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GENERAL CONDITIONS OF CONTRACT



BHEL
FSIP - INDUSTRIAL AREA JAGDISHPUR,
DISTT. AMETHI- 227817 (U.P.) INDIA



1.1 GENERAL

1.1.1 In case the bidder has a relative employed in BHEL, the authority inviting tender shall be informed of this fact in writing at the time of submission of tender, failing which the tender may be disqualified, or if such fact comes to light subsequently, the contract may be terminated.

1.1.2 If the bidder gives wrong information in his tender or creates conditions favorable for the acceptance of his tender, BHEL, FSIP reserves the right to reject such tender at any stage.

1.2 SIGNING OF TENDER DOCUMENTS

The tenderer shall furnish following, duly enclosing documents relating thereto:-

- a) Authorized signatory shall be the person holding 'power of attorney' on behalf of the firm/company/bidder-concerned authorized/empowered to act on behalf for the specific purpose.
- b) Power of Attorney: An attested copy of the Power of Attorney, in case an individual other than the sole proprietor signs the tender shall be submitted along with the tenders.
- c) In case of an Individual, full name, address, place & nature of business and license relating to.
- d) In case of Partnership Firms: The names of all the partners and their address. A copy of the partnership deed/instrument of partnership duly certified by the Notary Public shall be enclosed. The tender must be signed by all the partners of the firm or by the managing partner who has power to do.
- e) BHEL will not be bound by any other power of attorney granted or the change in composition of the firm made after the execution of the contract agreement. They may, however, recognize such power of attorney or change in status only after legal advice.
- f) Bidder shall sign all pages of tender document with seal and date. In case bidder download document from BHEL website no signing of document will be done by BHEL authority and submitting authentic and countersigned copy of tender is responsibility of bidder.
- g) The bidder shall accept all the terms and conditions of the tender. Each page should be duly signed by the bidder as a token of acceptance.
- h) All entries in the e-tender should be filled. All the columns in the tender form should be filled without leaving any column blank. In case any of the columns are left blank, the tender may liable to be rejected.

1.3 **OFFICIAL SECRET ACT:** The bidder shall give an undertaking (if applicable) under the official secret Act for maintaining secrecy of the drawings, documents or other records connected with the work given to them. The bidder shall return all the drawings/documents given to them.

1.4 **MODE OF COMMUNICATIONS:** Generally, all communications, references etc. shall be delivered through E-Mail/ Internet/Registered Post/web portals or can be given to the authorized supervisor. It will be undertaken that the bidder has read and understood the message, within three days of the delivery, even if they have not received / not opened/ having Technical problems on their side. Bidder shall communicate their change of authorized supervisor, email address in advance. Any communication required to be sent to the bidder in writing shall be sent at the address mentioned on the tender form or to any other address subsequently intimated by him in writing to BHEL FSIP for the purposes.

I/We hereby accept above (signature & seal of bidder)



1.5 EARNEST MONEY DEPOSIT (EMD)

1.5.1 EMD is to be paid by bidder for securing fulfilment of any obligations in terms of the NIT. Offer should be accompanied with Earnest Money as specified in NIT through.

The EMD may be accepted only in the following forms:

- a. Electronic Fund Transfer credited in BHEL account (**before tender opening**). EFT shall be made in Bank Account No.: 10405292240 of SBI, IGFC branch, IA Jagdishpur, IFSC No. SBIN0009072. Receipt of EFT Transfer from bank shall be enclosed with Techno-commercial offer. Proof of EMD deposit should be send by email to given contact person.
- b. Banker's cheque/ Pay order/ Demand draft, in favour of BHEL (**along with offer**) EMD to be deposited along with the tender documents in the form of a Accounts payee Crossed demand draft favoring B.H.E.L., Drawn on Bank of Baroda, Payable at Industrial Area, Jagdishpur (Code-INDJAG) or a Crossed demand draft favoring B.H.E.L., drawn on State Bank Of India, Payable at IGFC Ltd. Branch, Industrial Area, Jagdishpur (code- 09072).
- c. 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 Bidder, a/c BHEL).
- d. In addition to above, the EMD amount in excess of Rs. 2.0 (Two) lakh 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.
- e. The EMD shall not carry any interest.

1.5.2 In case of unsuccessful bidder, the EMD will be refunded after finalization of the tender.

1.5.3 BHEL reserves the right of forfeiture of EMD, in case the successful bidder who:

- a. 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.
- b. The Bidder fails to deposit the required Security deposit or commence the work within the period as per LOI/ Contract.

1.5.4 EMD instructions:

- a) EMD amount as indicated in NIT is to be submitted by the bidders. If the bidder wishes to participate in more than one tender, one time EMD option may be opted by the bidders.
- b) The one time EMD amount is **Rs. 5.00 Lakhs**. For Deposit of one time EMD contact Sr. DGM (MM).
- c) The one time EMD will be valid for all the tenders floated by BHEL – FSIP, Jagdishpur during the period of one year from date of deposit of One Time EMD. After One Year validity One Time EMD need to be extended.
- d) One time EMD will not be adjusted against Security Deposit.

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- e) One time EMD will be refunded only after the finalization of all tenders participated by the bidder.
- f) The copy of the onetime EMD deposit receipt is to be submitted with the bid.
- g) Tenders without EMD shall be rejected out rightly.

1.6 SECURITY DEPOSIT

1.6.1 Security Deposit means the security provided by the Bidder towards fulfilment of any obligations in terms of the provisions of the contract.

1.6.2 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.

The balance amount to make up the required Security Deposit of 5% of the contract value may be accepted in the following forms:

- a) Local cheques of Scheduled Banks (subject to realization)/ Pay Order/ Demand Draft/ Electronic Fund Transfer in favour of BHEL (payable at Ind. Area Jagdishpur). EFT shall be made in Bank Account No.: 10405292240 of SBI, IGFC branch, I.A Jagdishpur., IFSC No. SBIN0009072. Receipt of EFT Transfer from bank shall be submitted to BHEL.
- b) Bank Guarantee from Scheduled Banks/ Public Financial Institutions as defined in the Companies Act. The Bank Guarantee format should have the approval of BHEL.
- c) Fixed Deposit Receipt issued by Scheduled Banks/ Public Financial Institutions as defined in the Companies Act (FDR should be in the name of the Bidder, a/c BHEL)
- d) Securities available from Indian Post offices such as National Savings Certificates, Kisan Vikas Patra etc. (held in the name of Bidder 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.)

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

If the value of work done at any time exceeds the contract value, the amount of Security Deposit shall be correspondingly enhanced and the additional Security Deposit shall be immediately deposited by the Bidder or recovered from payments due to the Bidder.

The recoveries made from running bills (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.

Security Deposit shall be released to the Bidder upon fulfilment of contractual obligations as per terms of the contract. The Security Deposit shall not carry any interest.

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1.6.4 Failure to pay the security deposit shall be treated as failure to discharge the duties under the contract and shall result in cancellation of the offer of the contract and the bidder shall be liable to compensate the losses if any incurred by BHEL on this account. The security deposit shall be refunded within a reasonable time after the date of expiry of the contract period subject to the bidder carrying out all obligations and operations as required under the contract.

1.6.5 BHEL reserves the right to appropriate the whole or any part of the amount of the security deposit without prejudice to other claims against the bidder for losses suffered by BHEL due to failures on the part of the bidder or due to termination of contract or bidder becoming disqualified because of liquidation. Such losses, damages, charges, expenses or cost, as assumed by BHEL shall be final and binding the bidder and shall not be called into question.

1.6.6 Whenever any sum of money is found to be recoverable from the bidder, the same will be deducted from any sum that may due or which at any time there after becomes due to the bidder under this contract or under any other contract or from his security deposit. In case the recoveries are not complete even after such deduction, the bidder shall pay the same or the balance thereof from the security deposit. The bidder shall immediately thereafter pay such further sums as may be required to replenish the shortage caused by such recoveries in the amount of security deposit.

1.6.7 Security deposit money of bidder will be refunded only after successful completion of the contract. In case any dues are claimed by the statutory Authorities related to contract, the same shall be recovered/ borne/ settled by bidder.

1.7 STATUTORY REQUIREMENTS

1.7.1 The bidders must comply with Minimum wages State Government (UP) notification. The bidder will also require to comply with all the statutory provisions such as Bonus, PF, EDLI, ESI, Gratuity, Service Tax, compensatory allowance, travel allowance, minimum wages prevailing at the time of payment or arrears thereof, declared Holidays, leave, night shift working allowance, etc.

1.7.2 The bidder shall comply with the provisions of the Factories Act 1948, Contract Labour (Regulation and Abolition) Act 1970, ESI Act, Employees Provident Fund and Miscellaneous Act 1952, Minimum Wages Act 1948, Payment of Gratuity Act 1972, Industrial Disputes Act, 1947, Employers Liability Act 1938, Inter State Migrants Workmen (Regulation of employment and conditions of Service) Act 1979 and or any other Laws and Rules that may be applicable from time to time to the workers engaged by him. The bidder, when required by the Company shall produce the registers and records for verification and comply with other directions issued by the company for compliance of the statutory provisions.

1.7.3 The bidder will have to follow the provisions of Payment of Bonus Act 1965 and Rules 1975, and is liable to pay Bonus to his workers. (Minimum prescribed bonus being 8.33% at present). The bidder shall maintain Form D as per Rule 5 of the PAYMENT OF BONUS ACT 1965. The bidder is further liable to pay bonus to his employees in accordance with the payment of Bonus Act 1965 and will keep all the records in Form C as per the said Act.

1.7.4 In case of revision of Minimum Wage by the State Govt. after the award of work by BHEL FSIP, the bidder will be liable to pay the difference of increased wages for such period. Any failure to comply with the statutory requirements on the part of bidder shall disqualify such bidder from all contracts awarded to him and his name shall be black listed for further tenders / contracts. In

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addition, the bidder's security deposit shall be forfeited apart from consequential legal action against him.

- 1.7.5 statutory registrations and clearances- pre-requisites: Bidder shall commence the work only after obtaining:
- Labour License: The Bidder has to obtain & submit labour license as per prevailing rules after award of the work/LOI.
 - Provident fund code no. : Bidder should preferably have the independent PF code under Employee Provident Fund and Miscellaneous Provisions Act 1952
 - ESI code no. : Photocopy of Letter from ESI Corporation and PF commissioner's office, to establish that bidder is independently registered as an employer under ESI and PF to be produced before commencement of work (ESI & PF code to be submitted). Bidder should preferably have independent ESI Employer code under ESI Act 1948.
 - Notice of commencement in form 6-A & maintain Register of workers Form-13.

1.8 CONTRACTOR SHALL ENSURE FOLLOWING WHILE EXECUTING CONTRACT

- Employment card as per rule no 76 of contract labour (Regulation & Abolition) UP rules, 1973
- Appointment letter to his employees.
- Annual leave with wages including EL, CL, National Holidays & Festival holiday.
- Leave record register.
- Shall engage only adult workers who have attained the age of 18.
- Work to be done on second/third shift, overtime, Sundays or on other declared holiday with written permission.
- Obtain insurance cover for his employees, tools etc. & third party insurance coverage at his own cost.
- Remit Provident fund contribution in prescribed 3A & 6A forms.
- ESI contribution in form 6
- Submit challans of PF & ESI contributions every month.
- Submit undertaking/declaration every month along with RA bills, that employer's contribution (12% EPS and EPF both) has been made/paid by the contractor himself and contractor has not availed the benefit under the Pradhan Mantri Rojgar Protsahan Yojana (PMRPY) scheme, failure to this RA bill will not be paid.
- Distribute wage slip each month to his employees

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XIII. Ensure payment as per minimum wages act, 1948 through bank account of labours

XIV. On completion of work

- a) Submit PF & inspection report
- b) Notice of completion -Form 25 A (8).

XV. Those engaging 100 or more workman,

- a. Shall comply with the provisions of factories Act.

1.8.1 Each bidder will be required to maintain the daily attendance of his labours in the prescribed Performa for accounting payment of minimum wages, deduction towards ESI & PF Contributions, payment of Bonus, leave etc.

1.8.2 The Bidder shall, keep and produce for inspection at all times, forms, registers and other records required to be maintained under various statutes in order go through them by the Company whenever required.

1.9 FAILURE TO COMPLY WITH CONTRACT/ TERMINATION OF CONTRACT

1.9.1 Notwithstanding anything contained in any other clause, BHEL reserves the right to terminate the contract due to any failure on the part of the Bidder in discharging his obligations under the contract or in the event of his becoming insolvent or going into liquidation. The decision of the BHEL about the failure on the part of the Bidder shall be final and binding on the bidder. In case of any damage to the existing building, structures, materials, tools, furniture and fixtures, machines etc., caused from bidder's end, the cost of its repairs or replacement will be recovered from the bidder. If there is any stoppage of production in any area of the plant due to the fault of the bidder, the bidder is liable to compensate the same.

1.9.2 In the event of any failure on the part of the bidder, BHEL shall have the right without prejudice to any other right or remedies, to get the work done through any other agency and the Bidder shall be liable to compensate BHEL for any losses on this account. The additional cost, loss, if any incurred by BHEL will be recovered from the bills, security deposits, other dues as well as directly from the Bidder.

1.9.3 The cancellation of contract may be either whole or part of the contract at BHEL's option. However the bidder shall continue to operate that part of contract which has not been terminated.

1.9.4 The bidder shall ensure and maintain uninterrupted progress of the work in accordance with instructions given to him on behalf of BHEL from time to time.

1.9.5 In case the bidder makes default in commencing the work within the time specified by BHEL without any reasonable cause, disputes any of the terms and conditions of the contract or refuses to execute the contract or any part thereof at any stage, the contract shall, without prejudice to any other right or remedies available to BHEL FSIP, be liable to be canceled / terminated in part or in whole. In the event of cancellation / termination of contract, the bidder shall be liable, to compensate BHEL for all losses incurred by BHEL including the loss suffered on account of having the work executed through any other bidder or department as may be convenient to BHEL, in accordance with the exigencies of the work.

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- 1.9.6 Officer In-charge shall have the right to stop the work at any stage due to any of the reason arising due to non-execution of work or violating any clause of contract terms and conditions, at any time by giving the bidder the seven days' notice in writing and the measurement of the work shall be made by the officer or his authorized representative at any time after due notice at the time of measurement to the bidder. When the payment is made to the bidder based on such measurement, whether or not the bidder or his agent was present at the time of measurement, he shall have no further claim against BHEL.
- 1.9.7 Officer In-charge shall have the right to terminate the contract, forfeit the Security Deposit and recover the loss sustained in getting the balance work done through other agencies at bidder's risk & cost in addition to liquidated damages in the event of Bidder's continued poor performance, withdrawal from or abandonment of the work before completion of the work after giving a show cause with notice period of 15 days.

1.10 LAWS GOVERNING THE CONTRACT

- 1.10.1 The contract will be governed by the Laws of India for the time being in force and as amended or made from time to time.
- 1.10.2 All disputes shall be settled in accordance with the Laws of India for the time being in force and as amended from time to time.
- 1.10.3 The decision of BHEL regarding interpretation of any terms and conditions set forth in tender document and the agreement shall be final and binding on the bidder.
- 1.10.4 Sub-contracting: The bidder shall not sub-contract or transfer or assign the contract in full or in part or any part thereof to any other person or firm or company.

1.11 DUTIES AND RESPONSIBILITIES OF THE BIDDER

The duties and responsibilities and obligation of the bidder including statutory responsibilities mentioned in this document is an indicative list and not exhaustive list. Bidders are required to confirm with the concerned authorities for proper and complete compliance.

- 1.11.1 **CHILD LABOUR:** The bidder will not engage any child labour (i.e. any workers below the age of 18 years) and the bidder will abide by the provisions of child labour (Prohibition & Regulation) Rules 1988. He should issue appropriate appointment Letter to his Workmen.
- 1.11.2 The following documents / forms under Contract Labour (Regulation & Abolition) Act 1970 and relevant rules therein shall be maintained by each bidder:
- (i) A notice showing the wage period and the place and time of disbursement of wages to be displayed at the place of work and a copy sent by the bidder to the HR Department (Rule 75).
- (ii) A register of workman Form XIII (Rule 75)
- (iii) Employment card Form XIV (Rule 76)
- (iv) Service Certificate Form XV (Rule 77)

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- (v) Muster Roll, Wage Register, Deductions Register, overtime Register Etc.
- (vi) Half yearly return to be sent (In duplicate) by the bidder to the licensing officer. Form – XXIV (Rule 82 (I) with a copy to HRM Department regularly.
- (vii) All statutory registers and records shall be preserved in original for a period of Ten years and should be made available even after the contract is over for verification.

1.11.3 The bidder shall comply with the provisions of Contract Labour (R & A) Act including provisions relating to welfare and Health facilities as provided under the Contract Labour (R& A) Act 1970 and relevant rules.

1.11.4 All the bidders shall submit the returns required under contract Labour (Regulation & Abolition) Act 1970 and forward a copy to HR Department.

1.11.5 Since, FSIP-JAGDISHPUR is a Notified Area under the provisions for ESI Act 1948, the bidder shall comply with the provision of ESI Act, and will be responsible for any liability arising during the tenure of the work contract under the Act, The bidder should ensure ESI coverage and facilities to his workers (I.e. ESI code no. and ESI card etc.,) as per ESI Scheme from ESI authorities including Medical Benefit etc,. The bidder shall arrange for filling of family declaration forms in respect of their contract labors and deposit the same in ESI office for issue of Identity card by ESI authorities. The bidder may deduct required ESI contribution from the wages of their employees as per law and deposit the same (Employees share) along with his contribution to the ESI authorities.

1.11.6 Workmen insured under ESI Act only shall be deployed in contract work.

1.11.7 The bidder shall submit Six Monthly return in Form 6 along with monthly Challans to the appropriate authority under the provisions of Employee's State Insurance Act 1948, under intimation to HR Dept.

1.11.8 Notwithstanding anything contrary to this, in the event of accident the bidder shall be required to submit injury report to the concerned authorities with a copy of the same to the designated BHEL FSIP Executive immediately and ensure the compliance of the ESI Act and rules made therein.

1.11.9 The bidder shall submit the following returns to the appropriate authority under the provisions of Employee's Provident Fund and Misc. Provisions Act 1952, Employees Pension Scheme 1995 under intimation to HR Dept.

1.11.10 Monthly return in Form 12 A along with form 5 & 10(addition and deletion) and monthly Challan.

1.11.11 Annual Return in Form 6A along with Form 3A.

The Bidder shall maintain the following records as required under the Employees Provident Fund and Miscellaneous Provisions Act 1952, Employee's Pension Scheme 1995

- (i) Declaration of Nomination, Form No.2 Para 33 and 61 (1).
- (ii) Pass Book.
- (iii) Cash Book.

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- (iv) Attendance.
- (v) Wage Register.
- (vi) PAN , Mobile , UID

1.11.12 The bidder shall regularly pay the amount of contribution (employer's contribution as well as the employee's contribution) as per the Employee's Provident Fund and Miscellaneous Provisions Act 1952, Employees Pension Scheme 1995 and Employee's State Insurance Act 1948.

(i) The bidder may recover from his workmen, the employee's contribution in accordance with the provision of the said act and the Scheme but he shall not recover the employer's contribution or the other charges from his employees in any manner.

(ii) The bidder shall submit along with monthly bills to BHEL, statement showing the recoveries of contributions in respect of employees employed by or through him along with the proof of Deposit of such contribution with the Concerned Authority and shall also furnish to BHEL FSIP such information, in the capacity of principal Employer, is required to furnish under the provisions of the schemes under the Employees P.F. and Misc. provisions Act 1952 and ESI Act 1948 to the authorities under the said acts.

(iii) The bidder will arrange for his own P.F. and ESI code No. from the P.F. Authorities and ESI Authorities.

1.11.13 Bidder to ensure that the employees deployed in the premises of BHEL are physically and mentally fit and do not have any criminal records. The company has right to direct the bidder to remove from the BHEL premises such of his personnel who may be physically, hygienically, clinically or medically unfit.

1.11.14 In case bidder fails to make payment of wages to his employees or remittance of contribution to the concerned authorities, the Security deposit / other dues payable under the contract can be utilized by BHEL to discharge the liability of the bidder.

1.11.15 The liability for any compensation on account of injury sustained by an employee of the bidder will be exclusively that of the bidder.

1.11.16 NATIONAL & FESTIVAL HOLIDAYS (as declared by BHEL, FSIP Jagdishpur): The bidder will give paid National Holidays and Festival Holidays to the workers as per Section 5 of National and Festival Holidays Act. However, if due to the exigency of work if any of his workmen is required to work on National Holiday or Festival Holiday, the bidder will pay wages as per Section 5 sub section 2 and 3 of the said act.

1.11.17 Besides the three national holidays 15th August, 26th January and 2nd October, if (BHEL FSIP, Jagdishpur) or Govt. declares any other day as a national holiday / holiday same will be treated as paid holiday for the purpose of this contract. Accordingly the bidder shall be required to provide paid holiday to its workers for the same. If any of the contract worker works on such additional declared national holiday, he will be entitled to additional payment for the said day.

1.11.18 GENERAL ELECTIONS: If the general elections are held for State Assembly / Parliament and Government declares a public holiday for exercising the franchise, the contract shall give all his workman half day leave in "A" shift only. The bidder's workmen working B and C shifts will be required to exercise their franchise during their own time.

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1.11.19 The Bidder shall maintain the following Documents, Registers, Forms as required under the FACTORIES Act 1948 and Rules 1969.

- | | | |
|------|------------|------------------------|
| (I) | Leave Book | Form No. 15 (Rule 121) |
| (II) | Nomination | Form No. 25 (Rule 127) |

1.11.20 The bidder will extend leave with wage to his workers who have worked for a period of 240 days or more during a calendar year. To facilitate the proper execution of the Factories Act, these leaves shall be allowed during the same calendar year, at the rate of one day for every 20 working days. A worker commencing service on a day other than the 1st day of the January shall be entitled to leave with wages at the above rate (one day for every 20 days of work) only if he has worked for 2/3rd of total no. of days in the remaining year. The bidder will pay the un-availed portion of leave to worker every Six month from the start of the contract.

1.11.21 Bidder has to ensure that all his workmen are granted one day weekly off after every 48 hrs. of work during a week.

1.11.22 All the Registers and Records, forms, Notices maintained under the relevant Acts and Rules should be produced on demand before the Inspector or any other authority under the Act, failing which the contract may be terminated without any notice.

1.11.23 Bidder shall be required to submit a list of his workers to be deployed for the works contract in the enclosed Performa giving details regarding Name of contract worker Fathers Name, permanent and Present Address, Date of Birth, Qualification, Caste-SC/ST/OBC ESI No. and family member details.

1.11.24 The bidder shall promptly furnish all information and document required by BHEL FSIP Authorities for the purpose of complying with the responsibilities of Occupier of the factory and shall render all the necessary assistance for the same.

1.11.25 The bidder will maintain proper discipline of his workmen and will ensure that his workers do not cause any loss or theft or damage to any company's property. The bidder will also be responsible for the good conduct of his workmen.

1.11.26 The bidder or his authorized representative shall be required to be present at the work place / site during working hours for the purpose of supervising the work and executing as per contract, who should be capable of managing of his workforce, carry out the job smoothly, maintaining and submitting all statutory records and co-ordination with concerned section-in charge. The bidder will be solely responsible for executing the agreed work and the employees of BHEL will only oversee the proper execution of work.

1.11.27 The bidder shall, without fail, give up to date information in writing of the attendance of the workers engaged by him. The bidder will also submit the required documents and certificates as prescribed from time to time for the clearance and the payment of the bill.

1.11.28 During the currency of contract, if the bidder is awarded any other work contract in BHEL FSIP, the bidder will have to inform the designated BHEL/ FSIP executive before accepting the other work.

1.11.29 The bidder shall be responsible for observance of local laws, employment of personnel, payment of taxes etc.

1.11.30 The bidder shall be wholly responsible for the behavior of the workmen at the work place and outside, in the BHEL premises.

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1.11.31 The bidder shall ensure disbursement of wages payable to the labour in their respective Bank Accounts before 10th day of next month.

1.12 SETTLEMENT OF DISPUTES

- i) Except as otherwise specifically provided in the contract all disputes concerning questions of fact arising under the contract shall be decided by the concern BHEL official subject to a written appeal by the bidder to the concern BHEL official, whose decision shall be final to the parties hereto.
- ii) Any disputes or differences including those considered as such by only one of the parties arising out of or in connection with the contract shall be to the extent possible settled amicably between the parties.
- iii) If amicable settlement cannot be reached then all disputed issues shall be settled by arbitration as provided in relevant clause.

1.13 LEGAL JURISDICTION

In respect of all matters arising out of or pertaining to the contract, the cause of action thereof shall be deemed to have arisen only at JAGDISHPUR, where BHEL-FSIP is situated. All legal proceedings pertaining to the above matters or dispute shall be instituted only in courts having territorial jurisdiction over the place where BHEL-FSIP is situated and no other court shall have the jurisdiction.

1.14 ARBITRATION AND CONCILIATION

- (i) Except as provided elsewhere in this contract, in case amicable settlement is not reached between the Parties, in respect of any dispute or difference; arising out of the formation, bench, termination, validity or execution of the Contract; 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 giving a notice within 15 days in writing to the other Party may refer such dispute or difference to the sole arbitration of an arbitrator appointed by Head of the BHEL Unit/Region/Division issuing the Contract.
- (ii) The Arbitrator shall pass a reasoned award and the award of the Arbitrator shall be final and binding upon the Parties to the disputes.
- (iii) Subject as aforesaid, the provision of Arbitration and Conciliation Act 1966 (India) or statutory modifications or re-enactments thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause. The seat of arbitrator shall be BHEL FSIP Jagdishpur.
- (iv) The cost of arbitration shall be borne as per the award of the Arbitrator.
- (v) Subjected to the arbitration in terms of Clause given above, the Courts at Jagdishpur/Sultanpur (Principal Civil Court having ordinary original civil jurisdiction to decide question forming subject matter of the arbitration is located) shall have exclusive jurisdiction over any matter arising out of or in connection with this Contract.
- (vi) Notwithstanding the existence or any dispute or difference and/or reference for the arbitration, the Contractor shall proceed with and continue without hindrance the performance of its obligations under this Contract with due diligence and expedition in a professional manner expect where the Contract has been terminated by either Party in terms of this Contract.
- (vii) In case of Contract with Public Sector Enterprise (PSE) or a Government Department, the following shall be applicable:
In the event of any dispute or difference relating to the interpretation and application of the provision of the Contract, such dispute or difference shall be referred by either Party for arbitration to the sole arbitrator in the Department of Public Enterprise to be nominated by the Secretary to the Government

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of India in-charge of the Department of Public Enterprises. The Arbitration and Conciliation Act, 1966 shall not be applicable to arbitration under this clause. The award of the arbitration shall be binding upon the Parties to the dispute, providing, 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 authorised by the Law Secretary, whose decision shall bind the Parties hereto finally and conclusively. The Parties to the dispute will share equally the cost of arbitration as intimated by the Arbitrator.

1.15 STRIKES AND LOCKOUTS

- a. The bidder will be solely responsible for all disputes and other issues connected with his workmen. In the event of bidder's workmen resorting to strike or the bidder resorting to lockout and, if the strike or lockout so declared is not settled within a period of one month, BHEL shall have the right to get the work executed employing its own men or through other agencies or both. The cost incurred by BHEL in this regard shall be recovered from the bidder.
- b. For any purpose whatsoever, the employees of the bidder shall not be deemed to be in the employment of BHEL.
- c. The bidder, as the employer of his workmen, shall manage them. In the event of any dispute arising between the Bidder and his employees, the Bidder alone is solely responsible for resolving the dispute between them and BHEL will in no way be responsible for settling the dispute either statutory or otherwise.

1.16 DEFAULT/BREACH OF CONTRACT, INSOLVENCY AND RISK PURCHASE

If the Service Provider / Bidder fails to provide the required services as per the Contract on time / fails to deliver the goods or materials or any installment thereof within the period(s) fixed for such delivery or delivers goods or materials not of the contracted quality and failing to adhere to the contract specifications or at any time repudiates or otherwise abandons the contract before expiry of such period or refuses or is unable to supply / provide goods / services or materials covered by the Order/Contract either in whole or in part or otherwise fails to perform the Order/Contract or commits any breach of the Order/Contract not herein specifically provided for or in the event of the death or insanity or if the Seller/Bidder 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 or if the Seller/Bidder (Service Provider) 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, the purchaser without prejudice to his right to recover any expenses, losses or damages to which the purchaser may be put to incur or sustain by reason of the Seller/Bidder's default or breach of Order/Contract shall be entitled to cancel the Order/Contract either in whole or portion thereof without compensation to the Seller/Bidder (Service Provider) and if the purchaser so desires, he may procure upon such terms and in such manner as he deems appropriate, stores not so delivered or others of a similar description where stores exactly complying with particulars are not, in the opinion of the purchaser, which shall be final, readily procurable, at the risk and cost of the Seller/Bidder (Service Provider) and the Seller/Bidder (Service Provider) shall be liable to the purchaser for any excess costs provided that the Seller/Bidder (Service Provider) shall

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continue the performance of the Order/Contract to the extent not cancelled under the provisions of this clause. The Seller/Bidder (Service Provider) shall on no account be entitled to any gain on such repurchases.

1.17 TERMINATION OF CONTRACT ON DEATH OF BIDDER

In case of death of contractor bidder (in case of sole proprietorship concern) the contract stands cancel and the competent authority on behalf of the BHEL reserve right to get the balance work done by other agencies as per decision of BHEL without prejudice to any of the rights or remedies under the contract. BHEL shall have the right of terminating the contract without compensation to the bidder.

1.18 SAFETY AND OCCUPATIONAL HEALTH

i. The bidder has to assume full responsibility of the safety of the vehicles/ equipments, crew and to comply with the security/ safety regulations of BHEL and others inside the BHEL factory. The bidder is required to maintain first aid box at work place. The bidder shall follow safety rules and regulations as per provisions of Factories Act 1948, and Rules at his own expense and arrange for the safety provisions as appended to these conditions or rules framed by the government from time to time. The bidder shall be responsible for safety of his laborers while they are engaged for work connected with BHEL FSIP contract.

ii. The bidder has to properly educate their workmen in safe working practices in consultation with the officer-in-charge and ensure safe working condition.

iii. (a) Accident: Any death or permanent disability resulting solely and directly from any unintended and unforeseen injurious occurrence caused during the manufacturing / operation and works incidental thereto at BHEL factories/ offices and precincts thereof, project execution, erection and commissioning, service, repair and maintenance, trouble shooting, service, overhaul, renovation and retrofitting, trail operation, performance guarantee testing undertaken by the company or during any works / during working at BHEL Units/ Offices/ townships and premises/ project sites.

(b) Victim: Any person who suffers permanent disablement or dies in an accident as defined in clause.

(c) Compensation in respect of each of the victims:

I. In the event of death or permanent disability resulting from Loss of both limbs: Rs. 10,00,000/- (Rs. Ten Lakh).

II. In event of other permanent disability: Rs. 7,00,000/- (Rs. Seven Lakh)

(d) Permanent Disablement: A disablement that is classified as a permanent total disablement under the provision to section 2(I) of the Employee's Compensation Act. 1923.

iv. BHEL shall recover the amount of compensation paid to victim(s) by BHEL toward loss of life / permanent disability due to an accident which is attributable to the negligence of contractor, agency or firm or any of its employees.

v. Bidder shall ensure that Uniform, safety shoes and PPE (as per requirement of work area) shall be used by the workers as specified by BHEL.

1.19 FORCE MAJEURE

Notwithstanding anything contained in this Contract, neither the Bidder and nor the BHEL shall be held responsible for total or partial non execution of any of the contractual obligations, should the obligation be made impossible due to concurrence of a Force Majeure which will include war, military operations of



any nature, blockages, revolutions, insurrections, riots, civil commotion's, insurgency, sabotage, act of public enemy, acts of god, epidemics and act of Govt. over which the Supplier or BHEL has no control.

1.20 FRAUD PREVENTION POLICY

The Bidder along with its associate/ collaborators/ sub-bidders/ 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."

1.21 SUSPENSION OF BUSINESS DEALINGS WITH BHEL

The guidelines for suspension of business dealings are available on www.bhel.com and will be guiding criteria in case of any misconduct/default/use of illegal means etc. is resorted by vendor/bidder. The details of different type of default/misconducts are available in guidelines.

1.22 PAYMENT TO THE BIDDER

The periodicity of payment to the Bidder shall be on monthly basis. The Bidder shall raise the bill for payment as per contractual terms and conditions mentioned in the Contract, which should be duly certified by the BHEL official in charge of the contracted work. However the bill shall be raised by the bidder only after disbursement of wages payable to the workmen before 10th day of every month (with billing cycle as 1st to 30th/31st of month) in their respective bank account. Normally, payment shall be made within 45 days of receipt of bill at BHEL.

1.23 PENALTY FOR DELAYED PERFORMANCE

For late completion of work, BHEL standard LD clause shall be applicable which is 0.5% per week for unexecuted portion of work subject to maximum 10% of work order value. Cost of rejection/rework, as appropriate shall be recovered from bidder as compensation for defective job done.

1.24 INDEMNITY_BOND/ COMPLIANCE OF LEGAL PROVISION/ INTIGRITY PACT

The Bidder will have to indemnify BHEL against:

- (a) All claims for death, injury or damage to any person or property caused by his negligence of his employees whilst in BHEL premises.
- (b) Observance of Labor & Industrial Laws, including regular remittance to EPF and ESI.
- (c) All claims by way of compensation and all other types of unforeseen claims, which may arise in the period of contract.
- (d) The Bidder will accept liability for compensation in accordance with the provision of the Indian Worker's Compensation Act, 1948, amendments thereafter and or other law for the time being in force for personal injury caused to any workmen by accident arising out of and in the course of this contract.
- (e) The Bidder will indemnify the company against all payments by way of compensation or otherwise which the company may be called upon to make under the provisions of the said Acts to any workmen as aforesaid, and any cost incurred by the company in connection with any claim preferred by such workmen and or against all actions, claims and demand whatsoever in respect thereof or in respect of any loss, injury or damages whatsoever to any third person arising out or occasioned by the negligent, imperfect or improper performance of this contract by the Bidder, their workmen servants or agents.

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BHARAT HEAVY ELECTRICALS LIMITED

FABRICATION STAMPING AND INSULATOR PLANT, JAGDISHPUR -227817

- (f) The Company shall not be held liable for any loss, damage or compensation to third parties arising from or in relation to transport operation done by the bidder, such loss, damage or compensation shall be reimbursed by the Bidder to the company together with the costs incurred by the company on any legal proceedings pertaining there to.
- (g) The Bidder shall fully indemnify the loss if any caused to BHEL due to any default or non-observance of any of the laws, or any omission or commission or inability on the part of the Bidder or his representative.
- (h) In case of contract estimate is equal to or more that Rs. 5 Crore, Integrity Pact to be signed and submitted by the bidder along with the tender documents by the bidder.
- (i) That BHEL- FSIP Jagdishpur will not, in any manner be responsible for any act, omission or commission of the workers engaged by bidder and no claim in this respect will lie against BHEL-FSIP Jagdishpur. If any such claim is made against BHEL-FSIP Jagdishpur by any worker or his heirs engaged/employed by the bidder, which BHEL-FSIP Jagdishpur is obliged to discharge by virtue of any statute or any provision of law and rules due to mere fact of the workers of the bidder working at BHEL- FSIP Jagdishpur premises or otherwise, the bidder will be liable to indemnify/reimburse BHEL-FSIP Jagdishpur all the money paid in addition to the expenses incurred by him. The bidder must indemnify and keep indemnified BHEL- FSIP Jagdishpur against all losses and claims for injuries or damage to any person or property whatsoever which may arise of or in course of the operation of the contract and against all claims, demands, proceedings, damages, cost, charges and expenses whatsoever in respect of contingencies depicted herein shall be deemed as expected risk.

1.25 CONTRACT AGREEMENT: The successful bidder has to sign and submit a contract agreement on a non-judicial stamp paper of Rs.100/- at his own cost within stipulated time as acceptance of rates, terms and conditions of the contract.