

**Techno-Commercial Memorandum of Understanding (TC-MoU) for Supply of
Low Carbon Ferrochrome (Material Code FF1135175039)**

This TC-MOU No.

BHEL/CFFP/MM/TC-MOU/FF1135175039/VC

agreed between

M/s Central Foundry Forge Plant (CFFP), BHEL, Haridwar (Buyer)

and

M/s _____ (BHEL Vendor Code: -----) (Seller)

and is applicable to all Tender Enquiries issued by CFFP, BHEL under this TC-MoU for

<u>MATERIAL</u>	
Material :	Low Carbon Ferrochrome
CFFP BHEL Material Code :	FF1135175039
CFFP Specification no :	FF 05007 Rev. 06
<u>This TC- MoU shall remain in effect for THE PERIOD</u>	
Date of Commencement of TC-MoU :	1 st August , 2019
Duration of TC-MoU :	Two Years
Date of Completion of TC-MoU :	31 st July , 2021
<u>ANNEXURES to this document</u>	
Material Specification	Annexure – A (CFFP Specification No.: FF 05007 Rev. 06)
Scope of Third Party Inspection	Annexure-B
General Terms & Conditions of tender	Annexure – C (Document No.: CFFP/MM/PUR/GT/02 REV04 Dated 03.04.2019)
LC Terms & Conditions	Annexure- D

Scope of Techno Commercial MoU

This Techno Commercial MoU, along with the Terms & Conditions of this TC-MoU, as specified in this page (Page 1) and the subsequent pages 2 to 7 of this document, shall be deemed to have been accepted by both the Buyer and the Seller for processing of the tender enquiries issued by the buyer for procurement of Low carbon Ferrochrome & placement of purchase order against the same. These “Terms & Conditions” shall be binding on both the Buyer and the Seller till execution of Purchase order (PO) issued to the Seller by the Buyer.

For M/S CFFP, BHEL, Haridwar

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For M/S -----

- 1) This TC-MoU will remain valid till the date mentioned as “Date of Completion of TC-MoU” under the heading “**THE PERIOD**”. Any revision / deviation in the terms and conditions to be incorporated in this TC-MoU, including “Date of Completion of MoU”, can be done only before this date and only with the mutual agreement of both the Buyer & the Seller.
- 2) The “**MATERIAL**” shall be supplied by seller as per the specification no. FF05007 Rev. 06, hereinafter called “**SPECIFICATION**” in all respects and the seller confirms agreement of all the clauses of the said Specification (ANNEXURE-A).
- 1) **CHEMICAL COMPOSITION:** Material is required as per chemical composition specified in clause 6 of Specification. CFFP may consider acceptance of material under exceptional circumstances with deviation up to the limits in Chromium content only, subject to following conditions (refer a., b., and c. below), provided all other clauses of Specification/PO are met:
 - a. For Chromium contents greater than 63% but less than 65%, supplies may be accepted with deductions. Deduction for lower Chromium content (Chromium content between 63% to 65%) shall be on pro rata basis with equal penalty. For example, in case of material with 64% Chromium content, deduction will be 3.08% (1.54% on pro rata + 1.54% as penalty). The deduction will be made on the cost of total quantity of the material in the supplied lot as per basic rate mentioned in Purchase Order issued by the Buyer.
 - b. For Chromium contents greater than 75%, no increase in agreed basic rate as per PO on pro rata basis will be allowed.
 - c. Payment for accepted material in the specified range will be at Fixed PO Rate and no pro rata rate will be permitted for higher Chromium content within the specified range as per Specification.
- 2) **SIZE:** Material is required in sizes as specified in the Specification. Deviations in sizes will be dealt with as detailed below:
 - a. Payment will not be made for material found beyond specified value of size in clause 3 of the specification as reported during inspection at CFFP. For example, as against the permitted undersized material of 15% if the undersized material in any lot of supply is found 18%, then no payment will be made for 3% which is beyond the permissible limit of 15%.
 - b. Similarly, Payment will not be made for oversized material found beyond specified value of size in clause 3 of the specification (beyond permissible limit of 10%) as reported during inspection at CFFP.
 - c. Vendor will have no right to claim for return of oversize/undersize material to him.
4. **TEST CERTIFICATE:** Original Manufacturer's Test Certificate with linkage to supplied material shall be provided by seller along with dispatch documents.
5. **GUARANTEE CERTIFICATE:** Guarantee Certificate shall be provided by the seller along with dispatch documents confirming that in case of any non-conformity with respect to the Specification, the supplied material shall be replaced free of cost.
6. **PACKING & MARKING:** Material shall be supplied by seller in Original Manufacturer's Packing with marking as per specification.

7. **INSPECTION & ACCEPTANCE:** Third Party Inspection (before dispatch) from one of the following six inspection agencies i.e.:

- i. **LRIS**
- ii. **BVIS (WINGS OF BUREAU-VERITAS)**
- iii. **DNV**
- iv. **TUV(SUD)**
- v. **ALFRED H KNIGHT**
- vi. **SGS**

shall be arranged by seller at their cost. Inspection by any other third party shall be carried out only in exceptional cases with mandatory prior approval by the Buyer.

- a. Third party inspection report should include tests results as per requirement of clause 8 of the Specification. Third Party Inspection will be as per scope given in **Annexure-B: "Scope of Third Party Inspection"**.
- b. Acceptance of material shall be after final inspection at CFFP BHEL, Haridwar as per the Specification and shall be binding on seller. Material not found in conformance with applicable specification and / or purchase order conditions and / or Terms & Conditions of this TC-MoU, shall be rejected.
- c. In case material gets rejected during final inspection at CFFP, the same shall be replaced by supplier immediately. All the charges (like To & Fro freight, insurance etc.) for replacement shall be borne by supplier. Date of receipt of replacement material, if accepted, shall be considered as actual delivery date with respect the PO delivery date for calculating penalty against Late Delivery.

8. **DELIVERY TERM:-**

i. **For Indian Suppliers:** FOR, Destination (Door delivery basis). Destination will be C.Store, CFFP, BHEL, Haridwar.

ii. **For Foreign suppliers:** On CIF, Nhava Sheva , Mumbai

Quoted rate should be inclusive of the charges like freight, insurance, packing & forwarding etc. for the delivery term given above or else proper loading shall be done.

9. **DELIVERY SCHEDULE :-**

- i. **For Indian Suppliers:** - FOR delivery -**within 60 days from P.O. date**
- ii. **For Foreign suppliers:** F.O.B. delivery- **within 30 days from L.C. date,**

L.D. will be applicable for deliveries beyond above mentioned delivery schedule .

10. **PRICE DISCOVERY:**

- a. "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 /'sealed price bid on e-procurement portal', submitted by the bidder. This will be decided after techno-commercial evaluation. Bidders to give their acceptance with their 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.
- b. In case BHEL decides to go for Reverse Auction, only those bidders who have given their acceptance to participate in RA will be allowed to participate in the Reverse Auction. Those bidders who have given their acceptance to participate in Reverse Auction will have to necessarily submit 'Process compliance form' (to the designated service provider) as well as Online sealed bid' in the Reverse Auction. Non-submission

of 'Process compliance form' or 'Online sealed bid' by the agreed bidder (s) will be considered as tampering of the tender process and will invite action by BHEL as per extant guidelines for suspension of business dealings with suppliers/ contractors (as available on www.bhel.com).

- c. The bidders have to necessarily submit online sealed bid less than or equal to their envelope sealed price bid /'sealed price bid on e-procurement portal' already submitted to BHEL along with the offer(Landed cost to CFFP i.e. Landed cost net of Input Tax Credit for which sample calculation sheet shall be provided by BHEL). The envelope sealed price bid/'sealed price bid on e-procurement portal' of successful L1 bidder in RA, if conducted, shall also be opened after RA and the order will be placed on lower of the two bids (RA closing price & envelope sealed price/'sealed price bid on e-procurement portal') thus obtained. The bidder having submitted this offer specifically agrees to this condition and undertakes to execute the contract on thus awarded rates.
- d. If it is found that L1 bidder has quoted higher in online sealed bid in comparison to envelope sealed bid/'sealed price bid on e-procurement portal' for any item(s), the bidder will be issued a warning letter to this effect. However, if the same bidder again defaults on this count in any subsequent tender in the unit, it will be considered as fraud and will invite action by BHEL as per extant guidelines for suspension of business dealings with suppliers/ contractors (as available on www.bhel.com)."
- e. Highest bidder during online sealed bid will not be permitted to participate further in Reverse Auction of the tender enquiry.
- f. After declaring L1 bidder upon completion of RA, CFFP/BHEL will open the price submitted by L1 bidder in e-procurement portal during tender submission. Order will be placed at lower of the two rates.
- g. CFFP, BHEL also reserve its right to negotiate with L1 bidder, established after price discovery.
- h. Buyer may also negotiate with L1 vendor after reverse auction, if necessary.

11. **EVALUATION OF PRICE BIDS:** Evaluation of price bids will be done on the basis of delivered cost at CFFP i.e. Landed cost net of Input Tax Credit at CFFP.

12. PAYMENT TERM:

A. For Indian suppliers - 100% within 45 days after receipt of material at CFFP / BHEL, Haridwar through e-payment, subject to acceptance of material by CFFP / BHEL, Haridwar during Final inspection of material at CFFP.
In case vendor does not agree, proper loading shall be done.

Loading will be @ Base rate of SBI (as applicable on the dated 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 bidders.

B. For foreign suppliers-

Payment through USANCE LC on 70th day of bill of lading date. All bank charges shall be to vendor's account.
In case vendor does not agree, proper loading shall be done.

Loading will be @ Base rate of SBI (as applicable on the dated 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 bidders.

13. **VALIDITY OF OFFERS:** Validity of offers of vendors in subsequent tender enquiries under TC-MoU, should be minimum 15 days from techno-commercial (part-1) tender opening date.
14. **ORDERING:** Ordering will be done on two parties. PO for 70% quantity will be placed on L1 vendor and 30% quantity on 2nd vendor on acceptance of L1 landed rate (2nd vendor based on their price ranking position i.e. L2 or L3...etc.). Offers of vendors quoting for less than 70% of tender enquiry quantity will be ignored.
- BHEL may also place order for part quantity. Quoted rate not to be linked with order quantity.
15. The price quoted by the seller shall remain **FIRM** till the execution of the PO for that particular tender enquiry issued by the Buyer.
16. Seller has to confirm supply of material as per the delivery schedule mentioned in the tender enquiry. In case deliveries quoted by supplier are not meeting the tender enquiry requirements, the buyer may ignore the seller's offer.
17. Delivery in the promised period is the essence of contract. Requests for delivery extension from the seller for reasons like Non availability of transport / inspection agency etc. will not be entertained by the buyer.
18. **PENALTY & RISK PURCHASE:** Purchase orders placed against this TC-MoU shall be subject to normal clauses for imposing Penalty, Liquidated Damages for Late Delivery, Risk purchases, Cancellation, Arbitration in case of delay in effecting supply and / or other defaults as per following conditions:
- Penalty for Late Delivery:** The delivery of the goods shall be made strictly as per time limit specified in delivery schedule, failure to supply within this period will make the seller liable to a penalty of 1/2 (half) percent of the price of the goods in arrears per week, subject to a maximum of 10% on the basic rate (total PO value). Any correspondence regarding waiver of LD shall not be entertained.
 - Risk Purchase:** In case of delays in supplies / defective supplies or non-fulfillment of any other terms and conditions given in the Purchase Order by the seller, the Buyer reserves the right to cancel the purchase order in full or part thereof, and may also make the purchase of such material from alternative source at the sole risk and cost of the seller.
19. **DISPUTES, ARBITRATION & SETTLEMENT THAT OF:** In the event of any dispute arising out of contractual obligation, the order being finalized at Haridwar, India will be subject to Indian Laws and falls under jurisdiction of the court of Law at Haridwar, India.
20. **POST TC-MoU TENDERING:** Signing this TC-MOU does not guarantee tender enquiry to vendor. Tender enquiry shall be issued to suitable vendors (based on Supplier Performance Rating) as per BHEL rules & guidelines prevailing at the time of enquiry. Performance rating depends upon quality of supplied material & adherence to delivery schedule of purchase orders.
21. **PERFORMANCE EVALUATION:** During the validity period of this TC-MOU, vendor's performance shall be reviewed as per BHEL rules & guidelines.
22. **RIGHT TO ENQUIRE:** Buyer reserves the right not to consider vendor for sending enquiry (during validity period of this TC-MOU) due to non-execution of old order(s) or other valid reasons.

23. **All the subsequent tender enquiries under TC-MOU will be floated through e-procurement.** During tender enquiry ,vendor will quote the following only in their offer:

a. Techno Commercial Bid

- i. Confirmation to enquiry quantity
- ii. Duly filled, signed & stamped copy of Integrity Pact (if applicable)
- iii. Validity of rates- minimum 15 days from techno-commercial (part-1) tender opening date

b. Price Bid

- i. Currency - Indian Vendors shall quote their price only in INR.
- ii. Foreign vendors shall quote their price only in USD, EURO, UK POUND STERLING and JAPANESE YEN.
- iii. For evaluation of price bids, exchange rate (TT selling rate of SBI) as on scheduled date of tender opening (Part-1 bid in case of two part bid) shall be considered.

If the relevant day happens to be a bank holiday, then the forex rate as on the pervious bank (SBI) working day shall be taken.

24. Basis of payment:- Payment will be made to vendor based on fixed PO rate as per PO terms.

25. Vendor has to clearly mention taxes applicable in their offer.

26. Foreign suppliers will submit “LC Terms & conditions” (Annexure –D), duly signed & stamped by their company, which will be a part of TC-MoU for this item. In case Foreign suppliers do not accept “LC Terms & conditions” (Annexure –D) , their offer may be rejected.

27. BHEL reserves the right to short close this TC-MOU or any extension thereof, at any stage.

28. Terms & conditions not specified in TC-MOU shall be as per tender enquiry / Purchase order / as per “**General Terms and Conditions**” of Tender Enquiry, Annexure-C (document no.- CFFP/MM/PUR/GT/02 REV04 Dated:03.04.2019).

29. If there is a disagreement in various clauses of this **document of TC-MOU** and “**General Terms & Conditions**” of Tender Enquiry, Annexure-C (document no.- CFFP/MM/PUR/GT/02 REV04 Dated:03.04.2019), the clause(s) mentioned in this **document of TC-MOU** shall supersede.

30. In case of any difference in conditions accepted by seller in this document of TC-MOU & elsewhere quoted by seller in their offer , terms accepted by seller in this document of TC-MOU shall be treated as final and binding on vendor.

31. Conditions for availing Micro & Small Enterprises (MSE's) benefits by Indian Bidders - will be as per clause no. of 26 of General Terms & condition of tender, Annexure-C (document no.- CFFP/MM/PUR/GT/02 REV04 Dated:03.04.2019).

32. Conditions to avail benefits under Public Procurement (Preference to MAKE IN INDIA) order 2017 and its amendment thereof - will be as per clause no. of 27 of General Terms & condition of tender , Annexure-C (document no.- CFFP/MM/PUR/GT/02 REV04 Dated:03.04.2019).

33. This TC-MoU will be valid for Purchase Orders placed through tender enquiries floated up to Date of Completion of this document of TC-MoU i.e. upto 31st July, 2021 or till revision of this TC-MOU, whichever is earlier.

We hereby confirm our acceptance for compliance of Terms & Conditions of TC-MOU stipulated above.

For & on behalf of

**M/s Central Foundry Forge plant,
BHEL, Haridwar**

Signature

Company Seal

Name & Address

Phone No.

Email id.

Date

For & on behalf of

**M/s _____
(BHEL Vendor Code: -----)**

Signature of Authorized Signatory

Company Seal

Name & Address

Phone No.

Email id.

Date