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Chapter 01

GENERAL INSTRUCTIONS TO BIDDERS

1. DESPATCH INSTRUCTIONS

- 1.1. The General Conditions of Contract form part of the Tender specifications. **All pages of the tender documents shall be duly signed and stamped (in form of manual or electronic signature) and submitted along with the offer in token of complete acceptance thereof.** The information furnished shall be complete by itself. The Bidder is required to furnish all the details and other documents as required in the following pages.
- 1.2. **Contract formation, the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptance, termination of contract as the case may be, shall be in electronic form either through BHEL's E-Procurement portal or e-mail communication. Such contract, notice shall not be deemed unenforceable or undelivered solely on the ground that electronic form or means was used for that purpose and no communication was received from BHEL in paper form through postal route or any other means. Primary mode of communication between BHEL and bidders/contractors shall be through e-mail. No bidder/contractor shall insist for the mode of communication to be through postal route like speed post or courier.**
- 1.3. Bidders are advised to study all the tender documents carefully. Any submission of tender by the Bidder shall be deemed to have been done after careful study and examination of the tender documents and with the full understanding of the implications thereof. Should the Bidders have any doubt about the meaning of any portion of the Tender Specification or find discrepancies or omissions in the drawings or the tender documents issued are incomplete or shall require clarification on any of the technical aspect, the scope of work etc., he shall at once, contact the authority inviting the tender well in time (so as not to affect last date of submission) for clarification before the submission of the tender. Bidder's request for clarifications shall be with reference to Sections and Clause numbers given in the tender documents. The specifications and terms and conditions shall be deemed to have been accepted by the Bidder in his offer. Non-compliance with any of the requirements and instructions of the tender enquiry may result in the rejection of the offer.

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2. SUBMISSION OF TENDERS

2.1. The Bidders must submit their tenders as per instructions in the NIT:

- a. Offer shall be submitted online in e-procurement portal <https://bhel.abcprocure.com/>.
- b. No other mode of offer submission shall be acceptable & such offers shall NOT be considered.

Note: Bidder can anytime review & revise the submitted offer before expiry of last date & time of submission. However, no changes in offer shall be possible after expiry of last date & time of submission. Last date of expiry shall be the final cut-off date declared by BHEL and may be extended through corrigendum by BHEL time to time.

2.2. The tenders received after the specified time of their submission are treated as late tenders and shall not be considered under any circumstances.

2.3. Tenders shall be opened by authorized officer of BHEL as specified in the NIT.

2.4. Bidders are advised and supposed to be well acquainted with the actual working and other prevalent conditions at project site for which bids are being invited by BHEL. No claim will be entertained later on the grounds of lack of knowledge of any of the conditions.


3. LANGUAGE

3.1. The Bidder shall quote the rates in English language and international numerals. These rates shall be entered in figures as well as in words. For the purpose of the tenders, the metric system of units shall be used.

3.2. All entries in the tender shall either be typed or written legibly in ink. Erasing and over-writing is not permitted and may render such tenders liable for rejection. All cancellations and insertions shall be duly attested by the Bidder.

4. PRICE DISCREPANCY:

4.1. All prices to be quoted strictly in the Price Bid formats only. Amount/Percentage etc. should NOT be quoted anywhere in the Technical or Commercial Offer. Otherwise the offer may be liable for rejection.

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4.2. When the rate quoted by the contractor in figures and words tallies but the total amount is not worked out correctly, the rate quoted by the contractor shall be taken as correct and not the total amount.

4.3. In case of lump-sum price, if there is any difference between the amount in figures and in words, the amount quoted by the bidder in words shall be taken as correct.

5. QUALIFICATION OF BIDDERS

5.1. Only Bidders who fulfil the required **prequalification criteria** forming part of the NIT are expected to quote for this work.

5.2. Offers from bidders who are under suspension (banned) by any Unit/Region/Division of BHEL shall not be considered. Bidder shall explicitly disclose their status of suspension in any unit/Region/Division of BHEL in their offer.

5.3. Offers from Bidders who do not comply with the latest guidelines of Ministry/Commissions of Govt of India shall not be considered.

6. EVALUATION OF BIDS

6.1. Technical Bids submitted by the Bidder will be opened first and evaluated for fulfilling the Qualification criteria and other conditions in NIT/Tender documents, based on documentary evidences submitted along with the offer.

6.2. Price Bids of unqualified bidders shall not be opened. Reasons for rejection shall be intimated in due course after issue of LOI/LOA to successful bidder and receipt of unqualified acceptance from the successful bidder.

7. EARNEST MONEY DEPOSIT

7.1. Every tender must be accompanied by the prescribed amount of Earnest Money Deposit (EMD) in the manner described herein.

7.2. EMD shall be furnished along with the offer in full as per the amount indicated in the Special Conditions of Contract. EMD is to be paid by bidders for securing fulfilment of any obligations in terms of the NIT.

7.3. EMD may be paid only in following manner :

- a) Cash deposit as permissible under extant Income Tax Act) (**before tender opening**)

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- b) Electronic Fund Transfer credited in BHEL account (**before tender opening**)
- c) Banker's Cheque/Pay Order/Demand Draft, in favour of 'Bharat Heavy Electricals Limited' and payable at Rudrapur (Uttarakhand) (**along with offer**).
- d) Fixed Deposit Receipt (FDR) 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) EMD amount in excess of Rs. Two Lakhs may also 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.
- f) No other form of EMD remittance shall be acceptable to BHEL.
- g) For Electronic Fund Transfer, details are as below:

1	Name of the Beneficiary	Bharat Heavy Electricals Limited
2	Bank Name	State Bank of India
3	Bank Telephone No.(with STD code)	05944 - 247678 / 247646/ 243843
4	Branch Address	Indira Choraha, Rudrapur, U.S. Nagar, Uttarakhand-263153
5	Bank Fax No. (with STD code)	05944 - 243454
6	MICR Code of the Bank Branch	263002001
7	Bank Account Number	10672521208
8	Bank Account Type	Cash Credit
9	IFSC Code of Beneficiary Branch	SBIN0000708

7.4. EMD by the bidder will be forfeited as per Tender Documents/NIT conditions if :

- a) After opening the tender and within the offer validity period, the bidder revokes his offer or makes modification in his offer which is not acceptable to BHEL.
- b) The Contractor fails to deposit the required security deposit or does not commence the work within the period as per LOI/Contract. In case the LOI / contract is silent in this regard then within 15 days after award of contract.
- c) EMD by the bidder shall be withheld in case any action on the tender is envisaged under the provisions of extant Guidelines on Suspension of business dealings with Suppliers/Contractors and forfeited/released based on the action as determined under these guidelines.

7.5. EMD shall not carry any interest.

7.6. In the case of unsuccessful bidders, the Earnest Money will be refunded to them within a reasonable time (15 days) after acceptance of award by successful Bidder.

7.7. EMD of successful bidders shall be retained as part of Security Deposit.

7.8. If the EMD is demanded by BHEL in NIT but NOT submitted along with the offer, the bidder's offer may not be evaluated. **Bidder shall indicate the details of EMD submission along with offer.**

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8. SECURITY DEPOSIT

8.1. Security Deposit means the security provided by the Contractor towards fulfilment of obligations in terms of the provisions of the contract.

8.2. Upon acceptance of Offer, contract shall be finalized with the successful Bidder(s) whose offer meets Pre-Qualification requirement and is techno-commercially suitable and quotes lowest landed cost.

8.3. The security Deposit should be furnished before start of the work by the contractor.


8.4. Security Deposit should be submitted towards fulfilment of any obligations in terms of the provisions of the contract. **The total amount of Security Deposit will be 5% of the contract value.** EMD of the successful Bidder shall be converted and adjusted towards the required amount of Security Deposit.

8.5. Security deposit can also be recovered at the rate of 10% from the running bills. However, in such cases at least 50% of the Security Deposit should be deposited in any form as prescribed below, before start of the work and the balance 50% may be recovered from the running bills.

8.6. The balance amount of Security Deposit (after adjustment of EMD as SD) should be furnished before start of the work by the contractor.

8.7. The balance amount to make up the required Security Deposit of 5% of the contract value may be furnished in any one of the following forms:

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

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(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)

8.8. The Security Deposit shall not carry any interest.

8.9. In case the value of work exceeds / reduces from the awarded / accepted value, the Security Deposit shall be correspondingly enhanced / reduced as given below:

- a) The enhanced part of the Security Deposit shall be immediately deposited by the Contractor or adjusted against payments due to the Contractor.
- b) The validity of Bank Guarantees towards Security Deposit shall be initially upto the completion period as stipulated in the Letter of Intent / Award + 3 months, and the same shall be kept valid by proper renewal till the acceptance of Final Bills of the Contractor, by BHEL.
- c) BHEL reserves the right of forfeiture of Security Deposit in addition to other claims and penalties in the event of the Contractor's failure to fulfill any of the contractual obligations or in the event of termination of contract as per terms and conditions of contract. BHEL reserves the right to set off the Security Deposit against any claims of other contracts with BHEL.
- d) 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 the authority competent to award the work.

8.10. POINTS TO BE NOTED IN CASE BANK GUARANTEES ARE SUBMITTED FOR EMD/SD

Where ever Bank Guarantees are to be furnished/submitted by the contractor, the following shall be complied with

- a) Bank Guarantees shall be from Scheduled Banks / Public Financial Institutions as defined in the Companies Act.
- b) The Bank Guarantees shall be as per prescribed formats
- c) It is the responsibility of the bidder to get the Bank Guarantees revalidated/extended for the required period, as per the advice of BHEL. BHEL shall not be liable for issue of any reminders regarding expiry of the Bank Guarantees.
- d) In case the Bank Guarantees are not extended before the expiry date, BHEL reserves the right to invoke the same by informing the concerned Bank in writing, without any advance notice/communication to the concerned bidder.
- e) Bidders to note that any corrections to Bank Guarantees shall be done by the issuing Bank, only through an amendment in an appropriate non judicial stamp paper.
- f) The Original Bank Guarantee shall be sent directly by the Bank to BHEL under Registered Post (Acknowledgement Due), addressed to the Subcontracting Department of the respective Region.

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9. RETURN OF SECURITY DEPOSIT

Security Deposit shall be refunded/Bank Guarantee(s) released to the Contractor after completion of execution of project and submission of Final bills(**Form WAM 7 and WAM10**) along with “No Claim” Certificate after deducting all expenses / other amounts due to BHEL under the contract / other contracts entered into with them by BHEL.

10. VALIDITY OF OFFER

The rates in the Tender shall be kept open for acceptance for a minimum period of **THREE MONTHS** from latest due date of offer submission (including extension, if any).

11. EXECUTION OF CONTRACT AGREEMENT


The successful Bidder’s responsibility under this contract commences from the date of issue of the Letter of Intent by Bharat Heavy Electricals Limited. The Bidder shall submit an unqualified acceptance to the Letter of Intent/Award within the period stipulated therein. The successful Bidder shall be required to execute an agreement in the prescribed form, with BHEL, within a reasonable time after the acceptance of the Letter of Intent / Award and in any case before releasing the first running bill. The contract agreement shall be signed by a person duly authorized / empowered by the Bidder. The expenses for preparation of agreement document shall be borne by BHEL. Format of the contract agreement can be provided before bid submission if required.

12. REJECTION OF TENDER AND OTHER CONDITIONS

12.1. Conditional tenders, unsolicited tenders, tenders which are incomplete or not in the form specified or defective or have been materially altered or not in accordance with the tender conditions, specifications etc., are liable to be rejected.

12.2. Tenders are liable to be rejected in case of unsatisfactory performance of the Bidder with BHEL, or Bidder under suspension (hold / banning / delisted) by any unit/ region/ division of BHEL or Bidders who do not comply with the latest guidelines of Ministry / Commissions of Govt of India. BHEL reserves the right to reject a bidder in case it is observed that they are overloaded and may not be in a position to execute this job as per the required schedule. The decision of BHEL will be final in this regard.

12.3. If a Bidder who is a proprietor expires after the submission of his tender or after the acceptance of his tender, BHEL may at their discretion, cancel such tender. If a partner of a firm expires after the submission of tender or after the acceptance of the tender, BHEL may then cancel such tender at their discretion, unless the firm retains its character.

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- 12.4.** BHEL will not be bound by any Power of Attorney granted by changes in the composition of the firm made subsequent to the execution of the contract. They may, however, recognize such power of Attorney and changes after obtaining proper legal advice, the cost of which will be chargeable to the contractor concerned.
- 12.5.** If the Bidder deliberately gives wrong information in his tender, BHEL reserves the right to reject such tender at any stage or to cancel the contract if awarded and forfeit the Earnest Money / Security Deposit/any other money due.
- 12.6.** Canvassing in any form in connection with the tenders submitted by the Bidder shall make his offer liable to rejection.
- 12.7.** The successful Bidder should not sub-contract part or complete work detailed in the tender specification undertaken by him without written permission of BHEL's Construction Manager/Site Incharge. The Bidder is solely responsible to BHEL for the work awarded to him.
- 12.8.** The Tender submitted by a techno commercially qualified Bidder shall become the property of BHEL who shall be under no obligation to return the same to the bidder. However unopened price bids and late tenders shall be returned to the bidders
- 12.9.** BHEL shall not be liable for any expenses incurred by the bidder in the preparation of the tender irrespective of whether the tender is accepted or not.

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CHAPTER-2

DEFINITION:

The following terms shall have the meaning hereby assigned to them except where the context otherwise requires


- 1.1. BHEL shall mean Bharat Heavy Electricals Limited (of the respective CFP- Rudrapur inviting the Tender), a company registered under Indian Companies Act 1956, with its Registered Office at BHEL HOUSE, SIRI FORT, NEW DELHI – 110 049, or its CFP- Rudrapur or its Authorized Officers or its Site Engineers or other employees authorized to deal with any matters with which these persons are concerned on its behalf.
- 1.2. “EXECUTIVE DIRECTOR” or ‘GROUP GENERAL MANAGER’ or “GENERAL MANAGER (Incharge)” or “GENERAL MANAGER” shall mean the Officer in Administrative charge of the CFP-Rudrapur Unit of BHEL.
- 1.3. “COMPETENT AUTHORITY” shall mean Executive Director or Group General Manager or General Manager (Incharge) or General Manager or BHEL Officers who are empowered to act on behalf of the Executive Director or General Manager (Incharge) or General Manager of BHEL.
- 1.4. “ENGINEER” or “ENGINEER IN CHARGE” shall mean an Officer of BHEL as may be duly appointed and authorized by BHEL to act as “Engineer” on his behalf for the purpose of the Contract, to perform the duty set forth in this General Conditions of Contract and other Contract documents. The term also includes ‘CONSTRUCTION MANAGER’ or ‘SITE INCHARGE’ as well as Officers at Site or at the Headquarters of the CFP-Rudrapur.
- 1.5. “SITE” shall mean the places or place at which the plants / equipments are to be erected and services are to be performed as per the specification of this Tender.
- 1.6. “CLIENT OF BHEL” or “CUSTOMER” shall mean the project authorities with whom BHEL has entered into a contract for supply of equipments or provision of services.
- 1.7. “CONTRACTOR” shall mean the successful Bidder/Bidder who is awarded the Contract and shall include the Contractor’s successors, heirs, executors, administrators and permitted assigns.
- 1.8. “CONTRACT” or “CONTRACT DOCUMENT” shall mean and include the Agreement of Work Order, the accepted appendices of Rates, Schedules, Quantities if any, General Conditions of Contract, Special Conditions of Contract, Instructions to the Bidders , Drawings, Technical Specifications, the Special Specifications if any, the Tender documents, subsequent amendments mutually agreed upon and the Letter of Intent /Acceptance issued by BHEL. Any conditions or terms stipulated by the contractor in the tender documents or subsequent letters shall not form part of the contract unless, specifically accepted in writing by BHEL in the Letter of Intent/Award and incorporated in the agreement.

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- 1.9. "GENERAL CONDITIONS OF CONTRACT" shall mean the 'Instructions to Bidders' and 'General Conditions of Contract' pertaining to the work for which above tenders have been called for.
- 1.10. "TENDER SPECIFICATION" or "TENDER" or "TENDER DOCUMENTS" shall mean General Conditions, Common Conditions, Special Conditions, Price Bid, Rate Schedule, Technical Specifications, Appendices, Annexures, Corrigendums, Amendments, Forms, procedures, Site information etc. and drawings/documents pertaining to the work for which the Bidders are required to submit their offers. Individual specification number will be assigned to each Tender Specification.
- 1.11. "LETTER OF INTENT" shall mean the intimation by a Letter/Fax/email to the Bidder that the tender has been accepted in accordance with provisions contained in the letter. The responsibility of the contractor commences from the date of issue of this letter and all terms and conditions of the contract are applicable from this date.
- 1.12. "COMPLETION TIME" shall mean the period by 'date/month' specified in the 'Letter of Intent/Award' or date mutually agreed upon for handing over of the intended scope of work, the erected equipment/plant which are found acceptable by the Engineer, being of required standard and conforming to the specifications of the Contract.
- 1.13. "PLANT" shall mean and connote the entire assembly of the plant and equipments covered by the contract.
- 1.14. "EQUIPMENT" shall mean equipment, machineries, materials, structural, electricals and other components of the plant covered by the contract.
- 1.15. "TESTS" shall mean and include such test or tests to be carried out on the part of the contractor as are prescribed in the contract or considered necessary by BHEL, in order to ascertain the quality, workmanship, performance and efficiency of the contractor or part thereof.
- 1.16. "APPROVED", "DIRECTED" or "INSTRUCTED" shall mean approved, directed or instructed by BHEL.
- 1.17. "WORK or CONTRACT WORK" shall mean and include supply of all categories of labour, specified consumables, tools and tackles and Plants required for complete and satisfactory site transportation, handling, stacking, storing, erecting, testing and commissioning of the equipments to the entire satisfaction of BHEL.
- 1.18. "SINGULAR AND PLURALS ETC" words carrying singular number shall also include plural and vice versa, where the context so requires. Words imparting the masculine Gender shall be taken to include the feminine Gender and words imparting persons shall include any Company or Associations or Body of Individuals, whether incorporated or not.
- 1.19. "HEADING" – The heading in these General Conditions are solely for the purpose of facilitating reference and shall not be deemed to be part thereof or be taken as instructions thereof or of the contract.

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- 1.20. "MONTH" shall mean calendar month unless otherwise specified in the Tender.
- 1.21. Day' or 'Days' unless herein otherwise expressly defined shall mean calendar day or days of twenty four (24) hours each. A week shall mean continuous period of seven (7) days.
- 1.22. "COMMISSIONING" shall mean the synchronization testing and achieving functional operation of the Equipment with associated system after all initial adjustments, trials, cleaning, re-assembly required at site if any, have been completed and Equipment with associated system is ready for taking into service.
- 1.23. "WRITING" shall include any manuscript type written or hand written or printed statement or electronically transmitted messages, under the signature or seal or transmittal of BHEL.
- 1.24. "TEMPORARY WORK" shall mean all temporary works for every kind required in or for the execution, completion, maintenance of the work.
- 1.25. 'CONTRACT PRICE' or 'CONTRACT VALUE' shall mean the sum mentioned in the LOI/LOA/Contract Agreement subject to such additions there to or deductions there from as may be made under provisions hereinafter contained
- 1.26. "COMMENCEMENT DATE" or "START DATE" shall mean the commencement/start of work at Site as per terms defined in the Tender.
- 1.27. "SHORT CLOSING" or "FORE CLOSING" of Contract shall mean the premature closing of contract, for reasons not attributable to the contractor and mutually agreed between BHEL and the contractor.
- 1.28. "TERMINATION" of Contract shall mean the pre mature closing of contract due to reasons as mentioned in the contract.
- 1.29. "DE-MOBILISATION" shall mean the temporary winding up of Site establishment by Contractor leading to suspension of works temporarily for reasons not attributable to the contractor.
- 1.30. "RE-MOBILISATION" shall mean the resumption of work with all resources required for the work after demobilization.
- 1.31. AMC - Annual Maintenance Contract

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CHAPTER-3
LAW GOVERNING THE CONTRACT AND COURT JURISDICTION

The contract shall be governed by the statutes and laws for the time being in force in the Republic of India like The Indian Contract Act, The Information Technology Act etc. The Civil Court having original Civil Jurisdiction at Rudrapur, Udham Singh Nagar, Uttarakhand 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.

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CHAPTER-4 ISSUE OF NOTICE

1.1. Service of notice on contractor

Any notice to be given to the Contractor under the terms of the contract may be served by sending the same **by any mode like Registered Post/Speed Post/e-mail/Fax** to or leaving the same at the Contractor's last known address of the principal place of business (or in the event of the contractor being a company, to or at its Registered Office). In case of change of contact details like address, telephone nos, e-mail id etc., and the notice shall be served at changed address/e-mail id/Fax as notified in writing by the Contractor to BHEL. Such posting or leaving of the notice shall be deemed to be good service of such notice and the time mentioned to the condition for doing any act after notice shall be reckoned from the date so mentioned in such notice. **Such notice shall not be deemed un-delivered solely on the ground that electronic form or means was used for that purpose and no communication was received from BHEL in paper form through postal route or any other means.**

1.2. Service of notice on BHEL


Any notice to be given to BHEL Region/Unit under the terms of the Contract shall be served by sending the same by post to or leaving the same at BHEL address or changed address as notified in writing by BHEL to the Contractor

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CHAPTER-5

USE OF LAND

No land belonging to BHEL or their Customer under temporary possession of BHEL shall be occupied by the contractor without written permission of BHEL.

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CHAPTER-6

COMMENCEMENT OF WORK

- 1.1. The contractor shall commence the work as per the time indicated in the Letter of Intent/Award from BHEL and shall proceed with the same with due expedition without delay.

- 1.2. If the contractor fails to start the work within stipulated time as per LOI/ LOA awarded by or within 15 days from the award of LOI/LOA whichever is earlier, then BHEL at its sole discretion will have the right to cancel the contract. The Earnest Money and/or Security Deposit with BHEL will stand forfeited without any further reference to him without prejudice to any and all of BHEL's other rights and remedies in this regard.


- 1.3. All the work shall be carried out under the direction and to the satisfaction of BHEL.

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CHAPTER-7

MEASUREMENT OF WORK AND MODE OF PAYMENT:

- 1.1. All payments due to the contractors shall be made through Electronic Fund Transfer only, unless otherwise found operationally difficult for reasons to be recorded in writing.
- 1.2. For progress running bill payments: - **The Contractor shall present detailed measurement sheets in triplicate**, duly indicating all relevant details based on technical documents and connected drawings for work done during the month/period under various categories in line with terms of payment as per contract. The basis of arriving at the quantities, weights shall be relevant documents and drawings released by BHEL. These measurement sheets shall be prepared jointly with BHEL Engineers and signed by both the parties.
- 1.3. **These measurement sheets will be checked by BHEL Engineer and quantities and percentage eligible for payment under various groups shall be decided by BHEL Engineer. The abstract of quantities and percentage so arrived at based on the terms of payment shall be entered in Measurement Book and signed by both the parties and shall be termed as Verified Measurement Sheet.**
- 1.4. **Based on the quantities in Verified Measurement Sheet, contractor shall prepare the bills in prescribed format and work out the financial value. These will be entered in Measurement Book and signed by both the parties. Payment shall be made by BHEL after effecting the recoveries due from the contractor.**
- 1.5. All recoveries due from the contractor for the month/period shall be effected in full from the corresponding running bills unless specific approval from the competent authorities is obtained to the contrary.
- 1.6. Measurement shall be restricted to that portion of work for which it is required to ascertain the financial liability of BHEL under this contract.
- 1.7. The measurement shall be taken jointly by persons duly authorized on the part of BHEL and by the Contractor.
- 1.8. The Contractor shall bear the expenditure involved if any, in making the measurements and testing of materials to be used/used in the work. The contractor shall, without extra charges, provide all the assistance with appliances and other things necessary for measurement.

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- 1.9. If at any time due to any reason whatsoever, it becomes necessary to re-measure the work done in full or in part, the expenses towards such re measurements shall be borne by the contractor unless such re measurements are warranted solely for reasons not attributable to contractor.
- 1.10. Passing of bills covered by such measurements does not amount to acceptance of the completion of the work measured. Any left out work has to be completed, if pointed out at a later date by BHEL.
- 1.11. Final measurement bill shall be prepared in the final bill format prescribed for the purpose based on the certificate issued by BHEL Engineer that entire works as stipulated in tender specification has been completed in all respects to the entire satisfaction of BHEL. Contractor shall give unqualified "No Claim" Certificate. All the tools and tackles loaned to him should be returned in satisfactory condition to BHEL. The abstract of final quantities and financial values shall also be entered in the Measurement Books and signed by both parties to the contract. The Final Bill shall be prepared and paid within a reasonable time after completion of work.

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CHAPTER-8

RIGHTS OF BHEL

- 1.1. BHEL reserves the following rights in respect of this contract during the original contract period or its extensions if any, as per the provisions of the contract, without entitling the contractor for any compensation.

- 1.2. To withdraw any portion of work and/or to restrict/alter quantum of work as indicated in the contract during the progress of work and get it done through other agencies to suit BHEL's commitment to its customer or in case BHEL decides to advance the date of completion due to other emergent reasons/ BHEL's obligation to its customer.

- 1.3. 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:
 - a) Contractor's poor progress of the work vis-à-vis execution timeline as stipulated in the Contract, backlog attributable to contractor including unexecuted portion of work 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 by the Contractor within scheduled completion period as per Contract or as extended from time to time, for the reasons attributable to the contractor.
 - d) Termination of Contract on account of any other reason (s) attributable to Contractor.
 - e) Assignment, transfer, subletting of Contract without BHEL's written permission.
 - f) Non-compliance to any contractual condition or any other default attributable to Contractor.

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).

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

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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.

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

LD against delay in executed work shall be calculated in line with relevant LD clause of the contract, 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.

- 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 = T1
- b) Let the value of executed work till the time of termination of contract = X
- c) 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
- d) Delay in executed work attributable to contractor i.e. $T2 = [1 - (X/Y)] \times T1$
- e) LD shall be calculated in line with LD clause (clause 2.7.9) of the Contract for the delay attributable to contractor taking "X" as Contract Value and "T2" as period of delay attributable to contractor.

- 1.3.1. In case Contractor fails to deploy the resources as per requirement, BHEL can deploy own/hired/otherwise arranged resources at the risk and cost of the contractor and recover the expenses incurred from the dues payable to

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contractor. Recoveries shall be actual expenses incurred plus 5% overheads or as defined in TCC.

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

Following sequence shall be applicable for recoveries from contractor:

- a) Dues available in the form of Bills payable to contractor, SD, BGs against the same contract.
- b) Demand notice for deposit of balance recovery amount shall be sent to contractor, if funds are insufficient to effect complete recovery against dues indicated in (a) above.
- c) If contractor fails to deposit the balance amount to be recovered within the period as prescribed in demand notice, following action shall be taken for balance recovery:
 - i. Dues payable to contractor against other contracts in the same Region shall be considered for recovery.
 - ii. ii) If recovery cannot be made out of dues payable to the contractor as above, balance amount to be recovered, shall be informed to other Regions/Units for making recovery from the Unpaid Bills/Running Bills/SD/BGs/Final Bills of contractor.
 - iii. iii) In-case recoveries are not possible with any of the above available options, Legal action shall be initiated for recovery against contractor.

1.5. To terminate the contract or to restrict the quantum of work and pay for the portion of work executed in case BHEL's contract with their customer are terminated for any reason, as per mutual agreement.

1.6. To effect recovery from any amounts due to the contractor under this or any other contract or in any other form, the moneys BHEL is statutorily forced to pay to anybody, due to contractor's failure to fulfill any of his obligations. BHEL shall levy overheads of 5% on all such payments along with interest as defined elsewhere in the GCC.

1.7. While every endeavour will be made by BHEL to this end, they cannot guarantee uninterrupted work due to conditions beyond their control. The Contractor will not be normally entitled for any compensation/extra payment on this account unless otherwise specified elsewhere in the contract.

1.8. In case the execution of works comes to a complete halt or reaches a stage wherein worthwhile works cannot be executed and there is no possibility of commencement of work for a period of not less than One month, due to reasons not attributable to the contractor and other than Force Majeure conditions, BHEL may consider permitting the contractor to de mobilize forthwith and re mobilize at an agreed future date. Cost of such demobilization/remobilization shall be mutually agreed. The duration of

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contract/time extension shall accordingly get modified suitably. In case of any conflict, BHEL decision in this regard shall be final and binding on the contractor.

1.9. In the unforeseen event of inordinate delay in receipt of materials, drawings, fronts, etc, due to which inordinate discontinuity of work is anticipated, BHEL on its own or contractor's request at its discretion may consider to short close the contract in following cases:

- a) The balance works are minor vis a vis the scope of work envisaged as per the contract.
- b) There has been no significant work in past 3 months OR no significant work is expected in next 3 months (due to reasons beyond the control of BHEL)
- c) The balance works cannot be done within a reasonable period of time as they are dependent on unit shut down or on other facilities of customer or any other reasons not attributable to the contractor.
- d) Work does not start within six months of LOI/ LOA date.

At the point of requesting for short closure, contractor shall establish that he has completed all works possible of completion and he is not able to proceed with the balance works due to constraints beyond his control. In such a case, the estimated value of the unexecuted portion of work (or estimated value of services to be provided for carrying out milestone/stage payments like Trial Operation/PG Test, etc) as mutually agreed, shall however be reduced from the final contract value.

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CHAPTER-9
LIQUIDATED DAMAGES/PENALTY

a) LIQUIDATED DAMAGES

1. If the contractor delays in the execution of the work or rendering of services in breach of contract, BHEL shall have the right to impose Liquidated Damages on Contractor for this non-performance. **For this purpose, the period of delay shall be the delay attributable to the Contractor for the execution of work or rendering of services as per contract.** If, delay is not attributable to the supplier, proper delay analysis with applicable documentary evidences may be submitted by the contractor to BHEL at the earliest **but not later than six months from the end of the financial year in which the payment is withheld, otherwise, the whole delay shall be presumed to be attributable to contractor.**
2. LD shall be **0.5% of the total order value per week of delay or part thereof subject to a maximum of 10%** of the total order value.
3. In case of staggered delivery schedule, LD shall be 0.5% of the undelivered portion per week of delay or part thereof subject to a maximum of 10% of the total order value. However, even if a staggered delivery schedule for Capital Machine/BOPs is agreed, the LD cap will be levied on total order value and not undelivered portion of the order value.
4. In case of any amendment/revision, the LD shall be linked to the amended /revised PO value.
5. **Any deviation from the above LD clause shall be based on Customer/project/Product specific requirement and the clause decided shall be specified in the NIT.**
6. Any loading on LD clause shall be to the extent to which it is not agreed to by the bidder (at offered value).
7. GST shall also be charged on LD amount as per applicable rate and tax invoice shall be issued by BHEL.

b) PENALTY:

Penalty clause, if any, shall be specifically indicated in NIT Terms & Conditions.

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CHAPTER-10

RESPONSIBILITIES OF THE CONTRACTOR IN RESPECT OF LOCAL LAWS, EMPLOYMENT OF WORKERS ETC.

The following are the responsibilities of the contractor in respect of observance of local laws, employment of personnel, payment of taxes etc. The subcontractor shall fully indemnify BHEL against any claims of whatsoever nature arising due to the failure of the contractor in discharging any of his responsibilities hereunder:

- 1.1. As far as possible, Unskilled Workers shall be engaged from the local areas in which the work is being executed.
- 1.2. The contractor at all times during the continuance of this contract shall, in all his dealings with local labour for the time being employed on or in connection with the work, have due regard to all local festivals and religious and other customs.
- 1.3. The contractor shall comply with all applicable State and Central Laws, Statutory Rules, Regulations, Notifications, etc. such as Payment of Wages Act, Minimum Wages Act, Workmen Compensation Act, Employer's Liability Act, Industrial Disputes Act, Employers Provident Act, Employees State Insurance Scheme, Contract Labour (Regulation and Abolition) Act, 1970, Payment of Bonus & Gratuity Act, Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, The Building and Other Construction Workers' Welfare Cess Act, 1996 and other Acts, Rules, and Regulations for labour/workers as applicable and as may be enacted by the State Government and Central Govt. during the tenure of the Contract and having force or jurisdiction at Site. The Contractor shall also comply with provisions of and give all such notices to the local Governing Body, Police and other relevant Authorities as may be required by the Law.
- 1.4. The Contractor shall comply with Contract Labour (Regulations and Abolition) Act, 1970 and obtain independent License, if required, under the Contract Labour (Regulations and Abolition) Act, 1970 for engaging contract labour as required from the concerned Authorities based on the certificate (Form-V) issued by the Principal Employer/Customer.
- 1.5. The contractor shall pay and bear all taxes, fees, license charges, Cess, duties, deposits, tolls, royalties, commission or other charges which may be leviable on account of his operations in executing the contract.
- 1.6. BHEL would pay the inspection fees and Registration fees of Electrical Inspectorate, all other arrangements for site visits periodically by the Inspectorate to site, Inspection

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certificate etc. will have to be made by contractor. However, BHEL will not make any payment to the Inspectorate in connection with contractor's Electricians qualification tests etc.

- 1.7. Contractor shall be responsible for provision of Health and Sanitary arrangements (more particularly described in Contract Labour Regulation & Abolition Act), Safety precautions etc. as may be required for safe and satisfactory execution of contract.
- 1.8. The contractor shall be responsible for proper accommodation including adequate medical facilities for personnel employed by him.
- 1.9. The contractor shall be responsible for the proper behavior and observance of all regulations by the staff employed by him.
- 1.10. The contractor shall ensure that no damage is caused to any person/property of other parties working at site. If any such damage is caused, it is responsibility of the contractor to make good the losses or compensate for the same.
- 1.11. All the properties/equipments/components of BHEL/their Client loaned with or without deposit to the contractor in connection with the contract shall remain properties of BHEL/their Client.
- 1.12. In case the contractor is required to undertake any work outside the scope of this contract, the rates payable shall be those mutually agreed upon if the item rates are not mentioned in existing contract
- 1.13. Any delay in completion of works/or non achievement of periodical targets due to the reasons attributable to the contractor, the same may have to be compensated by the contractor either by increasing manpower and resources or by working extra hours and/or by working more than one shift. All these are to be carried out by the contractor at no extra cost.
- 1.14. The contractor shall arrange, coordinate his work in such a manner as to cause no hindrance to other agencies working in the same premises.
- 1.15. All safety rules and codes applied by the Client/BHEL at site shall be observed by the contractor without exception. The contractor shall be responsible for the safety of the equipment/material and works to be performed by him and shall maintain all light, fencing guards, slings etc. or other protection necessary for the purpose. Contractor shall also take such additional precautions as may be indicated from time to time by the

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Engineer with a view to prevent pilferage, accidents, fire hazards. Due precautions shall be taken against fire hazards and atmospheric conditions.

The contractor shall arrange for such safety devices as are necessary for such type of work and carry out the requisite site tests of handling equipment, lifting tools, tackles etc. as per prescribed standards and practices.

Contractor has to ensure the implementation of Health, Safety and Environment (HSE) requirements as per directions given by BHEL/Customer. The contractor has to assist in HSE audit by BHEL/Customer and submit compliance Report. The contractor has to generate and submit record/reports as per HSE plan/activities as per instruction of BHEL/Customer.

- 1.16. The contractor will be directly responsible for the payment of wages to his workmen. A pay roll sheet giving details of all the payments made to the workers and duly signed by the contractor's representative should be furnished to BHEL site for record purpose, if so called for.**

Contractor shall create awareness amongst their workforce by helping & encouraging in opening bank accounts and to encourage them to adopt digital mode of transactions. While releasing wages/ salary to their workers/ supervisors/ staff, Contractor shall comply with the GOI's guidelines for maximizing such transactions through Non-Cash / digital means.


- 1.17.** In case of any class of work for which there is no such specification as laid down in the contract, such work shall be carried out in accordance with the instructions and requirements of the Engineer.

- 1.18.** Also, no idle charges will be admissible in the event of any stoppage caused in the work resulting in contractor's labour and Tools & Plants being rendered idle due to any reason at any time.

- 1.19.** The contractor shall take all reasonable care to protect the materials and work till such time the plant/equipment has been taken over by BHEL or their Client whichever is earlier.

- 1.20.** The contractor shall not stop the work or abandon the site for whatsoever reason of dispute, excepting force majeure conditions. All such problems/disputes shall be separately discussed and settled without affecting the progress of work. Such stoppage or abandonment shall be treated as breach of contract and dealt with accordingly

- 1.21.** The contractor shall keep the area of work clean and shall remove the debris etc. while executing day-to-day work. Upon completion of work, the contractor shall remove from the vicinity of work, all scrap, packing materials, rubbish, unused and other materials and deposit them in places specified by the Engineer. The contractor will also demolish all the hutments, sheds, offices, etc. constructed and used by him

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and shall clean the debris. In the event of his failure to do so, the same will be arranged to be done by the Engineer and the expenses recovered from the contractor.

- 1.22.** The contractor shall execute the work in the most substantial and workman like manner in the stipulated time. Accuracy of work and timely execution shall be the essence of this contract. The contractor shall be responsible to ensure that the quality, assembly and workmanship conform to the dimensions and clearance given in the drawings and/ or as per the instructions of the Engineer.

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CHAPTER-11

PROGRESS MONITORING, MONTHLY REVIEW AND PERFORMANCE EVALUATION

- 1.1. A detailed plan/ programme for completion of the contractual scope of work as per the time schedule given in the contract shall be jointly agreed between BHEL and Contractor, before commencement of work. The above programme shall be supported by month wise deployment of resources viz Manpower, T&P, Consumables, etc. Progress will be reviewed periodically (Daily/Weekly/Monthly) vis a vis this jointly agreed programme. The Contractor shall submit periodical progress reports (Monthly) and other reports/information including manpower, consumables, T&P mobilization etc as desired by BHEL.

- 1.2. The burden of proof that the causes leading to any shortfall is not due to any reasons attributable to the contractor is on the contractor himself. Contractor will ensure that prior information is given by them to BHEL regarding reason for delay, if any which is shortfalls attributable to (i) Contractor, (ii) Force Majeure Conditions, and (iii) BHEL

- 1.3. Performance of the Contractor shall be assessed as per prescribed formats and shall form the basis for 'Annual/Overall Performance Evaluation' of the Contractor and also for 'Assessment of Capacity of Bidder' for Tenders where the Contractor is a bidder. BHEL reserves the right to revise the evaluation formats during the course of execution of the works.

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CHAPTER-12
TIME OF COMPLETION

- 1.1. The time schedule shall be as prescribed in the Contract. The time for completion shall be reckoned from the date of commencement of work at Site as certified by BHEL Engineers
- 1.2. The entire work shall be completed by the contractor within the time schedule or within such extended periods of time as may be allowed by BHEL.

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CHAPTER-13

EXTENSION OF TIME FOR COMPLETION


- 1.1. If the completion of work as detailed in the scope of work gets delayed beyond the contract period, the contractor shall request for an extension of the contract and BHEL at its discretion may extend the Contract. **Scope of extension shall be limited to time extension and BHEL shall not be liable under any circumstances for compensation of any cost in-lieu of this time extension.**
- 1.2. If any 'Time extension' is granted to the contractor to facilitate continuation of work and completion of contract, due to backlog attributable to the contractor alone, then it shall be without prejudice to the rights of BHEL to impose penalty/LD for the delays attributable to the contractor, in addition to any other actions BHEL may wish to take at the risk and cost of contractor.
- 1.3. A joint programme shall be drawn for the balance amount of work to be completed during the period of 'Time Extension', along with matching resources (with weightages) to be deployed by the contractor as per specified format.
- 1.4. During the period of 'Time extension', contractor shall maintain their resources as per mutually agreed program.
- 1.5. At the end of total work completion as certified by BHEL Engineer, and upon analysis of the total delay, the portion of time extensions attributable to (i) Contractor, (ii) Force majeure conditions, and (iii) BHEL, shall be worked out and shall be considered to be exhausted in the same order. The total period of time extensions shall be the sum of (i), (ii) and (iii) above and shall be equal to period between the scheduled date of completion and the actual date of completion of contract. LD shall be imposed/levied for the portion of time extensions attributable to contractor and recoverable from the dues payable to the contractor.

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CHAPTER-14

EXTRA WORKS

- 1.1. All rectifications or modifications, revamping, and reworks required for any reasons not due to the fault of the contractor, or needed due to any change in, deviation from drawings and design of equipments, operation, maintenance requirements, mismatching, or due to damages in transit, storage and erection, commissioning, and other allied works not very specifically indicated in the drawings, but are found essential for satisfactory completion of the work, will be considered as extra works.
- 1.2. Extra works arising on account of the contractor's fault, irrespective of time consumed in rectification of the damage/loss, will have to be carried out by the contractor free of cost. Under such circumstances, any material and consumable required for this purpose will also have to be arranged by the contractor at his cost.
- 1.3. All the extra work should be carried out by a separate team, without affecting routine activities. Daily log sheets in the pro-forma prescribed by BHEL should be maintained and shall be signed by the contractor's representative and BHEL engineer. No claim for extra work will be considered / entertained in the absence of the said supporting documents i.e. daily log sheets. Signing of log sheets by BHEL engineer does not necessarily mean the acceptance of such works as extra works.
- 1.4. BHEL retains the right to award or not to award any of the major repair / rework / modification / rectification / fabrication works to the contractor, at their discretion without assigning any reason for the same.
- 1.5. After eligibility of extra works is established and finally accepted by BHEL engineer / designer, payment will be released on competent authority's approval at the following rate.
- 1.6. **MAN-HOUR RATE FOR ELIGIBLE EXTRA WORKS:**
Single composite average labour man-hour rate, including overtime if any, supervision, use of tools and tackles and other site expenses and incidentals, consumables for carrying out any minor rework / repairs / rectification / modification / fabrication as certified by site as may arise during the course of erection, testing, commissioning or extra works arising out of transit, storage and erection damages, payment, if found due will be at Rs 100/- per man hour. The above composite labour man hour rate towards extra works shall remain firm and not subject to any variation during execution of the work. PVC will not be applicable for extra works. Rate revision, Over Run Charges/compensation etc will not be applicable due to extra works.

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CHAPTER-15 SUPPLEMENTARY ITEMS


Supplementary items are items/works required for completion of entire work but not specified in the scope of work. Subject to certification of such items/works as supplementary items by BHEL Engineer, rates shall be derived on the basis of any one of the following on mutual agreement:

- a) Based on percentage breakup/rates indicated for similar/nearby items
- b) In case (a) above does not exist, then BHEL/site may derive the percentage breakup/rates to suit the type of work.

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CHAPTER-16 INSURANCE

- 1.1. BHEL/their customer shall arrange for insuring the materials/properties of BHEL/customer covering the risks during transit, storage, erection and commissioning.
- 1.2. It is the sole responsibility of the contractor to insure his materials, equipments, workmen, etc. against accidents and injury while at work and to pay compensation, if any, to workmen as per Workmen's compensation Act. The work will be carried out in a protected area and all the rules and regulations of the client /BHEL in the area of project which are in force from time to time will have to be followed by the contractor.
- 1.3. If due to negligence and or non-observation of safety and other precautions by the contractors, any accident/injury occurs to the property / manpower belong to third party, the contractor shall have to pay necessary compensation and other expense, if so decided by the appropriate authorities.
- 1.4. The contractor will take necessary precautions and due care to protect the material, while in his custody from any damage/ loss due to theft or otherwise till the same is taken over by BHEL or customer. For lodging / processing of insurance claim the contractor will submit necessary documents. BHEL will recover the loss including the deductible franchise from the contractor, in case the damage / loss is due to carelessness / negligence on the part of the contractor. In case of any theft of material under contractor's custody, matter shall be reported to police by the contractor immediately and copy of FIR and subsequently police investigation report shall be submitted to BHEL for taking up with insurance. However this will not relieve the contractor of his contractual obligation for the material in his custody.

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CHAPTER-17
STRIKES & LOCKOUT

- 1.1. The contractor will be fully responsible for all disputes and other issues connected with his labour. In the event of the contractor's labour resorting to strike or the Contractor resorting to lockout and if the strike or lockout declared is not settled within a period of one month, BHEL shall have the right to get the work executed through any other agencies and the cost so incurred by BHEL shall be deducted from the Contractor's bills.
- 1.2. For all purposes whatsoever, the employees of the contractor shall not be deemed to be in the employment of BHEL

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CHAPTER-18

FORCE MAJEURE

- 1.1. "Force Majeure" shall mean any event beyond the reasonable control of the parties including but not limited to fire, flood, earthquake or other acts of God, war, riots, civil war and restraints of Governing States, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected. The following events are explicitly excluded from Force Majeure and are solely the responsibilities of the non-performing party :
- a. any strike, work-to-rule action, go-slow or similar labour difficulty
 - b. late delivery of equipment or material (unless caused by Force Majeure event)
 - c. economic hardship.
- 1.2. If either party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within 15 (fifteen) days after the occurrence of such event.
- 1.3. The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered or delayed. The Time for Completion shall be extended by a period of time equal to period of delay caused due to such Force Majeure event.
- 1.4. Delay or non-performance by either party hereto caused by the occurrence of any event of Force Majeure shall not
- Constitute a default or breach of the Contract.
 - Give rise to any claim for damages or additional cost or expense occasioned thereby, if and to the extent that such delay or non-performance is caused by the occurrence of an event of Force Majeure

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CHAPTER-19 ARBITRATION & CONCILIATION

1.1. ARBITRATION

1.1.1. In case amicable settlement is not reached between the Parties, in respect of any dispute or difference or claim or controversy arising out of the formation, breach, termination, validity or execution of the Contract(or Agreement) or the respective rights and liabilities of the parties or in relation to interpretation of any provision of the Contract or in any manner touching upon the Contract, then, either party may, by a notice in writing to the other Party refer such dispute or difference or controversy of claim, (except as to any matters, the decision of which is specifically provided for therein) to the sole arbitration by the arbitrator appointed by Head/In-Charge of the BHEL Unit/Division/Region.

1.1.2. The Arbitrator shall pass a reasoned award and the award of the Arbitrator shall be final and binding upon the parties to the dispute.

1.1.3. Subject as aforesaid, the provisions of Arbitration and Conciliation Act 1996 (India), or other statutory modifications of re-enactments thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceeding under this clause. The seat of arbitration shall be at Component Fabrication Plant, Rudrapur, Distt. Udham Singh Nagar, Uttarakhand.

1.1.4. In case of Contract with Public Sector Enterprise (PSE) or a Government Department, the following shall be applicable:

1.1.5. In the event any dispute or difference relating to the interpretation and application of the provisions of the Contract, such dispute or difference shall be referred to by either party to the arbitration of one of the arbitrators in the department of Public enterprises to be nominated by the Secretary to the Government of India in-charge of the Department of Public Enterprises. The Arbitration and Conciliation Act, 1996 shall not be applicable to arbitration under this clause. The award of the arbitrator shall be binding upon the parties to the dispute, provided, however, any party aggrieved by such award may make further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law and Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary or Additional Secretary when so authorized by the Law Secretary, whose decision shall bind the parties hereto finally and conclusively.

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1.1.6. Notwithstanding the existence of any dispute or differences and/or reference for the arbitration, the Supplier shall proceed with and continue without hindrance the performance of its obligations under this Contract with due diligence and expedition in a professional manner.

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

1.1.8. Work under the contract shall be continued during the arbitration proceedings.

1.2. CONCILIATION

The Parties i.e. BHEL and contractor/Supplier agree that if at any time (whether before, during or after the arbitral or judicial proceedings), any Disputes (which term shall mean and include any dispute, difference, question or disagreement arising in connection with construction, meaning, operation, effect, interpretation or breach of the agreement, contract or the Memorandum of Understanding (delete whichever is inapplicable), which the Parties are unable to settle mutually), arise inter-se the Parties, the same may, be referred by either party to Conciliation to be conducted through Independent Experts Committee to be appointed by competent authority of BHEL from the BHEL Panel of Conciliators.

Notes:


1. No serving or a retired employee of BHEL/Administrative Ministry of BHEL shall be included in the BHEL Panel of Conciliators.

2. Any other person(s) can be appointed as Conciliator(s) who is/are mutually agreeable to both the parties from outside the BHEL Panel of Conciliators.

The proceedings of Conciliation shall broadly be governed by Part-III of the Arbitration and Conciliation Act 1996 or any statutory modification thereof and as provided in **Annexure-CONCILIATION** to this GCC.

The **Annexure-CONCILIATION** together with its Formats will be treated as if the same is part and parcel hereof and shall be as effectual as if set out herein in this GCC.

The Contractor/Seller etc. agrees that the BHEL may make any amendments or modifications to the provisions stipulated in the **Annexure-CONCILIATION** to this GCC from time to time and confirms that it shall be bound by such amended or modified provisions of the **Annexure-CONCILIATION** with effect from the date as intimated by BHEL to it.

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CLOSING OF CONTRACTS

The Contract shall be considered completed and closed upon completion of all contractual obligations and settlement of Final Bill or completion of Guarantee period whichever is later. Upon closing of Contract, BHEL shall issue a completion certificate as per standard format, based on specific request of Contractor.

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SUSPENSION OF BUSINESS DEALINGS

- 1.1. BHEL reserves the right to take action against Contractors who either fail to perform or Bidders /Contractor who indulge in malpractices, by suspending business dealings with them in line with BHEL guidelines issued from time to time.
- 1.2. Suspension could be in the form of 'Hold', 'De-listing' or 'Banning' a contractor.
- 1.3. A bidder may be put on HOLD for a period of 6 months, for future tenders for specific works on the basis of one or more of the following reasons:
 - a) Bidder does not honour his own offer or any of its conditions within the validity period.
 - b) Bidder fails to respond against three consecutive enquires of BHEL.
 - c) After placement of order, Bidder fails to execute a contract.
 - d) Bidder fails to settle sundry debt account, for which he is legitimately liable, within one year of its occurrence.
 - e) Bidder's performance rating falls below 60% in specific category (as per BHEL guidelines of performance evaluation)
 - f) Bidder works are under strike/ lockout for a long period.
- 1.4. A Bidder may be de-listed from the list of registered Bidders of the region for a period of 1 year on the basis of one or more of the following reasons:-
 - a) Bidder tampers with tendering procedure affecting ordering process or commits any misconduct which is contrary to business ethics.
 - b) Bidder has substituted, damaged, failed to return, short returned or unauthorized disposed of materials/ documents/ drawings/ tools etc of BHEL.
 - c) Bidder no longer has the technical staff, equipment, financial resources etc. required to execute the orders/ contracts.
- 1.5. A Bidder can be banned from doing any business with all Units of BHEL for a period of 3 years on the basis of one or more of the following reasons:
 - a) Bidder is found to be responsible for submitting fake/ false/ forged documents, certificates, or information prejudicial to BHEL's interest.
 - b) In spite of warnings, the Bidder persistently violates or circumvents the provisions of labour laws/ regulations/ rules and other statutory requirements.
 - c) Bidder is found to be involved in cartel formation
 - d) The Bidder has indulged in malpractices or misconduct such as bribery, corruption and fraud, pilferage etc which are contrary to business ethics.
 - e) The Bidder is found guilty by any court of law for criminal activity/ offences involving moral turpitude in relation to business dealings.

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- f) The Bidder is declared bankrupt, insolvent, has wound up or been dissolved; i.e ceases to exist for all practical purposes.
- g)) Bidder is found to have obtained Official Company information/ documentation by questionable means.
- h) Communication is received from the administrative Ministry of BHEL to ban the Bidder from business dealings.

1.6. Contracts already entered with a contractor before the date of issue of order of 'HOLD' or 'DE-LISTING' shall not be affected.

1.7. All existing contracts with a 'BANNED' contractor shall normally be short closed.

1.8. Once the order for suspension is passed, existing offers/new offers of the contractor shall not be entertained.

1.9. The above guidelines are not exhaustive but enunciate broad principles governing action against contractors.

1.10. **Suspension of Business Dealings:** Action shall be taken as per extant BHEL "Guidelines for Suspension of Business Dealings with Suppliers/Contractors AA/MM/SB/01 Rev.02 Dated 22.07.2016 Amdt 01 Dt.06.11.2018" against Supplier/Contractor as well their agents who either fail to perform or are in default without any reasonable cause like force majeure, 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 processor influence the price, tempering with tender process etc. **Details in this regard can be accessed through BHEL website www.bhel.com**

(direct link: http://www.bhel.com/vender_registration/pdf/Suspension_guidelines_abridged.pdf) In case of any conflict with any terms and conditions mentioned above in this chapter, details given in "Guidelines for Suspension of Business Dealings with Suppliers/Contractors AA/MM/SB/01 Rev.02 Dated 22.07.2016 Amdt 01 Dt.06.11.2018" shall prevail.

1.11. **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."

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OTHER ISSUES

- 1.1. Value of Non judicial Stamp Paper for Bank Guarantees and for Contract Agreement shall be not less than Rs 100/- unless otherwise required under relevant statutes.
- 1.2. **Special Conditions of Contract shall prevail over General Conditions of Contract in order of precedence. In case of any conflict between the General Conditions of Contract and Special Conditions of Contract, provisions contained in the Special Conditions of Contract shall hold good.**
- 1.3. BHEL may not insist for signing of Contract Agreements in respect of low value and short time period contracts on case to case basis based on BHEL's own discretion.
- 1.4. **Reverse Auction:** BHEL reserves the right to go for Reverse Auction (RA) (Guidelines as available on www.bhel.com) instead of opening the sealed envelope price bid, submitted by the bidder. This will be decided after techno-commercial evaluation. Bidders to give their acceptance with the offer for participation in RA. Non-acceptance to participate in RA may result in non-consideration of their bids, in case BHEL decides to go for RA. Those bidders who have given their acceptance to participate in Reverse Auction will have to necessarily submit 'Process compliance form' (to the designated service provider) as well as 'Online sealed bid' in the Reverse Auction. Non-Submission of 'Process compliance form or Online sealed bid' by the agreed bidder (s) will be considered as tampering of the tender process and will invite action by BHEL as per extant guidelines for suspension of business dealings with suppliers/ contractors (as available on www.bhel.com). The bidders have to necessarily submit online sealed bid less than or equal to their envelope sealed price bid already submitted to BHEL along with the offer. The envelope sealed price bid of successful L1 bidder in RA, if conducted, shall also be opened after RA and the order will be placed on lower of the two bids (RA closing price & envelope sealed price) thus obtained. The bidder having submitted this offer specifically agrees to this condition and undertakes to execute the contract on thus awarded rates. *If it is found that L1 bidder has quoted higher in online sealed bid in comparison to envelope sealed bid for any item(s), the bidder will be issued a warning letter to this effect. However, if the same bidder again defaults on this count in any subsequent tender in the unit, it will be considered as fraud and will invite action by BHEL as per extant guidelines for suspension of business dealing with suppliers/ contractors (as available on www.bhel.com).*" As a reminder to the bidders, system will flash following message (in RED Color) during the course of 'online sealed bid': "Bidders to submit online sealed bid less than or equal to their envelope sealed bid already submitted to BHEL".