or price contained in the Contract for any item of the Work is by reason of such omission or addition rendered unreasonable or inapplicable then a suitable rate or price shall be agreed upon between the Engineer and the Contractor. In the event of disagreement the Engineer shall fix such other rate of price as shall in his opinion be reasonable and proper having regard to the circumstances and the same shall be binding on the contractor. But under no circumstance the contractor shall suspend the work on the plea of non-settlement of rates falling under the clause or claim any compensation on that account.
