

ANNEXURE TO CONDITIONS OF CONTRACT FOR CIVIL WORKS

The following terms and conditions shall form a part of the tender document. If any discrepancies found between below mentioned clauses and clauses in the Conditions of Contract for Civil Works, Doc.No.-TB-Civil-GCC, Rev-02, the clauses mentioned in this annexure shall prevail.

- 1.0 Clause C-27.0 of “Over run charges”** under special conditions of contract is now deleted. No overrun charges are payable under the contract.
- 2.0 Clause C-35.0 “secured advance”** under special conditions of contract is now deleted. No advance on materials shall be payable under the contract.
- 3.0 Clause C- of “C-29.7”** under special condition of contract is now deleted and now this clause should be read as below.
- 3.1 TDS under Income Tax, VAT etc. if any, shall be deducted at prevailing rates on Gross Value of invoice from the running bills unless Exemption certificate from the appropriate Authority/Authorities is furnished.
- 3.2 All taxes (Except service Tax including Cess/surcharge etc on service tax as applicable) WCT under VAT act, duties, charges, royalties, duties etc. any State or Central Levy and other taxes for materials for execution of the contract shall be borne by the contractor and shall not be payable extra. Any increase of the same at any stage during execution of the contract shall have to be borne by the contractor. Quoted price of the bidder shall be inclusive of all such requirements. Contractor is responsible to furnish all documentary evidences towards registration, payment of works contract Tax and other documents in connection with State VAT Act, as may be required from time to time as and when required by BHEL. Submission of Tax Invoice is a must after Grossing up Bills as the price is inclusive of VAT, separate depiction of VAT.
- 3.3 Contractors have to make their own arrangement at their cost for completing the formalities , if required, with state Vat Authorities, for bringing their material, plant & machinery at site for the execution of contract, road permit / way bill, if required shall be arranged by the contractor and BHEL will not supply any road permit / way bill for this purpose. Contractor must be a Registered as Dealer with the state VAT Act. A copy of the said Registration certificate must be provided to BHEL before the first bill is raised by the contractor.
- 3.4 Service tax: Contractor shall obtain prior approval of BHEL for adopting the scheme for payment of service tax for this contract before the first bill is raised by the contractor. BHEL reserves the right to disagree with the scheme proposed by the contractor .The decision of BHEL shall be final and the contractor shall be bound to adopt the scheme of service tax as finalized by BHEL.

Service Tax (including Cess/surcharge etc on service tax as may be applicable) as legally leviable & payable by the contractor under the provisions of applicable law/ act, shall be paid by BHEL extra as per provision of applicable law. The contractor must be duly registered service provider under service tax law The invoice shall be a Tax invoice under service tax law and it should clearly depict following (i) the service tax registration number of the contractor (ii) the amount of service tax (iii) the rate of service tax (iv) any other requirement specified by law.

BHEL will not be held to be responsible for any non-compliance of the contractor in respect of various service tax rules, being framed from time to time.

Contractor will be required to provide all necessary documents / certificates as may be necessary for availment of input credit by BHEL.

- 3.5 Tender rates are inclusive of all taxes, duties levies etc except service tax. Any increase by the government in any of taxes except service tax shall be borne by contractor. Service tax as per Clause No. 3(4) above will be paid extra as per Contract. However, regarding newly introduced taxes (i.e. taxes introduced by government after tender opening date) reimbursement will be made subject to following

(a) if new tax introduced by Central Govt. /state Govt./ /Municipality becomes directly applicable on items specified in Bill of Quantities and as per the scheme announced by the government and new tax is neither in lieu of substitution nor in lieu of abolition, reduction of any of present taxes but is altogether a new tax, full reimbursement will be made provided it becomes directly applicable on items specified in BOQ.

(b) If new tax introduced by Central /state Govt. becomes directly applicable on items specified in Bill of Quantities but is in substitution /abolition /reduction of any present taxes other than service tax, no reimbursement will be made to that effect.

(c) If new tax introduced by Central /state Govt becomes directly applicable on items specified in Bill of Quantities but EITHER is in substitution /abolition of service tax OR is in substitution /abolition of service tax as well as any or all of present taxes, reimbursement will be made only to the extent service tax rate, which the contractor is entitled as per contract on the date immediately prior to date on which rate of new tax announced by Government becomes applicable/effective. New tax shall be paid at actual restricted to service tax rate which the contractor is entitled on the date immediately prior to date on which rate of new tax announced by the Govt. becomes applicable/effective, will have to be borne by contractor .If required, unit rates specified in BOQ may have to be appropriately adjusted for the work/bills pertaining to period after new tax becomes applicable.

It is further clarified in any of above cases, no reimbursement of any new tax shall be considered unless new tax becomes directly leviable on items specified in BOQ.

- 4.0 Clause C-26.0 “Price Variation”** under special conditions of contract is now deleted and now this Clause should be read as below.

- 4.1 In order to take care of variation in cost of execution of work on either side, due to variation in the index of LABOUR, HIGH SPEED DIESEL OIL and Price Variation Formula as described herein shall be applicable.
- 4.2 85% component of Contract Value shall be permitted to be adjusted for variation in various relevant indices during execution of work. The remaining 15% shall be treated as fixed component.
- 4.3 The basis for calculation of price variation in each category, their component, Base Index, shall be as under:

Sl. No.	Category	Base Index	Component (K)
1	Labour	'MONTHLY ALL-INDIA AVERAGE CONSUMER PRICE INDEX NUMBERS FOR INDUSTRIAL WORKERS' published by Labour Bureau, Ministry of Labour and Employment, Government of India. (Website: labourbureau.nic.in)	80
2	High Speed Diesel Oil	Name of Commodity: HSD OIL. Type : INDIVIDUAL COMMODITY (See Note A)	5

Note:

- A. As per the 'MONTHLY WHOLE SALE PRICE INDEX' for the respective Commodity and Type, published by Office of Economic Adviser, Ministry of Commerce and Industry, Government of India. (Website: www.eaindustry.nic.in). Revisions in the index or commodity will be re adjusted accordingly.

- 4.4 Payment/recovery due to variation in index shall be determined on the basis of the following notional formula without any initial absorption, in respect of the identified components viz LABOUR, HIGH SPEED DIESEL OIL,

$$P = K \times R \times \frac{(X_N - X_0)}{X_0}$$

Where

P = Amount to be paid/recovered due to variation in the Index for Labour, High Speed Diesel Oil

K = Percentage component applicable for Labour, High Speed Diesel Oil

R = Value of work done (Excluding Taxes and Duties if payable extra) for the billing month (The month in which the work has been performed)

X_N = Revised Index No for Labour, High Speed Diesel Oil for the billing month (The month in which the work has been performed) under consideration.

X_0 = Index no for Labour, High Speed Diesel Oil, as on the Base date.

- 4.5 Base date shall be calendar month of the latest date of submission of Tender.
- 4.6 PVC shall not be payable for the ORC amount, Supplementary/Additional Items, Extra works executed on manday rates basis.
- 4.7 The contractor shall furnish necessary monthly bulletins for the necessary indices from the relevant websites along with his Bills.

- 4.8 The contractor will be required to raise the bills for price variation payments on a monthly basis along with the running bills irrespective of the fact whether any increase/decrease in the index for relevant categories has taken place or not. In case there is delay in publication of bulletins (final figure), the provisional values as published can be considered for payments and arrears shall be paid/recovered on getting the final values.
- 4.9 PVC shall be applicable for the entire original contract period plus the extended period. However the Total Quantum of Price Variation amount payable/recoverable shall be regulated as follows:
- i) For the portion of backlog attributable to the contractor, the PVC will be based on the average of the indices for the period of the original contract period.
 - ii) For the period of Force Majeure, the PVC will be limited to the indices applicable at the beginning of the force majeure period.
 - iii) For the portion of backlog attributable to BHEL, the PVC will be as per the indices applicable for the respective months.
 - iv) The total amount of PVC shall be limited to 10% of executed contract value. Executed contract value for this purpose is exclusive of PVC, ORC, Supplementary/Additional Items, Extra works executed on manday rates basis.

5.0 RESPONSIBILITY OF CONTRACTOR IN RESPECT OF LAWS/ STATUTORY RULES / REGULATIONS PERTAINING TO BOCW

It shall be mandatory for the contractor to comply with Building and Other Construction Worker (Regulation of Employment and Conditions of Service) Act, 1996 and Rules of 1998 read with Building and other Construction Workers welfare Cess act, 1996 and Cess Rules.

It shall be the sole responsibility of the contractor to apply for a license to the Competent Authority under the Building and Other Construction Worker (Regulation of Employment and Conditions of Service) Act, 1996 and Rules of 1998 read with Building and other Construction Workers welfare Cess act, 1996 and Cess Rules and obtain proper certificate thereof by specifying the scope of its work. It shall also be responsibility of the contractor to furnish a copy of such certificate of license / permission to BHEL within 2 months from date of start of award of work at site or along with 1st RA bill whichever is earlier.

It shall be the responsibility of the sub-contractor to furnish the receipts / challans towards deposit of the cess together with the number, name and other details of beneficiaries (building or construction workers) engaged by the sub-contractor during the preceding month.

The onus shall lie on the contractor to register with the authorities and provide the details of the amount remitted to the authorities. In case the contractor fails to comply with the BOCW act, no payments shall be released to the contractor.

In case the customer owns the responsibility of compliance of BOCW act and deducts the amount from BHEL, the same shall be deducted from the RA bills of the contractor.

In the event of any penalty or other implication due to non compliance of statutory obligation the same shall be on contractor's account

6.0 OVER ALL PRICE VARIATION

The individual quantity can vary to any extent or may be deleted for which no compensation will be payable to the contractor and the rates will remain firm. Also the rate of each item remains firm as long as the variation in the total value of work executed under the contract including extra items if any remains within plus/minus 30 percent of the contract value. In case the actual value of executed work including extra work on completion of work becomes less than 70% of the basic/original contract value than the following method shall be adopted.

The actual executed value shall be raised by 7% (For arriving at the final payment against work executed) subject to the condition that total value of work executed plus increase by 7% as above shall be limited to 70% of the basic/original contract value. The rate quoted shall be firm irrespective of any upward variation in the contract price.

It is further clarified that the enhancement/rate revision on the basic rate as per PVC clause shall not be accounted for the purpose of operating this clause.

7.0 CONDITIONS FOR ACCEPTANCE OF BANK GUARANTEES

Contractors are advised to obtain Bank Guarantee preferably from any of the following BHEL consortium banks

Sl. No.	Nationalised Bank		Nationalised Bank
1	Allahabad bank	19	Vijaya Bank
2	Andhra bank		Public Sector Banks
3	Bank of Baroda	20	IDBI
4	Canara Bank		Foreign bank
5	Corporation bank	21	CITI Bank N.A
6	Central bank of India	22	Deutsche Bank AG
7	Indian Bank	23	The Hongkong and Shanghai Banking Corporation Limited
8	Indian Overseas Bank	24	Standard Chartered Bank
9	Oriental bank of Commerce	25	The Royal Bank of Scotland N.V.
10	Punjab National Bank	26	J P Morgan
11	Punjab & Sindh Bank		Private bank
12	State Bank of India	27	Axis Bank
13	State Bank of Hyderabad	28	The Federal Bank Limited
14	Syndicate Bank	29	HDFC
15	State Bank of Travancore	30	Kotak Mahindra Bank
16	UCO Bank	31	ICICI
17	Union Bank of India	32	Indusind Bank
18	United Bank of India	33	Yes Bank

Conditions for acceptance of Bank Guarantees from Banks outside BHEL's consortium shall be as below:

The Bank Guarantees of all Public sector banks can be accepted (in addition to consortium banks)

The Bank Guarantees of Co-operative banks shall not be accepted.

Bank Guarantees of other than consortium bank and public sector bank can be accepted subject to an overall exposure limit (at New Delhi) of Rs. 10 crores for banks with networth of more than Rs. 500 crores as on last balance sheet date and Rs 5 crores for banks with net worth between Rs. 350 to Rs 500 crores (A certificate and copy of latest Balance Sheet to be given by the Bank at the time of submission of Bank Guarantees).

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

In case of foreign vendors the bank guarantees issued by foreign banks may be confirmed by our consortium bank in India.

In case of Bank Guarantees given by Non-Consortium banks (Private sector or Public sector), the Bank Guarantees are to be enforceable in New Delhi or the town/ city in which the sector/ project is located.

8.0 Clause No. C.24.0 (Delay and Extension of Time) of Conditions of Contract for Civil Works has been modified as below:

If, in the opinion of the Engineer, the work is delayed

- i) by reason of abnormally bad weather, or
- ii) by reason of serious loss or damage by fire, or
- iii) by reason of civil commotion, local combination of workmen, strike or lockout, affecting any of the trades employed on the work, or
- iv) by delay on the part of the agency or tradesman engaged by the BHEL in executing work not forming part of the contract, or
- v) By reason of any other cause which in the absolute discretion of the Engineer is beyond the contractor's control, then in any such case, the Engineer (or higher authority) may make fair and reasonable extension in the completion dates of the individual items of work of the contract as whole. Such extension which will be communicated to the contractor by the Engineer in writing shall be final and binding on the contractor. No other claim in this respect for compensation, idle labour or otherwise howsoever is admissible. Upon the happening of any such event causing delay the contractor shall immediately give notice thereof in writing to the Engineer but shall nevertheless use constantly his best endeavour to prevent or make good the delay and shall do all that may reasonably be required to the satisfaction of the Engineer to proceed with the work.
- vi) In case of delay in completion of work BHEL reserve the right to grant time extension under the following options depending upon the performance of the vendor:
 - a. Time extension without levy of LD in case it is found that delay is not attributable to the vendor.
 - b. Time extension with deduction of applicable LD in line with Liquidity Damage clause if the delay is solely attributable to the vendor.

- c. In case facts of delay is not settled, BHEL reserve the right to grant provisional time extension for delay in completion of total work or part thereof and running/ interim payments to the vendor will be released without deduction of LD subject to submission of additional Bank guarantee equivalent to maximum LD amount valid till completion of work under their scope and grant of final time extension.

During provisional time extension period ORC/ PVC shall not be payable to the contractor. The Final Delay analysis shall be prepared on completion of the work. In case of delay is not attributable to contractor as per final delay analysis the ORC/ PVC shall be released along with the final bill without any interest charges attributable to BHEL.

In case of delay attributable to contractor, LD shall be deducted for that period in line with clause "Compensation/ LD/ Penalty for delay in execution" of conditions of contract and balance ORC/ PVC (if any) shall be released along with the final bill without any interest charges attributable to BHEL.

PVC/ ORC shall be governed by respective clauses in the NIT.

9.0 The Clause No. B.15.0 "Arbitration" of Conditions of contract for Civil works stands deleted. Now the modified clause shall be read as below:

- 9.1 Except where otherwise provided for in the contract all questions & disputes relating to the meaning of the specification designs, drawings and instruction herein before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings specifications, estimates, instructions, orders of these conditions or otherwise concerning the works, of the execution or failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof shall be referred to the sole arbitration of the Head TBG, BHEL, Noida and if the Head TBG is unable or unwilling to act, to the sole arbitration of some other person appointed by the Head TBG willing to act as such arbitrator.

A party wishing to commence arbitration proceeding shall invoke Arbitration Clause by giving 60 days notice to the other party. The notice invoking arbitration shall specify all the points of disputes with details of the amount claimed to be referred to arbitration at the time of invocation of arbitration and not thereafter.

There will be no objection if the arbitrator so appointed is an employee of BHEL and he had to deal with the matters to which the contract relates, in the course of his duties. The arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason such Head TBG as aforesaid at the time of such transfer vacation of office or inability to act shall appoint (see note) another person to act as arbitrator in accordance with the terms of the contract such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. It is also a term of this contract that no person other than a person appointed by such Head TBG as aforesaid should act as arbitrator and if for any reason that is not possible the matter is not to be referred to arbitration at all, in all cases where the amount of the claim dispute is Rs. 50,000/- (Rupees fifty thousand) and above the arbitrator shall give reasons for the award.

The provisions of Indian Arbitration and Conciliation Act 1996 or any statutory modification or re-enactment thereof and the rules made thereunder and the time being in force shall apply to the arbitration proceeding under this clause.

It is a term of the contract that the party involving arbitration shall specify the dispute or disputes to be referred to arbitration under this clause together with the amounts claimed in respect of each dispute.

The arbitrator may from time to time with consent of the parties enlarge the time for making and publishing the award.

The work under the contract shall, if reasonably possible, continue during the arbitration proceedings and no payment due or payable to the contractor shall be withheld on account of such proceedings.

The Arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties fixing the date of the first hearing.

The Arbitrator shall give a separate award in respect of each dispute or difference referred to him.

The Venue of arbitration shall be at New Delhi.

The award of the arbitrator shall be final, conclusive and binding all parties to this contract, subject to the provisions of the Arbitration and Conciliation Act, 1996.

Laws governing the Contract:

The contract shall be governed by the Indians Laws for the time being in force.

NOTE:-The Authority appointing the arbitrator should not be lower in rank than the Authority accepting the Agreement.

- 9.2 In case of Contract with Public Sector Enterprise (PSE) or a Government Department through Permanent Machinery of Arbitrators (PMA) in the department of Public Enterprises, the following shall be applicable:

In the event of any dispute or difference relating to the interpretation and application of the provisions of the Contract, such dispute or difference shall be referred to by either party to the arbitration of one of the arbitrators in the department of public enterprises. The award of the arbitrator shall be binding upon the parties to the dispute, provided, however, any party aggrieved by such award may make further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law and Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary or Additional Secretary when so authorized by the Law Secretary, whose decision shall bind the parties hereto finally and conclusively.

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

- 9.4 Neither party shall be entitled for any pre-reference or pendent-lite interest on its claims and any claim for such interest made by any party shall be void.

10.0 FACILITIES PROVIDED TO MSEs

10.1 Following facilities shall be provided to MSEs

a) Exemption from submission of EMD

10.2 "MSE suppliers can avail the intended benefits only if they submit along with the offer, attested copies of either 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 at Annexure - 1 where deemed validity of EM II certificate of five years has expired) applicable for the relevant financial year (latest audited). Date to be reckoned for determining the deemed validity will be the date of bid opening (Part 1 in case of two part bid). Non submission of such documents will lead to consideration of their bid at par with other bidders. No benefit 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. Documents should be notarized or attested by a Gazetted officer.

11.0 All other terms and conditions of tender shall remain unchanged.

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 Books 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 in 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 permissible limit of Rs.....Lacs forMicro / Small (Strike off which is not 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