

BHARAT HEAVY ELECTRICALS LIMITED
Transmission Business Group
Subcontract Management
Special Terms & Conditions

The following special terms and conditions shall form a part of the tender document. If any discrepancy found between below mentioned clauses and clauses in the Conditions of Contract for testing and commissioning work, the clauses mentioned in this document shall prevail.

1.0 EARNEST MONEY DEPOSIT

Every tender must be accompanied by the prescribed amount of Earnest Money Deposit (EMD) mentioned in NIT.

1. Mode of EMD deposit:

EMD can be submitted in any one of the following modes:

- i) Cash deposit as permissible under the extant Income Tax Act (before tender opening),
- ii) Electronic Fund Transfer credited in BHEL account (before tender opening). Details of BHEL account mentioned in tender document.
- iii) Banker's cheque/Pay order/Demand Draft, in favour of 'BHEL' and payable at New Delhi (Along with offer)
- iv) Fixed Deposit Receipt (FDR) issued by schedule Banks/Public Finance Institutions as defined in the companies ACT (FDR should be in the name of the contractor, a/c BHEL)

In addition to above, the EMD amount in excess of Rs Two lakh may also be accepted in the form of Bank Guarantee from scheduled bank. The Bank Guarantee in such cases shall be valid for at least six months.

B. No other form of EMD remittance shall be acceptable to BHEL.

1. Forfeiture of EMD

EMD by the bidder will be forfeited as per NIT conditions, if

- i) After opening the tender and within the offer validity period, the bidder revokes his tender or makes any modification in his tender which is not acceptable to BHEL.
 - ii) The contractor fails to deposit the required Security deposit or commence the work within the period as per LOI/contract.
2. EMD by the tenderer shall be withheld in case any action on the tenderer is envisaged under the provision of extant "Guidelines on Suspension of business dealing with supplier/contractors" and forfeited/ released based on the action as determined under these guidelines.

3. In the case of unsuccessful bidders, the Earnest Money will be refunded to them within a reasonable time after award of work.
4. EMD shall not carry any interest.
5. EMD of successful bidder shall be retained as part of Security Deposit.
6. Bidders may please note that "One Time EMD" provision stands deleted. Hence, bidders who have deposited Rs. 2 Lakh as 'One Time EMD' with BHEL are also required to submit the requisite amount of EMD.
7. ***Exemption from submission of EMD is applicable for MSME bidders. Please refer clause no. 14 (facilities provided to MSEs) for detail.***

2.0 SECURITY DEPOSIT

Security Deposit means the security provided by the Contractor towards fulfilment of any obligations in terms of the provision of the contract.

Upon acceptance of Tender, the successful Tenderer should deposit the required amount of Security Deposit for satisfactory completion of work. **The total amount of Security Deposit will be 5 % of the Contract Value. EMD of the successful tenderer shall be converted and adjusted towards the required amount of Security Deposit.**

2.1 Mode of Security deposit:

The security Deposit should be furnished before start of the work by the contractor.

"Bidders agrees to submit performance security required for execution of the contract within the time period mentioned. In case of delay in submission of Performance security, enhanced performance security which would include interest (SBI rate + 6%) for the delayed period, shall be submitted by the bidder. Further, if performance security is not submitted till such time the first bill becomes due, the amount of performance security due shall be recovered as per terms defined in NIT / Contract, from the bills along with due interest".

The balance amount to make up the required Security Deposit of 5% of the contract Value may be furnished in any of the following forms:

- i) Cash (as permissible under the extant Income Tax Act)
- ii) Local cheques of scheduled banks (subject to realization) / Pay Order / Demand Draft / Electronic Fund Transfer, in favour of BHEL.
- iii) Bank Guarantee from Scheduled Banks / Public Financial Institutions as defined in the Companies Act. The Bank Guarantee format for Security Deposit shall be in the prescribed formats enclosed with general conditions of contract.
- iv) Fixed Deposit Receipt issued by Scheduled Banks / Public Financial Institutions as defined in the Companies Act. The FDR should be in the name of the contractor, A/C BHEL and duly discharged on the back.

- v) Securities available from Indian 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 endorsed/hypothecated/pledged, as applicable, in favour of BHEL and duly discharged on the back).

(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)

2.2 Submission of Security Deposit:

- i) At least 50 % of the required Security Deposit, including the EMD, shall be submitted before start of work. Balance of the Security Deposit can be submitted by way of deduction of 10% of the gross amount progressively from each running bills of the contractor till the total amount of the required Security Deposit is collected.
- ii) If the value of work done at any time exceeds the contract value, the amount of Security Deposit shall be correspondingly enhanced and the additional Security Deposit shall be immediately deposited by the Contractor or it shall be recovered from payment/s due to the Contractor.
- iii) The recoveries made from running bills (cash deduction towards balance SD amount) can be released against submission of equivalent Bank Guarantee in acceptable form, but only once, before completion of work, at the discretion of BHEL.
- iv) The BG shall be submitted only through the Banker. Along with the BG, the Bank shall also furnish a letter of confirmation (in the prescribed formats enclosed with general conditions of contract).
- v) 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 and the same will be kept valid by proper renewal till the completion of the work.
- vi) 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.

2.3 Conditions for acceptance of bank guarantees

Contractors are advised to obtain Bank Guarantee preferably from any of the following BHEL consortium banks

Sl. No.	Nationalised Bank		Nationalised Bank
1	Allahabad bank	19	Vijaya Bank
2	Andhra bank		Public Sector Banks
3	Bank of Baroda	20	IDBI
4	Canara Bank		Foreign bank

5	Corporation bank	21	CITI Bank N.A
6	Central bank of India	22	Deutsche Bank AG
7	Indian Bank	23	The Hongkong and Shanghai Banking Corporation Limited
8	Indian Overseas Bank	24	Standard Chartered Bank
9	Oriental bank of Commerce	25	J P Morgan
10	Punjab National Bank		
11	Punjab & Sindh Bank		Private bank
12	State Bank of India	26	Axis Bank
13	State Bank of Hyderabad	27	The Federal Bank Limited
14	Syndicate Bank	28	HDFC
15	State Bank of Travancore	29	Kotak Mahindra Bank
16	UCO Bank	30	ICICI
17	Union Bank of India	31	Indusind Bank
18	United Bank of India	32	Yes Bank

Bank Guarantees from Banks outside BHEL's consortium shall be as below:

The Bank Guarantees of all Public sector banks can be accepted (in addition to consortium banks)

The Bank Guarantees of Co-operative banks shall not be accepted.

Bank Guarantees of other than consortium bank and public sector bank can be accepted subject to an overall exposure limit (at New Delhi) of Rs. 10 crores for banks with network of more than Rs. 500 crores as on last balance sheet date and Rs 5 crores for banks with net worth between Rs. 350 to Rs 500 crores (A certificate and copy of latest Balance Sheet to be given by the Bank at the time of submission of Bank Guarantees).

In case of private sector banks a clause to be incorporated in the text of Bank Guarantee that it can be enforceable by being presented at any branch of the bank.

In case of foreign vendors the bank guarantees issued by foreign banks may be confirmed by our consortium bank in India.

In case of Bank Guarantees given by Non-Consortium banks (Private sector or Public sector), the Bank Guarantees are to be enforceable in New Delhi or the town/ city in which the sector office is located.

2.4 RETURN OF SECURITY DEPOSIT:

If the contractor duly performs and completes the work in all respects to the entire satisfaction of BHEL, security deposit will be released to the contractor after deducting all costs, expenses and other amounts that are to be paid to BHEL under this contract or other contracts entered

into with the contractor. It may be noted that in no case the Security Deposit shall be refunded/released prior to passing of final bill.

2.5 Bank Account Details for submission of EMD/ Security Deposit through electronic fund transfer mode.

NAME OF THE COMPANY	BHARAT HEAVY ELECTRICALS LTD
ADDRESS OF THE COMPANY	TRANSMISSION BUSINESS GROUP, 10TH FLOOR, JOY TOWER, PLOT NO. C-20, 1/1A, C BLOCK, PHASE 2, INDUSTRIAL AREA, SECTOR-62, NOIDA – 201301 (U.P.)
NAME OF BANK	STATE BANK OF INDIA
NAME OF BANK BRANCH	CAG-II NEW DELHI (17313)
CITY	NEW DELHI
ACCOUNT NUMBER	00000040313508308
ACCOUNT TYPE	CASH CREDIT
IFSC CODE	SBIN0017313

3.0 TERMS OF PAYMENT

- 3.1 No Mobilisation advance is payable
- 3.2 90% payment against monthly progressive invoices duly certified by our commissioning engineer at site/ site in charge.
- 3.3 10% against total commissioning of all the equipments and panel under scope of work and submission of test report and hand corrected as built drawings.
- 3.4 100% To & Fro train fare, air fare, luggage and portorage expenses, local transportation, accommodation charges and other charges applicable as per NIT shall be released along with the 90% payment mentioned at sl. no. 3.2 above.

4.0 TAXES & DUTIES:

- 1. All taxes (except GST), duties , charges , royalties, cess and any other levies by Central/ State/local authorities for the execution of the contract shall be borne by the contractor and shall not be payable extra . Any increase of the same at any stage during execution of the contract shall be borne by the contractor. Quoted price of the same shall be inclusive of all such requirements.
- 2. Contractors have to make their own arrangement at their cost for completing the formalities, if required with relevant taxation authorities, for bringing their material, plant and machinery at site for the execution of the contract. Road permits / way bill if required shall be arranged by the contractor.
- 3. The Contractor is responsible to furnish documentary evidence towards GST Registration of the State wherein the site is located and any other documents as per GST Act which may be required from time to time by BHEL. BHEL will not be held to be responsible for any non-compliance of the Contractor in respect of GST laws as framed from time to time.

4. Goods and Service Tax (GST) will be reimbursed to the Contractor subject to the following conditions :-
 - (i) Submission of valid GST Compliant Tax Invoice as per the GST Invoice Rules
 - (ii) The Invoice raised by the Contractor should indicate the BHEL GST Registration Number.
5. The GST amount shall get reflected within prescribed time limit in the GSTN for BHEL to avail the input credit. If the GST Credit is reversed/ denied/ delayed to BHEL due to non-receipt/delayed receipt of Services and/or tax invoice or due to expiry of timeline prescribed in GST law or due to any other factor for availing such Input Tax Credit (ITC) or for any other reason arising out of the act directly attributable to the Contractor, GST amount shall be recoverable from Contractor from any dues payable to the Contractor along with any interest levied/ leviable on BHEL.
6. Statutory variation, if any, on account of GST will be payable by BHEL at actuals on submission of documentary evidence.
7. TDS under Income Tax Act/GST Act shall be deducted as per applicable rates unless Exemption certificate, if applicable, from the appropriate Authority is furnished to BHEL along with the Invoice.
8. **New Taxes & duties:**

If any new tax or duty is levied by the Central/State Government/ Municipality/Local Authority and becomes directly applicable on items specified in the Bill of Quantities, full reimbursement shall be made subject to submission of documentation as per statute.

5.0 QUANTITY AND PRICE VARIATION

The quantities indicated in “Bill of Quantity” attached with the tender are indicative only and individual quantity may vary up to any extent. Unit price will be firm and no price escalation is payable throughout the execution / extended period of the rate contract.

The total contract value is subject to variations depending upon the actual requirement. However, total executed value should not exceed beyond 30% of total contract value.

6.0 FINALIZATION OF RATE CONTRACT AND ALLOCATION OF JOB:

- 6.1 BHEL does not bind itself to accept the lowest or any tender but reserves the right to accept /reject any tender without assigning any reason thereof. The offer will be evaluated on overall L1 basis.

7.0 PERIOD OF RATE CONTRACT:

The rate contract shall be valid for 2 years, effective from the date of issue of LOI. However, BHEL may renew the contract for a further three months/ or part thereof with mutual consent. BHEL shall reserve the right and option to effect premature termination of this rate contract at any point of time, if felt necessary without any financial implication on BHEL.

The contract shall be valid for the project sites where services of testing commissioning sought in the duration of the Rate contract.

A separate work order shall be issued for each particular project. The project specific BOQ shall be furnished to successful bidders on case to case basis. The contract value for each project specific case will be work out as per the rate contract.

8.0 ADDITIONAL EXPENDITURE AND LOSS/ DAMAGE:

In case any additional expenditure is incurred in the works arising out of the faulty execution of the works by the contractor, such additional expenditure shall be borne by the contractor.

If due to contractor's personnel carelessness, negligence, non-observance of safety precautions, 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.

9.0 PROTECTION OF WORK & INSURANCE

Contractor shall effectively protect his work, testing instruments, material from theft, damage or tempering at his own expenses till the work is finally taken over by the BHEL/Owner.

Contractor shall take insurance cover(s) to cover his testing instruments, Assets, workmen compensation and third party liability. The contractor shall make available the original insurance cover(s) to the Engineer for necessary verification before commencement of work.

10.0 TESTING ENGINEER/ MANPOWER AND INSTRUMENTS:

- 10.1 On receipt of a specific work order and intimation of readiness of site and requirement of resources for testing, the contractor will depute his team of engineers/ technicians to site who will report to BHEL's testing engineers/ site in charge.
- 10.2 Contractor has to depute qualified personnel to BHEL's site who will present their credentials/ licence/ certificates to BHEL's testing engineer/ Site Incharge.
- 10.3 Commissioning team members shall not be allowed to be changed unless commissioning engineer/other staff are found incompetent & sick. Under such circumstances contractor has to supply replacement of engineer within 5 days. Contractor shall obtain prior permission from BHEL before releasing his manpower from site.
- 10.4 Contractor's manpowers are expected to conduct themselves in most professional/ethical manner and must follow the directives given to them by BHEL's testing engineer/ site in charge.
- 10.5 If during the currency of the work any member of contractor's team is found unqualified/ behaving in unethical / unacceptable/ working in non-professional ways then BHEL reserves the right to expel such person from site. In such cases contractor has to provide alternate manpower qualified for the work within 72 hours on receipt of such information/ notice by e-mail/ phone/ letter.
- 10.6 In case alternate engineer/technician is not provided within stipulated time then the penalty equal to double the man hour rate given in contract BOQ will be imposed on the contractor.

- 10.7 If such alternate manpower is not provided within the time required by BHEL/ its customer then BHEL reserves the right to call such manpower from alternate source at the risk & cost of the contractor.
- 10.8 The contractor shall provide list of testing instruments to BHEL before the commencement of work at site. These testing instruments shall not be removed from site without the written permission of the owner/BHEL.

11.0 COMMUNICATION:

The Contractor will make his own arrangement for all his communication needs such as telephone, fax, internet etc.

12.0 LD / Penalty

- 12.1 If the tenderer fails to provide services within the initial mobilization period (07 days) fixed in the tender or as indicated in Work Order or at any time repudiates the contract then BHEL, without prejudice to any other right or remedy available to it under the contract, may at its discretion to recover from the tenderer, liquidated damages and not by way of penalty, a sum of ½ % (half percentage) of contract value of the individual work order per day of delay in mobilization, subject to ceiling of 10% of the contract value of the individual work order along with applicable GST (if any) . Once the maximum limit of delay is reached (i.e. 20 days of delay) BHEL may consider termination of the contract and forfeiture of the Security deposit.
- 12.2 If during the currency of the work any member of contractor's team is found unqualified/ behaving in unethical / unacceptable/ working in non-professional ways then BHEL reserves the right to expel such person from site. In such cases contractor has to provide alternate manpower qualified for the work within 72 hours on receipt of such information/ notice by e-mail/ phone/ letter. In case alternate engineer/technician is not provided within stipulated time then the penalty equal to double the item rate given in contract BOQ will be imposed on the contractor.
- 12.3 The sum total of these recoveries under above clauses 12.1 & 12.2 shall be limited to maximum 15% of the contract value of the individual work.

13.0 Model Conciliation Clause For Conducting Conciliation Proceedings Under The BHEL Conciliation Scheme, 2018

The Parties the if at any time (whether before, during or after the arbitral or judicial proceedings), any Disputes (which terms shall means and include any dispute, difference, question or disagreement arising in connection with construction, meaning, operation, effect, interpretation or breach of the agreement, contract or the Memorandum of Understanding (delete whichever is inapplicable), which the parties unable to settle mutually), arise inter-se the Parties, the same may, be refereed by either party to conciliation to be conducted through Independent Experts Committee to be appointed by competent authority of BHEL from the BHEL Panel of Conciliators.

Notes:

1. No serving or a retired employee of BHEL/Administrative Ministry of BHEL shall be included in the BHEL Panel of Conciliators.

2. Any other person(s) can be appointed as Conciliator(s) who is/are mutually agreeable to both the parties from outside the BHEL Panel of Conciliators.

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 Annexure-A* to this GCC.

The Annexure-A together with its appendices will be treated as if the same is part and parcel hereof and shall be as effectual as if set out herein in these GCC.”

C. Guidelines for settlement of claims for compensation on accidents

The amount of compensation paid by BHEL under its guidelines on Settlement of claims for compensation on accidents as applicable for BHEL, i.e. ` 10,00,000/- (Rs Ten Lakh) in the event of death or permanent disability resulting from Loss of both limbs and ` 7,00,000/-(Rs Seven Lakh) in the event of permanent disability: shall be recoverable in full from the contractor, agency or firm, if the accident is attributable to negligence of contractor, agency or firm or any of its employees, except in case of work/ service contract etc. being of less than ` 5,00,000/- value, in which case the entire amount of compensation shall be borne by BHEL.

D. The Clause No. B.15.0 “Arbitration” of Conditions of contract for ETC works stands deleted. Now the modified clause shall be read as below:

- (i) 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 TBG, BHEL, Noida and if the Head TBG is unable or unwilling to act, to the sole arbitration of some other person appointed by the Head TBG willing to act as such arbitrator.

A party wishing to commence arbitration proceeding shall invoke Arbitration Clause by giving 60 days notice to the other party. The notice invoking arbitration shall

specify all the points of disputes with details of the amount claimed to be referred to arbitration at the time of invocation of arbitration and not thereafter.

There will be no objection if the arbitrator so appointed is an employee of BHEL and he had to deal with the matters to which the contract relates, in the course of his duties. The arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason such Head 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 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.

The provisions of Indian Arbitration and Conciliation Act 1996 or any statutory modification or re-enactment thereof and the rules made thereunder 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 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 at New Delhi.

The award of the arbitrator shall be final, conclusive and binding all parties to this contract, subject to the provisions of the Arbitration and Conciliation Act, 1996.

Laws governing the Contract:

The contract shall be governed by the Indians Laws for the time being in force.

NOTE: -The Authority appointing the arbitrator should not be lower in rank than the Authority accepting the Agreement.

- (ii) In case of Contract with Public Sector Enterprise (PSE) or a Government Department through Permanent Machinery of Arbitrators (PMA) in the department of Public Enterprises, the following shall be applicable:

In the event of any dispute or difference relating to the interpretation and application of the provisions of the Contract, such dispute or difference shall be referred to by either party to the arbitration of one of the arbitrators in the department of public enterprises. The award of the arbitrator shall be binding upon the parties to the dispute, provided, however, any party aggrieved by such award may make further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law and Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary or Additional Secretary when so authorized by the Law Secretary, whose decision shall bind the parties hereto finally and conclusively.

- (iii) The cost of arbitration shall be equally by the parties.
- (iv) Neither party shall be entitled for any interest including pre-reference or pendent-lite interest on its claims and any claim for such interest made by any party shall be void.

14.0 FACILITIES PROVIDED TO MSEs

- (i) Following facilities shall be provided to MSEs
 - a) Exemption from submission of EMD
- (ii) "MSE suppliers can avail the intended benefits only if they submit along with the offer, attested copies of either EM II certificate having deemed validity (five years from the date of issue of acknowledgement in EM II) or valid NSIC certificate or Udyog Aadhar Memorandum/ Udyam Registration Certificate or or EM-II certificate along with attested copy of a CA certificate applicable for the relevant financial year (latest audited). Date to be reckoned for determining the deemed validity will be the date of bid opening (Part 1 in case of two part bid). Non submission of such documents will lead to consideration of their bid at par with other bidders. No benefit shall be applicable for this enquiry if any deficiency in the above required documents are not submitted before price bid opening. If the tender is to be submitted through e-procurement portal, then the above required documents are to be uploaded on the portal. Documents should be notarized or attested by a Gazetted officer.

All other terms and conditions of tender shall remain unchanged.

PROFORMA OF BANK GUARANTEE (in lieu of SECURITY DEPOSIT)

In consideration of Bharat Heavy Electricals Limited (hereinafter referred to as the 'Employer' which expression shall unless repugnant to the context or meaning thereof, include its successors and permitted assigns) incorporated under the Companies Act, 1956 and having its registered office at BHEL House, Siri Fort, New Delhi-110049 through its Unit at BHEL, Transmission Business Group, Noida (name of the Unit) having agreed to exempt _____ (Name of the Vendor / Contractor / Supplier) with its registered office at _____¹ (hereinafter called the said "Contractor" which term includes supplier), from demand under the terms and conditions of the Contract reference No. _____ dated _____² valued at Rs.³ (Rupees) (hereinafter called the said Contract), of Security Deposit for the due fulfilment by the said Contractor of the terms and conditions contained in the said Contract, on production of a Bank Guarantee for Rs.⁴ (Rupees only),

We _____ (indicate the name and address of the Bank) having its Head Office at _____ (address of the head Office) (hereinafter referred to as the Bank), at the request of _____ [Contractor(s)], being the Guarantor under this Guarantee, do hereby irrevocably and unconditionally undertake to forthwith and immediately pay to the Employer, an amount not exceeding Rs. _____ without any demur, immediately on demand from the Employer and without any reservation, protest, and recourse and without the Employer needing to prove or demonstrate reasons for its such demand

Any such demand made on the bank, shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs. _____.

We undertake to pay to the Employer any money so demanded notwithstanding any dispute or disputes raised by the Contractor(s) in any suit or proceeding pending before any Court or Tribunal or Arbitrator or any other authority, our liability under this present being absolute and unequivocal.

The payment so made by us under this guarantee shall be a valid discharge of our liability for payment hereunder and the Contractor(s) shall have no claim against us for making such payment.

We, further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said Contract and that it shall continue to be enforceable till all the dues of the Employer under or by virtue of the said Contract have been fully paid and its claims satisfied & the Employer certifies that the terms and conditions of the said Contract have been fully and properly carried out by the said contractor(s) or acceptance of the final bill or discharge of this guarantee by the Employer, whichever is earlier. This guarantee shall initially remain in force up to and including _____⁵ and shall be extended from time to time for such period as may be desired by the Employer. Unless a demand or claim under this guarantee is made on us in writing on or before the _____⁶, (3 months more than the present date of validity of Bank Guarantee) we shall be discharged from all the liability under this guarantee thereafter.

We, _____ (indicate the name of the Bank) further agree with the Employer that the Employer shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Contract or to extend time of 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 the Employer against the said contractor(s) and to forbear or enforce any of the terms and conditions relating to the said Contract and we shall not be relieved from

our liability by any 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 the Employer or any indulgence by the Employer to the said contractor(s) or by any such matter or thing whatsoever which under the law relating to sureties would but for this provision have effect of so relieving us.

The Bank also agrees that the Employer at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Contractor and notwithstanding any security or other guarantee that the Employer may have in relation to the Contractor's liabilities.

This Guarantee shall not be determined or affected by liquidation or winding up, dissolution or change of constitution or insolvency of the Contractor but shall in all respects and for all purposes be binding and operative until payment of all money payable to the Employer in terms thereof. This guarantee will not be discharged due to the change in the constitution of the Bank or the Contractor(s).

We,..... BANK lastly undertake not to revoke this guarantee during its currency except with the previous consent of the Employer in writing.

Notwithstanding anything to the contrary contained hereinabove:

- a) The liability of the Bank under this Guarantee shall not exceed.....⁴
- b) This Guarantee shall be valid up to⁵
- c) Unless the Bank is served a written claim or demand on or before⁶ all rights under this guarantee shall be forfeited and the Bank shall be relieved and discharged from all liabilities under this guarantee irrespective of whether or not the original bank guarantee is returned to the Bank.

We, _____ Bank, have power to issue this Guarantee under law and the undersigned as a duly authorized person has full powers to sign this Guarantee on behalf of the Bank.

Date _____ Day of _____
for _____ (indicate the name of the Bank) _____

(Signature of Authorised signatory)

¹ ADDRESS OF THE VENDOR /CONTRACTOR / SUPPLIER .

² DETAILS ABOUT THE NOTICE OF AWARD/CONTRACT REFERENCE

³ CONTRACT VALUE

⁴ BG AMOUNT IN FIGURES AND WORDS

⁵ VALIDITY DATE (At least 3 months more than completion period)

⁶ DATE OF EXPIRY OF CLAIM PERIOD (At least 3 months more than the present date of validity of BG)

Notes:

- 1 The expiry of claim period shall be at least 3 months more than the validity date. It may be

ensured that the same is in line with the agreement/ contract entered with the Vendor.

2 The BG should be on Non-Judicial Stamp paper/e-stamp paper of appropriate value as per Stamp Act prevailing in the State(s) where the BG is submitted or is to be acted upon or the rate prevailing in the State where the BG was executed, whichever is higher. The Stamp Paper/e-stamp paper shall be purchased in the name of Vendor/Contractor/Supplier /Bank issuing the guarantee.

3 In Case of Bank Guarantees submitted by Foreign Vendors:

- a. **From Nationalized/Public Sector / Private Sector/ Foreign Banks (BG issued by Branches in India)** can be accepted subject to the condition that the Bank Guarantee should be enforceable in the town/city or at nearest branch where the Unit is located i.e. Demand can be presented at the Branch located in the town/city or at nearest branch where the Unit is located.
- b. **From Foreign Banks (wherein Foreign Vendors intend to provide BG from local branch of the Vendor country's Bank)**
 - b.1 In such cases, in the Tender Enquiry/ Contract itself, it may be clearly specified that Bank Guarantee issued by **any of the Consortium Banks only** will be accepted by BHEL. As such, Foreign Vendor needs to make necessary arrangements for issuance of Counter- Guarantee by Foreign Bank in favour of the Indian Bank's (BHEL's Consortium Bank) branch in India. It is advisable that all charges for issuance of Bank Guarantee/ counter- Guarantee should be borne by the Foreign Vendor. The tender stipulation should clearly specify these requirements.
 - b.2 In case, Foreign Vendors intend to provide BG from Overseas Branch of our Consortium Bank (e.g. if a BG is to be issued by SBI Frankfurt), the same is acceptable. However, the procedure at sl.no. b.1 will required to be followed.

PROFORMA OF BANK GUARANTEE (in lieu of EARNEST MONEY if permissible in NIT)

(On non-Judicial paper of appropriate value)

Bank Guarantee No.....

Date.....

To,

M/s Bharat Heavy Electricals Limited
Transmission Business Group (TBG)
5th Floor, Advant Navis IT Business Park
Plot No. 7, Sector-142, Expressway Noida,
UP-201305

Dear Sirs,

In accordance with the terms and conditions of Invitation for Bids/Notice Inviting Tender No.....¹(Tender Conditions), M/s having its registered office at² (hereinafter referred to as the 'Tenderer'), is submitting its bid for the work of³ invited by M/s Bharat Heavy Electricals Limited through its Unit at BHEL, Transmission Business Group, Noida.

The Tender Conditions provide that the Tenderer shall pay a sum of Rs as Earnest Money Deposit in the form therein mentioned. The form of payment of Earnest Money Deposit includes Bank Guarantee executed by a Scheduled Bank.

In lieu of the stipulations contained in the aforesaid Tender Conditions that an irrevocable and unconditional Bank Guarantee against Earnest Money Deposit for an amount of Rs.....⁴ is required to be submitted by the Tenderer as a condition precedent for participation in the said Tender and the Tenderer having approached us for giving the said Guarantee,

We, the.....[Name & address of the Bank]

having our Registered Office at.....(hereinafter referred to as the Bank) being the Guarantor under this Guarantee, hereby irrevocably and unconditionally undertake to forthwith and immediately pay to the Employer without any demur, merely on your first demand any sum or sums of Rs.⁴ (in words Rupees.....) without any reservation, protest, and recourse and without the beneficiary needing to prove or demonstrate reasons for its such demand.

Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs.

We undertake to pay to the Employer any money so demanded notwithstanding any dispute or disputes raised by the Vendor/Contractor/Supplier in any suit or proceeding pending before any Court or Tribunal, Arbitrator or any other authority, our liability under this present being absolute and unequivocal.

The payment so made by us under this Guarantee shall be a valid discharge of our liability for payment hereunder and the Tenderer shall have no claim against us for making such payment.

We Bank further agree that the Employer shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Tender or to extend the time of submission of from time to time or to postpone for any time or from time to time any of the powers exercisable by the Employer against the said Tenderer and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Tenderer or for any forbearance, act or omission on the part of the Employer or any indulgence by the Employer to the said Tenderer or by any such matter or thing whatsoever which under the law relating to sureties would but for this provision have effect of so relieving us.

The Bank also agrees that the Employer at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Tenderer and notwithstanding any security or other guarantee that the Employer may have in relation to the Tenderer's liabilities.

This Guarantee shall be irrevocable and shall remain in force upto and including.....⁵ and shall be extended from time to time for such period as may be desired by the Employer.

This Guarantee shall not be determined or affected by liquidation or winding up, dissolution or change of constitution or insolvency of the Tenderer but shall in all respects and for all purposes be binding and operative until payment of all money payable to the Employer in terms hereof. However, unless a demand or claim under this Guarantee is made on us in writing on or before the⁶ we shall be discharged from all liabilities under this Guarantee.

We, Bank lastly undertake not to revoke this guarantee during its currency except with the previous consent of the Employer in writing.

Notwithstanding anything to the contrary contained hereinabove:

- a) The liability of the Bank under this Guarantee shall not exceed.....⁴
- b) This Guarantee shall be valid up to⁵
- c) Unless the Bank is served a written claim or demand on or before⁶ all rights under this guarantee shall be forfeited and the Bank shall be relieved and discharged from all liabilities under this guarantee irrespective of whether or not the original bank guarantee is returned to the Bank.

We, Bank, have power to issue this Guarantee under law and the undersigned as a duly authorized person has full powers to sign this Guarantee on behalf of the Bank.

For and on behalf of

(Name of the Bank)

Date.....

Place of Issue.....

- 1 Details of the Invitation to Bid/Notice Inviting Tender
- 2 Name and Address of the Tenderer
- 3 Details of the Work
- 4 BG Amount in words and Figures
- 5 Validity Date (At least six months from date of tender opening)

6 Date of Expiry of Claim Period (At least 3 months more than the present date of validity of BG)

Note:

- 1 The Bank Guarantee should be valid for at least six months from date of tender opening. The expiry of claim period shall be at least 3 months more than the validity date. It may be ensured that the same is in line with the agreement/ contract entered with the Vendor.
- 2 The BG should be on Non-Judicial Stamp paper/e-stamp paper of appropriate value as per Stamp Act prevailing in the State(s) where the BG is submitted or is to be acted upon or the rate prevailing in the State where the BG was executed, whichever is higher. The Stamp Paper/e-stamp paper shall be purchased in the name of Vendor/Contractor/Supplier /Bank issuing the guarantee.
- 3 **In Case of Bank Guarantees submitted by Foreign Vendors-**
 - a. **From Nationalized / Public Sector / Private Sector/ Foreign Banks (BG issued by Branches in India)**
can be accepted subject to the condition that the Bank Guarantee should be enforceable in the town/city or at nearest branch where the Unit is located i.e. Demand can be presented at the Branch located in the town/city or at nearest branch where the Unit is located.
 - b. **From Foreign Banks (wherein Foreign Vendors intend to provide BG from local branch of the Vendor country's Bank)**
 - b.1 In such cases, in the Tender Enquiry/ Contract itself, it may be clearly specified that Bank Guarantee issued by **any of the Consortium Banks only** will be accepted by BHEL. As such, Foreign Vendor needs to make necessary arrangements for issuance of Counter- Guarantee by Foreign Bank in favour of the Indian Bank's (BHEL's Consortium Bank) branch in India. It is advisable that all charges for issuance of Bank Guarantee/ counter- Guarantee should be borne by the Foreign Vendor. The tender stipulation should clearly specify these requirements.
 - b.2 **In case, Foreign Vendors intend to provide BG from Overseas Branch of our Consortium Bank (e.g. if a BG is to be issued by SBI Frankfurt), the same is acceptable. However, the procedure at sl.no. b.1 will required to be followed.**
 - b.3 The BG issued may preferably be subject to Uniform Rules for Demand Guarantees (URDG) 758 (as amended from time to time). The BG Format provided to them should clearly specify the same.