

BHARAT HEAVY ELECTRICALS LIMITED

SEAMLESS STEEL TUBE PLANT

TIRUCHIRAPPALLI – 620014 – INDIA.

GENERAL CONDITIONS OF CONTRACT Annexure – C FOR IMPORT SUPPLIER.

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1.0. Definitions :

Throughout these conditions and in the specifications the terms:

1.1. **'Purchaser'** means, the **Bharat Heavy Electricals Limited, Seamless Steel Tube Plant, Tiruchirappalli-620014, Tamil Nadu, India**, acting through the Head/ Materials Management.

1.2. **'Seller'** means, the Person or Company with whom the Order for the supply is placed and shall be deemed to include the Seller's Successors (approved by the Purchaser), Representatives, Heirs, Executors and Administrator, as the case may be.

1.3. **'Engineer'** or **'Inspecting Officer'** means the Person, Firm or Department, nominated by the Purchaser to inspect the stores on his behalf.

1.4. **'Contract'** shall mean and include the Tender, Letter of Acceptance, Agreement, together with any correspondence, modifying the Terms thereof of the General Conditions, Specifications, Schedules, if any, annexed. This also includes the Drawings, if any, enclosed or to be provided, or to be approved by the Purchaser or his Authorised Nominee and the samples and patterns, if any, to be provided under the provision of the Contract.

1.5. **'Specification'** shall mean the Specifications annexed to or issued with these General Conditions of Contract.

1.6. **'Stores'** shall mean the goods specified in the Contract, which the Seller has agreed to supply under the Contract.

2.1. **Parties to the Contract,** which is for the supply by the Seller to the Purchaser on the conditions set forth in the Contract, are Seller and the Purchaser named in the main body of the Contract.

2.2. Authority of Person signing documents :

A person signing the Contract, shall be deemed to warrant that he has authority to bind so, and if on enquiry, it appears that the person so signing had no authority to do so, Purchaser may without prejudice to other civil and criminal remedies, cancel the Contract and hold the Signatory liable for all costs and damages.

2.3. Notice on behalf of the Purchaser :

Notice on behalf of the Purchaser in connection with the Contract may be given by any Authorised Officer of the Plant dealing with the Contracts.

2.4. Preference to 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 preference and/or local content in respect of this procurement, the same shall be applicable.

3.1. Execution :

The whole Contract is to be executed in the most approved, substantial and workman-like manner to the entire satisfaction of the Purchaser.

3.2. Alterations :

The Purchaser or his Authorised Nominee may require such alterations to be made on the work during its progress, as he deems necessary. Should these alterations be such that either party to the Contract, consider an alteration in prices, such alteration shall not be carried out until amended prices have been submitted by the Seller and accepted by the Purchaser. Should the Seller proceed to manufacture such stores with alterations, without obtaining the consent in writing of the Purchaser to an amended price, the Seller shall be deemed to have agreed to supply the stores, at such price as may be considered reasonable by the Purchaser. In case of alterations, time of delivery has to be reconsidered.

4.0. Seller's Responsibility :

The Seller shall be solely responsible for the Execution of the Contract in all respects, in accordance with the Conditions of the Contract notwithstanding any approval, which the Engineer may have given to materials or other parts of work involved in the Contract or of tests carried-out, either by the Seller or by the Engineer.

5.0. Inspection :

The stores shall be of approved design and each part/component shall be thoroughly inspected and tested at Seller's Works before shipment and shall fully comply with relevant requirements of the Purchaser. The Test Certificates shall be one of the documents for operation of Letter of Credit and shall be submitted along with first set of documents for negotiation.

6.0. Facilities for inspection and test :

6.1. The Purchaser or his Authorised Nominee shall be entitled, at all reasonable times, during manufacture to inspect, examine and test at the Seller's premises, the material and workmanship of all stores to be supplied under the Contract, and if part of the stores is being manufactured on other premises, the Seller shall obtain for the Purchaser or his Authorised Nominee, permission to inspect, examine and test, as if the said stores were being manufactured at the Seller's premises. Such inspection, examination and testing if made, shall not release the Seller from any obligation under the Contract.

6.2. Where the Contract provides for tests on the premises of the Seller or any of his Sub-Contractors, the Seller shall provide such assistance, labour, materials electricity, fuel, stores, apparatus and instruments, as may be required, and as may be reasonably demanded to carry out such tests efficiently.

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- 6.3. The Seller shall give the Authorised Nominee reasonable notice, in writing, of the date and the place, at which any stores will be ready for testing as provided in the Contract.

7.0. **Certification of Inspection and Approval :**

No Stores will be considered ready for delivery until Purchaser or his Nominee shall have certified in writing that they have been inspected and approved by him. It shall be the responsibility of the Seller to ensure that only such goods, as have been duly inspected and approved by the Purchaser, are offered for arranging shipment to the Government of India's Forwarding Agents, and to furnish them a Certificate as under.

"Certified that the goods offered for arranging shipment have been duly inspected and approved by the Prescribed Authority, in accordance with the Terms of the Contract and a copy of the Inspection Certificate issued in this regard, is enclosed".

8.0. **Progress Report :**

The Seller shall render such report, as to the progress of the manufacture/supply, in such a form, as may be called for by the Purchaser. The submission and acceptance of these reports, shall not prejudice rights of the Purchaser in any manner.

9.0. **Transfer and Subletting :**

The Seller shall not sublet (except as may be customary in the trade concerned, in which case the Seller advise the Purchaser of the same), transfer, assign or otherwise part with the Contract or any part thereof, either directly or indirectly, without the previous written permission from the Purchaser. The Seller shall be entirely responsible for the work executed by the Sub-Contractor, if any. For this purpose, he shall at his own cost, ensure adequate inspection at their works, by an Inspection Organisation acceptable to the Purchaser.

10.0. **Guarantee :**

- 10.1. The Seller shall guarantee that the stores supplied shall comply fully with the specifications laid down for material, workmanship and performance. If any stores are found defective, the Purchaser shall submit his claim to the Seller within 12 (twelve) months from the date of arrival of the stores at Purchaser's site or within 18 (eighteen) months counting from the date of despatch from the Port of despatch, whichever is earlier. The Seller shall be given the necessary facility to investigate such claims. If they are proved to be faulty, the Seller at his option, either repair or replace within a period of 30 days by faultless stores at Seller's cost. All replacement parts shall be shipped by Seller C.I.F Indian Ports, from which point the Purchaser shall clear through Custom and take delivery at his expense to inland destination. If the Seller so desires, the defective stores can be taken over by his Representative in India for disposal, within a period of three months from the date of receipt of replacement stores. At the expiry of this period, no claim whatsoever shall lie on the Purchaser.

- 10.2. All the replacement stores shall also be guaranteed for a period of 12 (twelve) months from the date of arrival of stores at Purchaser's site.

- 10.3. The decision of the Purchaser in regard to the Seller's liability under this guarantee shall be final and conclusive.

11.0. **Performance Bank Guarantee :**

To fulfill guarantee conditions outlined in Clause (10) above, the Seller shall furnish a Bank Guarantee in the Proforma attached in Annexure-C from a Bank, approved by the Purchaser, for an amount equivalent to 10% of the Contract, along with first shipment documents. On the satisfactory performance and completion of the Contract in all respects, the Bank Guarantee will be returned to the Seller without any interest.

12.0. **Packing :**

The Stores shall be suitably painted for tropical conditions, duly ensuring prevention of damage or loss during transit and storage. The packages shall be provided with facilities for easy handling by mechanical means, if need be. For this, the packing specification adopted is also to be such as to obtain a clean AIR WAY BILL.

13.0. **Marking :**

All Packages shall be marked as per instructions given below, in **BOLD** letters in **English** language.

BHEL -- SSTP -- TIRUCHIRAPALLI (INDIA) -- PIN CODE: 620 014

CONTRACT No.	::
SELLER's NAME	::
CASE No.	::
GROSS DIMENSION IN CM	::
GROSS WEIGHT	::
NETT WEIGHT	::
TARE WEIGHT	::
BRIEF DESCRIPTION OF CONTENTS	::
SUGGESTED SLING MARKS	::
COUNTRY OF ORIGIN	::

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14.0. **Dimension and Weight :**

Specification of dimensions and weights in all places, shall be in **Metric system** and in **English** language.

15. 0. **Airfreight :** As per contract.

16.0. **Insurance :**

Insurance will be arranged by Purchaser, for which purpose, the details of consignment along with its value, shall be intimated by the Seller to the Purchaser (or the Seller shall make arrangement with the Freight Forwarders to inform the Purchaser), by FAX immediately after shipment of the consignment. The FAX shall be as per the specimen given below:

16.1. **Fax No. ++91-431-2520464/2520383**

Attn :: Head/MM/SSTP/BHEL/Tiruchirappalli-620014/Tamil Nadu/INDIA.

Please refer your Contract No. _____, dated _____, for _____.

Arrange insurance for ::

No. of Cases.	::
Weight (MT).	::
Value .	::
Airlines.	::
Flight No.	::
No. & Date of BL/AWB.	::

17.0. **Documents to be supplied by Seller :**

17.1 **On receipt of Order or along with Order Acknowledgement :**

The Seller shall furnish the break-up prices of the major components going into equipment. This information is required by the Purchaser to check up and admit the claims of the Seller, if part shipments are contemplated and also to facilitate clearance of the consignment through Customs after payment of Duties.

17.2. **Before Despatch :**

The Seller shall furnish the Packing dimensions of the consignment in Metric Units, along with Nett, Tare and Gross Weights of each package and special storage requirements, if any, on board the Aircraft.

17.3. **After Despatch :**

Immediately after despatch, the Seller shall furnish 4 (four) sets of Non-Negotiable copies of AWB and other documents referred to in the "Terms of Payment" Clause of the Contract, shall be air-mailed to Head/MM, Seamless Steel Tube Plant, Bharat Heavy Electricals Limited, Tiruchirappalli 620 014, Tamil Nadu, India, under 2 (two) separate successive despatches. In addition to the above, one set of Non Negotiable copies of AWB and other documents referred to in Clause 17, shall be air-mailed to the Port Consignee, viz.

**Senior Manager/Material Services
Bharat Heavy Electricals Ltd. / Port Clearance Wing
No. 165 - Thambu Chetty Street, Chennai-600001.
Tamil Nadu - INDIA.**

18.0. **Patent Infringement and Indemnity:**

The Seller shall at all times indemnify the Purchaser against all claims, which may be made in respect of the goods supplied, for infringement of any patent, design or trade-mark, provided always that in the event of any claim in respect of an alleged breach of a patent, registered design or trade mark, being made against the Purchaser, he shall notify the Seller of the same, and the Seller shall be at liberty, but at his own expense, to conduct negotiation for settlement of any litigation that may arise therefrom.

19.0. **Liquidated Damages :**

The time of delivery or despatch stipulated in the said schedule for delivery or despatch of the stores, shall be deemed to be the '**Essence of the Contract**'. Should the Seller fail to deliver the stores or any consignment thereof, within the period prescribed for such delivery, the Purchaser shall be entitled (by way of Liquidated Damages), for a sum of **half** percent of the price of any stores, which the Seller has failed to deliver, as aforesaid, for each and every week or part of a week, during which the delivery of such stores may be in arrears, subject to a maximum of **10 (ten)** percent of the total order value. **This amount is to be automatically deducted in invoice itself.**

20.0. **Cancellation Clause :**

Alternatively, at the option of the Purchaser, the Purchaser shall be entitled to purchase elsewhere, on account and at the risk of the Seller, the stores of any consignment thereof, which the Seller has failed to deliver as aforesaid, or if not available, the best and nearest available substitute thereof, or to cancel the Contract, and the Seller shall be liable for any loss or damage, which the Purchaser may sustain by reason of such failure on the part of the Seller.

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21.0. **Risk Purchase:**

The Cancellation of the Contract, as stated in the above Clause, may be either for whole or part of the Contract at Purchaser's option. In the event of the Purchaser terminating this Contract, in whole or part, he may procure upon such items and in such manner, as he deems appropriate supplies or services similar to those so terminated, and the Seller shall be liable to the Purchaser for any excess costs, for such similar supplies or services, provided that the Seller shall continue the performance of this Contract to the extent not terminated under the provisions of this Clause.

22.0. **Preferential delivery:**

It should be noted that if a Contract is placed on a higher Tenderer, in preference to the lowest acceptable Offer, in consideration of offer of the earlier delivery, the Seller will be liable to pay the Purchaser, the difference between the Contract rate and that of the lowest acceptable Tender, on the basis of final price/F.O.R. destination, including all other incidentals, in case of failure to complete supplies in terms of such Contract, within the date of delivery specified in the Tender and incorporated in the Contract. This is in addition and without prejudice to other rights under the Terms of Contract-

23.0. **Force Majeure:**

If at any time, during the continuance of this Contract, the performance in whole or part by either party, of any obligation under this Contract, shall be prevented or delayed by reason, of any war, hostile acts of the public enemy, civil commotion, sabotage, fire, explosions epidemics, quarantine restriction or acts of God (hereinafter referred to as events), then provided Notice of Happening of any such event is given by one party to other, within 21 days from the date of occurrence thereof. Neither party shall, by reason of such event, be entitled to terminate this Contract, nor shall either party have any claim for damages against the other, in respect of such non-performance and delay in performance, and delivery under the Contract shall be resumed as soon as practicable after such event has come to an end or ceased to exist. If the performance, in whole or part, of any obligation under this Contract is prevented or delayed by reason of any such event, claims for extension of time shall be granted for periods considered reasonable by the Purchaser, subject to prompt notification by the Seller to the Purchaser, of the particulars of the event and supply to the Purchaser, if required, of any supporting evidence. Any waiver of time, in respect of partial installment, shall not be deemed to be a waiver of time in respect of remaining deliveries.

24.0. **Customs Drawback:**

If by reason of a Customs Notification, published after the placing of the Contract, the stores to be supplied shall become, on exportation, subject to a Customs Drawback, in respect of duty paid on them, or on the material used in their manufacture, the Seller shall recover the amount of the Drawback and Contract price of the stores shall be reduced by the amount so recovered.

25.0. **Corrupt Gift and Payment of Commission:**

Any bribe, commission, gift or advantage given, promised or offered by or on behalf of the Seller, his Agents or Servants, any one of his or their behalf, to any Employee, Representative or Agents of the Purchaser, or any Person on his behalf, in relation to the execution of this or any other Contract with the Purchaser, shall, in addition to the criminal liabilities under the laws in force, be subject to the Contract cancellation, and all other Contracts with Purchaser and also payment of any loss resulting from any such cancellation, to the like extent as provided. In case of cancellation, the Purchaser shall be entitled to deduct the amount so payable from money otherwise to the Seller, under this or any other Contract. Any question of dispute as to the commission of any offence, under the present clause, shall be settled by the Purchaser, in such a manner and on such evidence or information as may be thought fit and sufficient and his decision shall be final and conclusive in the matter.

26.0. **Legal Interpretation:**

The Contract shall be governed by the Laws in India for the time being in force. To interpret all the Commercial Terms and Abbreviations used in the Contract, which have not been otherwise defined, the rules of "INCOTERMS 2010" shall be applied, unless and otherwise agreed by both the parties.

27.0. **Arbitration:**

All disputes or differences, whatsoever arising between the parties, out of or relating to the construction, meaning and operation or effect of this Contract, or the branch thereof, shall be settled by Arbitration, in accordance with the Rules of Arbitration of the Indian Council of Arbitration and the Award made in pursuance thereof, shall be binding on the parties.

28.0. **Set-off Clause:**

Payment shall be subject to deduction of any amount, for which the Seller is liable under this Contract or any other Contract, in respect of which the Bharat Heavy Electricals Ltd., Tiruchirapalli - 620 014, Tamil Nadu, India, is the Purchaser.