

## **ANNEXURE TO CONDITIONS OF CONTRACT FOR ETC 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 Erection Works, DOC. NO. – TB-ETC-GCC, REV.-02, dated 20th JUNE, 2005, the clauses mentioned in this annexure shall prevail.

### **1. Condition of Contract for Erection works (DOC. NO. – TB-ETC-GCC, REV.-02, 20th June, 2005):**

#### **A. EARNEST MONEY DEPOSIT**

Every tender must be accompanied by the prescribed amount of Earnest Money Deposit (EMD) mentioned in NIT.

##### **1. Mode of EMD deposit:**

EMD can be submitted in any one of the following modes:

- i) Cash deposit as permissible under the extant Income Tax Act (before tender opening),
- ii) Electronic Fund Transfer credited in BHEL account (before tender opening). Details of BHEL account mentioned in this document.
- iii) Banker's cheque/Pay order/Demand Draft, in favour of 'Bharat Heavy Electricals Limited' and payable at New Delhi (Along with offer)
- iv) In case total EMD amount is more than Rs. 20 Lakh, the amount in excess of Rs. 20 lakh may be accepted in the form of Bank Guarantee from scheduled bank. The Bank Guarantee in such cases shall be valid for at least six months.
- v) No other form of EMD remittance shall be acceptable to BHEL

##### **2. Forfeiture of EMD**

EMD by the bidder will be forfeited as per NIT conditions, if

- i) After opening the tender and within the offer validity period, the bidder revokes his tender or makes any modification in his tender which is not acceptable to BHEL.
  - ii) The contractor fails to deposit the required Security deposit or commence the work within the period as per LOI/contract.
3. EMD by the tenderer shall be withheld in case any action on the tenderer is envisaged under the provision of extant "Guidelines on Suspension of business dealing with supplier/contractors" and forfeited/ released based on the action as determined under these guidelines.
4. In the case of unsuccessful bidders, the Earnest Money will be refunded to them within a reasonable time after award of work.
5. EMD shall not carry any interest.
6. EMD of successful bidder shall be retained as part of Security Deposit.

## **B. SECURITY DEPOSIT**

Security Deposit means the security provided by the Contractor towards fulfilment of any obligations in terms of the provision of the contract.

1. Upon acceptance of Tender, the successful Tenderer should deposit the required amount of Security Deposit for satisfactory completion of work. **The total amount of Security Deposit will be 5 % of the Contract Value. EMD of the successful tenderer shall be converted and adjusted towards the required amount of Security Deposit.**

### **2. Mode of Security deposit:**

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

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

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

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

### **3. Submission of Security Deposit:**

- i) At least 50 % of the required Security Deposit, including the EMD, shall be submitted before start of work. Balance of the Security Deposit can be submitted by way of deduction of 10% of the gross amount progressively from each running bills of the contractor till the total amount of the required Security Deposit is collected.
- ii) If the value of work done at any time exceeds the contract value, the amount of Security Deposit shall be correspondingly enhanced and the additional Security Deposit shall be immediately deposited by the Contractor or it shall be recovered from payment/s due to the Contractor.

- iii) The recoveries made from running bills (cash deduction towards balance SD amount) can be released against submission of equivalent Bank Guarantee in acceptable form, but only once, before completion of work, at the discretion of BHEL.
4. The BG shall be submitted only through the Banker. Along with the BG, the Bank shall also furnish a letter of confirmation (in the prescribed formats enclosed with general conditions of contract).
5. The validity of the Bank Guarantee furnished towards Security Deposit shall be up to three months more than the period of completion of work as stipulated in the LOI and the same will be kept valid by proper renewal till the completion of the work.
6. BHEL reserves the right of forfeiture of Security Deposit in addition to other claims and penalties in the event of the contractor's failure to fulfil any of the contractual obligations or in the event of termination of contract as per terms and conditions of the contract. BHEL reserves the right to set off the Security Deposit, against any claims of any other contracts with BHEL.
7. **Conditions for acceptance of bank guarantees**

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

Sl. No.	Nationalized Bank		Nationalised Bank
1	Allahabad bank	19	Vijaya Bank
2	Andhra bank		<b>Public Sector Banks</b>
3	Bank of Baroda	20	IDBI
4	Canara Bank		<b>Foreign bank</b>
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	J P Morgan
10	Punjab National Bank		
11	Punjab & Sindh Bank		<b>Private bank</b>
12	State Bank of India	26	Axis Bank
13	State Bank of Hyderabad	27	The Federal Bank Limited
14	Syndicate Bank	28	HDFC
15	State Bank of Travancore	29	Kotak Mahindra Bank
16	UCO Bank	30	ICICI
17	Union Bank of India	31	Indusind Bank
18	United Bank of India	32	Yes Bank

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 office is located.**

**8. RETURN OF SECURITY DEPOSIT:**

If the contractor duly performs and completes the work in all respects to the entire satisfaction of BHEL and presents an absolute "No demand certificate", returns properties belonging to BHEL, taken, borrowed or hired by him for carrying out the said works, and furnishes performance bond BG in the prescribed proforma as per ANNEXURE-J, Security Deposit will be released to the contractor after deducting all costs, expenses and other amounts that are to be paid to BHEL under this contract or other contracts entered into with the contractor. It may be noted that in no case the Security Deposit shall be refunded/released prior to passing of final bill.

**C. Bank Account Details for submission of EMD/ Security Deposit through electronic fund transfer mode.**

<b>NAME OF THE COMPANY</b>	<b>BHARAT HEAVY ELECTRICALS LTD</b>
<b>ADDRESS OF THE COMPANY</b>	<b>TRANSMISSION BUSINESS GROUP, 5TH FLOOR, TOWER A ADVANT NAVIS IT BUSINESS PARK, PLOT NO. 7, SECTOR-142, EXPRESSWAY NOIDA, NOIDA – 201305 (U.P.)</b>
<b>NAME OF BANK</b>	<b>HDFC BANK</b>
<b>NAME OF BANK BRANCH</b>	<b>ARERA COLONY, BHOPAL</b>
<b>CITY</b>	<b>BHOPAL</b>
<b>ACCOUNT NUMBER</b>	<b>00620320000021</b>
<b>ACCOUNT TYPE</b>	<b>CASH CREDIT</b>
<b>IFSC CODE</b>	<b>HDFC0000062</b>
<b>MICR CODE</b>	<b>462240002</b>

**D. Clause No. C.2.0 “TERMS OF PAYMENTS” stands deleted. Now this clause shall be read as below:**

**1.0 Terms of Payment for BOQ for Erection, Testing and Commissioning of 400kV switchyard at Banaskantha & Sankhari in Gujarat (Annexure-I.1, I.2, II.1 & II.2):**

- 1.1 No Mobilisation Advance shall be paid.
- 1.2 70% of the contract item price on the monthly progressive bills on pro rata basis after arranging necessary calibrated tools/tackles required for erection, submitting calibration reports, qualification/experience certificates of welder/Electrician/other staff, levelling, alignment, tightening and completion of erection including maintaining proper records of installation in FQPs and as certified by BHEL, Engineer.
- 1.3 10% of the contract item price on the monthly progressive bills on pro rata basis on arranging calibrated testing equipment, submission of calibration reports, testing of equipment including maintaining proper records of testing in FQPs and as certified by BHEL, Engineer.
- 1.4 10% of the contract item price after completion of satisfactory commissioning and submission of complete records of erection/testing/commissioning /charging protocol as per FQPs for the complete sub-station. If the contract is for more than one sub-station, then the same will be released after successful commissioning of each sub-station. If for any reason, the commissioning is delayed for reasons beyond the control of the contractor, in such case this payment will be released against commissioning certificate issued by the customer.
- 1.5 Last 10% of the contract item price after all test reports as per contract are jointly witnessed and signed by BHEL/customer, “As Built” changes are incorporated in relevant drawings, material reconciliation and substation is handed over to the Owner / Customer. If the contract is for more than one sub-station, then the same will be released after successful handing over of each sub-station. If for any reason, the handing over is delayed for reasons beyond the control of the contractor, in such case this payment will be released against commissioning certificate issued by the BHEL / customer and against submission of final bill of individual substation.
- 1.6 The contractor shall furnish within 15 days after LOI, a detailed bar-chart indicating time schedule for the erection, testing, pre-commissioning and commissioning so as to achieve the contractual planed date as agreed.

**2.0 Terms of Payment for BOQ for Unloading & Storage (Annexure-III.1, III.2, IV.1 & IV.2) :**

- 2.1 No Mobilisation Advance shall be paid.
- 2.2 75% of the contract item price on the monthly progressive bills on pro rata basis for receipt, material including arranging crane for unloading, maintaining proper records of receipt & storage in Field Quality Plans (FQPs) and as certified by BHEL Engineer.

2.3 Remaining 25% of the contract item price will be released

- (i) For items of 400kV switchyard at Banaskantha & Sankhari in Gujarat - After erection of materials/ equipment and handing over of un-erected materials and all mandatory spares (765/400kV) to BHEL/ Customer.
  - (ii) For items of 765 kV switchyard package- After handing over of materials/ equipment to the contractor appointed for ETC works of 765 kV switchyard package. In case the contractor completes all activities related to 400kV switchyard ETC works before mobilization of contractor for 765 kV switchyard package, BHEL may consider to release the balance payment after written instruction of site in-charge.
- 2.4 The quoted rates for various items are inclusive of receipt, unloading, inspection, verification, storage, up-keeping during storage, watch & ward and handing over of to customer at their stores of mandatory spares and nothing extra is payable on this account. Handing over of material/ equipment to be used in 765kV switchyard at Banaskantha in Gujarat shall be as per 2.3 (ii) above.
- 3.0 The payment due to the contractor shall be released after deducting income Tax wherever deductible at source as per Indian Income Tax Act and BHEL will issue appropriate certificate to the contractor after tax deduction.

**E. Clause No. C.17.0 “Over-run Charges” stands deleted. Now this clause shall be read as below.**

**Over-run compensation-** If the contract is extended beyond the contract period (including grace period) for any reason (including due to extra work/additional quantity) other than those attributable to the contractor or force majeure conditions, the contractor will be compensated by payment of over-run charges at the rate of 0.2 percent (point two percent) of the executed contract value per month after the expiry of grace period. Executed value as on last day of respective month(s) will be taken for purpose of calculation of overrun compensation.

The over run compensation will be payable for the eligible period of time extension on account of reasons attributable to BHEL only. No over run will be payable for the extension on account of reasons attributable to contractor and/or force majeure conditions.

Part of Extension attributable to the contractor, if any, in total contract extension shall be exhausted first i.e. immediately after end of grace period. This shall be followed by Extension on account of force majeure conditions, if any and lastly on account of BHEL.

The compensation will be payable for the extended eligible period in months and days as applicable.

Any compensation paid to the contractor against over run charges during the eligible extended period of the project will be recovered from the contractor or any payment on this account payable to the contractor will be cancelled if further extension is required due to the reasons attributable to the contractor or situation of risk & cost arises due to failure of the contractor to complete the work.

If the delay is attributable to the contractor LD will be imposed as per the provision in the contract.

**Total Over Run Compensation shall be limited to 10% of the executed contract value as certified in Final Bill. For this purpose executed contract value excludes PVC, ORC, Supplementary/Additional Items and Extra Works done.**

**Grace period-** The grace period will be defined in the Tender Document based on the calculation as one month for every six month (or part thereof) of the contract period. The prices quoted by the contractor will remain firm till the contract period plus the grace period including extended period if any.

**F. Clause No. B.16.3 shall be read in conjunction with the following**

**Extra works** - Extra works that arise on account of contractor's fault will have to be carried out by the contractor free of cost including the supply of consumables etc.

After eligibility of extra works is established and finally accepted by BHEL Engineer/Designer, payment will be decided on the following rates

**Man-day rate for eligible extra works:**

Single man-day rate (for Skilled manpower & un-skilled manpower) for carrying out rework/repairs/rectification/fabrication and other such works for a man-day of 8 hours as may arise during the course of erection will be limited to minimum wages of skilled/ un-skilled manpower prevailing at the time of execution of the extra work as notified by the state Government. Contractor has to submit notification published by the concerned state Govt. regarding minimum wage applicable for the period of execution of the extra work.

The above man day rate includes overtime if any, other site expenses and incidentals, consumables, tools and tackles etc.

As mentioned above, no payment will be made if an item of work lasts less than eight man hours.

**G. 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.

**H. Clause No. C.30.0 "INCOME TAX/SALES TAX/WORKS TAX/VAT" stands deleted. Now this clause shall be read as below:**

- (i) All taxes (except GST) , duties , charges , royalties, cess and any other levies by Central/ State/local authorities for the 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 be borne by the contractor .Quoted price of the same shall be inclusive of all such requirements.

- (ii) Contractors have to make their own arrangement at their cost for completing the formalities, if required with relevant taxation authorities, for bringing their material, plant and machinery at site for the execution of the contract. Road permits / way bill if required shall be arranged by the contractor.
- (iii) The Contractor is responsible to furnish documentary evidence towards GST Registration of the State wherein the site is located and any other documents as per GST Act which may be required from time to time by BHEL. BHEL will not be held to be responsible for any non-compliance of the Contractor in respect of GST laws as framed from time to time.
- (iv) Goods and Service Tax (GST) will be reimbursed to the Contractor subject to the following conditions :-
  - a) Submission of valid GST Compliant Tax Invoice as per the GST Invoice Rules after payment of CGST/ SGST as applicable.
  - b) The Invoice raised by the Contractor should indicate the BHEL GST Registration Number. (State-wise GSTIN of BHEL nodal units is attached)
  - c) Receipt of Services by BHEL.
  - d) The Contractor has filed the GST Returns in the GSTN Network within prescribed timelines, and the same is available in the online list of credit available to BHEL TBG in the Goods & Service Tax Network (GSTN).

Note: In lieu of Sl. No. (iv).(d) alternatively BG of appropriate value may be submitted by the contractor which shall be valid at least one month after the confirmation of date of payment of GST by contractor on GSTN portal.

- (v) If the GST Credit is denied/delayed to BHEL due to non/delayed receipt of Services and/or tax invoice or due to expiry of timeline prescribed in GST law for availing such Input Tax Credit (ITC) or for any other reason arising out of the act directly attributable to the Contractor, GST amount shall be recoverable from Contractor from any dues payable to the Contractor along with any interest levied/ leviable on BHEL.
- (vi) If the GST credit availed by BHEL is denied or reversed subsequently as per GST law, GST amount paid by BHEL towards such ITC reversal as per the GST law shall be recoverable from the Contractor along with any interest levied/leviable on BHEL from the dues payable to the Contractor.
- (vii) GST liability arising on BHEL under reverse charge mechanism, if applicable, before the actual receipt of services and/or invoice thereof would be subject to recovery of interest leviable for the period between the date of such liability and actual date of eligibility of ITC based on receipt of services, receipt of invoices and other conditions as specified in GST law.
- (viii) Statutory variation, if any, on account of GST within the Contractual time Period will be payable by BHEL at actuals on submission of documentary evidence. Statutory variation in GST rates for the work beyond Contractual Time Period will not be paid by BHEL. However, downward revision in GST rates needs to be duly passed on to BHEL.
- (ix) TDS under Income Tax Act shall be deducted as per applicable rates unless Exemption certificate, if applicable, from the appropriate Authority is furnished to BHEL along with the Invoice.
- (x) TDS under GST Act, if applicable shall be deducted as per applicable rates unless Exemption certificate, if applicable, from the appropriate Authority is furnished to BHEL along with the Invoice.



- (xi) Bidder should submit the Anti-Profitteering certificate under Sec 171 of GST Act stating that “the benefit of reduction in rate of tax and/or from input tax credit has been duly passed on to BHEL by way of commensurate reduction in prices”.
- (xii) GST (if any) shall also be applicable on liquidated damage/penalty as per relevant NIT clause.
- (xiii) New Taxes & duties:  
If any new tax or duty is levied by the Central/State Government/Municipality/Local Authority and becomes directly applicable on items specified in the Bill of Quantities, full reimbursement shall be made subject to submission of documentation as per statute. However, the new taxes shall be admissible only if the same is levied within the contractual time period. The same shall be admissible for the work done only up to the contractual time period.

**I. Clause No. A.17.0 shall be read in conjunction with the following**

**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		<b>Public Sector Banks</b>
3	Bank of Baroda	20	IDBI
4	Canara Bank		<b>Foreign bank</b>
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	J P Morgan
10	Punjab National Bank		
11	Punjab & Sindh Bank		<b>Private bank</b>
12	State Bank of India	26	Axis Bank
13	State Bank of Hyderabad	27	The Federal Bank Limited
14	Syndicate Bank	28	HDFC
15	State Bank of Travancore	29	Kotak Mahindra Bank
16	UCO Bank	30	ICICI
17	Union Bank of India	31	Indusind Bank
18	United Bank of India	32	Yes Bank

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 network 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.**

**J. DELAY AND EXTENSION OF TIME:**

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.

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

- i) 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.

- ii) 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.

- iii) The cost of arbitration shall be equally by the parties.
- iv) 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.

**L. FACILITIES PROVIDED TO MSEs**

- i) Following facilities shall be provided to MSEs
  - a)Exemption from submission of EMD
- ii) "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 Udyog Aadhar Memorandum 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.

**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 for .....Micro / 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