

PROFORMA OF BANK GUARANTEE (in lieu of BID BOND)

In consideration of the _____¹ (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 _____, India through its Unit _____ at _____ entering with _____, a company in India under the Indian Companies Act, 1956 and having its registered Office at _____² (hereinafter called the said "L,ESC (Licensor and Engineering Sub Contractor)" which expression shall unless repugnant to the context or meaning thereof, include its successors and permitted assigns) from demand under the terms and conditions of the Memorandum of Understanding dated _____ valued at INR _____⁴ plus GST⁴ (hereinafter called the said MoU) of Bid Bond for the due fulfilment by the said "Licensor and Engineering Sub Contractor" of the terms and conditions contained in the said MoU for _____ (*hereinafter called as project*) on production of a Bank Guarantee for INR _____⁵. The "Licensor and Engineering Sub Contractor" has agreed to comply the terms and conditions of the MOU as and when sought by the employer.

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 _____ do hereby undertake to pay to the Employer an amount unconditional or without any demur not exceeding INR _____ in the event of any breach by the said "Licensor and Engineering Sub Contractor" of any of the terms and conditions contained in the said MoU.

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 the Employer. 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 INR _____.

We undertake to pay to the Employer any money so demanded notwithstanding any dispute or disputes raised by the "Licensor and Engineering Sub Contractor" or supplier in any suit or proceeding pending before any Court or Tribunal relating thereto 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 "Licensor and Engineering Sub Contractor" 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 submission of contract performance bank guarantee according to the said MOU in the event Employer is successful in getting the order/ contract from _____ and that it shall continue to be enforceable till all the dues of the Employer under or

by virtue of the said MOU have been fully paid and its claim satisfied or discharged or till _____⁶ office/Department/Division of Employer certifies that the terms and conditions of the said MoU have been fully and properly carried out by the said "Licensor and Engineering Sub Contractor". Unless a demand or claim under this guarantee is made on us in writing on or before the _____⁷ 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 MoU or to extend this bank guarantee in case the order is not finalised by _____ for this Project within a period of six months or to postpone for any time or from time to time any of the powers exercisable by the Employer against the said "Licensor and Engineering Sub Contractor " and to forbear or enforce any of the terms and conditions relating to the said MoU and we shall not be relieved from our liability by any reason of any such variation or extension being granted to the said "Licensor and Engineering Sub Contractor or for any forbearance, act or omission on the part of the Employer or any indulgence by the Employer to the said "Licensor and Engineering Sub Contractor " 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.

This guarantee will not be discharged due to the change in the constitution of the Bank or "Licensor and Engineering Sub Contractor".

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 INR _____⁸
- b) This Guarantee shall be valid up to _____⁹
- c) Unless the Bank is served a written claim or demand on or before _____¹⁰ 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, _____(indicate the name of the Bank) _____ lastly undertake not to revoke this guarantee during its currency except with the previous consent of the Employer in writing.

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

(Signature of Authorised signatory)

* This date to be indicated should not be earlier than 60 days after the date contemplated under the MOU.

¹ NAME AND ADDRESS OF THE EMPLOYER. I.e Bharat Heavy Electricals Limited

² NAME AND ADDRESS OF THE VENDOR /CFBC BOILER SUBCONTRACTOR / SUPPLIER .

³ DETAILS ABOUT THE NOTICE OF AWARD/MOU REFERENCE

⁴ PROJECT/SUPPLY DETAILS

⁵ BG AMOUNT IN FIGURES AND WORDS

⁶ VALIDITY DATE

⁷ DATE OF EXPIRY OF CLAIM PERIOD

⁸ BG AMOUNT IN FIGURES AND WORDS.

⁹ VALIDITY DATE

¹⁰ DATE OF EXPIRY OF CLAIM PERIOD

Note:

1. 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/ MOU 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 (BHEL's Consortium Bank). 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). In case, of Foreign Vendors, the BG Format provided to them should clearly specify the same.

- b.4 The BG should clearly specify that the demand or other document can be presented in electronic form.