

## **Annexure A:**

### **Amendment to GCC**

#### **1. Clause no. 1.9.1 (ii) of GCC shall be read as follows:**

The EMD may be accepted only in the following forms:

- (a) Cash deposit as permissible under the extant Income Tax Act (before tender opening)
- (b) Electronic Fund Transfer credited in BHEL account (before tender opening)
- (c) Banker's cheque/ Pay order/ Demand draft, in favour of BHEL (along with offer)

In case total EMD amount is more than Rs. 20 Lakh, the amount in excess of Rs. 20 lakh may 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 from the date of bid submission as per NIT. EMD of successful tenderer will be retained as part of Security Deposit.

**Bidders who have earlier submitted the One time EMD are required to re-submit the EMD in the above mentioned methods.**

Clause no. 1.9.1 (iv), (v) and (vi) of GCC stands deleted.

#### **2. Clause no. 1.9.2 of GCC shall be read as follows:**

EMD by the bidder will be forfeited as per Tender Documents if

- i) After opening the tender and within the offer validity period, the tenderer 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.

#### **3. Additional Clause no. 1.9.5 to GCC**

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 dealings with suppliers/contractors" and forfeited /released based on the action as determined under these guidelines.

**The sl. No. under clause no. 1.10 (security deposit) of GCC shall be read as 1.10.1, 1.10.2, 1.10.3, 1.10.4, 1.10.5, 1.10.6 and 1.10.7**

#### **4. Clause no. 1.10.1 of GCC shall be read as follows:**

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.

#### **5. Clause no. 1.10.2 of GCC shall be read as follows:**

At least 50% of the required Security Deposit, including the EMD, should be furnished before start of the work. Balance of the Security Deposit can be deposited by deducting 10% of the gross amount progressively from each of the running bills of the Contractor till the total amount of the required Security Deposit is collected.

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, with the approval of competent authorities.

**6. Clause no. 1.10.3 of GCC shall be read as below:**

Security Deposit may be furnished in any one of the following forms

- a) Cash (as permissible under the extant Income Tax Act)
- b) Local cheques of Scheduled Banks (subject to realization)/ Pay Order/ Demand Draft/ Electronic Fund Transfer in favour of BHEL
- c) Bank Guarantee from Scheduled Banks/ Public Financial Institutions as defined in the Companies Act. The Bank Guarantee format should have the approval of BHEL
- d) Fixed Deposit Receipt issued by Scheduled Banks/ Public Financial Institutions as defined in the Companies Act (FDR should be in the name of the Contractor, a/c BHEL)
- e) Securities available from Indian Post offices such as National Savings Certificates, KisanVikasPatras etc. (held in the name of Contractor furnishing the security and duly endorsed/ hypothecated/ pledged, as applicable, in favour of BHEL)

(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)

**7. Clause no. 1.11 of GCC shall be read as below:**

Security Deposit shall be refunded/Bank Guarantee(s) released to the Contractor along with the 'Final Bill' after deducting all expenses / other amounts due to BHEL under the contract / other contracts entered into with them by BHEL upon fulfilment of contractual obligations as per terms of the contract.

**8. Clause 2.12 of GCC (Overrun Compensation)**

a) Existing Clause 2.12.2 of GCC stands revised as follows:

"Rates shall be increased by 5% for the first twelve months of one or more extensions beyond original contract period. For the next twelve months of further extensions if any, rates shall be increased as above by 5% over the previous twelve months, and similarly for each subsequent twelve months extension"

b) Existing Clause 2.12.3 of GCC stands revised as follows:

"The amount of increase payable per month due to rate revisions is subject to a minimum of Rs.1,00,000/- per month and a maximum of Rs 5,00,000/-per month".

**9. Clause 2.14 of GCC (Quantity Variation)**

a) Existing Clause 2.14.1 of GCC stands revised as follows:

**"The quantities given in the contract are tentative and may change to any extent (both in plus side and minus side).** The quoted rates for individual items shall remain firm irrespective of any variations in the individual quantities. No compensation becomes payable in case the variation of the final executed contract value is within the limit of Minus (-) 15% of awarded contract value"

b) Existing Clause 2.14.2 ii). of GCC stands revised as follows:

"In case the finally executed contract value increases above the awarded Contract Value due to quantity variation, there will be no upward revision in the rates for the individual items"

**10. Clause 2.17 of GCC (Price Variation Compensation) stands revised as follows:**

a) Current clause no 2.17.3 shall be re-numbered as 2.17.2

b) Current clause no 2.17.2 "85% component of Contract Value shall be permitted to be adjusted for variation in various relevant indices during execution of work. The remaining 15% shall be treated as fixed component"

shall be re-numbered as 2.17.3 and shall be replaced by following:

"In case 'Category' is not covered in table under the clause 2.17.2 then, 85% component of Contract Value shall be permitted to be adjusted for variation in various relevant indices during execution of work. The remaining 15% shall be treated as fixed component"

Clause 2.2 of GCC (Law governing the contract and court jurisdiction) stands revised as follows:

"The contract shall be governed by the Law for the time being in force in the Republic of India. Subject to Clause 2.21.1 of this Contract, the Civil Court having original Civil Jurisdiction at Bangalore shall alone have exclusive jurisdiction in regard to all claims in respect of the Contract. No other Civil Court shall have jurisdiction in case of any dispute, under this contract"

**11. Clause 2.21 of GCC (Arbitration clause)**

Clause 2.21 of GCC is re-titled as "ARBITRATION" and shall be replaced by following:

**12. 2.21 ARBITRATION**

2.21.1 All questions and disputes/difference relating to the meaning of the specifications, design, drawings and instructions and or interpretation of the contract or its clauses 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, drawing, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or 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 appointed by the Chairman & Managing Director/Executive Director (Incharge of the Unit) / General Manager (Incharge of the Unit) / concerned Additional General Manager of the Unit of BHEL. The cases referred to arbitration shall be other than those for which the decision of the Dy. General Manager / Sr. Manager /Project Manager/Manager/Sr. Engineer/Engineer, is expressed in the contract to be final and conclusive. The arbitrator to whom the matter is originally referred being unable to act for any reason, Chairman & Managing Director/Executive Director (Incharge of the Unit) / General Manager (Incharge of the Unit) / concerned Additional General Manager of the Unit of BHEL, shall appoint another person to act

as sole arbitrator and such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

Subject as aforesaid the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceedings.

It is a term of the contract that the party invoking arbitration shall specify the dispute or disputes including specifying the quantum of financial claim, if any, to be referred to arbitration under this clause together with the amount or amounts claimed in respect of each such dispute.

The arbitrator (s) shall complete the entire arbitration and publish an award within a period of twelve months from the date the Tribunal enters upon the reference.

The parties to this arbitration agreement may before or at the time of invoking the Arbitration clause, may indicate in writing for FAST TRACK PROCEDURE wherein the Arbitrator shall pass an award within six months from the date the Tribunal enters upon the reference and to that effect, the Tribunal may dispense with any technical formalities and conduct the proceedings without oral hearing, subject to acceptance of such Fast Track procedure by other party.

The work under the Contract shall continue during the arbitration proceeding and no payment due 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 one party issues notice to other party invoking arbitration clause under this. The Venue of arbitration shall be Bangalore and the language will be English only. The award of the arbitrator shall be final, conclusive and binding all parties to this contract.

2.21.2 The cost of arbitration shall be borne equally by the parties.

2.21.3 Work under the contract shall be continued during the arbitration proceedings

### **13. Addition of Clause no. 2.29 to GCC (Suspension of business dealings)**

The offers of the bidders who are under suspension as also the offers of the bidder, who engage the services of the banned firms, shall be rejected. The list of banned firms is available on BHEL website [www.bhel.com](http://www.bhel.com)

Commitment by Bidder/Supplier/Contractor:

1. The bidder/supplier/contractor commit to take all measures to prevent corruption and will not directly or indirectly influence any decision or benefit which he is not legally entitled to nor will act or omit in any manner which tantamount to an offence punishable under any provision of the Indian Penal Code, 1860 or any other law in force in India.

2. The bidder/supplier/contractor will, when presenting his bid, disclose any and all payments he has made, and is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract and shall adhere to relevant guidelines issued from time to time by Govt. of India/ BHEL.

3. The bidder/supplier/contractor will perform/execute the contract as per the contract terms & conditions and will not default without any reasonable cause, which causes loss of business/money/reputation, to BHEL.

In order to protect its commercial interests, BHEL may take action against suppliers/ contractors by way of suspension of business dealings with them, 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 as per the guidelines for Suspension of Business Dealings with Suppliers / Contractors available at [www.bhel.com](http://www.bhel.com) under "supplier registration page".

**14. Addition of Clause no. 2.30 to GCC (Fraud prevention policy)**

The Bidder along with its associate/collaborators/sub-contractors/sub vendors/ Consultants/ service providers shall strictly adhere to BHEL Fraud Prevention Policy displayed on BHEL website <http://www.bhel.com> and shall immediately bring to the notice of BHEL Management about any fraud or suspected fraud as soon as it comes to their notice."