Annexure A – General Terms & Conditions for Enq- 4101900024 dt 13.06.2019

1. PURCHASE PREFERENCE FOR MAKE IN INDIA

For this procurement, Public Procurement (Preference to Make in India), Order 2017 dated 15.06.2017 & 28.05.2018 and subsequent Orders issued by the respective Nodal Ministry shall be applicable even if issued after issue of this NIT but before finalization of contract / PO / WO against this NIT. In the event of any Nodal Ministry prescribing higher or lower percentage of purchase preference and / or local content in respect of this procurement, same shall be applicable.

In case item is divisible, following procedure will be followed-

- Among all qualified bids, the lowest bid will be termed as L1. If L1 is from a local supplier, the contract for full quantity will be awarded to L1.
- If L1 bid is not from a local supplier, 50% of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the local suppliers, will be invited to match the L1 price for the remaining 50% quantity subject to the local supplier's quoted price falling within the margin of purchase preference, and contract for that quantity shall be awarded to such local supplier subject to matching the L1 price. In case such lowest eligible local supplier fails to match the L1 price or accepts less than the offered quantity, the next higher local supplier within the margin of purchase preference shall be invited to match the L1 price for remaining quantity and so on, and contract shall be awarded accordingly. In case some quantity is still left uncovered on local suppliers, then such balance quantity may also be ordered on the L1 bidder.

In case item is not divisible, following procedure will be followed-

- Among all qualified bids, the lowest bid will be termed as L1. If L1 is from a local supplier, the contract will be awarded to L1.
- If L1 is not from a local supplier, the lowest bidder among the local suppliers, will be invited to match the L1 price subject to local supplier's quoted price falling within the margin of purchase preference, and the contract shall be awarded to such local supplier subject to matching the L1 price.
- In case such lowest eligible local supplier fails to match the L1 price, the local supplier with the next higher bid within the margin of purchase preference shall be invited to match the L1 price and so on and contract shall be awarded accordingly. In case none of the local suppliers within the margin of purchase preference matches the L1 price, then the contract may be awarded to the L1 bidder.

Document certifying local content and penal action in case of wrong declaration by suppliers.

- The local supplier at the time of tender, bidding or solicitation shall be required to provide self-certification on their letter head certified by the authorized signatory of the bidder that the item offered meets the minimum local content and shall give details of the location(s) at which the local value addition is made.
- In cases of procurement for a value in excess of Rs. 10 crores, the local supplier shall be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content.
- False declarations will be in breach of the Code of Integrity under Rule 175(1)(i)(h) of the General Financial Rules for which a bidder or its successors can be debarred for up to two years as per Rule 151 (iii) of the General Financial Rules along with such other actions as may be permissible under law.
- A supplier who has been debarred by any procuring entity for violation of the provisions of the Public Procurement (Preference to Make in India), Order 2017 shall not be eligible for preference for procurement by any other procuring entity for the duration of the debarment. The debarment for such other procuring entities shall take effect prospectively from the date on which it comes to the notice of other procurement entities, the debarment takes effect prospectively from the date of uploading on the website(s) of The Department of Expenditure, GOI in such a manner that ongoing procurements are not disrupted.

- The onus of submission of appropriately certified documents lies with the bidder and BHEL shall not have any liability to verify the contents and will not be responsible for the same. However, in case BHEL has any reason to doubt the authenticity of the Local Content, BHEL reserves the right to obtain the complete back up calculations before award of contract failing which the bid shall be rejected.

2. PURCHASE PREFERENCE FOR MSE SUPPLIERS.

- Purchase preference for local MSE's quoting in the tender will be 25%.
- Within the 25% reservation for local MSE's, 3% reservation will be applicable for women owned MSE's and 6.25% reservation will be applicable for MSE's owned by SC / ST.
- Payment for MSE Indigenous vendors will be as per MSMED Act, 2006

Document to be submitted as proof of MSE.

MSE suppliers can avail the intended benefits only if they submit along with the offer, attested / notarized copies (by a Gazetted officer) of anyone of the following documents along with copy of UAM certificate-

- Valid EM II certificate having deemed validity (5 years from the date of issue of acknowledgement in EM II).
- Valid NSIC certificate.
- Copy of CA certificate (in BHEL's standard format) 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 the Enquiry if any deficiency in the above required documents are not submitted before price bid opening. However, credentials of all MSE suppliers will be verified before considering the intended benefits for MSE suppliers at the time of tender evaluation.

3. BHEL STANDARD GUARANTEE CLAUSE

The materials are to be guaranteed for satisfactory performance for a period of 24 months from the date of dispatch or 18 months from the date of commissioning / putting into use whichever is earlier and if any defect is noticed during the above period, the same shall be rectified / replaced free of cost on FOR destination basis within a reasonable time, maximum limited to the agreed delivery period. To this effect a guarantee certificate should be sent along with the dispatch documents in the event of an order.

4. CANCELLATION / TERMINATION OF CONTRACT, DEFAULT / BREACH OF CONTRACT AND RISK PURCHASE

In case of abnormal delays (beyond the maximum late delivery period as per Penalty clause) in supplies / defective supplies or non-fulfilment of any other terms and conditions given in Purchase Order as enumerated subsequently in this clause, Purchaser shall be entitled to cancel the Order / Contract either in whole or portion thereof without compensation to Seller / Contractor and if the Purchaser so desires, may procure upon such terms and in such manner as deemed appropriate, stores not so delivered or others of similar description where stores exactly complying with particulars are not, in the opinion of the Purchaser, which shall be final, readily procurable, at the risk and cost of the Seller / Contractor and the Seller / Contractor shall be liable to the Purchaser for any excess costs provided that the Seller / Contractor shall continue the performance of the Order / Contract to the extent not cancelled under the provisions of this clause. The Seller / Contractor shall on no account be entitled to any gain on such repurchases. If bidder does not agree to the above Risk Purchase Clause, BHEL reserves the right to reject the offer.

Risk & Cost Clause, in line with Conditions of Contract may be invoked in any of the following cases:

a. Contractor / supplier's poor progress of the work vis-à-vis execution timeline as stipulated in the Contract, backlog attributable to contractor/ supplier including unexecuted portion of work / supply does not appear to be executable within balance available period (#) considering its performance of execution.

b. Withdrawal from or abandonment of the work by contractor before completion of the work as per contract.
c. Non completion of work / Non-supply by the Contractor / supplier within scheduled completion / delivery period as per Contract or as extended from time to time, for the reasons attributable to the contractor / supplier.
d. Termination of Contract on account of any other reason (s) attributable to Contractor / Supplier.
e. Assignment, transfer, subletting of Contract without BHEL's written permission resulting in termination of Contract or part thereof by BHEL.
f. Non-compliance to any contractual condition or any other default attributable to Contractor / Supplier.

Risk and Cost amount against Balance Work

Risk & Cost Amount= **[(A-B) + (A x H/100)]**

Where,

A= Value of Balance scope of Work / Supply (*) as per rates of new contract

B= Value of Balance scope of Work / Supply (*) as per rates of old contract being paid to the contractor / supplier at the time of termination of contract i.e. inclusive of PVC & ORC, if any.

H= Overhead Factor to be taken as 5

In case (A-B) is less than 0 (zero), value of (A-B) shall be taken as 0 (zero).

***(Balance scope of work / supply)**

Difference of Contract Quantities and Executed Quantities as on the date of issue of Letter for 'Termination of Contract', shall be taken as balance scope of Work / Supply for calculating risk & cost amount.

Contract quantities are the quantities as per original contract. If, Contract has been amended, quantities as per amended Contract shall be considered as Contract Quantities.

Items for which total quantities to be executed have exceeded the Contract Quantities based on drawings issued to contractor from time to time till issue of Termination letter, then for these items total Quantities as per issued drawings would be deemed to be contract quantities.

Substitute / extra items whose rates have already been approved would form part of contract quantities for this purpose. Substitute / extra items which have been executed but rates have not been approved, would also form part of contract quantities for this purpose and rates of such items shall be determined in line with contractual provisions.

However, increase in quantities on account of additional scope in new tender shall not be considered for this purpose.

Note: In case portion of work is being withdrawn, contract quantities pertaining to portion of work withdrawn shall be considered as 'Balance scope of work / supply' for calculating Risk & Cost amount.

LD against delay in executed work / supply in case of Termination of Contract in case of Risk and Cost Option

LD against delay in executed work / supply shall be calculated in line with LD clause of the contract for the delay attributable to contractor / supplier. For limiting maximum LD value, contract value shall be taken as Executed Value of work / supply.

Method for calculation of "LD against delay in executed work / supply" is given below.

a. Let the time period from scheduled date of start of work till termination of contract excluding the period of Hold (if any) not attributable to contractor / supplier= T1
b. Let the value of executed work / supply till the time of termination of contract= X
c. Let the Total Executable Value of work / supply for which inputs / fronts were made available to contractor / supplier and were planned for execution till termination of contract= Y
d. Delay in executed work / supply attributable to contractor/supplier i.e. T2= (1- X/Y) * T1

e. LD shall be calculated in line with LD clause of the Contract for the delay attributable to contractor / supplier taking "X" as Contract Value and "T2" as delay attributable to contractor / supplier.

Note: In case portion of work / supply is withdrawn, no LD shall be applicable for portion of work / supply withdrawn.

Recovery from Supplier

Recoveries from contractor / supplier on whom risk & cost has been invoked shall be made from the following:

a. Dues available in the form of Bills payable to contractor / supplier, SD, BG's against the same contract.
b. Dues payable to contractor / supplier against other contracts in the same Region / Unit / Division of BHEL.
c. Dues payable to contractor / supplier against other contracts in the different Region / Unit / division of BHEL.
d. Legal Options for recovery of dues payable by the supplier / contractor.

5. SUSPENSION OF BUSINESS DEALING

In order to protect the commercial interests of BHEL, it becomes necessary to take action against suppliers / contractors by way of suspension of business dealings, who either fail to perform or are in default without any reasonable cause, cause loss of business / money / reputation, indulge in malpractices, cheating, bribery, fraud or any other misconduct or formation of cartels so as to influence the bidding process or influence the price etc. Suspension of Business Dealings could be in the form of "Hold" or "Banning" a supplier / contractor or a bidder or an applicant for registration as a registered supplier. For this purpose, the abridged version of guidelines hoisted at website http://www.bhel.com/vender_registration/vender.php (Suspension of business dealings with suppliers / contractors) is being followed across all BHEL units. Vendors shall keep themselves aware of these guidelines before submission of their bid.

6. FORWARDING OF TEST CERTIFICATES & INSPECTION REPORTS

Test certificates (TC) along with Inspection Reports (IR) as called for in the TDC (Three ink signed originals) / approved Quality Plan shall be sent to Sr.Manager / Purchase (Fittings), BHEL Piping Centre immediately after the shipment / dispatch of items. Forthcoming section may please be refereed for detailed list of documents to be submitted to respective agencies in BHEL.

TC & IR shall be furnished for each batch of shipment / dispatch. If entire PO quantity is manufactured in one lot but dispatched in phased manner, original "IBR Form" should be submitted with the first consignment. For subsequent consignments, attested Xerox copy of IBR along with copies of TC and IR indicating invoice detail against which original TC and IR was handed over to BHEL shall be submitted. Soft copies of the all the test certificates shall also be submitted through email.

Year of code for the technical standards shall be latest and the specific year shall be indicated in the MTC's as well as applicable IBR Forms.

Additionally foreign vendors shall indicate the item description as "Boiler Components- Fittings" in all the dispatch documents like Bill of Lading, Invoice, Packing list, Country of origin certificate etc. Vendor shall negotiate the documents with bank only "For the net shipment value" (ie. invoice value excluding the LD value).

7. PAYMENT DOCUMENTS

In case of indigenous vendors

Payment shall be made against submission of the following documents-

a. Original GST compliant invoice and 2 copies of the same.
b. Original site acknowledged Lorry Receipt (Goods Receipt (GR) date for in case of BHEL Trichy stores).
c. Original inspection report and all original documents as called for in TDC / approved QP.

If one original certificate / LR is applicable for more than one invoice quantity / invoice, Xerox copy is acceptable with original correlation details on the Xerox copy with attestation by suppliers Quality in charge.

GST compliance-

a. GSTN registration number shall be indicated in all the invoices and invoices shall be in the format as specified / prescribed under GST laws. Invoices shall necessarily contain Invoice number (in case of multiple numbering system is being followed for billing like SAP invoice no, commercial invoice no etc., then the Invoice No which is linked / uploaded in GSTN network shall be clearly indicated), item description as per PO, Quantity, Rate, Value, applicable taxes with nomenclature (like IGST, SGST, CGST & UTGST) separately, HSN / SAC Code, etc.
b. All invoices shall bear the HSN Code for each item separately (Harmonized System of Nomenclature) / SAC code (Services Accounting Code).
c. A declaration to the effect that all invoice particulars are / were uploaded in the GSTN network / portal & all tax liability as per GST rules and regulations have been and will be discharged, shall be mentioned in the invoice. If not mentioned in the invoice, a separate declaration shall be submitted as per the requirement of BHEL.
d. In case of discrepancy in the data uploaded by supplier in the GSTN portal or in case of any shortages or rejection in the supply, then BHEL will not be able to avail the tax credit and will notify the supplier of the same. Supplier has to rectify the data discrepancy in the GSTN portal or issue credit note (details to be uploaded in GSTN portal) for the shortages or rejections in the suppliers, within the calendar month notified by BHEL.
e. For any such delay in availing of tax credit for reasons attributable to supplier (as mentioned above), interest (calculated @ SBI Base Rate + 6%) along with penalty (if any) will be deducted / recovered for the delayed period i.e. from the month of receipt till the month tax credit is availed, from the running bills. Incase GST credit is denied to BHEL due to any reason not attributable to BHEL, GST amount along with interest levied or leviable on BHEL will be recovered from payment due to vendor.
f. Under GST regime, BHEL has to discharge GST liability on LD recovered from suppliers/contractors. Hence applicable GST shall also be recoverable from suppliers/contractors on LD amount. For this Debit note will be issued by BHEL indicating the respective supply invoice number.

In case of foreign vendors

Payment shall be made against presentation of the following documents thru bank-

a. Original Bill of Lading (BL).
b. Original Invoice.
c. Packing List.
d. Country of origin certificate.

The following documents shall be forwarded to Sr.Manager / Purchase directly-

a. Original inspection report.
b. Original test certificates.
c. Guarantee certificate.

8. FORWARDING OF DISPATCH DOCUMENTS (APPLICABLE FOR FOREIGN VENDORS)

Dispatch documents and Test Certificates shall be forwarded as indicated below (details indicated are as applicable as on date and any revision to the same shall be communicated along with PO)-

1. BHEL Regional Operating Division (ROD)-

Copy of Invoice, Bill of Lading, Packing List, Country of origin certificate, Test Certificate (selected documents namely TPI covering letter, IBR Form IIIC and MTC only) to be mailed to the following persons in BHEL ROD for material clearance at Chennai Port-

a. Mr Santosh Kumar Jena – santoshj@bhel.in
b. Mr Velmurugan – vels@bhel.in
c. Mrs Shanthivasantha Rani – mshanthi@bhel.in

Mail copy mail shall also be sent to the following persons in Piping Centre.
a. Mr V Pradeep – vpradeep@bhel.in
b. Mr V Sundaram – vsundaram@bhel.in
c. Mrs M Ramya – mramya@bhel.in

Copy of above referred dispatch documents shall also be sent to Mr SS Rajan, BHEL ROD thru courier. The address of ROD division will be in BHEL Purchase Order. ROD's contact no 044 24374317 / 24374319.

All dispatch documents including BL shall be signed by competent authorities.

2. BHEL Piping Centre-
Copy of Invoice, Bill of Lading, Packing List, Country of origin certificate, Credit note for LD value (if LD is applicable) shall be mailed to the following persons at BHEL Piping Centre, Chennai-
a. Mr V Pradeep – vpradeep@bhel.in
b. Mr V Sundaram – vsundaram@bhel.in

Copies of Invoice, Bill of Lading, Packing List, Country of origin certificate, Credit note for LD value (if LD is applicable) along with one complete set of Original Test Certificates along with one copy shall be sent thru courier to Mr V Pradeep, Manager / Purchase, Piping Centre, Chennai.

Scanned copies of complete set of Test Certificates (TPI covering letter, IBR Form IIIC, MTC and all Inspection reports as called for in BHEL TDC / approved QP) shall be mailed to-
a. Mr V Pradeep – vpradeep@bhel.in
b. Mr V Sundaram – vsundaram@bhel.in

3. Bank-
Three sets of original Invoice & Packing list, one set of original Bill of Lading and Country of origin certificate, Credit note for LD value (if LD is applicable) along with one complete set of Test Certificate shall be forwarded thru Bank. The documents shall be negotiated with Bank only for the 'Net shipment value'. Net Shipment Value = Invoice value – LD value.

9. BILL OF ENTRY FILING (APPLICABLE FOR FOREIGN VENDORS)
Indian Customs has imposed a penalty on late filing of Bill of Entries (Air / Sea Shipments) by the importer @ INR 5,000/- per day (for Initial 03 days) & INR 10,000/- per day (thereafter). The maximum free time allowed for filing Bill of Entry is 24 hrs from the time of arrival of cargo at final port of discharge. The amount indicated is as prevailing on date. The actual penalty amount as prevailing on the date clearance shall be levied on the vendor if applicable.

The vendor should furnish the Non-Negotiable Documents (Air Way Bill / Bill of Lading, Error free Commercial Invoice, Packing List, Certificate of Origin) by mail and by post / courier to BHEL well in advance (ie. minimum 5 days prior to landing in case of sea and 2 days prior to landing in case of Air) at final port of discharge.

Vendor will be held responsible for the penalty arising against the late filing of Bill of entry due to-
a. Non-availability of Non-Negotiable Documents (NND's) before the cargo arrival

b. Discrepancy in documents
c. Short landing of consignments (For shipments on CFR Chennai Port)

For all shipments for the contracts (PO's) finalized on CFR Chennai Port basis-

a. Delivery Orders involving multiple agencies like liners / freight forwarders are not allowed. There must be a single agency office at the final discharge Port (Chennai) for issuing the Delivery Order to BHEL.
b. Detention / demurrage charges arising due to the delay in collection of Delivery Orders from multiple agencies of liner / freight forwarder also whose offices are not at available Chennai, the same amount will be deducted from vendor's bills only.
c. Bill of Lading should clearly endorse the detention free period and the same should be honoured by the freight forwarder and liner. Detention / demurrage if any due to non-acceptance of detention free period indicated in bill of lading will be to vendors account only.

Apart from the normal charges like Terminal Handling Charges, Container cleaning Charges, Delivery Order Charges at final port of discharge, other charges* indicated in delivery order will not be borne by BHEL. The liner / freight forwarders should be properly communicated by the vendor not to claim such charges for issuing Delivery Order. If the liner / freight forwarder claims such charges in their invoices, the same amount will be deducted from the vendor bills without any prior intimation in order to avoid the delay in Customs clearance.

*The likely additional / hidden costs or other charges (not payable by BHEL) as indicated above are-

a. CIC - Container Imbalance Charges / Surcharges
b. EIC - Equipment Imbalance Charge / Surcharges
c. CAF - Container / Currency Adjustment Factor
d. BAF - Bunker adjustment Factor
e. RDS - Rupee Depreciation Surcharge
f. CDS - Currency Depreciation Surcharge
g. ISPS - International Ship and Port Facility Security charges
h. OHS - Origin handling Charges
i. Port Congestion Charges