

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. Condition of Contract for Civil works (Doc. No.-TB-Civil-GCC, Rev-02):**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 may be accepted only in any of the following forms:

- 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 tender document.
- iii) Banker's cheque/Pay order/Demand Draft, in favour of 'BHEL' and payable at New Delhi (Along with offer)
- iv) Fixed Deposit Receipt (FDR) issued by schedule Banks/Public Finance Institutions as defined in the companies ACT (FDR should be in the name of the contractor, a/c BHEL
- v) In addition to above, the EMD amount in excess of Rs. Two (02) lakh may also be accepted in the form of Bank Guarantee from scheduled bank. The Bank Guarantee in such cases shall be valid for at least six months.**

No other form of EMD remittance shall be acceptable to BHEL.

1. 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.
2. 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.
 3. In the case of unsuccessful bidders, the Earnest Money will be refunded to them within a reasonable time after award of work.
 4. EMD shall not carry any interest.
 5. EMD of successful bidder shall be retained as part of Security Deposit.

6. Bidders may please note that “One Time EMD” provision stands deleted. Hence, bidders who have deposited Rs. 2 Lakh as ‘One Time EMD’ with BHEL are also required to submit the requisite amount of EMD.
7. No MSE benefits shall be given to MSEs bidder for WORKS CONTRACT. Please refer clause no. O (facilities provided to MSEs) for detail.

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 is enclosed.
- 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.	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	J P Morgan
10	Punjab National Bank		
11	Punjab & Sindh Bank		Private bank
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, 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.

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

D. Overall 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.

E. Clause no. C-25.0 "COMPENSATION/PENALTY FOR DELAY IN COMPLETION" stands deleted. Now this clause shall be read as below:-

In case the contractor fails to complete the project within the time specified in the tender specification or any extension thereof subject to force majeure condition, the contractor shall be liable to pay by way of LD/Penalty a sum equal to the half percent of the contract price, per calendar week or part thereof by which the commissioning of the project is delayed, subject to ceiling of 10 % of the contract price along with applicable GST (if any) on LD. Once the maximum limit of delay is reached (i.e. 20 week of delay) BHEL may consider termination of the contract and forfeit the Security deposit without prejudice to the other remedies under the contract.

If the contract is for more than one sub-station and the substations are completed and taken over by customer in stages, then the delays if any by the contractor for the substation completed and handed over may be accounted for the individual substation and LD leviable shall be computed based on the contract value of individual substation.

Amended/ revised contract value (excluding ORC, Extra Works, Supplementary/Additional Items and PVC) shall be considered for calculating LD/ penalty.

F. Clause No. C.29.7 "INCOME TAX/SALES TAX/WORKS TAX/VAT" stands deleted. Now this clause shall be read as below.

1. 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.
2. 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.

3. The Contractor is responsible to furnish documentary evidence towards GST Registration of the State wherein the site is located or any other documents as per GST Act which may be required from time to time. 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.
4. Goods and Service Tax (GST) will be reimbursed to the Contractor subject to the following conditions :-
 - (i) Submission of valid GST Compliant Tax Invoice as per the GST Invoice Rules.
 - (ii) The Invoice raised by the Contractor should indicate the BHEL GST Registration Number.
5. The GST amount shall get reflected within prescribed time limit in the GSTN for BHEL to avail the input credit. If the GST Credit is reversed/ denied/ delayed to BHEL due to non-receipt/delayed receipt of Services and/or tax invoice or due to expiry of timeline prescribed in GST law or due to any other factor 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.
6. Statutory variation, if any, on account of GST will be payable by BHEL at actuals on submission of documentary evidence.
7. TDS under Income Tax Act/ GST 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.
8. **New Taxes & duties (Introduced after tender opening date):**

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.
- G. **Clause C-27.0 of “Over run charges”** under special conditions of contract is now deleted. No overrun charges are payable under the contract.
- H. **Clause C-35.0 “secured advance”** under special conditions of contract is now deleted. No advance on materials shall be payable under the contract.
- I. **Clause C-26.0 “Price Variation”** under special conditions of contract is now deleted and now this Clause should be read as below.
 - I.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, CEMENT, MATERIALS, Price Variation Formula as described herein shall be applicable (only for works executed during extended period, if any, subject to other conditions as described in this section)
 - I.2 85% component of Contract Value shall be considered for PVC calculations and remaining 15% shall be treated as fixed component. The basis for calculation of price variation in each category, their component, Base Index shall be as under:

SL NO.	CATEGORY	BASE INDEX	Percentage Component
i)	LABOUR (ALL CATEGORIES)	'MONTHLY ALL-INDIA AVERAGE CONSUMER PRICE INDEX NUMBERS FOR INDUSTRIAL WORKERS' published by Labour Bureau, Ministry of Labour and Employment, Government of India. (Website: labourbureau.nic.in)	30
ii)	HIGH SPEED DIESEL OIL	Name of Commodity: HSD Commodity Code: 1202000005 (See Note A)	5
iv)	CEMENT	Name of Commodity: ORDINARY PORTLAND CEMENT Commodity Code: 1313050003 (See Note A)	30
vi)	All OTHER MATERIALS (Other than Cement & Steel)	Name of Commodity: ALL COMMODITIES Commodity Code:1000000000 (See Note A)	20

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: <http://eaindustry.nic.in/home.asp>). Revisions in the index or commodity will be re adjusted accordingly.

- I.3 Payment/recovery due to variation in index shall be determined on the basis of the following notional formula in respect of the identified COMPONENT ('K') viz LABOUR, HIGH SPEED DIESEL OIL, , CEMENT, MATERIALS.

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

X_0

Where

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

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

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

X_N = Revised Index for Labour, High Speed Diesel Oil, Cement, and Materials for the billing month under consideration

X_o = Index for Labour, High Speed Diesel Oil, Cement, and Materials as on the Base date

- I.4 Base date shall be the calendar month of the schedule completion date as per NIT
- I.5 PVC shall not be payable for the ORC amount, Supplementary/Additional/Extra Items. However, PVC will be payable for work executed under quantity variation of BOQ items under originally awarded contract.
- I.6 The contractor shall furnish necessary monthly bulletins in support of the requisite indices from the relevant websites along with his Bills.
- I.7 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.
- I.8 PVC shall be applicable only, during the extended period of contract (if any) after the scheduled completion period and for the portion of work delayed / backlog for the reasons not attributable to the Contractor.
- However total quantum of Price Variation amount payable/recoverable shall be regulated as follows:
- (i) For the portion of shortfall/ backlog not attributable to contractor, PVC shall be worked out on the basis of indices applicable for the respective month in which work is done. Base index shall be applicable as defined in clause I.4 above.
 - (ii) In case of Force majeure, PVC shall be regulated as per (a) or (b) below:
 - a) Force majeure is invoked before “base date”/“revised base date” (as explained below) OR immediately after “base date”/“revised base date” in continuation (i.e. during the period when PVC is not applicable):
 - 1. Base date shall be revised: Revised base date =Previous base date + duration of Force majeure. No PVC will be applicable for the work done till revised base date
 - 2. PVC will be applicable for the work done after “base date”/“revised base date” as the case may be (during extended period when delay is not attributable to contractor). PVC shall be worked out on the basis of indices applicable for the respective month in which work is done with base index as on “base date”/“revised base date” as the case may be.
 - b) Force majeure is invoked after “base date”/ “revised base date” as the case may be (during extended period when delay is not attributable to contractor)
 - 1. PVC shall be applicable for the work done after revocation of force majeure.
 - 2. PVC for the work done after revocation of force majeure shall be worked out on the basis of indices applicable for the respective month in which work is done excluding the effect of change in indices during total period of Force majeure(s) invoked after “base

date"/ "revised base date" as the case may be. Base index shall be taken as on "base date"/ "revised base date" as the case may be.

- I.9 **The total amount of PVC shall not exceed 10% of the cumulatively executed contract value. Executed contract value for this purpose is exclusive of PVC, ORC, Supplementary/Additional/Extra Items except extra works due to quantity variation of BOQ items under originally awarded contract.**

J. REINFORCEMENT STEEL (APPLICABLE ONLY FOR BHEL FREE ISSUED STEEL):

- (i) The reinforcement steel for the works shall be supplied by BHEL as per BOQ. Hence under items of reinforcement steel in BOQ, the bidders are required to quote labour rates only. **(Applicable only for the items where BHEL supply is mentioned in the BOQ).**
- (ii) The reinforcement steel shall be made available to the contractor within project area. The contractor shall collect these material from BHEL Store/ Storage yard. Loading and transportation from supplier stockyard to site is not in scope of the contractor. However, unloading, storage, watch & ward till handing over of complete work and lodging of insurance claim (if required) is included in the scope of bidder and deemed to be included in the quoted rates.
- (iii) If due to Contractor's carelessness, negligence, non-observance of safety precautions, improper security arrangements or due to non-compliance of paper work needed for lodging insurance claim, damage to BHEL/its Customer's property and/or personnel should occur, and if BHEL is unable to recover its claim from the Insurance Company, the deficit will be recovered from the Contractor.
- (iv) The steel issued to the contractor shall be mainly in standard length and section as received from the steel supplier. However the contractors shall be bound to accept the steel in length as available. No claims for extra payment because of issue of non standard length will be entertained during execution.

(v) RETURN OF STEEL

All surplus steel and all wastage materials shall be taken back on weightment basis. Surplus, unused and untampered steel shall be stored diameter / section wise and returned separately at a place directed by BHEL / engineer incharge within the project area. Return of such materials will not be entitled to any handling and incidental charges. All wastage / scrap (including melting scrap, wastage, unusable) shall be returned diameter/ section wise to the stores and a receipt obtained for material accounting purposes.

a) CONSUMPTION:

The theoretical consumption of various section / diameter of reinforcement shall be based on approved construction drawing and bar bending schedule, approved laps, chairs & lugs. The weight shall be calculated considering the sectional weights as per Indian standards. No extra cost shall be payable to the contractor for any deviation in weights for the different procedures adopted for issue and calculation for the theoretical consumption including rolling tolerances. The consumption / wastage shall be determined as under:

I) Actual consumption = (QTY issued by BHEL) – (surplus QTY returned by the contractor).

II) Surplus =Un-tampered and unused quantity of steel returned by the contractor to BHEL supported by relevant documents

III) Wastage = actual consumption - theoretical consumption (as erected quantity)

(B) WASTAGE

Allowable wastage: (+5%) of the theoretical consumption shall be considered as allowable wastage.

Wastage is further classified as cut pieces [pieces of lengths 3 m and above] and scrap (including pieces of lengths less than 3 m) measured as per actual weight basis.

Sl.	Reinforcement steel	Basis of issue & penal recovery
R-1	Theoretical consumption [without considering wastage and scrap of loss	Free
R-2	Wastage limited to plus five percent [+5%] of aforesaid theoretical consumption [r-1] towards allowable wastage [cut pieces plus scrap to be returned to BHEL]	Free
R-3	Wastage beyond five percent [+5%] of the theoretical consumption above (r-1).	Penal rate @ 50% over & above the procurement rate

K. RESPONSIBILITY OF CONTRACTOR IN RESPECT OF STATUTORY RULES / REGULATIONS PERTAINING TO BOWC.

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 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.

L. 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.

M. Model Conciliation Clause For Conducting Conciliation Proceedings Under The BHEL Conciliation Scheme, 2018

The Parties the if at any time (whether before, during or after the arbitral or judicial proceedings), any Disputes (which terms shall means and include any dispute, difference, question or disagreement arising in connection with construction, meaning, operation, effect, interpretation or breach of the agreement, contract or the Memorandum of Understanding (delete whichever is inapplicable), which the parties unable to settle mutually), arise inter-se the Parties, the same may, be refereed by either party to conciliation to be conducted through Independent Experts Committee 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 Annexure-A to this GCC.

The Annexure-A together with it's appendices will be treated as if the same is part and parcel hereof and shall be as effectual as if set out herein in these GCC."

N. 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:

- (i) Except as provide elsewhere in this Contract, in case amicable settlement is not reached between the Parties, 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 relation to interpretation of any provision of the Contract; or, in any manner touching upon the contract, then, either Party may, by a notice in writing to the other Party refer such dispute or difference to the sole arbitration of an arbitrator appointed by Head of the BHEL Unit/Region/Division issuing the Contract.

The Arbitrator shall pass a reasoned award and the award of the Arbitrator shall be final and binding upon the Parties.

Subject as aforesaid, the provisions of Arbitration and Conciliation Act 1996 (India) or statutory modifications or re-enactments thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause. The seat of arbitration shall be New Delhi.

The cost of arbitration shall be borne as per the award of the Arbitrator.

Subject to the arbitration in terms of clause L above, the court at New Delhi shall have exclusive jurisdiction over any matter arising out of or in connection with this Contract.

Notwithstanding the existence or 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 except where the contract has been terminated by either Party in terms of this contract.

- (ii) In the event of 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 as mentioned in DPE OM No.4(1)/2013-DPE9GM)/FTS-1835 dated 22.05.2018.

O. FACILITIES PROVIDED TO MSEs

Vide office memorandum F.No.21(8)/2011-MA dated 09.11.2016, Office of AS&DC, Ministry of MSME has issued clarification regarding definition of Goods and Services under the Public Procurement Policy of MSEs order-2012, In accordance with the Public Procurement Policy for MSEs order-2012 and OM regarding definition of Goods and Services issued by Ministry of MSME, it is clarified that benefits as envisaged in Public Procurement Policy for MSEs Order 2012 are to be provided in respect of the procurements related to the Goods and Services produced and provided by Micro and Small Enterprises (MSEs) only and **no benefits is to be given in Case of Works Contracts.**

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

PROFORMA OF BANK GUARANTEE (in lieu of SECURITY DEPOSIT)

In consideration of Bharat Heavy Electricals Limited (hereinafter referred to as the 'Employer' which expression shall unless repugnant to the context or meaning thereof, include its successors and permitted assigns) incorporated under the Companies Act, 1956 and having its registered office at BHEL House, Siri Fort, New Delhi-110049 through its Unit at BHEL, Transmission Business Group, Noida (name of the Unit) having agreed to exempt _____ (Name of the Vendor / Contractor / Supplier) with its registered office at _____¹ (hereinafter called the said "Contractor" which term includes supplier), from demand under the terms and conditions of the Contract reference No. _____ dated _____² valued at Rs.³ (Rupees) (hereinafter called the said Contract), of Security Deposit for the due fulfilment by the said Contractor of the terms and conditions contained in the said Contract, on production of a Bank Guarantee for Rs.⁴ (Rupees.....only),

We _____ (indicate the name and address of the Bank) having its Head Office at _____ (address of the head Office) (hereinafter referred to as the Bank), at the request of _____ [Contractor(s)], being the Guarantor under this Guarantee, do hereby irrevocably and unconditionally undertake to forthwith and immediately pay to the Employer, an amount not exceeding Rs. _____ without any demur, immediately on demand from the Employer and without any reservation, protest, and recourse and without the Employer needing to prove or demonstrate reasons for its such demand

Any such demand made on the bank, shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs. _____.

We undertake to pay to the Employer any money so demanded notwithstanding any dispute or disputes raised by the Contractor(s) in any suit or proceeding pending before any Court or Tribunal or Arbitrator or any other authority, our liability under this present being absolute and unequivocal.

The payment so made by us under this guarantee shall be a valid discharge of our liability for payment hereunder and the Contractor(s) shall have no claim against us for making such payment.

We, further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said Contract and that it shall continue to be enforceable till all the dues of the Employer under or by virtue of the said Contract have been fully paid and its claims satisfied & the Employer certifies that the terms and conditions of the said Contract have been fully and properly carried out by the said contractor(s) or acceptance of the final bill or discharge of this guarantee by the Employer, whichever is earlier. This guarantee shall initially remain in force up to and including _____⁵ and shall be extended from time to time for such period as may be desired by the Employer. Unless a demand or claim under this guarantee is made on us in writing on or before the _____⁶, (3 months more than the present date of validity of Bank Guarantee) we shall be discharged from all the liability under this guarantee thereafter.

We, _____ (indicate the name of the Bank) further agree with the Employer that the Employer shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Contract or to extend time of performance by the said contractor(s) from time to time or to postpone for any time or from time to time any of the powers exercisable by the Employer against the said contractor(s) and to forbear or enforce any of the terms and conditions relating to the said

Contract and we shall not be relieved from our liability by any reason of any such variation or extension being granted to the said contractor(s) or for any forbearance, act or omission on the part of the Employer or any indulgence by the Employer to the said contractor(s) or by any such matter or thing whatsoever which under the law relating to sureties would but for this provision have effect of so relieving us.

The Bank also agrees that the Employer at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Contractor and notwithstanding any security or other guarantee that the Employer may have in relation to the Contractor's liabilities.

This Guarantee shall not be determined or affected by liquidation or winding up, dissolution or change of constitution or insolvency of the Contractor but shall in all respects and for all purposes be binding and operative until payment of all money payable to the Employer in terms thereof. This guarantee will not be discharged due to the change in the constitution of the Bank or the Contractor(s).

We,..... BANK lastly undertake not to revoke this guarantee during its currency except with the previous consent of the Employer in writing.

Notwithstanding anything to the contrary contained hereinabove:

- a) The liability of the Bank under this Guarantee shall not exceed.....⁴
- b) This Guarantee shall be valid up to⁵
- c) Unless the Bank is served a written claim or demand on or before⁶ all rights under this guarantee shall be forfeited and the Bank shall be relieved and discharged from all liabilities under this guarantee irrespective of whether or not the original bank guarantee is returned to the Bank.

We, _____ Bank, have power to issue this Guarantee under law and the undersigned as a duly authorized person has full powers to sign this Guarantee on behalf of the Bank.

Date _____ Day of _____
for _____ (indicate the name of the Bank) _____

(Signature of Authorised signatory)

¹ ADDRESS OF THE VENDOR /CONTRACTOR / SUPPLIER .

² DETAILS ABOUT THE NOTICE OF AWARD/CONTRACT REFERENCE

³ CONTRACT VALUE

⁴ BG AMOUNT IN FIGURES AND WORDS

⁵ VALIDITY DATE (At least 3 months more than completion period)

⁶ DATE OF EXPIRY OF CLAIM PERIOD (At least 3 months more than the present date of validity of BG)

Notes:

- 1 The expiry of claim period shall be at least 3 months more than the validity date. It may be ensured that the same is in line with the agreement/ contract entered with the Vendor.
- 2 The BG should be on Non-Judicial Stamp paper/e-stamp paper of appropriate value as per Stamp Act prevailing in the State(s) where the BG is submitted or is to be acted upon or the rate

prevailing in the State where the BG was executed, whichever is higher. The Stamp Paper/e-stamp paper shall be purchased in the name of Vendor/Contractor/Supplier /Bank issuing the guarantee.

3 In Case of Bank Guarantees submitted by Foreign Vendors:

- a. From Nationalized/Public Sector / Private Sector/ Foreign Banks (BG issued by Branches in India)** can be accepted subject to the condition that the Bank Guarantee should be enforceable in the town/city or at nearest branch where the Unit is located i.e. Demand can be presented at the Branch located in the town/city or at nearest branch where the Unit is located.
- b. From Foreign Banks (wherein Foreign Vendors intend to provide BG from local branch of the Vendor country's Bank)**
 - b.1** In such cases, in the Tender Enquiry/ Contract itself, it may be clearly specified that Bank Guarantee issued by **any of the Consortium Banks only** will be accepted by BHEL. As such, Foreign Vendor needs to make necessary arrangements for issuance of Counter- Guarantee by Foreign Bank in favour of the Indian Bank's (BHEL's Consortium Bank) branch in India. It is advisable that all charges for issuance of Bank Guarantee/ counter- Guarantee should be borne by the Foreign Vendor. The tender stipulation should clearly specify these requirements.
 - b.2** In case, Foreign Vendors intend to provide BG from Overseas Branch of our Consortium Bank (e.g. if a BG is to be issued by SBI Frankfurt), the same is acceptable. However, the procedure at sl.no. b.1 will required to be followed.

PROFORMA OF BANK GUARANTEE (in lieu of EARNEST MONEY if permissible in NIT)

(On non-Judicial paper of appropriate value)

Bank Guarantee No.....

Date.....

To,

M/s Bharat Heavy Electricals Limited
Transmission Business Group (TBG)
5th Floor, Advant Navis IT Business Park
Plot No. 7, Sector-142, Expressway Noida,
UP-201305

Dear Sirs,

In accordance with the terms and conditions of Invitation for Bids/Notice Inviting Tender No.....¹(Tender Conditions), M/s having its registered office at² (hereinafter referred to as the 'Tenderer'), is submitting its bid for the work of³ invited by M/s Bharat Heavy Electricals Limited through its Unit at BHEL, Transmission Business Group, Noida.

The Tender Conditions provide that the Tenderer shall pay a sum of Rs as Earnest Money Deposit in the form therein mentioned. The form of payment of Earnest Money Deposit includes Bank Guarantee executed by a Scheduled Bank.

In lieu of the stipulations contained in the aforesaid Tender Conditions that an irrevocable and unconditional Bank Guarantee against Earnest Money Deposit for an amount of Rs.....⁴ is required to be submitted by the Tenderer as a condition precedent for participation in the said Tender and the Tenderer having approached us for giving the said Guarantee,

We, the.....[Name & address of the Bank]

having our Registered Office at.....(hereinafter referred to as the Bank) being the Guarantor under this Guarantee, hereby irrevocably and unconditionally undertake to forthwith and immediately pay to the Employer without any demur, merely on your first demand any sum or sums of Rs.⁴ (in words Rupees.....) without any reservation, protest, and recourse and without the beneficiary needing to prove or demonstrate reasons for its such demand.

Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs.

We undertake to pay to the Employer any money so demanded notwithstanding any dispute or disputes raised by the Vendor/Contractor/Supplier in any suit or proceeding pending before any Court or Tribunal, Arbitrator or any other authority, our liability under this present being absolute and unequivocal.

The payment so made by us under this Guarantee shall be a valid discharge of our liability for payment hereunder and the Tenderer shall have no claim against us for making such payment.

We Bank further agree that the Employer shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Tender or to extend the time of submission of from time to time or to postpone for any time or from time to time any of the powers exercisable by the Employer against the said Tenderer and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Tenderer or for any forbearance, act or omission on the part of the Employer or any indulgence by the Employer to the said Tenderer or by any such matter or thing whatsoever which under the law relating to sureties would but for this provision have effect of so relieving us.

The Bank also agrees that the Employer at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Tenderer and notwithstanding any security or other guarantee that the Employer may have in relation to the Tenderer's liabilities.

This Guarantee shall be irrevocable and shall remain in force upto and including.....⁵ and shall be extended from time to time for such period as may be desired by the Employer.

This Guarantee shall not be determined or affected by liquidation or winding up, dissolution or change of constitution or insolvency of the Tenderer but shall in all respects and for all purposes be binding and operative until payment of all money payable to the Employer in terms hereof. However, unless a demand or claim under this Guarantee is made on us in writing on or before the⁶ we shall be discharged from all liabilities under this Guarantee.

We, Bank lastly undertake not to revoke this guarantee during its currency except with the previous consent of the Employer in writing.

Notwithstanding anything to the contrary contained hereinabove:

- a) The liability of the Bank under this Guarantee shall not exceed.....⁴
- b) This Guarantee shall be valid up to⁵
- c) Unless the Bank is served a written claim or demand on or before⁶ all rights under this guarantee shall be forfeited and the Bank shall be relieved and discharged from all liabilities under this guarantee irrespective of whether or not the original bank guarantee is returned to the Bank.

We, Bank, have power to issue this Guarantee under law and the undersigned as a duly authorized person has full powers to sign this Guarantee on behalf of the Bank.

For and on behalf of

(Name of the Bank)

Date.....

Place of Issue.....

- 1 Details of the Invitation to Bid/Notice Inviting Tender
- 2 Name and Address of the Tenderer
- 3 Details of the Work
- 4 BG Amount in words and Figures
- 5 Validity Date (At least six months from date of tender opening)
- 6 Date of Expiry of Claim Period (At least 3 months more than the present date of validity of BG)

Note:

- 1 The Bank Guarantee should be valid for at least six months from date of tender opening. The expiry of claim period shall be at least 3 months more than the validity date. It may be ensured that the same is in line with the agreement/ contract entered with the Vendor.
- 2 The BG should be on Non-Judicial Stamp paper/e-stamp paper of appropriate value as per Stamp Act prevailing in the State(s) where the BG is submitted or is to be acted upon or the rate prevailing in the State where the BG was executed, whichever is higher. The Stamp Paper/e-stamp paper shall be purchased in the name of Vendor/Contractor/Supplier /Bank issuing the guarantee.
- 3 **In Case of Bank Guarantees submitted by Foreign Vendors-**
 - a. **From Nationalized / Public Sector / Private Sector/ Foreign Banks (BG issued by Branches in India)** can be accepted subject to the condition that the Bank Guarantee should be enforceable in the town/city or at nearest branch where the Unit is located i.e. Demand can be presented at the Branch located in the town/city or at nearest branch where the Unit is located.
 - b. **From Foreign Banks (wherein Foreign Vendors intend to provide BG from local branch of the Vendor country's Bank)**
 - b.1 In such cases, in the Tender Enquiry/ Contract itself, it may be clearly specified that Bank Guarantee issued by **any of the Consortium Banks only** will be accepted by BHEL. As such, Foreign Vendor needs to make necessary arrangements for issuance of Counter- Guarantee by Foreign Bank in favour of the Indian Bank's (BHEL's Consortium Bank) branch in India. It is advisable that all charges for issuance of Bank Guarantee/ counter- Guarantee should be borne by the Foreign Vendor. The tender stipulation should clearly specify these requirements.
 - b.2 **In case, Foreign Vendors intend to provide BG from Overseas Branch of our Consortium Bank** (e.g. if a BG is to be issued by SBI Frankfurt), the same is acceptable. However, the procedure **at sl.no. b.1** will required to be followed.
 - b.3 The BG issued may preferably be subject to Uniform Rules for Demand Guarantees (URDG) 758 (as amended from time to time). The BG Format provided to them should clearly specify the same.