

DEFAULT/ BREACH OF CONTRACT, INSOLVENCY AND RISK PURCHASE

In case of delays (beyond the maximum late delivery period as per LD clause) in supplies, or if there be defective supplies or non-fulfilment of any other terms and conditions of the Contract as enumerated subsequently in this clause, then, without prejudice to its right to recover any expenses, losses or damages to which the Buyer may be put to incur or sustain by reason of the Seller/Contractor's default or breach of Order/Contract or to suspend business dealings with the Seller/Contractor in terms of the Buyers' Guidelines for Suspension of Business Dealings as applicable from time to time, the Buyer shall also be entitled to cancel the Order/ Contract either in whole or portion thereof without compensation to Seller. On the occurrence of any of the acts/omissions mentioned below, the Buyer may if it so desires, procure upon such terms and in such manner as deemed appropriate, plant/ equipment/ stores not so delivered or others of similar description where plant/ equipment/ stores exactly complying with particulars are not, in the opinion of the Buyer (which shall be final), readily procurable, at the risk and cost of the Seller.

The Seller shall be liable to the Buyer for any excess costs incurred thereof and the Seller shall continue the performance of the Order/Contract to the extent not cancelled under the provisions of this clause. The Seller shall on no account be entitled to any gain on such repurchases. If the Bidder does not agree to this Risk Purchase clause, BHEL reserves the right to reject the bid/offer of the Bidder.

The order/contract may be cancelled in whole or part thereof and Risk & Cost Clause in line with terms and conditions of PO/Contract may be invoked by the Buyer in any of the following cases:

- i. If the Seller/Contractor fails to deliver the goods or materials or any installment thereof within the period(s) fixed for such delivery or the Seller's poor progress of the supply/services vis-à-vis delivery/execution timeline as stipulated in the contract, backlog attributable to the Seller including unexecuted portion of supply does not appear to be executable within balance period available;
- ii. delivers goods or materials not of the contracted quality and failing to adhere to the contract specifications/execution methodology;
- iii. withdrawal from or repudiation/abandonment of the supply/services by the Seller before completion as per contract or if the Seller refuses or is unable to supply goods or materials covered by the order/Contract either in whole or in part or otherwise fails to perform the Order/Contract.
- iv. Non supply by the Seller within scheduled completion/delivery period as per contract or as extended from time to time for reasons attributable to the Seller;
- v. Termination of Contract on account of any other reason(s) attributable to the Seller.
- vi. Assignment, transfer, sub-letting of Contract without BHEL's written permission resulting in termination of Contract or part thereof by BHEL.
- vii. If the Seller be an individual or a Sole Proprietorship, in the event of death or insanity of the Seller.
- viii. If the Seller/Contractor being an individual or if a partnership firm thereof, shall at any time be adjudged insolvent or shall have a receiving order for administration of his estate made against him or shall take any proceeding for composition under any Insolvency Act for the time being in force or make any assignment of the order/Contract or enter into any arrangement or composition with his creditors or suspend payment or if the firm dissolved under the Partnership Act;
- ix. If the Seller/Contractor being a Company is wound up voluntarily or by order of a Court or a Receiver, Liquidator or Manager on behalf of the debenture holders and creditors is appointed or circumstances have arisen which entitles the Court of debenture holder and creditors to appoint a receiver, liquidator or manager
- x. Non- Compliance to any contractual condition or any other default attributable to the Seller.

Such defaulting vendor/Seller shall not be eligible to participate in re-tendering conducted on account of risk purchase made due to fault of such vendor/Seller.

BHEL's right to go for Risk and Cost, Calculation of Risk and Cost amount & LD, recovery options to BHEL are given in detail in Annexure-V hereto.

(RISK AND COST CLAUSE)

1. BHEL reserves the right to terminate the contract or withdraw portion of work and get it done through other agency, at the risk and cost of the contractor *after due notice of a period of 14 days' by BHEL* in any of the following cases:
 - i) If the Seller/Contractor fails to deliver the goods or materials or any instalment thereof within the period(s) fixed for such delivery or the Seller's poor progress of the supply/ services vis-a-vis delivery/execution timeline as stipulated in the Contract, backlog attributable to seller including unexecuted portion of supply does not appear to be executable within balance available period;
 - ii) Delivers goods or materials not of the contracted quality and failing to adhere to the contract specifications;
 - iii) Withdrawal from or repudiation/ abandonment of the supply/ services by Seller before completion as per contract or if the Seller refuses or is unable to supply goods or materials covered by the Order/Contract either in whole or in part or otherwise fails to perform the Order/Contract;
 - iv) Non-supply by the Seller within scheduled completion/delivery period as per Contract or as extended from time to time, for the reasons attributable to the Seller;
 - v) Termination of Contract on account of any other reason (s) attributable to Seller.
 - vi) Assignment, transfer, subletting of Contract without BHEL's written permission resulting in termination of Contract or part thereof by BHEL.
 - vii) If the Seller be an individual or a sole proprietorship Firm, in the event of the death or insanity of the Seller;
 - viii) If the Seller/Contractor being an individual or if a firm on a partnership thereof, shall at any time, be adjudged insolvent or shall have a receiving order for administration of his estate made against him or shall take any proceeding for composition under any Insolvency Act for the time being in force or make any assignment of the Order/Contract or enter into any arrangement or composition with his creditors or suspend payment or if the firm dissolved under the Partnership Act;
 - ix) If the Seller/Contractor being a company is wound up voluntarily or by order of a Court or a Receiver, Liquidator or Manager on behalf of the debenture holders and creditors is appointed or circumstances shall have arisen which entitles the Court of debenture holder and creditors to appoint a receiver, liquidator or manager;
 - x) Non-compliance to any contractual condition or any other default attributable to Seller.

1.1 Risk & Cost Amount against Balance Work:

Risk & Cost amount against balance work shall be calculated as follows:

$$\text{Risk \& Cost Amount} = [(A-B) + (A \times H/100)]$$

Where,

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

B= Value of Balance scope of Work (*) as per rates of old contract being paid to the contractor 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).

1.2 * Balance scope of work (in case of termination of contract):

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 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 at risk & cost of contractor instead of termination of contract, contract quantities pertaining to portion of work withdrawn shall be considered as 'Balance scope of work' for calculating Risk & Cost amount.

1.3 LD against delay in executed work in case of Termination of Contract:

LD against delay in executed work shall be calculated in line with LD clause no. 16 of GCC, for the delay attributable to contractor. For limiting the maximum value of LD, contract value shall be taken as Executed Value of work till termination of contract.

Method for calculation of LD against delay in executed work in case of termination of contract" is given below.

- i. 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 = T1
- ii. Let the value of executed work till the time of termination of contract = X
- iii. Let the Total Executable Value of work for which inputs/fronts were made available to contractor and were planned for execution till termination of contract = Y
- iv. Delay in executed work attributable to contractor i.e. $T2 = [1 - (X/Y)] \times T1$
- v. LD shall be calculated in line with LD clause (clause 16) of the Contract for the delay attributable to contractor taking "X" as Contract Value and "T2" as period of delay attributable to contractor.

2. Recoveries arising out of Risk & Cost and LD or any other recoveries due from Contractor

Without prejudice to the other means of recovery of such dues from the Seller recoveries from the Seller on whom risk & cost has been invoked shall be made from the following:

- a) Dues available in the form of Bills payable to seller, SD, BGs against the same contract.
- b) Dues payable to seller against other contracts in the same Region/Unit/ Division of BHEL.
- c) Dues payable to seller against other contracts in the different Region/Unit/ division of BHEL.

In-case recoveries are not possible with any of the above available options, Legal action shall be initiated for recovery against contractor.