

GENERAL CONDITIONS OF CONTRACTS (GCC)

1. INSTRUCTIONS TO BIDDERS
2. GENERAL COMMERCIAL TERMS & CONDITIONS
3. ANNEXURES

**POWER SECTOR NORTHERN REGION
BHARAT HEAVY ELECTRICALS LIMITED**
HRDI & PSNR COMPLEX
PLOT NO. 25, SECTOR – 16A
NOIDA – 201301 (U.P.)

Not for Publication

For Official Use

INSTRUCTIONS TO BIDDERS

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1.0 GENERAL INSTRUCTIONS:

- 1.1** Tenderers are advised to study all the tender documents carefully. Any submission of tender by the tenderer shall be deemed to have been done only after careful study and examination of the tender documents and with the full understanding of the implications thereof. The specifications and terms and conditions shall be deemed to have been accepted unless otherwise specifically commented upon in the deviation sheets 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.
- 1.2** All commercial terms and conditions except price should be submitted as part of techno-commercial offer (Part-I) which may be opened first. The price part (Part-II) is to be submitted separately in a sealed cover along with techno-commercial offer (Part-I). Purchaser, however, reserves the right to open both the parts at the same time.
- 1.3** Price bids of only those bidders will be opened who will qualify for the subject job on the basis of evaluation of Techno-commercial bids / Pre – Qualification criteria and as considered suitable by BHEL. BHEL shall have sole discretion to adopt its own method for evaluation of Techno-commercial bids/ Pre - Qualification Criteria.
- 1.4** No revision of price will be entertained after tenders are opened, unless mentioned in our enquiry/asked so by BHEL.
- 1.5** BHEL reserves the right to split, accept or reject any or all tenders without assigning any reason what so ever.
- 1.6** BHEL reserves the right to reduce the tendered item and/or quantity, while awarding the order, without assigning any reason what so ever.
- 1.7** In case supplier fails to execute the Purchase Order (P.O) as per terms and conditions of P.O, BHEL shall have the right to arrange/procure the material from alternate sources as deemed appropriate by BHEL (including at higher rates) at the Risk and Cost of supplier.

2.0 PROCEDURE FOR SUBMISSION & OPENING OF TENDERS:

2.1 FOR CONVENTIONAL (HARD COPY) MODE:

- 2.1.1** Tender shall be submitted in **TWO PARTS** as described below on or before the DUE DATE and time indicated in the NIT.

PART – I : TECHNO-COMMERCIAL BID

Containing Technical offer, Annexure – I, II, III, IV, V, VII, X, XI & XII (whichever is applicable), Un-Price Schedule, Documents against Pre - Qualification Criteria, Commercial Terms & Conditions and other relevant documents.

PART-II : PRICE BID

Containing Prices, to be submitted strictly as per enclosed Price Schedule Format for complete scope of the Tender Enquiry.

NOTE: Any changes in the specified price format, if made, other than those specified and accepted in the un-priced format, the offer is liable to be rejected.

- 2.1.2** PART-I (techno-commercial bid) shall be opened on the due date and time as specified in the NIT, in the presence of such of those tenderers or their authorized representatives who may be present. Incomplete offers are liable to be rejected. Purchaser reserves the right to open both the parts i.e. Part-I and Part-II together.

NOTE: In case the due date of opening of tender becomes a non-working day, then the due date & time of offer submission and opening of tenders get extended to the next working day.

- 2.1.3** PART-II containing prices shall be submitted along with Part-I, but in a separate sealed cover. Any corrections/ amendments shall be properly and fully authenticated. If not done so, the offer is liable to be rejected.
- 2.1.4** In case it becomes necessary for the tenderer to make any changes in his original price bid (Part-II) on account of technical/ commercial confirmations/ clarifications, owing to the changes made by the purchaser, to bring the offer in line with the requirement of the specifications, the impact of such changes on price shall be submitted. Revised price bid only if requested by the purchaser shall be submitted, in a separate sealed cover. Impact/ Revised price bid shall be duly super scribed as:
IMPACT/ REVISED PRICE BID (PART-II) (DELETE WHICHEVER IS NOT APPLICABLE), REVISION NO ____ AGAINST TENDER ENQ. NO. _____ DATED _____”.
- 2.1.5** After the tenders have been technically & commercially examined and the necessary clarifications etc. obtained, Part-II containing FINAL REVISED PRICE BID, if submitted, otherwise, the original Price Bid along with price impact, if any, shall be opened, for which the date and time shall be intimated to the technically and commercially acceptable tenderers only, in case of public opening.
NOTE: BHEL also reserves the right to open the earlier price bids, if any, submitted by the bidders, if required.
- 2.1.6 MARKING ON ENVELOPES:**
Following should be super scribed on the envelopes of the two parts of the Bid.
PART I: TECHNO-COMMERCIAL BID:
TENDER FOR: _____
TENDER NO. _____ DUE ON: _____
PART II: PRICE BID:
TENDER FOR: _____
TENDER NO. _____
Both PART – I & PART – II should be individually sealed & super scribed as indicated above & shall be enclosed in one main envelope duly sealed & super scribed as:
“TENDER FOR: _____ AGAINST TENDER ENQ. NO. _____ DUE ON: _____ CONTAINING PART I AND PART II BIDS.”
Envelope not marked with tender enquiry number is liable to be ignored and may not be opened.
- 2.1.7 BID SUBMISSION**
The tenders shall be addressed to the official inviting Tenders by designation and sent at the following address:
HEAD/PURCHASE, BHARAT HEAVY ELECTRICALS LTD., POWER SECTOR – NORTHERN REGION, HRDI & PSNR COMPLEX, PLOT NO. 25, SECTOR – 16A, NOIDA – 201301 (U.P.)
And deposited in TENDER BOX, ROOM NO. 108 (PSNR), HRDI & PSNR Complex, PLOT NO. 25, SECTOR – 16A, NOIDA – 201 301 (U.P.)
Tenders can either be delivered in person or sent at the above mentioned address by **COURIER/ REGISTERED POST**, to the official inviting tender(s). It shall be the responsibility of the bidder to ensure that the tender is delivered in time. BHEL takes no responsibility for any delay/loss of documents or correspondences sent by courier/post.
- 2.1.8** Tenders received after the Specified time of their submission are treated as ‘Late Tenders’ and shall not be considered.
- 2.1.9** Unsolicited tenders will not be entertained.

2.2 FOR E – TENDER (ONLINE) MODE:

2.2.1 E-Tender shall be floated online through BHEL E-Procurement site (<https://bhel.abcprocure.com>). Bidder should respond by submitting their offer online only in BHEL E-Procurement site (<https://bhel.abcprocure.com>). No other mode of offer submission, i.e. hard copy of bid or bids through Courier/ Post/ Email/ Fax shall be accepted. Tender shall be submitted in Two parts as described below on or before the Due date and time of Tender submission indicated in the NIT.

PART – I: TECHNO-COMMERCIAL BID

The following documents to be uploaded in BHEL E-Procurement site (<https://bhel.abcprocure.com>);

- Scanned copy of **Covering letter of Offer**. *(to be attached in Attachment Section)*
- Scanned copy of **documents against Pre-Qualification criteria**. *(to be attached in Attachment Section)*
- Scanned copy of **Tender documents (NIT, SCC & GCC)** signed & stamped in each page by Authorized representative of bidder except price bid. *(to be attached in Attachment Section)*. Tender documents (i.e. NIT, SCC & GCC) uploaded through supplier login shall be consider as deemed acceptance of tender terms and conditions by the bidder (even if not specifically signed and stamped on each page).
- Scanned copy of **list of Deviations** (Technical and Commercial, if any). *(to be attached in Attachment Section)*
- Scanned copy of **applicable Annexures of GCC, i.e. No deviation certificate, Check list, Non-disclosure certificate etc.** duly filled & signed. *(to be attached in Attachment Section)*
- Scanned copy of **other relevant documents, copy of Pan card etc.** *(to be attached in Attachment Section)*
- Duly filled in **Un-price Schedule** as per NIT. *(to be attached in Un-Price bid Attachment Section)*

PART-II: PRICE BID

The following documents to be uploaded in BHEL E-Procurement site (<https://bhel.abcprocure.com>);

- Duly filled in **Price Schedule** as per NIT. *(to be attached in Price bid Attachment Section)*
Any other document uploaded in the price bid, apart from tendered Price schedule, shall not be taken into cognizance for evaluation of offer.

2.2.2 Tenderer can review & revise their submitted offers till due date & time of tender submission.

2.2.3 PART-I (techno-commercial bid) shall be opened on the due date and time as specified in the NIT. Tenderers or their authorized representatives may witness the event online through BHEL E-Procurement site (<https://bhel.abcprocure.com>).

NOTE: In case the due date of opening of tender becomes a non-working day, then the due date & time of offer submission and opening of tenders get extended to the next working day.

2.2.4 Tenderers whose bids are found techno commercially qualified shall be informed the date and time of opening of the Price Bid through system generated email from BHEL E-Procurement system. Tenderers or their authorized representatives may witness the event online through BHEL E-Procurement site (<https://bhel.abcprocure.com>).

2.2.5 Digital Signing of E-Tender:

Tenders shall be uploaded with all relevant PDF/zip format. The relevant tender documents should be uploaded by an authorized person of Bidder having Class 3- SHA2- 2048 BIT- SIGNING & ENCRYPTION digital signature certificate (DSC).

2.2.6 Requirements for Login & uploading of Tender:

- A PC with internet connectivity
- DSC (Digital Signature Certificate): Class 3- SHA2- 2048 BIT- SIGNING & ENCRYPTION
- Please note that only with DSC, Bidder will be able to login the e-procurement secured site and take part in the tendering process.
- Bidders are also requested to go through seller manual available on (<https://bhel.abcprocure.com>).

2.2.7 In case of E-Procurement assistance & Training, Bidder may contact to the BHEL's E-Procurement Service Provider, i.e. M/s e-Procurement Technologies Ltd. The address and contact details are as follows;

**M/s e-Procurement Technologies Ltd.
A-202/208, Wall Street – II, Opp. Orient Club,
Nr. Gujarat College, Ellis Bridge,
Ahmedabad – 380006, Gujarat.**

Name	Contact Nos.	e-mail ID	Role	Location
Swapnil Hamilton	+91 (79)68136867	swapnil.h@eptl.in	Support Executive	HO – Ahmedabad
Himanshi k	+91 (79)68136809	himanshi.k@eptl.in	Support Executive	HO – Ahmedabad
Ankur Bhatt	+91 (79)68136823	ankur.bhatt@eptl.in	Support Executive	HO – Ahmedabad
Hemangi Patel	+91 (79)68136862	hemangi@eptl.in	Support Executive	HO – Ahmedabad
Jayesh Trivedi	+91 (79)68136819	Jayesh.t@eptl.in	Support Executive	HO – Ahmedabad
Nandan Valera	+91 (79)68136850	nandan.v@eptl.in	Support Executive	HO – Ahmedabad
Jeetikhsh Shamnani	+91 (79)68136854	Jeetikhsh@eptl.in	Support Executive	HO – Ahmedabad
Prashant Rajyaguru	+91 (79)68136872 / +91 8160087732	prashant@eptl.in	Ast. Manager– Implementation & Support	HO – Ahmedabad
Dharam Rathod	+91 79 40270596 / 9374519754	dharam@eptl.in	Manager – Implementation & Support	HO – Ahmedabad
Pradip Parmar	+91 79 40270532 / 9328657215	pradip@eptl.in	Sr Manager – Implementation & Support	HO – Ahmedabad
Devang Patel	+91 79 40270576 / 99983 05442	devang@eptl.in	Sr Manager – Implementation & Support	HO – Ahmedabad

2.3 No correspondence shall be entertained from the tenderers after the opening of Part-II (Price bid) of the tender.

2.4 Purchaser may negotiate the tender, if the quoted rates/terms are found to be unreasonable or in the unacceptable range.

2.5 All corrigenda, addenda, amendments and clarifications to this Tender will be hosted in the BHEL web page (www.bhel.com)/ BHEL E-Procurement portal (<https://bhel.abcpocure.com>)/ CPP portal (www.eprocure.gov.in) and **not in the newspaper**. Bidders shall keep themselves updated with all such amendments.

3.0 PART - I (TECHNO-COMMERCIAL BID) – CONTENTS & CHECKLIST:

3.1 Technical offer shall contain:

1. Vendor confirmation regarding technical specification as specified in Tender.
2. Technical specifications/ write-ups.
3. Catalogues, literature & drawings/data sheets.
4. Recommended list of spare parts for three years operation as applicable.
5. Guarantee offered for the capacity of the system/ equipment.
6. Listing of **Technical Deviations**, if any.
7. Quality plans.
8. All other details/ documents as listed in tender documents.

3.2 Commercial offer shall contain:

1. Supporting documents against Pre – Qualification Criteria.
2. Annexure – I, II, III, IV, V, VII, X, XI & XII (whichever is applicable)
3. Un-Price Schedule.
4. Copy of PAN Card
5. Listing of **Commercial Deviations**, if any.
6. Acceptance to commercial terms and conditions (NIT, SCC & GCC) by submitting duly signed and stamped all pages of Tender document as a proof of acceptance.
7. All other details/ documents as listed in tender documents.

4.0 PART II (PRICE BID) – CONTENTS AND CHECK LIST :

4.1 Bidder shall submit their offer prices in the given '**PRICE SCHEDULE FORMAT**' as specified in Tender.

4.2 The bidders should fully understand scope of supply and their responsibilities under the tender specifications before quoting. The bidders are required to quote strictly in the currency mention in the rate schedule in part-II price bid. Conditional price bid or price bid with any deviation are liable to be rejected. No cutting / erasing /overwriting shall be done in the price bid.

5.0 CLARIFICATIONS REQUIRED BY BIDDERS:

Technical and Commercial clarifications required, if any, before submission of tender, should be addressed (at least one day before the due date of submission of tender) to the official inviting the tenders.

6.0 DEVIATIONS – LISTING:

Tenders shall be submitted strictly in accordance with the requirements of tender documents. Deviations (Technical and Commercial), if any, shall be listed out separately. Technical deviations and Commercial deviations shall be furnished in separate sheets under headings "**TECHNICAL DEVIATIONS**" and "**COMMERCIAL DEVIATIONS**" respectively, along with reasons for taking such deviations. Deviations mentioned elsewhere but not included in the Schedule of Deviations as above shall not be accepted.

7.0 VALIDITY OF OFFER:

Offers should be valid for a **period of 90 days from the date of Techno-Commercial bid (Part-I) opening.**

8.0 METRIC SYSTEM:

Suppliers are requested to give metric measurements while quoting.

9.0 REVERSE AUCTION:

BHEL shall be resorting to Reverse Auction (RA) (Guidelines as available on www.bhel.com) for this tender. RA shall be conducted among all the techno-commercially qualified bidders.

Price bids of all techno-commercially qualified bidders shall be opened and same shall be considered as initial bids of bidders in RA. In case any bidder(s) do(es) not participate in online Reverse Auction, their sealed envelope price bid along with applicable loading, if any, shall be considered for ranking.

Note: The above clause for RA shall be operated and BHEL shall resort to RA based on applicability specified in SCC of Tender.

(Please submit the Reverse Auction Format as per Annexure – V).

10.0 MICRO & SMALL SCALE ENTERPRISES (MSE):

- 10.1** Any Bidder falling under MSE category, shall furnish the following details & submit documentary evidence/ Govt. Certificate etc. in support of the same along with their Techno-commercial offer;

Type under MSE	SC/ST owned	Women owned	Others (excluding SC/ST & Women)
Micro			
Small			

NOTE: - *If the bidder does not furnish the above, offer shall be processed construing that the bidder is not falling under MSE category.*

- 10.2** MSE suppliers can avail the intended benefits only if they submit along with the offer, attested copies of either Udyog Aadhar or EM – II certificate having deemed validity (Five years from the date of issue of acknowledgement in EM-II) or valid NSIC certificate or EM-II certificate along with attested copy of a CA certificate (**Format enclosed as per Annexure- X** where deemed validity of EM-II certificate of five years has expired) applicable for the relevant financial year (last audited). Date to be reckoned for determining the deemed validity will be the date of bid opening (Part I in case of two part bid). Non submission of such documents will lead to consideration of their bids at par with other bidders. No benefits shall be applicable for this enquiry if any deficiency in the above required documents are not submitted before price bid opening. If the tender is to be submitted through e-procurement portal, then the above required documents are to be uploaded on the portal.

- 10.3** MSEs shall be exempted from payment of Tender fee.

- 10.4** MSEs shall be exempted from payment of earnest money at the time of tender deposit. However, there is no exemption of security deposit submission.

- 10.5** Participating MSEs quoting price within price band of L1+15 % shall be considered for award of complete scope of work by bringing down their price to L1 price in a situation, where L1 price is from other than a MSE. In case of more than one such MSE fall under price band of L1+15% then MSE with lowest price shall be given the first option to match the L1 price. However, MSEs owned by the Scheduled Caste or the Scheduled Tribe entrepreneurs followed by Women owned MSEs shall be given the preference for matching the L1 price irrespective of their standing in comparative statement of MSE bidders within price band of L1+15 %.

11.0 FRAUD PREVENTION POLICY:

The bidder along with its associate/collaborators/sub-contractors/sub-vendors/consultants/ service providers shall strictly adhere to BHEL Fraud Prevention Policy displayed on BHEL website

<http://www.bhel.com> and shall immediately bring to the notice of BHEL Management about any fraud or suspected fraud as soon as it comes to their notice.

12.0 LANGUAGE & CORRECTIONS:

- a) Tenderer shall quote the rates in English language and international numerals only. These rates shall be entered in figures as well as in words. For the purpose of tender, metric system of units shall be used.
- b) All entries in the tender shall either be typed or written legibly in ink. Cancellations, insertions, erasement, over-writing (if unavoidable) shall be authenticated with signature and seal by the bidder.
- c) Tenderer's offer, remarks and deviations shall be with reference to sections and clause numbers given in the tender documents.

13.0 PRICE DISCREPANCY:

Following shall be considered for evaluation and ordering for non-conformities/errors/ discrepancies in price bid:

- a) If, in the price structure quoted for the required goods/ services/ works, there is discrepancy between the unit price and the total price (which is obtained by multiplying the unit price by the quantity), the unit price shall prevail and the total price corrected accordingly, unless in the opinion of the Purchaser there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price corrected accordingly.
- b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected.
- c) If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject of (a) and (b) above.
- d) Taxes and duties if not specified clearly as extra shall be considered as included in the basic price and, therefore, shall not be reimbursed. Shall prevail subject of (a) and (b) above.
- e) Bid should be free from correction, overwriting, using corrective fluid, etc. Any interlineation, cutting, erasure or overwriting shall be valid only if they are attested under full signature(s) of person(s) signing the bid else bid shall be liable for rejection.

14.0 PUBLIC PROCUREMENT (PREFERENCE TO MAKE IN INDIA):

For this procurement, Public Procurement (Preference to Make in India), Order 2017 dated 15.06.2017, 28.05.2018, 29.05.2019 & 04.06.2020 and subsequent Orders issued by the respective Nodal Ministry shall be applicable even if issued after issue of this NIT but before finalization of contract/ PO/ WO against this NIT.

In the event of any Nodal Ministry prescribing higher or lower percentage of purchase preference and/ or local content in respect of this procurement, same shall be applicable.

GENERAL COMMERCIAL TERMS & CONDITIONS

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1.0 DEFINITION OF TERMS:

- 1.1 PURCHASER** shall mean M/s Bharat Heavy Electricals Limited (A Govt. of India Undertaking) incorporated under the Companies Act 1956 having its Registered office at BHEL House, Siri Fort, New Delhi – 110049 acting through its **Power Sector – Northern Region**, HRDI & PSNR COMPLEX, PLOT NO. 25, SECTOR – 16A, NOIDA – 201 301 (U.P.) which expression shall include its successors, authorized representatives and permitted assigns. It may also be referred to as **BHEL**.
- 1.2 TENDERER/ BIDDER** shall mean the Firm/ Company/ Organisation which quotes against the Tender Enquiry issued by Purchaser.
- 1.3 SELLER/ CONTRACTOR/ SUPPLIER/ VENDOR** shall mean the successful bidder with whom the Order/ Contract is made.
- 1.4 GCC** means General Conditions of Contract.
- 1.5 GOODS/ STORE** means all the items, materials, equipment and/or machinery, which the supplier is required to supply to the purchaser in terms of a contract.
- 1.6 SERVICES** means the services ancillary to the supply of the goods, such as transportation and insurance and as any other incidental services, such as installation, commissioning, provision of technical assistance, training and other such obligation of the supplier covered under a contract.
- 1.7 CONSIGNEE** means the individual or body to whom the contracted goods are required to be delivered as per the terms and conditions incorporated in a contract.
- 1.8 DAY** means calendar day of the Gregorian Calendar.
- 1.9 MONTH** means calendar month of the Gregorian Calendar.

2.0 PRICES:

Prices shall be for the entire scope of work in line with all instructions, specifications and terms & conditions specified in the tender documents.

3.0 INSPECTION:

Inspection for the stores will be carried out at the Seller's works/ Purchaser's Destinations/ Sites by the Purchaser's authorized inspecting officer. Wherever preliminary or stage Inspection is to be carried out at the seller's works the same will be subject to final acceptance/after receipt of the stores at the Purchaser's works / Destinations/ Site as the case may be and the decision of the purchaser shall be final. Rejected goods will be returned to the supplier at his cost including freight on original shipment.

4.0 INSURANCE:

- 4.1** Wherever Transit insurance is under Vendor's Scope, the Vendor will insure at his cost the goods for all transit risks.
- 4.2** In all other cases, Vendors shall inform the Underwriters, appointed/ nominated by BHEL/ Purchaser, the details of despatches under intimation to BHEL such as LR No. and date, Truck No., P.O. No., project and value. The details of underwriter shall be collected by the Vendor before dispatch of material from their works. Failure to do this will make the Vendor responsible for making goods any loss which might have otherwise been recovered from insurers.

5.0 PACKING AND MARKING:

5.1 Packing shall be in conformity with specifications and shall be such as to ensure prevention of damages, corrosion, deterioration, shortages, pilferage and loss in transit or storage. In case of shipment by sea, the packing shall be sea-worthy. If any damage deterioration or loss is sustained when the carrier or underwriter attributed to improper/defective packing the seller shall be liable to replace the stores at his cost or reimburse the value of the loss to the purchaser notwithstanding whether the insurance is arranged by him or not.

5.2 The following marking shall be made on each package in Black bold capital letters;

- a) Name & Address of Consignee
- b) Dimension of Package
- c) Weight details (Gross & Net)

5.3 These markings should be stenciled or written in bold letters on the package. Should the package be small suitable cards/ metal tags giving these details may be tagged or nailed to such package.

6.0 DELIVERY:

The seller shall deliver the stores in accordance with the conditions of the purchase order at the time and at the place and in the manner specified thereunder. The risk in the stores shall not pass to the purchaser unless and until the stores have been duly accepted by the purchaser at the destination.

7.0 REJECTION:

The seller shall intimate the purchaser in writing, within 15 days after the receipt of rejection advice regarding disposal of the rejected stores. If no advice is received within aforesaid period the purchaser shall be at liberty to return the stores at the risk and cost of the seller after recovering the cost, if any paid by the purchaser including inward freight and other incidental charges. The purchaser will not be responsible for rejected stores thereafter and no claim whatsoever will rest on the purchaser.

8.0 SHORTAGES / DAMAGES:

If there are any shortages/damages in Equipment/ Stores found during receipt of material at Destination/ site, vendor shall supply replacements for same, as early as possible, at the old contractual rates upon intimation to vendor within one (1) months of receipted LR. Decision of BHEL regarding shortages/damages shall be final and binding. LD shall be applicable as per original delivery schedule of P.O.

9.0 TERMS OF PAYMENT:

9.1 FOR SUPPLY PACKAGES:

9.1.1 Ninety percent (90%) of Ex -works price of materials supplied along with applicable 100% taxes and duties, insurance & freight shall be paid against the billing documents on pro-rata basis.

9.1.2 Ten percent (10%) of Ex - works of materials supplied will be released within 30 days from the date of receipt of material at Destination and submission of Form E1/ E2 against Form-C (if applicable).

Note: In extreme case, if vendors not agreeing to clause 9.1.2 as above then their prices will be loaded as per Annexure-VI.

9.2 FOR SUPPLY PACKAGES WITH INSTALLATION/ COMMISSIONING/ DEMONSTRATION TEST AT SITE IN VENDOR'S SCOPE:

9.2.1 FOR SUPPLY PORTION:

9.2.1.1 Ninety percent (90%) of Ex-works price of materials supplied along with applicable 100% taxes and duties, insurance & freight shall be paid against the billing documents on pro-rata basis.

9.2.1.2 Ten percent (10%) of Ex-works price of materials supplied will be released after submission of Installation/ Commissioning/ Demonstration Certificate duly certified by BHEL and Form E1/ E2 against Form-C (if applicable).

9.2.2 FOR INSTALLATION/ COMMISSIONING/ DEMONSTRATION PORTION:

100% Payment will be released after submission of Installation/ Commissioning/ Demonstration Certificate duly certified by BHEL.

9.3 FOR SUPPLY OF SPARES PARTS:

9.3.1 Ninety percent (90%) of Ex-works price of materials supplied along with applicable 100% taxes and duties, insurance & freight shall be paid against the billing documents.

9.3.2 Ten percent (10%) of Ex-works price of materials supplied will be released within 30 days from the date of receipt of material at Destination.

9.4 BILLING DOCUMENTS FOR 90% PAYMENT :

9.4.1 FOR SUPPLY PACKAGE:

1. Original tax Invoices
2. Copy of LR
3. Copy of Test Certificate
4. Copy of MDCC / Inspection Report (if applicable)
5. Original copy of SRV duly certified by BHEL.

9.4.2 FOR SUPPLY PACKAGES WITH COMMISSIONING / DEMONSTRATION TEST AT SITE:

1. Original tax Invoices
2. Copy of LR
3. Warranty Certificate for the goods.
4. Calibration Certificates/Mfg. Test Certificate.
5. Original copy of SRV duly certified by BHEL.
6. O&M Manuals.
7. Copy of MDCC / Inspection Report (if applicable)
8. Performance Bank Guarantee

9.4.3 FOR SUPPLY OF SPARE PARTS:

1. Original tax Invoices
2. Copy of LR
3. Warranty Certificate for the goods (If applicable)
4. Original copy of SRV duly certified by BHEL.

9.5 Vendors shall submit documents for payment directly to BHEL. Payment will be released within **30 days** from the date of receipt of clear & complete documents as per Purchase Order.

9.6 LOADING DETAILS IN CASE OF DEVIATIONS:

Loading details in respect to deviations in Payment Terms, LD, Guarantee/ Warranty & PBG will be as indicated in **Annexure – VI**.

9.7 MODE OF PAYMENT:

Payments shall be made directly to the Seller/ Contractor by E-transfer. Seller/ Contractor will provide necessary information for the same as per Annexure – VII to the Purchaser.

9.8 No interest shall be payable by the Purchaser on the Bank guarantee amount or balance payment or any money which may become due owing to difference or misunderstanding or any dispute between the Purchaser and the Contractor, or any delay on the part of Purchaser in making periodical or final payment or any other aspects incidental thereto.

10.0 PERFORMANCE BANK GUARANTEE (PBG):

10.1 PBG shall be applicable in case of supply packages with Commissioning / Demonstration test at site in vendor's scope.

10.2 The Vendor shall furnish Bank guarantee (in line with format as per **Annexure –VIII**) equal to **10% of the Order value excluding taxes & duties** before first submission of documents for payment to cover the due performance of order/ contract and to fulfil the guarantee conditions stipulated in the order/ contract.

10.3 The Bank guarantee shall be kept valid at all times during the entire Guarantee period and as advised by the Purchaser (as mentioned in clause 11.0 of General Commercial Terms & Conditions of GCC).

10.4 Purchaser reserves the right to encash the bank guarantee and forfeits the amount in the event of any default, failure or neglect on part of the Seller/ Contractor/Vendor in fulfilment of performance of the Order/ Contract.

10.5 An amount equivalent to the value of Bank Guarantee shall be retained by the Purchaser from the payments due to the Seller/ contractor/ Vendor before releasing any payment, in the absence of a valid Bank Guarantee.

10.6 Bank Guarantees shall be from Consortium Bank as per **Annexure – IX**. In case of bank guarantee from any other bank, BHEL shall get confirmation from the consortium bank, for which the confirmation charges will be borne by the vendor. Bank guarantees from co-operative banks/ non-scheduled banks are not acceptable.

10.7 In case of private sector banks, a clause to be incorporated in the text of BG that it can be enforceable by being presented **at any branch** of the bank.

11.0 GUARANTEE / WARRANTY FOR EQUIPMENT/ STORES:

11.1 Seller/ Contractor/ Vendor shall warrant that the stores supplied shall be free from all defects and faults in design & engineering, material, workmanship & manufacture and shall be of the highest grade and consistent with the established and generally accepted standards and in full conformity with the Order/ Contract specifications, drawing or samples, if any.

11.2 a) Guarantee period for Supply package with Commissioning / Demonstration test at site in Vendor's scope shall be, 18 (Eighteen) calendar months from the date of last dispatch or 12 (Twelve) calendar months from the date of satisfactory Commissioning or Demonstration of the package, whichever is later.

b) Guarantee period for **Supply of Spare Parts** shall be 12 (Twelve) calendar months from the date of last dispatch.

11.3 Rectification / replacement required during the warranty period shall be arranged by the supplier free of cost including to and fro transport charges, import duty/excise duty/other taxes/insurance etc. payable on the items rectified and/or replaced.

12.0 RECOVERY OF OUTSTANDING AMOUNT:

In event of any amount of money being outstanding at any point of time against the Seller/ Contractor/ Vendor due to excess payment or any other reason whatsoever, in the present order/ contract or any other order/ contract from any BHEL Unit, the outstanding amount shall be recovered from the payments due to the Seller/ Contractor/ Vendor at any appropriate time and

manner/ mode as deemed fit by the Purchaser from this or any other order/ contract of any BHEL unit at its sole discretion.

13.0 INDEMNIFICATION:

Seller/ Contractor/ Vendor shall fully indemnify and keep indemnified the Purchaser against all claims of whatsoever nature arising during the course and out of the execution of this Order/Contract.

14.0 DELAY/ TIME EXTENSION:

The Supplier shall Timely dispatch/ deliver and complete the other schedules as stipulated in Order/ Contract. If the Seller/ Contractor fails to complete the dispatch/ delivery and other schedules within the time period stipulated in Order/ Contract, or within any extension of time granted by Purchaser, it shall be lawful for Purchaser to recover damages for breach of Order/ Contract without prejudice to any other rights and/ or remedies provided for, in the Order/ Contract and hereunder. For any delay not attributable to the Seller/ Contractor, the Seller/Contractor must report the same to the Purchaser immediately in writing only.

15.0 LIQUIDATED DAMAGES:

- a) LD shall be 0.5% of the total order value per week of delay or part thereof subject to a maximum of 10% of the total order value.
- b) In case of staggered delivery schedule, LD shall be 0.5% of the undelivered portion per week of delay or part thereof subject to a maximum of 10% of the total order value. However even if a staggered delivery schedule for Capital Machine is agreed, the LD cap will be levied on total order value and not undelivered portion of the order value.
- c) In case of Steel, LD shall be 0.5% of undespached goods per week up to max 15%. Invoice / LR/any other despatch document date will be utilised for LD calculation, however inordinate delay in delivering the materials for reasons attributable to supplier will not suffice the case.
- d) In case of any amendment/ revision, the LD shall be linked to the amended/revised PO value.
- e) **LR/ GR/ RR date for indigenous supplies shall be treated as the date of dispatch for levying LD.** However if date of receipt of material at destination is beyond ten (10) days from the date of LR, such excess period shall be considered for LD purpose.
- f) Any delay in Erection/ Commissioning/ Demonstration of Machines/ Equipments/ IMTEs from schedule completion period due to reasons attributable to Supplier, the excess period shall be considered for LD purpose.

16.0 TERMINATION:

16.1 The Purchaser, without prejudice to any other rights or remedies it may possess, may terminate the Contract in the following circumstances:

- a) if the Contractor becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Contractor is a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Contractor being an individual or if a firm on a partnership thereof, is adjudged insolvent or has a receiving order for administration of his estate made against him or takes any proceeding for composition under any Insolvency Act for the time being in force or if the Contractor takes or suffers any other analogous action in consequence of debt.
- b) if the Contractor assigns or transfers the Contract or any right or interest therein in violation of the provision of Clause 17 (Assignment).

- c) if the Contractor, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this Sub-Clause :

"**Corrupt practice**" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.

"**Fraudulent practice**" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Purchaser and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Purchaser of the benefits of free and open competition.

- d) If the Contractor has abandoned or repudiated the Contract without assigning any reason.
- e) If the Contractor has without valid reason failed to commence work on the contract promptly or has suspended the progress of Contract performance for more than 07 (seven) days after receiving a written instruction from the Purchaser to proceed.
- f) If the Contractor persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause.
- g) If the Contractor refuses or is unable to provide sufficient goods or materials or any instalment thereof in the manner specified and within the Time specified in the contract.

16.2 Purchaser shall have the right to cancel Order/ Contract, wholly or in part, in case they are constrained to do so on account of any decline, diminution, curtailment or stoppage of their business. In such eventuality, the Seller/ Contractor shall make compensation claim in writing upon the purchaser. Thereafter, both the parties shall arrive at mutually acceptable compensation to be accorded to the Seller/ Contractor. The mutually acceptable compensation shall be final and binding upon both the parties.

16.3 The Purchaser shall have the right to cancel order/ contract at the risk and cost of Seller/ Contractor in case either the Seller/ Contractor himself or any of his representative or agent is found to have been an employee of the Purchaser or has within a period of two years of his retirement accepted the employment of the Seller/ Contractor either as a Seller/ Contractor or as an employee without having obtained prior permission of Purchaser.

16.4 In case of cancellation of main supply order/ contract, all other associated orders/ contracts like mandatory spares/ recommended spares/ E&C/ supervision of E&C shall stand cancelled.

16.5 Subject to Sub-Clause 16.6, the Contractor shall be entitled to be paid the Contract Price attributable to the materials supplied as on the date of termination. Any sums due to the Purchaser from the Contractor accruing prior to the date of termination shall be deducted from the amount to be paid to the Contractor under this Contract.

- 16.6** In case the Purchaser so desires, may procure upon such terms and in such manner as deemed appropriate, stores not so delivered or others of similar description where stores exactly complying with particulars are not, in the opinion of the Purchaser, which shall be final, readily procurable, at the risk and cost of the Seller/ Contractor and the Seller/ Contractor shall be liable to the Purchaser for any excess costs provided that the Seller/ Contractor shall continue the performance of the Order/ Contract to the extent not cancelled under the provisions of this clause. The Seller/ Contractor shall on no account be entitled to any gain on such repurchases. Cost of the purchases made by Purchaser at the risk and cost of Seller/ Contractor shall be worked out as follows:

"Excess cost (difference in values of new Awarded Contract/Purchase Order and old Awarded Contract/Purchase Order) plus 5% of Excess cost as overheads (Departmental charges) along with Liquidated Damages as applicable".

17.0 TRANSFER, SUB-LETTING/ ASSIGNMENT SUB-CONTRACTING:

Seller/ Contractor shall not sublet, transfer or assign order/ contract or any part thereof or interest therein or benefit or advantage thereof save with the prior consent in writing of Purchaser. In the event Seller/ Contractor sub-lets, transfers or assigns order/ contract or any part thereof or interest therein or benefit or advantage thereof without such permission, the Purchaser shall be entitled to cancel the Order/ Contract and to purchase the stores from elsewhere at risk and costs of Seller/ Contractor. In such eventuality the Seller/ Contractor shall be liable for any loss or damage which Purchaser may sustain in consequence of or arising out of such risk purchase.

18.0 FORCE MAJEURE:

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

19.0 SETTLEMENT OF DISPUTES:

If any dispute arises between the Parties hereto during the subsistence of the order /contract or thereafter, arising out of or in connection with, the validity, interpretation, implementation or alleged breach of any provision of the order/ contract, the Parties hereto shall endeavour to settle such dispute amicably.

20.0 ARBITRATION & CONCILIATION:

20.1 ARBITRATION:

20.1.1 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 20.2 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 New Delhi/ Delhi. The Contract shall be governed by and be construed as per provisions of the laws of India. Subject to this provision 20.1.1 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.

20.1.2 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.

20.1.3 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.

20.1.4 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.

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

20.3 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/ supplier 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 / supplier whether under the Contract or otherwise.

21.0 LAWS GOVERNING THE CONTRACT:

The Contract, including all matters connected with contract, shall be governed by and interpreted in accordance with laws in force in India.

22.0 JURISDICTION OF COURT:

The Courts at Delhi/ New Delhi shall have exclusive jurisdiction to decide the dispute, if any, in all matters arising under the contract(s) to which these conditions are applicable.

23.0 AMENDMENTS:

No portion of this General Conditions of Contract may be altered or amended or changed, except by a writing signed by the parties in the form of an addendum.

24.0 ORDER OF PRECEDENCE:

In case of contradiction / conflict, the order of precedence shall be in the order as per below;

- a) Amendments/Clarifications/Corrigenda/Errata etc., if any, issued in respect of the tender documents by BHEL.
- b) NIT
- c) Price Schedule
- d) Technical Specifications

- e) Special Conditions of Contract (SCC)
- f) General Conditions of Contract (GCC)

25.0 SUSPENSION OF BUSINESS DEALINGS:

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

25.1 Integrity commitment, performance of the contract and punitive action thereof:

25.1.1 Commitment by BHEL:

BHEL commits to take all measures necessary to prevent corruption in connection with the tender process and execution of the contract. BHEL will during the tender process treat all Bidder(s) in a transparent and fair manner, and with equity.

25.1.2 Commitment by Bidder/Supplier/Contractor:

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

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

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

If any bidder/ supplier/ contractor during pre-tendering/ tendering/ post tendering/ award/ execution/ post-execution stage indulges in mal-practices, cheating, bribery, fraud or and other misconduct or formation of cartel so as to influence the bidding process or influence the prices or acts or omits in any manner which tantamount to an offence punishable under any provision of the Indian Penal Code, 1860 or any other law in force in India, then, action may be taken against such bidder/ supplier/ contractor as per extant guidelines of the company available on www.bhel.com and/or under applicable legal provisions.

26.0 RISK AND COST:

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

- i). Contractor/ Supplier's poor progress of the work vis-à-vis execution timeline as stipulated in the Contract, backlog attributable to contractor / supplier including unexecuted portion of work / supply 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 / Non- supply by the Contractor / supplier within scheduled completion / delivery period as per Contract or as extended from time to time, for the reasons attributable to the contractor / supplier.

- 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 / supplier.

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/supply (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/ Supply 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.

Note: Incase 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/supply' for calculating Risk & Cost amount.

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

LD against delay in executed work/supply shall be calculated in line with LD clause no. 15.0 of GCC, for the delay attributable to contractor/supplier. 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 / supply 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 / supply till the time of termination of contract = X
- iii). Let the Total Executable Value of work / supply for which inputs/fronts were made available to contractor / supplier and were planned for execution till termination of contract = Y
- iv). Delay in executed work / supply attributable to contractor i.e. $T2 = [1 - (X/Y)] \times T1$
- v). LD shall be calculated in line with LD clause (clause 15.0) of the Contract for the delay attributable to contractor taking "X" as Contract Value and "T2" as period of delay attributable to contractor.

The following sequence shall be applicable for recoveries from contractor/ supplier on whom Risk & Cost has been invoked, after informing the Contractor/Supplier of the total proposed recovery:

- a) Dues available in the form of Bills payable to contractor/ supplier, SD, BGs against the same contract.



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

ANNEXURE – I	OFFER SUBMISSION AS PER NIT
ANNEXURE – II	CHECK LIST
ANNEXURE – III	NO DEVIATION CERTIFICATE
ANNEXURE – IV	CERTIFICATE OF PRICE JUSTIFICATION
ANNEXURE – V	REVERSE AUCTION FORMAT
ANNEXURE – VI	LOADING CRITERION
ANNEXURE – VII	NEFT DETAILS
ANNEXURE – VIII	PERFORMANCE BANK GUARANTEE FORMAT
ANNEXURE – IX	LIST OF CONSORTIUM BANKS
ANNEXURE – X	CERTIFICATE BY CHARTED ACCOUNTANT ON LETTER HEAD
ANNEXURE – XI	NON DISCLOSURE CERTIFICATE
ANNEXURE – XII	DECLARATION BY AUTHORISED SIGNATORY OF BIDDER
ANNEXURE – XIII	PROCEDURE FOR CONDUCT OF CONCILIATION PROCEEDINGS

ANNEXURE – I

OFFER SUBMISSION AS PER NIT

(To be Typed & submitted in the Letter Head of the Company/Firm of Bidder)

Ref. No. :

Dated :

**M/s Bharat Heavy Electricals Ltd.,
Power Sector Northern Region,
HRDI & PSNR COMPLEX,
PLOT NO. 25, SECTOR – 16A,
NOIDA – 201 301 (U.P.)**

ATTENTION:

Dear Sir,

Having examined the tender documents against your tender Enquiry No. _____ dated _____ and having understood the provisions of the said tender documents and having thoroughly studied the requirements of BHEL related to the work tendered for, in connection with

(name of work & project site), we hereby submit our offer for the proposed work in accordance with terms and conditions mentioned in the tender documents, at the prices quoted by us in your price schedule format and as per the indicated delivery schedule.

We have annexed to this tender the following documents:-

Part-I (Techno Commercial Bid) - in a properly sealed cover

- Complete Techno-Commercial Offer.
- Agreed Terms and Conditions (Annexure-II).
- Schedule of Commercial Deviations giving clause references.
- Schedule of Technical Deviations giving clause references.
- Signed & stamped copy of tender documents.
- Any other documents (Please specify).

Part-II (Price Bid) - in a separate, properly sealed cover in the format given by BHEL.

Thanking you,

Yours faithfully,

(Signature of the bidder with Name, Designation and Company's Seal)

ANNEXURE – II

CHECK LIST

NOTE: - Suppliers are required to fill in the following details in their Letterhead and no column should be left blank

A	Name and Address of the Supplier	
B	GSTN No. the Supplier (Place of Execution of Contract / Purchase Order)	
C	Details of Contact person for this Tender	Name : Mr/Ms Designation: Telephone No: Mobile No: Email ID:
D	DESCRIPTION	BIDDER'S CONFIRMATION (YES/ NO/ NA)
1	Whether Pre - Qualification Criteria is understood and provided proper supporting documents.	
3	Submission of Certificate of No Deviation as per Annexure – III	
4	Submission of Certificate of Price Justification as per Annexure – IV (<u>in case Single Tender</u>)	
5	Submission of Reverse Auction Format as per Annexure – V	
6	Submission of MSE certificate as specified in Tender	
7	Submission of Non-Disclosure Certificate as per Annexure - XI	
8	Submission of Declaration by Authorised Signatory of Bidder as per Annexure – XII (<u>in case Open Tender</u>)	
9	Submission of Unprice Format as specified in Tender	
10	Submission of Signed & Sealed copy of all pages of Tender (NIT, SCC & GCC)	

NOTE: TENDER NOT ACCOMPANIED BY THE PRESCRIBED ABOVE APPLICABLE DOCUMENTS ARE LIABLE TO BE SUMMARILY REJECTED.

Date:

(Signatures of the Bidder with Name, Designation & Company's Seal)



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ANNEXURE- III

CERTIFICATE OF NO DEVIATION

(To be Typed & submitted in the Letter Head of the Company/Firm of Bidder)

To,

(Write Name & Address of Officer of BHEL inviting the Tender)

Dear Sir,

Subject : No Deviation Certificate

Ref : 1) NIT/Tender Enquiry No:
2) All other pertinent issues till date

We hereby confirm that we have not changed/ modified/materially altered any of the tender documents as downloaded from the website/ issued by BHEL and in case of such observance at any stage, it shall be treated as null and void.

We also hereby confirm that we have neither set any Terms and Conditions and nor have we taken any deviation from the Tender conditions together with other references applicable for the above referred NIT/Tender Enquiry.

We further confirm our unqualified acceptance to all Terms and Conditions, unqualified compliance to Tender Conditions.

We confirm to have submitted offer in accordance with tender instructions and as per aforesaid references.

Thanking you,

Yours faithfully,
**(Signatures of the Bidder
with Name, Designation & Company's Seal)**



ANNEXURE– IV

CERTIFICATE OF PRICE JUSTIFICATION*

(To be Typed & submitted in the Letter Head of the Company/Firm of Bidder)

TENDER No. : _____ Date: _____

I/ WE, M/s

HEREBY CERTIFY THAT RATES PROVIDED ARE OUR BEST RATES AND WE HAVE NOT GIVEN THESE MATERIALS TO ANY PARTY FOR LESSER THAN THESE RATES IN LAST ONE YEAR.

(Signatures of the Bidder with Name, Designation & Company's Seal)

*** Certification Of Price Justification is applicable for SINGLE TENDER only.**

ANNEXURE- V

REVERSE AUCTION (RA) FORMAT

BHEL reserves the right to go for Reverse Auction (RA) (Guidelines as available on **www.bhel.com**) instead of opening the sealed envelope price bid, submitted by the bidder. This will be decided after techno-commercial evaluation. Bidders to give their acceptance with the offer for participation in RA. Non-acceptance to participate in RA may result in non-consideration of their bids, in case BHEL decides to go for RA.

In case BHEL decides to process the tender through Reverse Auction Process (RA), following details shall be required from the bidders for their authorized representative who will participate in the on line Reverse Auction Process;

(a) Name of Designation of official:

(b) Postal Address (Complete):

(c) Telephone Nos. (Land line & Mobile both):

(d) FAX No.:

(e) E-mail address:

(f) Name of Place/State/Country, wherefrom he will participate in the RA:

(Signatures of the Bidder with Name, Designation & Company's Seal)

(* Reverse Auction format is not applicable for SINGLE TENDER.)

ANNEXURE – VI

LOADING CRITERIA

No deviation in Tender terms & conditions are generally acceptable and bids with deviation are liable to be rejected. However exceptional circumstances, BHEL may accept the deviations with loadings as given below;

1. PAYMENT TERMS:

Loading of any deviation in the Payment terms w.r.t NIT terms shall be as follows;

“Base rate of SBI (as applicable on the date of bid opening; Techno-commercial bid opening in case of two part bids) + 6%, shall be considered for loading for the period of relaxation sought by Bidder.”

2. LIQUIDATED DAMAGES/ PENALTY:

Any Loading on LD clause shall be to the extent to which it is not agreed to by the Bidder (at offered value).

3. GUARANTEE/ WARRANTY PERIOD:

No deviation is permitted

4. PERFORMANCE BANK GUARANTEE (PBG):

No deviation is permitted

5. DEVIATION TO CLAUSE 9.1.2 OF PAYMENT TERM, i.e. Ten percent (10%) of basic price of materials supplied will be released within 30 days from the date of receipt of material at Destination and submission of Form E1/ E2 against Form-C (if applicable):

10% of Basic price value

NOTE: Any new Loading factor/s arising out of Techno-commercial clarifications / discussions stage shall be intimated to all eligible Tenderers before opening of Price bid.

(* Loading Criteria is not applicable for SINGLE TENDER.)



ANNEXURE – VII

NEFT DETAILS

Name of the party:

Name of the Bank:

Address of the Bank:

Party's A/c no:

Type of A/c:

IFSC CODE:

Vendor's E-MAIL ADDRESS:

(Signatures of the Bidder with Name, Designation & Company's Seal)

NOTE:

- THE ABOVE DETAILS ARE TO BE SUBMITTED ON THE COMPANY'S LETTERHEAD.
- THE DETAILS MAY EITHER BE ATTESTED BY YOUR BANKERS OR ACCOMPANIED BY A CANCELLED CHEQUE LEAF WITH IFSC CODE & A/C NO.PRINTED ON IT.
- UNDERTAKING TO REPORT IMMEDIATELY ANY CHANGES IN THE ABOVE TO BE SUBMITTED ON THE COMPANY'S LETTER HEAD



**POWER SECTOR NORTHERN
REGION (PSNR)
PURCHASE DEPARTMENT**

**GENERAL CONDITIONS
OF CONTRACT (GCC)
REVISION NO. 03
ISSUED ON 27-07-2020**

ANNEXURE- VIII

PERFORMANCE BANK GUARANTEE FORMAT

B.G. NO..... Date.....

This deed of Guarantee made this ----- day of ----- two thousand ----- by **<Name and Address of Bank>** hereinafter called the "The Guarantor" (which expression shall unless repugnant to the context or meaning thereof be deemed to include its successors and assigns) in favour of M/s Bharat Heavy Electrical Limited (A Govt. of India Undertaking) a company incorporated under the Companies Act, 1956, having its registered office at BHEL House, Siri Fort, Asiad, New Delhi – 110049 through its unit at Bharat Heavy Electricals Limited, Power Sector Northern Region, Plot No. 25, Sec – 16A, Distt. Gautam Budh Nagar, Noida 201301 hereinafter called "The Company" (which expression shall unless repugnant to the context or meaning thereof be deemed to include its successors and assigns).

WHEREAS **<Supplier's Name and Address>** (hereinafter referred to as the Supplier) have entered into a contract bearing No. **<P.O. No. & Date>** (hereinafter referred to as "the contract") for the supply of ----- with the company.

AND WHEREAS the contract inter-alia provides that the Supplier shall furnish to the company a sum of Rs.----- (Rupees-----) towards Performance Bond for due and faithful performance of the contract in the form and contents specified therein.

AND WHEREAS the Supplier has approached the Guarantor and in consideration of the arrangement arrived at between the Supplier and the Guarantor, the Guarantor has agreed to give the Guarantee as hereinafter mentioned in favour of the Company.

We **<Name of Bank>** the Guarantor do hereby guarantee to the Company the due and faithful performance, observance or discharge of the contract by the Supplier and further unconditionally and irrevocably undertake to pay to the Company without demur and merely on a demand, to the extent of Rs.----- (Rupees-----) against any claim by the Company on them for any loss, damage, costs, charges and expenses caused to or suffered by the Company by reasons of the Supplier making any default in the performance, observance or discharge of the terms, conditions, stipulations or undertakings or any of them as contained in the contract.

The decision of the Company whether any default has occurred or has been committed by the Supplier in the performance, observance or discharge of any of the terms, conditions, stipulations or undertakings or any one of them as contained in the contract and / or as to the extent of loss, damage, costs, charges and expenses caused to or suffered by the Company by reason of the Supplier making any default in the performance, observance or discharge of any of the terms, conditions, stipulations or undertakings or any one of them shall be conclusive and binding on the Guarantor irrespective of the fact whether the Supplier admits or denies the default or questions the correctness of any demand made by the Company in any Court, Tribunal or Arbitration proceedings or before any other Authority.

The Company shall have the fullest liberty without affecting in any way the liability of the Guarantor under this Guarantee, from time to time to vary any of the terms and conditions of the contract or extend time of performance by the Supplier or to postpone for any time and from time to time any of the powers exercisable by it against the Supplier and either enforce or forbear from enforcing any of the terms and conditions governing the contract or securities available to the Company and the Guarantor shall not be released from its liability under these presents by any exercise by the Company of the liberty with reference to the matters aforesaid or by reasons of time being given to the Supplier or any other forbearance, act or commission on the part of the Company or any indulgence by the Company to the Supplier or any other matter or thing whatsoever which under the law relating to sureties would, but for this provision have the effect of so releasing the Guarantor from its liability under this guarantee.



**POWER SECTOR NORTHERN
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REVISION NO. 03
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We <Name of Bank> the Guarantor further agrees that the Guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the contract and its claim satisfied or discharged and till the company certifies that the terms and conditions of the contract have been fully and properly carried out by the Supplier and accordingly discharges this Guarantee, subject however, that the Company shall have no claim under this Guarantee after ----- i.e. (the present date of validity of Bank Guarantee unless the date of validity of this Bank Guarantee is further extended from time to time, as the case may be) unless a notice of the claim under this Guarantee has been served on the Guarantor before the expiry of the said period in which case the same shall be enforceable against the Guarantor notwithstanding the fact that the same is enforced after the expiry of the said period.

We <Name of Bank> the Guarantor undertakes not to revoke this Guarantee during the period it is in force except with the previous consent of the Company in writing and agrees that any liquidation or winding up or insolvency or dissolution or any change in the constitution of the Supplier or the Guarantor shall not discharge the Guarantor's liability hereunder.

It shall not be necessary for the Company to proceed against the Supplier before proceeding against the Guarantor and the Guarantee herein contained shall be enforceable against them notwithstanding any security which the Company may have obtained or obtain from the Supplier shall at the time when proceedings are taken against the Guarantor hereunder be outstanding or unrealized.

Notwithstanding anything contained herein before, our liability under the Guarantee is restricted to Rs.----- (Rupees-----). Our guarantee shall remain in force until -----, i.e. (the present date of validity of Bank Guarantee unless the date of validity of this Bank Guarantee is further extended from time to time) unless a claim or demand under this guarantee is made against us on or before ----- we shall be discharged from our liabilities under this Guarantee thereafter.

Any claim or dispute arising under the terms of this documents shall only be enforced or settled in the courts of at New Delhi/ Delhi only.

The Guarantor hereby declares that it has power to execute this guarantee and the executant has full powers to do so on behalf of the Guarantor.

IN WITNESS whereof the ----- (Bank) has hereunto set and subscribed its hand the day, month and year first, above written.

(Name of the Bank)
Signed for and on behalf of the Bank
(Designation of the Authorized Person Signing the Guarantee)
(Signatory No.-----)

DATED:
SEAL

Notes :

1. The BG shall be executed on non-judicial stamp paper of not less than Rs 100/- unless otherwise required under relevant statutes, procured in the name of the Bank in the State where the Bank is located. The BG should be only from the Consortium Bank as per Annexure – IX.
2. The BG is required to be sent by the executing Bank directly to BHEL at the address where tender is submitted / accepted under sealed cover.

ANNEXURE- IX

LIST OF CONSORTIUM BANK

	NATIONALISED BANK		PUBLIC SECTOR BANKS
1	Allahabad bank	20	IDBI
2	Andhra bank		FOREIGN BANK
3	Bank of Baroda	21	CITI Bank N.A
4	Canara Bank	22	Deutsche Bank AG
5	Corporation bank	23	The Hongkong and Shanghai Banking Corporation Limited
6	Central bank	24	Standard Chartered Bank
7	Indian Bank	25	J P Morgan
8	Indian Oversea Bank		PRIVATE BANK
9	Oriental bank of Commerce	26	Axis Bank
10	Punjab National Bank	27	The Federal Bank Limited
11	Punjab & Sindh Bank	28	HDFC
12	State Bank of India	29	Kotak Mahindra Bank
13	State Bank of Hyderabad	30	ICICI
14	Syndicate Bank	31	Indusind Bank
15	State Bank of Travancore	32	Yes Bank
16	UCO Bank		
17	Union Bank of India		
18	United Bank of India		
19	Vijaya Bank		

ANNEXURE- X

CERTIFICATE BY CHARTERED ACCOUNTANT ON LETTER HEAD

This is to certify that M/s. _____,
(hereinafter referred to as 'Company') having its registered office at _____
_____ is registered under MSMED Act 2006,
(Entrepreneur Memorandum No (Part II) _____ Dtd.
_____, Category: _____ (Micro/Small). (Copy Enclosed)

Further verified from the Book of Accounts that the investment of the company as per the latest audited Financial year _____ as per MSMED Act 2006 is as follows:

1. For Manufacturing Enterprises: Investment is plant and machinery (i.e., original cost excluding land and building and the items specified by the Ministry of Small Scale Industries vide its notification No. S.O. 1722(E) dated October 5, 2006:

Rs. _____ Lacs

2. For Service Enterprises: Investment in equipment (original cost excluding land and building and furniture, fittings and other items not directly related to the service rendered or as may be notified under the MSMED Act, 2006 :

Rs. _____ Lacs

(Strike off whichever is not applicable)

The above investment of Rs. _____ Lacs is within the permissible limit of Rs. _____ Lacs for _____ Micro/Small (*strike off which is applicable*) Category under MSMED Act 2006.

Or

The company has been graduated from its original category (Micro/ Small) (*Strike off which is not applicable*) and the date of graduation of such enterprise from its original category is (dd/mm/yyyy) which is within the period of 3 years from the date of graduation of such enterprise from its original category as notified vide S.O. No. 3322 (E) dated 01.11.2013 published in the gazette notification dated 04.11.2013 by Ministry of MSME.

Date:

(Signature)

Name –

Membership number –

Seal of Chartered Accountant

ANNEXURE– XI

NON DISCLOSURE CERTIFICATE

(To be Typed & submitted in the Letter Head of the Company/Firm of Bidder)

I/We understand that BHEL PSNR is committed to Information Security Management System as per their Information Security Policy.

Hence, I/We M/s

Who are submitting offer for providing services to BHEL PSNR against Tender Enquiry No..... hereby undertake to comply with the following in line with Information Security Policy of BHEL PSNR.

- To maintain confidentiality of documents & information which shall be used during the execution of the Contract.
- The documents & information shall not be revealed to or shared with third party which shall not be in the business interest of BHEL PSNR.

Date:

**(Signatures of the Bidder with Name,
Designation & Company's Seal)**



(ANNEXURE – XII)

DECLARATION BY AUTHORISED SIGNATORY OF BIDDER*

(To be typed and submitted in the Letter Head of the Company/Firm of Bidder)

To,

BHARAT HEAVY ELECTRICALS LIMITED
POWER SECTOR NORTHERN REGION
SUB CONTRACT & PURCHASE DEPTT.
PLOT NO. 25, SECTOR-16A,
NOIDA – 201301, U.P.

Dear Sir,

Sub : **Declaration by Authorised Signatory regarding Authenticity of submitted documents.**

Ref : 1) NIT/Tender Enquiry No. & Date:

2) All other pertinent issues till date

I/We, hereby certify that all the documents submitted by us in support of possession of “Qualifying Requirements” are true copies of the original and are fully compliant required for qualifying / applying in the bid and shall produce the original of same as and when required by Bharat Heavy Electricals Limited.

I / We hereby further confirm that no tampering is done with documents submitted in support of our qualification as bidder. I / We understand that at any stage (during bidding process or while executing the awarded works) if it is found that fake / false / forged bid qualifying / supporting documents / certificates were submitted, it would lead to summarily rejection of our bid / termination of contract. BHEL shall be at liberty to initiate other appropriate actions as per the terms of the Bid / Contract and other extant policies of Bharat Heavy Electricals Limited.

Yours faithfully,

Date:

**(Signatures of the Bidder with Name,
Designation & Company’s Seal)**

*** Declaration by Authorised Signatory of Bidder is applicable for OPEN TENDER only.**

(ANNEXURE – XIII)

PROCEDURE FOR CONDUCT OF CONCILIATION PROCEEDINGS

1. 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 herein:
2. The party desirous of resorting to Conciliation shall send an invitation/notice in writing to the other party to conciliate specifying all points of Disputes with details of the amount claimed. The party concerned shall not raise any new issue thereafter. Parties shall also not claim any interest on claims/counter-claims from the date of notice invoking Conciliation till the conclusion of the Conciliation proceedings. If BHEL is to initiate Conciliation, then, the invitation to Conciliate shall be extended to the concerned Stakeholder in **Format-2** hereto. Where the stakeholder is to initiate the Conciliation, the notice for initiation of Conciliation shall be sent in **Format-3** hereto.
3. The party receiving the invitation/notice for Conciliation shall within 30 days of receipt of the notice of Conciliation intimate its consent for Conciliation along with its counter-claims, if any.
4. The Conciliation in a matter involving claim or counter-claim (whichever is higher) up to Rs 5 crores shall be carried out by sole Conciliator nominated by BHEL while in a matter involving claim or counter-claim (whichever is higher) of more than Rs 5 crores Conciliation shall be carried out by 3 Conciliators nominated by BHEL. The appointment of Conciliator(s) shall be completed and communicated by the concerned Department/Group of BHEL Unit/Division/Region/Business Group to the other party and the Conciliator(s) within 30 days from the date of acceptance of the invitation to conciliate by the concerned party in the **Format-4**. The details of the Claim, and counter-claim, if any, shall be intimated to the Conciliator(s) simultaneously in **Format-1**.
5. The Parties shall be represented by only their duly authorized in-house executives/officers and neither Party shall be represented by a Lawyer.
6. The first meeting of the IEC shall be convened by the IEC by sending appropriate communication/notice to both the parties as soon as possible but not later than 30 days from the date of his/their appointment. The hearings in the Conciliation proceeding shall ordinarily be concluded within two (2) months and, in exceptional cases where parties have expressed willingness to settle the matter or there exists possibility of settlement in the matter, the proceedings may be extended by the IEC by a maximum of further 2 months with the consent of the Parties subject to cogent reasons being recorded in writing.
7. The IEC shall thereafter formulate recommendations for settlement of the Disputes supported by reasons at the earliest but in any case within 15 days from the date of conclusion of the last hearing. The recommendations so formulated along with the reasons shall be furnished by the IEC to both the Parties at the earliest but in any case within 1 month from the date of conclusion of the last hearing.

8. Response/modifications/suggestions of the Parties on the recommendations of the IEC are to be submitted to the IEC within time limit stipulated by the IEC but not more than 15 days from the date of receipt of the recommendations from the IEC.
9. In the event, upon consideration, further review of the recommendations is considered necessary, whether by BHEL or by the other Party, then, the matter can be remitted back to the IEC with request to reconsider the same in light of the issues projected by either/ both the Parties and to submit its recommendations thereon within the following 15 days from the date of remitting of the case by either of the Parties.
10. Upon the recommendations by the Parties, with or without modifications, as considered necessary, the IEC shall be called upon to draw up the Draft Settlement Agreement in terms of the recommendations.
11. When a consensus can be arrived at between the parties only in regard to any one or some of the issues referred for Conciliation the draft Settlement Agreement shall be accordingly formulated in regard to the said Issue(s), and the said Settlement Agreement, if signed, by the parties, shall be valid only for the said issues. As regards the balance issues not settled, the parties may seek to resolve them further as per terms and conditions provided in the contract.
12. In case no settlement can be reached between the parties, the IEC shall by a written declaration, pronounce that the Conciliation between the parties has failed and is accordingly terminated.
13. Unless the Conciliation proceedings are terminated in terms of para 22 (b), (c) & (d) herein below, the IEC shall forward his/its recommendations as to possible terms of settlement within one (1) month from the date of last hearing. The date of first hearing of Conciliation shall be the starting date for calculating the period of 2 months
14. In case of 3 members IEC, 2 members of IEC present will constitute a valid quorum for IEC and meeting can take place to proceed in the matter after seeking consent from the member who is not available. If necessary, videoconferencing may be arranged for facilitating participation of the members. However, the IEC recommendations will be signed by all members. Where there is more than one (1) Conciliator, as a general rule they shall act jointly. In the event of differences between the Members of IEC, the decision/recommendations of the majority of the Members of IEC shall prevail and be construed as the recommendation of the IEC.
15. The Draft Settlement Agreement prepared by the IEC in terms of the consensus arrived at during the Conciliation proceedings between the Parties shall be given by the IEC to both the parties for putting up for approval of their respective Competent Authority.
16. Before submitting the draft settlement agreement to BHEL's Competent Authority viz. the Board Level Committee on Alternative Dispute Resolution (BLCADR) for approval, concurrence of the other party's Competent Authority to the draft settlement agreement shall be obtained by the other party and informed to BHEL within 15 days of receipt of the final draft settlement agreement by it. Upon approval by the Competent Authority, the Settlement Agreement would thereafter be signed by the authorized representatives of both the Parties and authenticated by the members of the IEC.

17. In case the Draft Settlement Agreement is rejected by the Competent Authority of BHEL or the other Party, the Conciliation proceedings would stand terminated.
18. A Settlement Agreement shall contain a statement to the effect that each of the person(s) signing thereto (i) is fully authorized by the respective Party (ies) he/she represents, (ii) has fully understood the contents of the same and (iii) is signing on the same out of complete freewill and consent, without any pressure, undue influence.
19. The Settlement Agreement shall thereafter have the same legal status and effect as an arbitration award on agreed terms on the substance of the dispute rendered by an arbitral tribunal passed under section 30 of the Arbitration and Conciliation Act, 1996.
20. Acceptance of the Draft Settlement Agreement/recommendations of the Conciliator and/or signing of the Settlement Agreement by BHEL shall however, be subject to withdrawal/closure of any arbitral and/or judicial proceedings initiated by the concerned Party in regard to such settled issues.
21. Unless otherwise provided for in the agreement, contract or the Memorandum of Understanding, as the case may be, in the event of likelihood of prolonged absence of the Conciliator or any member of IEC, for any reason/incapacity, the Competent Authority/Head of Unit/Division/Region/Business Group of BHEL may substitute the Conciliator or such member at any stage of the proceedings. Upon appointment of the substitute Conciliator(s), such reconstituted IEC may, with the consent of the Parties, proceed with further Conciliation into the matter either de-novo or from the stage already reached by the previous IEC before the substitution.
22. The proceedings of Conciliation under this Scheme may be terminated as follows:
 - a. On the date of signing of the Settlement agreement by the Parties; or,
 - b. By a written declaration of the IEC, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or,
 - c. By a written declaration of the Parties addressed to the IEC to the effect that the Conciliation proceedings are terminated, on the date of the declaration; or,
 - d. By a written declaration of a Party to the other Party and the IEC, if appointed, to the effect that the Conciliation proceedings are terminated, on the date of the declaration; or,
 - e. On rejection of the Draft Settlement Agreement by the Competent Authority of BHEL or the other Party.

23. The Conciliator(s) shall be entitled to following fees and facilities:

Sl. No.	Particulars	Amount
1	Sitting fees	Each Member shall be paid a Lump Sum fee of Rs 75,000/- for the whole case payable in terms of paragraph No. 27 herein below.

	2	Towards drafting of settlement agreement	In cases involving claim and/or counter-claim of up to Rs 5crores. Rs 50,000/- (Sole Conciliator) In cases involving claim and/or counter-claim of exceeding Rs 5 crores but less than Rs 10 crores. Rs 75,000 (per Conciliator) In cases involving claim and/or counter-claim of more than Rs 10 crores. Rs 1,00,000/- (per Conciliator) Note: The aforesaid fees for the drafting of the Settlement Agreement shall be paid on the, Signing of the Settlement Agreement after approval of the Competent Authority or Rejection of the proposed Settlement Agreement by the Competent Authority of BHEL.
	3	Secretarial expenses	Rs 10,000/- (one time) for the whole case for Conciliation by a Sole Member IEC. Where Conciliation is by multi member Conciliators – Rs 30,000/- (one time) - to be paid to the IEC.
	4	Travel and transportation and stay at outstation i) Retired Senior Officials of other Public Sector Undertakings (pay scale wise equivalent to or more than E-8 level of BHEL)	As per entitlement of the equivalent officer (pay scale wise) in BHEL.
		Others	As per the extant entitlement of whole time Functional Directors in BHEL. Ordinarily, the IEC Member(s) would be entitled to travel by air Economy Class.
	5	Venue for meeting	Unless otherwise agreed in the agreement, contract or the Memorandum of Understanding, as the case may be, the venue/seat of proceedings shall be the location of the concerned Unit / Division / Region / Business Group of BHEL. Without prejudice to the seat/venue of the Conciliation being at the location of concerned BHEL Unit / Division / Region / Business Group, the IEC after consulting the Parties may decide to hold the proceedings at any other place/venue to facilitate the proceedings. Unless, Parties agree to conduct Conciliation at BHEL premises, the venue is to be arranged by either Party alternately.

- 24.** The parties will bear their own costs including cost of presenting their cases/evidence/ witness (es)/expert(s) on their behalf. The parties agree to rely upon documentary evidence in support of their claims and not to bring any oral evidence in IEC proceedings.
- 25.** If any witness (es) or expert(s) is/are, with the consent of the parties, called upon to appear at the instance of the IEC in connection with the matter, then, the costs towards such witness (es)/expert(s) shall be determined by the IEC with the consent of the Parties and the cost so determined shall be borne equally by the Parties.
- 26.** The other expenditures/costs in connection with the Conciliation proceedings as well as the IEC's fees and expenses shall be shared by the Parties equally.
- 27.** Out of the lump sum fees of Rs 75,000/- for Sitting Fees, 50% shall be payable after the first meeting of the IEC and the remaining 50% of the Sitting Fees shall be payable only after termination of the conciliation proceedings in terms of para 22 hereinabove.
- 28.** The travelling, transportation and stay at outstation shall be arranged by concerned Unit as per entitlements as per Serial No. 4 of the Table at para 23 above, and in case such arrangements are not made by the BHEL Unit, the same shall be reimbursed to the IEC on actuals limited to their entitlement as per Serial No. 4 of the Table at Para 23 above against supporting documents. The IEC Member(s) shall submit necessary invoice for claiming the fees/reimbursements.
- 29.** The Parties shall keep confidential all matters relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of its implementation and enforcement or as required by or under a law or as per directions of a Court/Governmental authority/ regulatory body, as the case may be.
- 30.** The Parties shall not rely upon or introduce as evidence in any further arbitral or judicial proceedings, whether or not such proceedings relate to the Disputes that is the subject of the Conciliation proceedings:
 - a.** Views expressed or suggestions made by the other party in respect of a possible settlement of the Disputes;
 - b.** admissions made by the other party in the course of the Conciliator proceedings;
 - c.** proposals made by the Conciliator;
 - d.** The fact that the other Party had indicated his willingness to accept a proposal for settlement made by the Conciliator.
- 31.** The Parties shall not present the Conciliator(s) as witness in any Alternative Dispute Resolution or Judicial proceedings in respect of a Disputes that is/was the subject of that particular Conciliation proceeding.
- 32.** None of the Conciliators shall act as an arbitrator or as a representative or counsel of a Party in any arbitral or judicial proceeding in respect of a Disputes that is/was the subject of that particular Conciliation proceeding.
- 33.** The Parties shall not initiate, during the Conciliation proceedings, any arbitral or judicial proceedings in respect of a Disputes that is the subject matter of the Conciliation proceedings except that a Party may initiate arbitral or judicial proceedings where, in his



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opinion, such proceedings are necessary for preserving his rights including for preventing expiry of period of limitation. Unless terminated as per the provisions of this Scheme, the Conciliation proceedings shall continue notwithstanding the commencement of the arbitral or judicial proceedings and the arbitral or judicial proceedings shall be primarily for the purpose of preserving rights including preventing expiry of period of limitation.

- 34.** The official language of Conciliation proceedings under this Scheme shall be English unless the Parties agree to some other language.

FORMAT-1

**STATEMENT OF CLAIMS/COUNTER CLAIMS TO BE SUBMITTED TO THE
IEC BY BOTH THE PARTIES**

1. Chronology of the Disputes
2. Brief of the Contract/MoU/Agreement/LOI/LOA
3. Brief history of the Disputes:
4. Issues:
5. Details of Claim(s)/Counter Claim(s):

SI. No.	Description of claim(s)/Counter Claim	Amount (in INR)Or currency applicable in the contract	Relevant contract clause

6. Basis/Ground of claim(s)/counter claim(s) (along with relevant clause of contract)

Note– The Statement of Claims/Counter Claims may ideally be restricted to maximum limit of 20 pages. Relevant documents may be compiled and submitted along with the statement of Claims/Counter Claims. The statement of Claims/Counter Claims is to be submitted to all IEC members and to the other party by post as well as by email.

FORMAT-2

**FORMAT FOR NOTICE INVOKING CONCILIATION CLAUSE BY BHEL FOR
REFERRING THE DISPUTES TO CONCILIATION THROUGH IEC**

To,

M/s. (Stakeholder's name)

Subject: **NOTICE FOR INVOCATION OF THE CONCILIATION CLAUSE OF THE
CONTRACT BY BHEL**

Ref: Contract No/MoU/Agreement/LOI/LOA& date _____.

Dear Sir/Madam,

As you are aware, with reference to above referred Contract/MoU/Agreement/LOI/LOA, certain disputes have arisen, which, in spite of several rounds of mutual discussions and various correspondences have remained unresolved. The brief particulars of our claims which arise out of the above- referred Contract/MoU/Agreement/LOI/LOA are reproduced hereunder:

Sl. No.	Claim description	Amount involved

As you are aware, there is a provision in the captioned Contract/MoU/Agreement/LOI/ LOA for referring disputes to conciliation.

In terms of Clause -----of Procedure i.e., Annexure ----- to the Contract/MoU /Agreement / LOI / LOA, we hereby seek your consent to refer the matter to Conciliation by Independent Experts Committee to be appointed by BHEL. You are invited to provide your consent in writing to proceed with conciliation into the above mentioned disputes within a period of 30 days from the date of this letter along with details of counter-claims, if any, which you might have with regard to the subject Contract/ MoU/ Agreement/ LOI/ LOA.

Please note that upon receipt of your consent in writing within 30 days of the date of receipt of this letter by you, BHEL shall appoint suitable person(s) from the BHEL Panel of Conciliators.

This letter is being issued without prejudice to our rights and contentions available under the contract and law.

Thanking you
Yours faithfully

Representative of BHEL

Note: The Format may be suitably modified, as required, based on facts and circumstances of the case.



FORMAT-3

**FORMAT FOR NOTICE INVOKING CONCILIATION CLAUSE BY A
STAKEHOLDER FOR REFERRING THE DISPUTES TO CONCILIATION
THROUGH IEC**

To,
BHEL (Head of the Unit/Division/Region/Business Group)

Subject: **NOTICE FOR INVOCATION OF THE CONCILIATION CLAUSE OF THE
CONTRACT BY A STAKEHOLDER**

Ref: Contract No/MoU/Agreement/LOI/LOA& date _____.

Dear Sir/Madam,

As you are aware, with reference to above referred Contract/MoU/Agreement/LOI/LOA, certain disputes have arisen, which, in spite of several rounds of mutual discussions and various correspondences have remained unresolved. The brief particulars of our claims which have arisen out of the above- referred Contract/MoU/Agreement/LOI/LOA are enumerated hereunder:

Sl. No.	Claim description	Amount involved

As you are aware, there is a provision in the captioned Contract/MoU/Agreement/LOI/ LOA for referring inter-se disputes of the Parties to conciliation.

We wish to refer the above-said disputes to Conciliation as per the said Clause of the captioned Contract/MoU/Agreement/LOI/ LOA. In terms of Clause ----- of Procedure i.e., Annexure ----- to the Contract/MoU /Agreement / LOI / LOA, we hereby invite BHEL to provide its consent in writing to proceed with conciliation into the above mentioned disputes within a period of 30 days from the date of this letter along with details of counter-claims, if any, which it might have with regard to the subject Contract/ MoU/ Agreement/ LOI/ LOA and to appoint suitable person(s) as Conciliator(s) from the BHEL Panel of Conciliators.

This letter is being issued without prejudice to our rights and contentions available under the contract and law.

Thanking you
Yours faithfully

Representative of the Stakeholder

Note: The Format may be suitably modified, as required, based on facts and circumstances of the case.



FORMAT-4

FORMAT FOR INTIMATION TO THE STAKEHOLDER ABOUT APPOINTMENT OF CONCILIATOR/IEC

To,

M/s. (Stakeholder's name)

Subject: **INTIMATION BY BHEL TO THE STAKEHOLDER AND CONCILIATOR(S) ABOUT APPOINTMENT OF CONCILIATOR/IEC**

Ref: Contract No/MoU/Agreement/LOI/LOA& date _____.

Sir,

This is with reference to letter dated ----- regarding reference of the disputes arising in connection with the subject Contract No /MoU/Agreement/LOI/LOA to conciliation and appointment of Conciliator(s).

In pursuance of the said letter, the said disputes are assigned to conciliation and the following persons are nominated as Conciliator(s) for conciliating and assisting the Parties to amicably resolve the disputes in terms of the Arbitration & Conciliation Act, 1996 and the Procedure ---- to the subject Contract /MoU/Agreement/LOI/LOA, if possible.

Name and contact details of Conciliator(s)

a)

b)

c)

You are requested to submit the Statement of Claims or Counter-Claims (strike off whichever is inapplicable) before the Conciliator(s) in Format 5 (enclosed herewith) as per the time limit as prescribed by the Conciliator(s).

Yours faithfully,

Representative of BHEL

CC: To Conciliator(s)... for Kind Information please.

Encl: As above

Note: The Format may be suitably modified, as required, based on facts and circumstances of the case.