

# Volume - IC General Conditions of Contract

(Common for Power Sector Regions)

2012

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## **CHAPTER -1**

### **1. GENERAL INSTRUCTION TO TENDERERS**

#### **1.1. DESPATCH INSTRUCTION**

- i) The General Conditions of Contract form part of the Tender specifications. **All pages of the tender documents shall be duly signed, stamped and submitted along with the offer (upload on E portal using Digital Signature in case of E tender) in token of complete acceptance thereof.** The information furnished shall be complete by itself. The tenderer is required to furnish all the details and other documents as required in the following pages.
- ii) Tenderers are advised to study all the tender documents carefully. Any submission of tender by the tenderer 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 tenderers 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. Tenderer'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 tenderer in his offer. Non compliance with any of the requirements and instructions of the tender enquiry may result in the rejection of the tender.
- iii) Integrity pact (IP) shall be applicable for all tenders / contracts if indicated in NIT. This integrity pact shall be issued as part of the Tender documents and shall be returned by the bidder along with Techno-commercial bid duly filled, signed and stamped by the authorized signatory who signs the bid / **upload on E portal using Digital Signature in case of E tender**. Only those vendors / bidders who have entered into such an IP with BHEL shall be considered qualified to participate in the bidding. Entering into this pact shall be a preliminary qualification.

#### **1.2. SUBMISSION OF TENDERS**

- 1.2.1 The tenderers must submit their tenders to Officer inviting tender (**Or upload on E portal website <https://bhel.abcprocure.com> in case of E tender**) **as per instructions in the NIT.**
- 1.2.2 Tenders submitted by post shall be sent by "REGISTERED POST ACKNOWLEDGEMENT DUE / by COURIER" and shall be posted with due allowance for any postal/courier delays. BHEL takes no responsibility for delay, loss or non-receipt of tenders sent by post/courier. **In case of E tenders; Tenders shall be uploaded with due allowance for any last minute failure in E-tender Portal/internet connectivity etc.** BHEL takes no responsibility for any such issues. **The tenders received after the specified time of their submission are treated as 'Late Tenders' and shall not be considered under any circumstances. In any case the E-tender, Portal will not allow any tenderer to**

**submit their tenders after the due date/time of offer submission.** ~~Offers received by Fax/Email/Internet shall be considered as per terms of NIT.~~

- 1.2.3 Tenders shall be opened by authorised Officer of BHEL at his office at the time and date as specified in the NIT, ~~in the presence of such of those tenderers or their authorised representatives who may be present~~
- 1.2.4 Tenderers whose bids are found techno commercially qualified shall be informed the date and time of opening of the Price Bids and ~~such Tenderers may depute their representatives to witness the opening of the price bids~~ **shall also be opened ONLINE.** BHEL's decision in this regard shall be final and binding.
- 1.2.5 Before submission of Offer, the tenderers are advised to inspect the site of work and the environments and be well acquainted with the actual working and other prevalent conditions, facilities available, position of material and labour, means of transport and access to Site, accommodation, etc. No claim will be entertained later on the grounds of lack of knowledge of any of these conditions.

### **1.3. LANGUAGE**

- 1.3.1 The tenderer 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.
- 1.3.2 All entries in the tender shall either be typed (in case of E tender, E portal shall be used) 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 tenderer.

### **1.4 PRICE DISCREPANCY:**

- 1.4.1 **Conventional (Manual) Price Bid opening :** In the case of price bid opening without resorting to Reverse Auction, if there are differences between the rates given by the tenderer in words and figures or in amount worked out by him, the following procedure for evaluation and award shall be followed:
- i) When there is a difference between the rates in figures and in words, the rates which corresponds to the amounts worked out by the contractor, shall be taken as correct
  - ii) When the amount of an item is not worked out by the contractor or it does not correspond with the rate written either in figure or in words, then the rate quoted by the contractor in words shall be taken as correct
  - iii) When the rate quoted by the contractor in figures and words tallies but the amount is not worked out correctly, the rate quoted by the contractor shall be taken as correct and not the amount.
  - iv) 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.
  - v) In case of omission in quoting any rate for one or more items, the evaluation shall be done considering the highest quoted rate obtained against the respective items by other tenderers for the subject tender. If the tenderer becomes L-1, the notional rates for the omission items shall be the lowest rates quoted for the respective items by the other tenderers against the respective omission items for the subject job and the 'Total quoted price (loaded for omissions)' shall be arrived at. However the overall price remaining the same as quoted originally, the rates for all the items in the 'Total quoted price (loaded for omissions)' shall be reduced item wise in proportion to the ratio of 'Original' total price and the 'Total quoted price (loaded for omissions)'.
  - vi) The 'Final Total Amount' shall be arrived at after considering the amounts worked out in line with 'i' to 'iv' above.

1.4.2 **Reverse Auction:** In case of Reverse Auction, the successful bidder shall undertake to execute the work as per overall price offered by him during the Reverse Auction process. In case of omission of rates, the procedure shall be as per 'Guidelines for Reverse Auction' enclosed.

1.5. **QUALIFICATION OF TENDERERS**

- i) Only tenderers who have previous experience in the work of the nature and description detailed in the Notice Inviting Tender and/or tender specification are expected to quote for this work duly detailing their experience along with offer.
- ii) Offers from tenderers who do not have proven and established experience in the field shall not be considered
- iii) .Offers from tenderers who are under suspension (banned) by any Unit/Region/Division of BHEL shall not be considered.
- iv) Offers from tenderers who do not comply with the latest guidelines of Ministry/Commissions of Govt of India shall not be considered.

1.6. **EVALUATION OF BIDS**

- i) Technical Bids submitted by the tenderer will be opened first **(ONLINE)** and evaluated for fulfilling the Pre Qualification criteria and other conditions in NIT/Tender documents, based on documentary evidences submitted/**Uploaded** along with the offer
- ii) In case the same qualifying experience is claimed by more than one agency, then the agency who has executed the work as per documentary evidence submitted shall only be qualified. Scope of qualifying work should be totally with the agency who has executed and in case it is only labour+consumables without T&P, then the responsibility of execution is assigned to the first agency and not to the agency who has executed only as labour supply contractor. Further, BHEL reserves the right to ask for further proofs including submission of TDS certificates for the said job
- iii) In case the qualifying experience is claimed by private organizations based on Work Order and completion certificates from another private organization, BHEL reserves the right to ask for further proofs including submission of TDS certificates for the said job
- iv) Assessing Bidder Capacity for executing the current tender shall be as per Notice Inviting Tender
- v) Price Bids of shortlisted bidders shall only be opened either through the conventional price bid opening/ **(Online)** / or through electronic Reverse Auction, at the discretion of BHEL
- vi) 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.
- vii) Bidders are advised to also refer to clause no 2.9.4 regarding evaluation of their performance in ongoing projects for the current tender

1.7. **DATA TO BE ENCLOSED**

Full information shall be given by the tenderer in respect of the following. Non-submission of this information may lead to rejection of the offer.

i) **INCOME TAX PERMANENT ACCOUNT NUMBER**

Certified copies of Permanent Account Numbers as allotted by Income Tax Department for the Company/Firm/Individual Partners, etc. shall be furnished along with tender.

ii) **ORGANIZATION CHART**

The organization chart of the tenderer's organization, including the names, addresses and contact information of the Directors/Partners shall be furnished along with the offer.

- iii) An attested copy of the Power of Attorney, in case the tender is signed by an individual other than the sole proprietor
- iv) **IN CASE OF INDIVIDUAL TENDERER:**  
His / her full name, address and place & nature of business.
- v) **IN CASE OF PARTNERSHIP FIRM**  
The names of all the partners and their addresses, A copy of the partnership deed/instrument of partnership duly certified by the Notary Public shall be enclosed.
- vi) **IN CASE OF COMPANIES:**
  - a. Date and place of registration including date of commencement certificate in case of Public Companies (certified copies of Memorandum and articles of Association are also to be furnished).
  - b. Nature of business carried on by the Company and the provisions of the Memorandum relating thereof.

#### 1.8 **AUTHORISATION AND ATTESTATION**

Tenders shall be signed by a person duly authorized/empowered to do so. An attested copy of the Power of Attorney, in case the tender is signed by an individual other than the sole proprietor shall be submitted along with the tenders

#### 1.9 **EARNEST MONEY DEPOSIT**

1.9.1 Every tender must be accompanied by the prescribed amount of Earnest Money Deposit (EMD) in the manner described herein. EMD shall be furnished as per the amount indicated in special conditions of contract/NIT as detailed below:

- i) EMD can be paid in cash deposit (as permissible under extant Income Tax Act) before tender opening,
- ii) EMD can be paid through Banker's cheque/Pay order/Demand Draft, in favour of 'Bharat Heavy Electricals Limited' and payable at Regional HQ issuing the tender (Along with the offer).
- iii) Electronic Fund Transfer credited in BHEL account (before tender opening). Details of BHEL account shall be as indicated in special conditions of contract/NIT.
- iv) 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).

**Note: In addition, the EMD amount in excess of Rs. 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.**

- v) No other form of EMD remittance shall be acceptable to BHEL
- vi) **ONLY For SAS jobs**, (other than R&M jobs), Bidder may opt to deposit "One Time EMD" of Rs. 5.0 lakhs (Rupees Five lakhs only) with BHEL:Power Sector Region HQ issuing the tender, which will enable them to participate in all the future tender enquiries in respect of SAS jobs issued from the respective office. Interested bidders may clearly send their consent for converting the present EMD into a "One Time EMD" in their offer.
  - Note : The 'One Time EMD' cannot be withdrawn by the tenderers within 3 years from the date of deposit, under any circumstances. The Tenderer who wishes to withdraw after three years will not be allowed to submit 'One Time EMD' again.
- vii) Bidders who have already deposited such "One Time EMD" of Rs. 5.00 lakh (Rupees Five lakhs

only) are exempted from submission of EMD for tenders of **SAS Jobs**. However a copy of 'One Time EMD' certificate issued by BHEL Regional HQ issuing the tender shall be enclosed along with the offer.

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

- i) After opening the tender and within the offer validity period, the bidder revokes his tender or makes any modification in his tender which is not acceptable to BHEL.
- ii) The contractor fails to deposit the required Security deposit or commence the work within the period as per LOI/contract.

1.9.3 EMD shall not carry any interest.

1.9.4 In the case of unsuccessful bidders, the Earnest Money will be refunded to them within a reasonable time after award of work.

**1.9.5 EMD of successful bidder shall be retained as part of Security Deposit.**

1.9.6 EMD by the tenderer shall be withheld in case any action on the tenderer is envisaged under the provision of extant "Guidelines on Suspension of business dealing with supplier/contractors" and forfeited/released based on the action as determined under these guidelines.

**1.10 SECURITY DEPOSIT**

1.10.1 Security Deposit means the security provided by the Contractor towards fulfillment of any obligations in terms of the provision of the contract. Upon acceptance of Tender, the successful Tenderer should deposit the required amount of Security Deposit for satisfactory completion of work. The total amount of Security Deposit will be **5 % of the Contract Value**. EMD of the successful tenderer shall be converted and adjusted towards the required amount of Security Deposit.

~~1.10.2 The security Deposit should be furnished before start of the work by the contractor.~~

1.10.3 Modes of Deposit: 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

- i) Cash (as permissible under the extant Income Tax Act)
- ii) Local cheques of scheduled banks (subject to realization) / Pay Order / Demand Draft / Electronic Fund Transfer, in favour of BHEL.
- iii) Bank Guarantee from Scheduled Banks / Public Financial Institutions as defined in the Companies Act. The Bank Guarantee format for Security Deposit shall be in the prescribed formats.
- iv) Fixed Deposit Receipt issued by Scheduled Banks / Public Financial Institutions as defined in the Companies Act. The FDR should be in the name of the contractor, A/C BHEL.
- v) Securities available from Post Offices such as National Savings Certificates, Kisan Vikas Patras etc. (Certificates should be held in the name of Contractor furnishing the security and duly endorsed/hypothecated/pledged, as applicable, in favour of BHEL).

**NOTE:** BHEL will not be liable or responsible in any manner for the collection of interest or renewal of the documents or in any other matter connected therewith.

**1.10.4 Remittance of Security Deposit:** At least 50 % of the required Security Deposit, including the EMD, shall be submitted **before start of work**. Balance of the Security Deposit can be submitted by way of deduction of 10% of the gross amount progressively from each running bills of the contractor till the total amount of the required Security Deposit is collected.

1.10.5 In case the value of work exceeds /reduces from the awarded / accepted value, the Security



Deposit shall be correspondingly enhanced /reduced as given below:

- i) The enhanced part of the Security Deposit shall be immediately deposited by the Contractor or adjusted against payments due to the Contractor.
- ii) There will be no reduction in Security Deposit value in case of variation in contract value upto the lower limit specified in Quantity variation clause. In case of reduction of contract value beyond the lower limit specified in Quantity Variation clause, then the Security Deposit shall be re-adjusted in proportion.
- iii) In case of reduction, the reduced Contract value shall be certified by BHEL Construction Manager after ascertaining / freezing of BOQ / Drawings from the Design / Engineering Centre. The reduced Security Deposit value can only be considered after taking into account the adequacy of the securities held by BHEL to meet the liabilities of the contractor for the contract, and the performance of the contract in general. In such cases, the revised value of Security Deposit shall be worked out only after execution of not less than the lower limit of the revised scope of work/contract value as per quantity variation clause, and as certified by Construction Manager. This reduction in value of Security Deposit shall not entitle the contractor to any amendment of Contract and shall be operated at the discretion of BHEL
- iv) Contract value for the purpose of operating the reduced/increased value of Security Deposit due to Quantity Variation, shall be exclusive of Price Variation Clause, Over Run Compensation and Extra works done on manday rates.

1.10.6 The recoveries made from running bills (cash deduction towards balance SD amount) can be released against submission of equivalent Bank Guarantee (by contractor) in acceptable form, but only once, before completion of work, at the discretion of BHEL.

1.10.7 The Security Deposit shall not carry any interest

1.10.8 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 fulfillment of all contractual obligations as per terms of the contract.

1.10.9 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.

#### 1.11 RETURN OF SECURITY DEPOSIT

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

#### 1.12 BANK GUARANTEES

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

- i) Bank Guarantees shall be from Scheduled Banks / Public Financial Institutions as defined in the Companies Act.
- ii) The Bank Guarantees shall be as per prescribed formats.
- iii) It is the responsibility of the bidder to get the Bank Guarantees revalidated/extended for the required period (subject to a minimum period of six months), as per the advice of BHEL Site Engineer / Construction Manager. BHEL shall not be liable for issue of any reminders regarding expiry of the Bank Guarantees.
- iv) In case extension/further extensions of any Bank Guarantees are not required, the bidders shall

ensure that the same is explicitly endorsed by the Construction Manager and submitted to the Regional HQ issuing the LOI/LOA.

- v) 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.
- vi) 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.
- vii) The Original Bank Guarantee/any extensions/amendments shall be sent directly by the Bank to BHEL under Registered Post (Acknowledgement Due), addressed to the Subcontracting Department of the respective Region.

#### 1.13 VALIDITY OF OFFER

The rates in the Tender shall be kept open for acceptance for a minimum period of **SIX MONTHS** from latest due date of offer submission (including extension, if any) . In case BHEL (Bharat Heavy Electricals Ltd) calls for negotiations, such negotiations shall not amount to cancellation or withdrawal of the original offer which shall be binding on the tenderers.

#### 1.14 EXECUTION OF CONTRACT AGREEMENT

The successful tenderer's responsibility under this contract commences from the date of issue of the Letter of Intent by Bharat Heavy Electricals Limited. The Tenderer shall submit an unqualified acceptance to the Letter of Intent/Award within the period stipulated therein.

The successful tenderer 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 tenderer. The expenses for preparation of agreement document shall be borne by BHEL.

#### 1.15 REJECTION OF TENDER AND OTHER CONDITIONS (Revised w.e.f 09<sup>th</sup> Apr 2013)

1.15.1 The acceptance of tender will rest with BHEL which does not bind itself to accept the lowest tender or any tender and reserves to itself full rights for the following without assigning any reasons whatsoever:-

- a. To reject any or all of the tenders.
- b. To split up the work amongst two or more tenderers as per NIT.
- c. To award the work in part if specified in NIT
- d. In case of either of the contingencies stated in (b) and (c) above, the time for completion as stipulated in the tender shall be applicable.

1.15.2 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.

1.15.3 Tenders are liable to be rejected in case of unsatisfactory performance of the tenderer with BHEL, or tenderer under suspension (hold/banning /delisted ) by any unit / region / division of BHEL or

tenderers 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 in line with clause no. 9.0 of the 'NIT'. The decision of BHEL will be final in this regard.

- 1.15.4 If a tenderer 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.
- 1.15.5 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, recognise such power of Attorney and changes after obtaining proper legal advice, the cost of which will be chargeable to the contractor concerned.
- 1.15.6 If the tenderer 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.
- 1.15.7 Canvassing in any form in connection with the tenders submitted by the Tenderer shall make his offer liable to rejection.
- 1.15.8 In case the Proprietor, Partner or Director of the Company/Firm submitting the Tender, has any relative or relation employed in BHEL, the authority inviting the Tender shall be informed of the fact as per specified format, along with the Offer. Failing to do so, BHEL may, at its sole discretion, reject the tender or cancel the contract and forfeit the Earnest Money/Security Deposit.
- 1.15.9 The successful tenderer 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 tenderer is solely responsible to BHEL for the work awarded to him.
- 1.15.10 The Tender submitted by a techno commercially qualified tenderer 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
- 1.15.11
- a) Any discount/revised offer submitted by a bidder on its own shall be accepted provided it is received on or before the due date and time of offer / Bid submission (i.e Part-I bid). The discount shall be applied on pro-rata basis to all items unless specified otherwise by the bidder. However incase the bidder offering the discount on specific item(s) becomes L-1 and work gets awarded, BHEL shall ensure that L-1 status of the bidder remains unchanged during execution of the contract due to quantity variation by reduction in contract value to the extent required. In case of Reverse Auction, the price submitted by the bidder during online sealed bid and further Reverse Auction, shall be the discounted price. No further discount shall be applied by BHEL for evaluation.
  - b) Unsolicited discounts/revised offers received after the due date and time of offer / Bid Submission (i.e Part-I bid) shall not be considered for evaluation. However, if the party who has submitted the unsolicited **discount/rebate** becomes the L-1 party, then the awarded price i.e contract value shall be worked out after considering the discount so offered. (This clause shall not be applicable incase the unsolicited revised offer is towards enhancement of rates/price)

1.15.12 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.

~~1.15.13 If the final price of successful bidder is lesser by 'more than 20%' of BHEL's estimates, 'Additional Security Deposit' will be required to be submitted by the successful bidder with value as follows:~~

~~Additional Security Deposit = 30 % of (A-B) will be calculated as below:~~

~~A = 80% of BHEL estimate~~

~~B = The final offered price of successful bidder through RA (In case of RA)~~

~~OR~~

~~Sealed paper price bid of successful bidder (in case of paper bid)~~

~~This 'Additional Security Deposit' shall have the same validity as that of the 'Security Deposit' and shall be revalidated/released in the manner as spelt out for the 'Security Deposit' as per relevant clause of GCC.~~

~~The BHEL's estimated value shall be disclosed to successful bidder (on request) in case 'Additional Security Deposit' is applicable.~~

## CHAPTER-2

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

- i) BHEL shall mean Bharat Heavy Electricals Limited (of the respective Power Sector Region 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 Power Sector Regional Offices or its Authorised Officers or its Site Engineers or other employees authorised to deal with any matters with which these persons are concerned on its behalf.
- ii) “EXECUTIVE DIRECTOR” or ‘GROUP GENERAL MANAGER’ or “GENERAL MANAGER (Incharge)” or “GENERAL MANAGER” shall mean the Officer in Administrative charge of the respective Power Sector Region.
- iii) “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.
- iv) “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 respective Power Sector Regions.
- v) “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.
- vi) “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.
- vii) “CONTRACTOR” shall mean the successful Bidder/Tenderer who is awarded the Contract and shall include the Contractor’s successors, heirs, executors, administrators and permitted assigns.
- viii) “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 Tenderers, 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.
- ix) “GENERAL CONDITIONS OF CONTRACT” shall mean the ‘Instructions to Tenderers’ and ‘General Conditions of Contract’ pertaining to the work for which above tenders have been called for.
- x) “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 tenderers are required to submit their offers. Individual specification number will be assigned to each Tender Specification.
xi)	“LETTER OF INTENT” shall mean the intimation by a Letter/Fax/email to the tenderer 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.
xii)	“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.
xiii)	“PLANT” shall mean and connote the entire assembly of the plant and equipments covered by the contract.
xiv)	“EQUIPMENT” shall mean equipment, machineries, materials, structural, electricals and other components of the plant covered by the contract.
xv)	“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.
xvi)	“APPROVED”, “DIRECTED” or “INSTRUCTED” shall mean approved, directed or instructed by BHEL.
xvii)	“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.
xviii)	“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.
xix)	“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.
xx)	“MONTH” shall mean calendar month unless otherwise specified in the Tender.
xxi)	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.
xxii)	“COMMISSIONING” shall mean the synchronisation 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.
xxiii)	“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.
xxiv)	“TEMPORARY WORK” shall mean all temporary works for every kind required in or for the execution, completion, maintenance of the work.
xxv)	‘CONTRACT PRICE’ or ‘CONTRACT VALUE’ shall mean the sum mentioned in the LOI/LOA/Contract Agreement subject to such additions thereto or deductions there from as may be made under provisions hereinafter contained
xxvi)	“COMMENCEMENT DATE” or “START DATE” shall mean the commencement/start of work at Site as per terms defined in the Tender.
xxvii)	“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
xxviii)	“TERMINATION” of Contract shall mean the pre mature closing of contract due to reasons as mentioned in the contract
xxix)	“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
xxx)	“RE MOBILISATION” shall mean the resumption of work with all resources required for the work after demobilization.
2.2	<p><b>LAW GOVERNING THE CONTRACT AND COURT JURISDICTION</b></p> <p>The contract shall be governed by the Law for the time being in force in the Republic of India. Subject to Clause 2.21.1 or 2.21.2 of this contract, the Civil Court having original Civil Jurisdiction at Delhi for PSNR, at Kolkata for PSER, at Nagpur for PSWR and at Chennai for PSSR, shall alone have exclusive jurisdiction in regard to all matters in respect of the Contract.</p>
2.3	<p><b>ISSUE OF NOTICE</b></p> <p>2.3.1 <b><u>Service of notice on contractor</u></b> Any notice to be given to the Contractor under the terms of the contract shall be served by sending the same <b>by Registered Post / Speed Post</b> 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 address, the notice shall be served at changed address 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.</p> <p>2.3.2 <b><u>Service of notice on BHEL</u></b> Any notice to be given to BHEL in-charge/Region 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.</p>
2.4	<p><b>USE OF LAND</b></p> <p>No land belonging to BHEL or their Customer under temporary possession of BHEL shall be occupied by the contractor without written permission of BHEL.</p>



**2.5 COMMENCEMENT OF WORK**

- 2.5.1 The contractor shall commence the work as per the time indicated in the Letter of Intent from BHEL and shall proceed with the same with due expedition without delay.
- 2.5.2 If the contractor fails to start the work within stipulated time as per LOI or as intimated by BHEL, 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.
- 2.5.3 All the work shall be carried out under the direction and to the satisfaction of BHEL.

**2.6 MEASUREMENT OF WORK AND MODE OF PAYMENT:**

- 2.6.1 All payments due to the contractors shall be made by e mode only, unless otherwise found operationally difficult for reasons to be recorded in writing.
- 2.6.2 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.
- 2.6.3 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.
- 2.6.4 Based on the above quantities, 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.
- 2.6.5 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.
- 2.6.6 Measurement shall be restricted to that portion of work for which it is required to ascertain the financial liability of BHEL under this contract.
- 2.6.7 The measurement shall be taken jointly by persons duly authorized on the part of BHEL and by the Contractor.
- 2.6.8 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.
- 2.6.9 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.



- 2.6.10 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.
- 2.6.11 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.

**2.7 RIGHTS OF BHEL**

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.

- 2.7.1 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.

**2.7.2**

- 2.7.2.1 To terminate the contract or withdraw portion of work and get it done through other agency, at the risk and cost of the contractor after due notice of a period of 14 days' by BHEL in any of the following cases:

- i). 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.
- ii). Withdrawal from or abandonment of the work by contractor before completion of the work as per contract.
- iii). 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.
- iv). Termination of Contract on account of any other reason (s) attributable to Contractor.
- v). Assignment, transfer, subletting of Contract without BHEL's written permission.
- vi). 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):

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 LD clause no. 2.7.9 of GCC, for the delay attributable to contractor. For limiting the maximum value of LD, contract value shall be taken as Executed Value of work till termination of contract.

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

- i). Let the time period from scheduled date of start of work till termination of contract excluding the period of Hold (if any) not attributable to contractor = T1
- ii). Let the value of executed work till the time of termination of contract = X
- iii). Let the Total Executable Value of work for which inputs/fronts were made available to contractor and were planned for execution till termination of contract = Y
- iv). Delay in executed work attributable to contractor i.e.  $T2 = [1 - (X/Y)] \times T1$
- v). LD shall be calculated in line with LD clause (clause 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.

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

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

**2.7.4** 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.

**2.7.5** 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.

**2.7.6** 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.

**2.7.7** 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 two months, 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. ORC in such cases shall not be applicable for the period between the period of demobilization and re mobilisation. The duration of 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.

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

- a) The balance works (including but not limited to Trial Operation, PG Test, etc) are minor vis a vis the scope of work envisaged as per the contract.
- b) There has been no significant work in past 6 months OR no significant work is expected in next 6 months (example in Hydro projects or in projects where work has stopped 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 shutdown or on other facilities of customer or any other reasons not attributable to the contractor

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.

### **2.7.9 LIQUIDATED DAMAGES/PENALTY**

If the contractor fails to maintain the required progress of work which results in delay in the completion of the work as per the contractual completion period, BHEL shall have the right to impose Liquidated Damage/Penalty at the rate of 0.5% of the contract value, per week of delay or part thereof subject to a maximum of 10% of the contract value. For this purpose, the period of delay shall be the delay attributable to the Contractor for the completion of work as per contract. Contract Value for this purpose, shall be the final executed value exclusive of ORC, Extra Works executed on Manday rate basis, Supplementary/Additional Items and PVC.

### **2.7.10 RECOVERY RATES FOR MATERIALS AND TOOLS & PLANT (Not specified in the contract)**

In case delays are not attributable to the contractor and stores & materials are issued by BHEL/ Customer to the Contractor for expediting the work, cost of such material will be recovered at higher of the prevailing market rate or the book rate plus 5% departmental charges with the due approvals of BHEL Competent authority.

Recoveries alongwith applicable Sales Tax/ VAT/ other duties shall be effected within three months from the date of issue of material, beyond which the interest will be charged on the outstanding amount at base rate of SBI (as on the day of issue of material) + 6%.

When the Contractor is not responsible for delay and the works needs to be completed within a specified time frame, the services of BHEL T&P alongwith operator and fuel may be extended to the Contractor with the due approvals of BHEL Competent authority at the charges prevailing in BHEL based on internal guidelines.

### **2.8 RESPONSIBILITIES OF THE CONTRACTOR IN RESPECT OF LOCAL LAWS, EMPLOYMENT OF WORKERS ETC (Revised w.e.f 09<sup>th</sup> Apr 2013).**

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:

- 2.8.1 As far as possible, Unskilled Workers shall be engaged from the local areas in which the work is being executed.
- 2.8.2 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.
- 2.8.3 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 may be enacted by the State Government & Central Government 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.

- 2.8.4 The contractor shall obtain independent License 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.
- 2.8.5 The contractor shall pay and bear all taxes, fees, license charges, deposits, duties, tolls, royalties, commission or other charges which may be leviable on account of his operations in executing the contract.
- 2.8.6 While BHEL would pay the inspection fees and Registration fees of Boiler/Electrical Inspectorate, all other arrangements for site visits periodically by the Inspectorate to site, Inspection certificate etc. will have to be made by contractor. However, BHEL will not make any payment to the Inspectorate in connection with contractor's Welders/Electricians qualification tests etc.
- 2.8.7 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.
- 2.8.8 The contractor shall be responsible for proper accommodation including adequate medical facilities for personnel employed by him.
- 2.8.9 The contractor shall be responsible for the proper behavior and observance of all regulations by the staff employed by him.
- 2.8.10 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.
- 2.8.11 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.
- 2.8.12 The contractor shall use such properties for the purpose of execution of this contract. All such properties/equipments/components shall be deemed to be in good condition when received by the contractor unless he notifies within 48 hours to the contrary. The contractor shall return them in good condition as and when required by BHEL/their Client. In case of non-return, loss, damage, repairs etc, the cost thereof as may be fixed by BHEL Engineer will be recovered from the contractor
- 2.8.13 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
- 2.8.14 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.
- 2.8.15 The contractor shall arrange, coordinate his work in such a manner as to cause no hindrance to other agencies working in the same premises.

- 2.8.16 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 Engineer with a view to prevent pilferage, accidents, fire hazards. Due precautions shall be taken against fire hazards and atmospheric conditions. Suitable number of Clerical staff, watch and ward, store keepers to take care of equipment/materials and construction tools and tackles shall be posted at site by the contractor till the completion of work under this contract.

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

- 2.8.17 The contractor will be directly responsible for payment of wages to his workmen. A pay roll sheet giving all the payments given to the workers and duly signed by the contractor's representative should be furnished to BHEL site for record purpose, if so called for.
- 2.8.18 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.
- 2.8.19 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.
- 2.8.20 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.
- 2.8.21 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
- 2.8.22 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 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.
- 2.8.23 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.

2.8.24 The Contractor to note that some of BHEL's T&Ps/MMDs may not be insured. The Contractor will take necessary precautions and due care to protect the same while in his custody from any damage/ loss till the same is handed over back to BHEL. In case the damage / loss is due to carelessness/ negligence on the part of the contractor, the Contractor is liable to get them repair/ replaced immediately and in case of his failure to do so within a reasonable time, BHEL will reserve the right to recover the loss from the contractor.

**2.9 PROGRESS MONITORING, MONTHLY REVIEW AND PERFORMANCE EVALUATION**

2.9.1 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 monthwise 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 (Daily/Weekly/Monthly) and other reports/information including manpower, consumables, T&P mobilization etc as desired by BHEL.

2.9.2 Monthly progress review between BHEL and Contractor shall be based on the agreed programme as above, availability of inputs/fronts etc, and constraints if any, as per prescribed formats. Manpower, T&P and consumable reports as per prescribed formats shall be submitted by contractor every month. Release of RA Bills shall be contingent upon certification by BHEL Site Engineer of the availability of the above prescribed formats duly filled in and signed.

2.9.3 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. The monthly progress review shall record shortfalls attributable to (i) Contractor, (ii) Force Majeure Conditions, and (iii) BHEL

2.9.4 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

**2.10 TIME OF COMPLETION**

2.10.1 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

2.10.2 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 under clause 2.11

**2.11 EXTENSION OF TIME FOR COMPLETION**

2.11.1 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.

2.11.2 Based on the monthly reviews jointly signed, the works balance at the end of original contract period less the backlog attributable to the contractor shall be quantified, and the number of months of 'Time extension' required for completion of the same shall be jointly worked out. Within this period of 'Time extension', the contractor is bound to complete the portion of backlog attributable to the contractor. Any further 'Time extension' or 'Time extensions' at the end of the previous extension shall be worked out similarly.

2.11.3 However 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.

- 2.11.4 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. Review of the programme and record of shortfall shall be done every month of the 'Time extension' period in the same manner as is done for the regular contract period.
- 2.11.5 During the period of 'Time extension', contractor shall maintain their resources as per mutually agreed program
- 2.11.6 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.

## 2.12 OVERRUN COMPENSATION (ORC)

- 2.12.1 **ORC during original contract period:** No ORC shall be applicable during the original contract period.
- 2.12.2 **ORC during extended period for the reasons solely attributable to contractor:** No ORC shall be applicable during the extended period granted for the reasons solely attributable to contractor and work executed during this period shall be paid as per original contract rates.
- 2.12.3 **ORC during extended period for the reasons not attributable to contractor:** ORC shall be payable as per following procedure:
- 2.12.3.1 For initial period of twelve months of extended period, ORC rate applicable over executed value shall be 5%. For every subsequent period of twelve months, ORC rate shall be further increased by 5% over the previous rate. For example, ORC rates applicable for initial period of 12 months and subsequent period of 12 months are given below.

Sl. No.	Extended Period for the reasons attributable to BHEL	ORC rate applicable over executed value	
1	First 12 months	5%	
This 2	13 <sup>th</sup> -24 <sup>th</sup> month and so on	10.25% $\{[(1.05 \times 1.05) - 1] \times 100\}$	process of increasing

ORC rate for each subsequent period of 12 months shall continue till applicability of ORC.

- 2.12.3.2 On completion of original contract period as well as on completion of each subsequent period of twelve months i.e. at the time of change in applicable ORC rate, Delay Analysis shall be carried out and percentage shortfall attributable to both BHEL & Contractor shall be calculated.
- 2.12.3.3 For the purpose of calculation of ORC, executed value of work in the month shall be divided in Part-1 and Part-2 in proportion of percentage shortfall attributable to BHEL and contractor respectively, based on the last delay analysis as worked out in 2.12.3.2.  
ORC shall be payable only on Part-1 and no ORC shall be payable on Part-2.  
Value of Part-1 shall be further limited to the value of actual inputs provided by BHEL i.e. "Plan - Shortfall attributable to BHEL" for the month, as per Form-14 for calculation of ORC.

- 2.12.3.4 Payment of ORC amount shall be further regulated as follows:

- (i) 50% of the ORC is allocated for deployment of matching resources (with weightages) agreed as



per the joint programme drawn vide 2.11.4. ORC Payment against resources shall be calculated in proportion to percentage of resources actually deployed w.r.t. planned resources, as per Form-14.

- (ii) 50% of ORC is allocated for achieving of planned progress agreed as per the joint programme drawn vide 2.11.4. ORC Payment shall be reduced in proportion to percentage shortfall attributable to contractor w.r.t. "Plan - Shortfall attributable to BHEL" for the month, as per Form-14.

2.12.3.5 The maximum amount of ORC payable for the month shall be limited to Rs. 5,00,000/-.

2.12.3.6 In case, there is no shortfall attributable to contractor for the month and also contractor has deployed the resources as agreed in Form-14 but ORC amount payable for the month worked out as per procedure mentioned in clause 2.12.3.3, 2.12.3.4 and 2.12.3.5, is less than Rs.1,00,000/-, then ORC amount payable for the month shall be Rs.1,00,000/- otherwise ORC amount payable for the month shall remain same.

2.12.3.7 In case execution is on **HOLD** (Other than Force Majeure), ORC shall be payable as per following:

- i). Contractor has not been permitted by BHEL to de-mobilize
  - a) ORC amount of Rs. 1,00,000/- per month shall be applicable during the period of HOLD provided resources as planned are deployed (not demobilised) during the period of hold.
  - b) Subsequent to lifting of HOLD, Period of HOLD shall not be excluded in calculation of period for deciding applicable ORC rate as per clause 2.12.3.1.
- ii). Contractor has been permitted to demobilize and to remobilize after lifting of HOLD
  - a) No ORC shall be payable to contractor for the period of HOLD.
  - b) Subsequent to lifting of HOLD, Period of HOLD shall not be excluded in calculation of period for deciding applicable ORC rate as per clause 2.12.3.1.

2.12.3.8 In case **Force Majeure** is invoked:

- (i) No ORC shall be applicable during the period of Force Majeure.
- (ii) Subsequent to revocation of Force Majeure, period of Force Majeure shall be excluded in calculation of period for deciding applicable ORC rate as per clause 2.12.3.1.

2.12.4 Applicability of ORC: ORC shall not be applicable for following activities.

- (i) Area cleaning, removal of temporary structures and return of scrap.
- (ii) Punch list points / pending points liquidation pending due to reasons attributable to contractor
- (iii) Submission of "As built Drawing"
- (iv) Material Reconciliation
- (v) Completion of Contract Closure formalities like HR Clearance/ No dues from various dept./ Statutory Authorities etc.

2.12.5 Total Over Run Compensation shall be limited to 10% of the cumulatively executed contract value

till the month (excluding Taxes and Duties if payable extra). For this purpose, executed contract value excludes PVC, ORC and Extra/Supplementary Works.

**2.13 INTEREST BEARING RECOVERABLE MOBILISATION ADVANCES**

**2.13.1** Normally no advance is payable to the contractor. However, Mobilization advance payment in exceptional circumstances shall be interest bearing and secured through a Bank Guarantee and shall be limited to a maximum of 5% of contract value. This 'Interest Bearing Recoverable Mobilisation Advance' shall be payable in not less than two installments with any of the installment not exceeding 60% of the total eligible advance.

**2.13.2** Contractor shall establish the utilization of advance drawn before the release of next installment.

**2.13.3** In exceptional circumstances, with due justification, Competent Authority of BHEL is empowered to approve proposals for payment of additional interim interest bearing advance against Bank Guarantee, for resource augmentation towards expediting work for project implementation.

**2.13.4** Unadjusted amount of advances paid shall not exceed 5% of the total contract value at any point of time. Recovery of advances shall be made progressively from each Running Bill such that the advance amounts paid along with the interest is fully recovered by the time the contractor's billing reaches 90% of total value of works to be executed.

**2.13.5** Bank Guarantee towards 'Interest Bearing Recoverable Mobilisation Advance' shall be atleast 110% of the advance so as to enable recovery of not only principle amount but also the interest portion, if so required.

**2.13.6** Payment and recovery of Interest Bearing Recoverable mobilisation advance shall be at the sole discretion of BHEL and shall not be a subject matter of arbitration.

**2.13.7** The rate of interest applicable for the above advances shall be the Base rate of State Bank of India prevailing at the time of disbursement of the advance + 6%, and such rate will remain fixed till the total advance amount is recovered

**2.13.8** Recovery rate per month shall be higher of the following:

A. the sum of:

a. Not less than 10% of Running Bill amount

b. Simple interest up to the date of RA Bill on the outstanding Principle amount/amounts

**OR**

B. The rate at which the advance amounts paid along with the interest is fully recovered by the time the contractor's billing reaches 90% of total value of works to be executed:

**2.13.9** Contractor to submit Bank Guarantee as per prescribed formats for each of the advance and shall be valid for at least one year or the recovery duration or the balance contract period which ever is later. In case the recovery of dues does not get completed within the aforesaid BG period, the contractor shall renew the BG or submit fresh BG for the outstanding amount and the remaining recovery period.

**2.13.10** BHEL is entitled to make recovery of the entire outstanding amount in case the contractor fails to comply with the BG requirement

2.14 **QUANTITY VARIATION**

- 2.14.1 **The quantities given in the contract are tentative and may change to any extent (both in plus side and minus side).** The quoted rates for individual items shall remain firm irrespective of any variations in the individual quantities. No compensation becomes payable in case the variation of the final executed contract value is within the limit of Minus (-) 15% of awarded contract value
- 2.14.2 Compensation due to variation of final executed value in excess of the limits defined in clause above, shall be as follows:
- In case the finally executed contract value reduces below the lower limit of Contract Value due to quantity variation specified above, the contractor will be eligible for compensation @ 15% of the difference between the lower limit of the contract value and the actual executed value.
  - In case the finally executed contract value increases above the awarded Contract Value due to quantity variation, there will be no upward revision in the rates **for the individual items and also contractor is not eligible for any compensation.**

2.15 **EXTRA WORKS**

- 2.15.1 All rectifications/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 which are not very specifically indicated in the drawings, but are found essential for satisfactory completion of the work, will be considered as extra works.
- 2.15.2 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.
- 2.15.3 All the extra work should be carried out by a separately identifiable gang, 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.
- 2.15.4 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
- 2.15.5 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.

**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 major 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 108/- per man hour.**

2.15.6 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.

2.15.7 **Extra Works for Civil Packages** shall be regulated as follows

- i) Rates for Extra Works arising due to (1) non availability of BOQ (Rate Schedule), OR (2) change in Specifications of materials/works (3) rectification/modification/dismantling & re erecting etc due to no fault of Contractor, shall be in the order of the following:
  - a) Item rates are to be derived from similar nature of items in the BOQ (Rate Schedule) with applicable escalation derived from All India Consumer Price Index for Whole Sale Commodities.
  - b) As per CPWD-DSR-2007 (or latest edition) with applicable escalation derived from All India Consumer price Index for Whole Sale Commodities, OR, Notification issued by the office of CPWD for 'Cost Index' in that Region where the project is being executed, whichever is less
  - c) Item rates are to be worked out on the basis of prevailing market rates mutually agreed between BHEL and Contractor, plus 15% towards Contractor's overheads and profit.
- ii) PVC and ORC will not applicable be for (i) above.

## 2.16 SUPPLEMENTARY ITEMS

### 2.16.1 For NON Civil Works

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:

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

### 2.16.2 For Civil Works

- i) Rates for Supplementary Works/Additional Works arising out due to additions/alterations in the original scope of works as per contract subject to certification of BHEL Engineer shall be worked out as under:
  - a) Item rates which are available in existing BOQ (Rate Schedule) shall be operated with applicable escalation derived from All India Consumer Price Index for Whole Sale Commodities
  - b) Items of works which are not available in existing BOQ shall be operated as an 'Extra Works' and rate shall be derived as per clause no 2.15.7
- ii) Execution of Supplementary Works/Additional Works through the Contractor shall be at the sole discretion of BHEL, and shall be considered as part of executed contract value for the purpose of Quantity Variation as per clause 2.14
- iii) BHEL Engineer's decision regarding fixing the rate as above is final and binding on the contractor.
- iv) PVC and ORC will not be applicable for (i) above.

## 2.17 PRICE VARIATION COMPENSATION

2.17.1 In order to take care of variation in cost of execution of work on either side, due to variation in the index of LABOUR, HIGH SPEED DIESEL OIL, WELDING ROD, CEMENT, STEEL, MATERIALS, Price Variation Formula as described herein shall be applicable (*only for works executed during extended period, if any, subject to other conditions as described in this section*)

2.17.2 85% component of Contract Value shall be considered for PVC calculations and remaining 15% shall be treated as fixed component. The basis for calculation of price variation in each category, their

component, Base Index shall be as under:

SL NO.	CATEGORY	BASE INDEX	PERCENTAGE COMPONENT ('K')				
			CIVIL PACKAGES (See Note A/B/C)			MECHANICAL PACKAGES	Electrical , C&I Material Management/ Handling and other labour oriented packages
			A	B	C		
i)	LABOUR (ALL CATEGORIES)	'MONTHLY ALL-INDIA AVERAGE CONSUMER PRICE INDEX NUMBERS FOR INDUSTRIAL WORKERS' published by Labour Bureau, Ministry of Labour and Employment, Government of India. (Website: labourbureau.nic.in)	40	25	30	65	80
ii)	HIGH SPEED DIESEL OIL	Name of Commodity: HSD Commodity Code: 1202000005 (See Note E)	5	3	5	5	5
iii)	WELDING ROD	Name of Commodity: MANUFACTURE OF BASIC METALS Commodity Code: 1314000000 (See Note E)				15	
iv)	CEMENT	Name of Commodity: ORDINARY PORTLAND CEMENT Commodity Code: 1313050003 (See Note E)		20	30		
v)	STEEL (Structural and Reinforcement Steel)	Name of Commodity: MILD STEEL: LONG PRODUCTS Commodity Code: 1314040000 (See Note E)		25			
vi)	ALL OTHER MATERIALS	Name of Commodity: ALL COMMODITIES	40	12	20		

	(Other than Cement & Steel)	Commodity Code:1000000000 (See Note E)					
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**Note: A) Cement & Steel : Free Issue (BHEL Scope)**

**B) Cement & Steel : In Contractor Scope**

**C) Cement in Contractor Scope, and Steel is Free Issue (BHEL Scope)**

**D) For Composite packages (i.e. Civil+Mechanical+Electrical and/or CI or Civil+Mechanical or Mechanical+Electrical and/or CI), the COMPONENT ('K') for various categories shall be as per respective packages as above.**

**E) As per the 'MONTHLY WHOLE SALE PRICE INDEX' for the respective Commodity and Type, published by Office of Economic Adviser, Ministry of Commerce and Industry, Government of India. (Website: <http://eaindustry.nic.in/home.asp>). Revisions in the index or commodity will be re adjusted accordingly.**

2.17.3 #

2.17.4 Payment/recovery due to variation in index shall be determined on the basis of the following notional formula in respect of the identified COMPONENT ('K') viz LABOUR, HIGH SPEED DIESEL OIL, WELDING ROD, CEMENT, STEEL, MATERIALS.

$$P = K \times R \times \frac{(X_N - X_o)}{X_o}$$

Where

P = Amount to be paid/recovered due to variation in the Index for Labour, High Speed Diesel Oil, Welding Rod, Cement, Steel and Materials

K = Percentage COMPONENT ('K') applicable for Labour, High Speed Diesel Oil, Welding Rod, Cement, Steel and Materials

R = Value of work done for the billing month (Excluding Taxes and Duties if payable extra)

X<sub>N</sub> = Revised Index for Labour, High Speed Diesel Oil, Welding Rod, Cement, Steel and Materials for the billing month under consideration

X<sub>o</sub> = Index for Labour, High Speed Diesel Oil, Welding Rod, Cement, Steel and Materials as on the Base date

2.17.5 **Base date shall be the calendar month of the schedule completion date (i.e. Actual start date + Scheduled Contractual completion period as per Letter of Intent/award and/or work order).**

2.17.6 PVC shall not be payable for the ORC amount, Supplementary/Additional Items, Extra works. However, PVC will be payable for items executed under quantity variation of BOQ items under originally awarded contract.

2.17.7 The contractor shall furnish necessary monthly bulletins in support of the requisite indices from the relevant websites along with his Bills.

2.17.8 The contractor will be required to raise the bills for price variation payments on a monthly basis along with the running bills irrespective of the fact whether any increase/decrease in the index for relevant categories has taken place or not. In case there is delay in publication of bulletins (final figure), the provisional values as published can be considered for payments and arrears shall be paid/recovered on getting the final values.

2.17.9 PVC shall be applicable only, during the extended period of contract (if any) after the scheduled



completion period and for the portion of work delayed / backlog for the reasons not attributable to the Contractor.

However total quantum of Price Variation amount payable/recoverable shall be regulated as follows:

- i. For the portion of shortfall/ backlog not attributable to contractor, PVC shall be worked out on the basis of indices applicable for the respective month in which work is done. Base index shall be applicable as defined in clause 2.17.5
- ii. In case of Force majeure, PVC shall be regulated as per (a) or (b) below:
  - a) Force majeure is invoked before “base date”/“revised base date” (as explained below) OR immediately after “base date”/“revised base date” in continuation (i.e. during the period when PVC is not applicable):
    1. Base date shall be revised: Revised base date =Previous base date + duration of Force majeure.  
No PVC will be applicable for the work done till revised base date.
    2. PVC will be applicable for the work done after “base date”/“revised base date” as the case may be (during extended period when delay is not attributable to contractor). PVC shall be worked out on the basis of indices applicable for the respective month in which work is done with base index as on “base date”/“revised base date” as the case may be.
  - b) Force majeure is invoked after “base date”/ “revised base date” as the case may be (during extended period when delay is not attributable to contractor) -
    1. PVC shall be applicable for the work done after revocation of force majeure.
    2. PVC for the work done after revocation of force majeure shall be worked out on the basis of indices applicable for the respective month in which work is done excluding the effect of change in indices during total period of Force majeure(s) invoked after “base date”/ “revised base date” as the case may be. Base index shall be taken as on “base date”/ “revised base date” as the case may be.
- iii. The total amount of PVC shall not exceed 15% of the cumulatively executed contract value. Executed contract value for this purpose is exclusive of PVC, ORC, Supplementary/Additional Items and Extra works except extra items due to quantity variation.

## **2.18 INSURANCE**

- 2.18.1 BHEL/their customer shall arrange for insuring the materials/properties of BHEL/customer covering the risks during transit, storage, erection and commissioning.
- 2.18.2 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.
- 2.18.3 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.
- 2.18.4 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.

## **2.19 STRIKES & LOCKOUT**

2.19.1 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.

2.19.2 For all purposes whatsoever, the employees of the contractor shall not be deemed to be in the employment of BHEL

## **2.20 FORCE MAJEURE**

The following shall amount to Force Majeure:-

2.20.1 Acts of God, act of any Government, War, Sabotage, Riots, Civil commotion, Police action, Revolution, Flood, Fire, Cyclones, Earth quake and Epidemic and other similar causes over which the contractor has no control.

2.20.2 If the contractor suffers delay in the due execution of the contractual obligation due to delays caused by force majeure as defined above, the agreed time of completion of the job covered by this contract or the obligations of the contractor shall be extended by a period of time equal to period of delay, provided that on the occurrence of any such contingency, the contractor immediately reports to BHEL in writing the causes of delay and the contractor shall not be eligible for any compensation.

## **2.21 ARBITRATION & CONCILIATION**

### **2.21.1 ARBITRATION:**

2.21.1.1 Except as provided elsewhere in this Contract, in case Parties are unable to reach amicable settlement (whether by Conciliation to be conducted as provided in Clause 2.21.2 herein below or otherwise) in respect of any dispute or difference; arising out of the formation, breach, 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 (hereinafter referred to as the 'Dispute'), then, either Party may, commence arbitration in respect of such Dispute by issuance of a notice in terms of section 21 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the 'Notice'). The Notice shall contain the particulars of all claims to be referred to arbitration in sufficient detail and shall



also indicate the monetary amount of such claim. The arbitration shall be conducted by a sole arbitrator to be appointed by the Head of the BHEL Power Sector Region issuing the Contract within 60 days of receipt of the complete Notice. The language of arbitration shall be English.

The Arbitrator shall pass a reasoned award.

Subject as aforesaid, the provisions of Arbitration and Conciliation Act 1996 (India) or statutory modifications or re-enactments thereof and the rules made thereunder as in force from time to time shall apply to the arbitration proceedings under this clause. The seat of arbitration shall be \_\_\_\_\_ (the place from where the contract is Issued). The Contract shall be governed by and be construed as per provisions of the laws of India. Subject to this provision 2.21.1.1 regarding ARBITRATION, the principal civil court exercising ordinary civil jurisdiction over the area where the seat of arbitration is located shall have exclusive jurisdiction over any DISPUTE to the exclusion of any other court.

2.21.1.2 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 provisions of commercial contract(s) between Central Public Sector Enterprises (CPSEs)/ Port Trusts inter se and also between CPSEs and Government Departments/Organizations (excluding disputes concerning Railways, Income Tax, Customs & Excise Departments), such dispute or difference shall be taken up by either party for resolution through AMRCD (Administrative Mechanism for Resolution of CPSEs Disputes) as mentioned in DPE OM No. 4(1)/2013-DPE(GM)/FTS-1835 dated 22-05-2018 as amended from time to time.

2.21.1.3 The cost of arbitration shall initially be borne equally by the Parties subject to the final allocation thereof as per the award/order passed by the Arbitrator.

2.21.1.4 Notwithstanding the existence of any dispute or differences 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 unless the dispute inter-alia relates to cancellation, termination or short-closure of the Contract by BHEL.

#### **2.21.2 CONCILIATION:**

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), 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 (IEC) 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 Procedure 2.3 to this GCC. The Procedure 2.3 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 hereby agrees that BHEL may make any amendments or modifications to the provisions stipulated in the Procedure 2.3 to this GCC from time to time and confirms that it shall be bound by such amended or modified provisions of the Procedure 2.3 with effect from the date as intimated by BHEL to it.

**2.21.3 No Interest payable to Contractor**

Notwithstanding anything to the contrary contained in any other document comprising in the Contract, no interest shall be payable by BHEL to Contractor on any moneys or balances including but not limited to the Security Deposit, EMD, Retention Money, RA Bills or the Final Bill, or any amount withheld and/or appropriated by BHEL etc., which becomes or as the case may be, is adjudged to be due from BHEL to Contractor whether under the Contract or otherwise.

**2.22 RETENTION AMOUNT**

- 2.22.1 Retention Amount shall be 5% of executed contract value and shall be recovered at the rate of 5% from each Running Bill admitted, including PVC Bills.
- 2.22.2 Refund of Retention Amount shall be as follows:
- i) 50% of retention amount along with 'Final Bill'
  - ii) Balance 50% of retention amount shall be retained towards 'Performance Guarantee for Workmanship' and shall become refundable after expiry of Guarantee period, provided all the defects noticed during the guarantee period have been rectified to the satisfaction of BHEL Site Engineer/BHEL Construction Manager, and after deducting all expenses/other amounts due to BHEL under the contract/other contracts entered into by BHEL with them. This portion of the retention amount can be released on commencement of the Guarantee period, on submission of equivalent Bank Guarantee.

**2.23 PAYMENTS**

Payments to Contractors are made in any one of the following forms

**2.23.1 Running Account Bills (RA Bills)**

- i) These are for interim payments when the contracts are in progress. The bills for such interim payments are to be prepared by Contractor in prescribed formats (RA Bill forms).
- ii) Payments shall be made according to the extent of work done as per measurements taken up to the end of the calendar month and in line with the terms of payments described in the Tender documents

- iii) Recoveries on account of electricity, water, statutory deductions, etc are made as per terms of contract
- iv) Full rates for the work done shall be allowed only if the quantum of work has been done as per the specifications stipulated in the contract. If the work is not executed as per the stipulated specifications, BHEL may ask the contractor to re do the work according to the required specifications, without any extra cost. However, where this is not considered necessary 'OR' where the part work is done due to factors like non-availability of material to be supplied by BHEL 'OR' non availability of fronts 'OR' non availability of drawings, fraction payment against full rate, as is considered reasonable, may be allowed with due regard for the work remaining to be done. BHEL decision in this regard will be final and binding on the contractor.
- v) In order to facilitate part payment, BHEL Site Engineer at his discretion may further split the contracted rates/percentages to suit site conditions, cash flow requirements according to the progress of work

#### 2.23.2 Final Bill

Final Bill' is used for final payment on closing of Running Account for works or for single payment after completion of works. 'Final Bill' shall be submitted as per prescribed format after completion of works as per scope and upon material reconciliation, along with the following.

- i) 'No Claim Certificate' by contractor
- ii) Clearance certificates where ever applicable viz Clearance Certificates from Customer, various Statutory Authorities like Labour department, PF Authorities, Commercial Tax Department, etc
- iii) Indemnity bond as per prescribed format

BHEL shall settle the final bills after deducting all liabilities of Contractor to BHEL

#### 2.24 PERFORMANCE GUARANTEE FOR WORKMANSHIP

2.24.1 Even though the work will be carried out under the supervision of BHEL Engineers the Contractor will be responsible for the quality of the workmanship and shall guarantee the work done for a period of twelve months from the date of commencement of guarantee period as defined in Technical Conditions of Contract, for good workmanship and shall rectify free of cost all defects due to faulty erection detected during the guarantee period. In the event of the Contractor failing to repair the defective works within the time specified by the Engineer, BHEL may proceed to undertake the repairs of such defective works at the Contractor's risk and cost, without prejudice to any other rights and recover the same from the Guarantee money.

2.24.2 BHEL shall release the guarantee money subject to the following

- i) Contractor has submitted 'Final Bill'
- ii) Guarantee period as per contract has expired
- iii) Contractor has furnished 'No Claim Certificate' in specified format
- iv) BHEL Site Engineer/Construction Manager has furnished the 'No Demand Certificate' in specified format
- v) Contractor has carried out the works required to be carried out by him during the period of Guarantee and all expenses incurred by BHEL on carrying out such works is included for adjustment from the Guarantee money refundable.

#### 2.25 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. BHEL shall issue Performance/Experience Certificates as per its own internal guidelines based on

	the specific request of the Contractor.
2.26	<b>REVERSE AUCTION:</b> BHEL reserves the right to go for Reverse Auction for Price Bid Opening by BHEL appointed service provider, instead of opening the submitted sealed price bid/ Uploaded E bid in the conventional way/ through E-Portal. The Business Rules for Reverse Auction shall be as per BHEL guidelines issued from time to time.
2.27	<b>SUSPENSION OF BUSINESS DEALINGS</b> BHEL reserves the right to take action against Contractors who either fail to perform or Tenderers/Contractor who indulge in malpractices, by suspending business dealings with them in line with BHEL guidelines issued from time to time.
2.28	<b>OTHER ISSUES</b>
2.28.1	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.
2.28.2	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 prevail.
2.28.3	Unless otherwise specified in NIT, offers from consortium/JVs shall not be considered.
2.28.4	BHEL may not insist for signing of Contract Agreements in respect of low value and short time period contracts like providing services for Hot water flushing, Chemical Cleaning, Transportation, etc
2.28.5	The consultant / firm (and any of its affiliates) shall not be eligible to participate in tender/s for the related works or services for the same project, if they were engaged for the consultancy services.