

# General Conditions of Contract

(Common for PE&SD, Hyderabad)

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## **CHAPTER -1**

### **1. GENERAL INSTRUCTION TO TENDERERS**

#### **1.1. DESPATCH INSTRUCTION**

- i) The General Conditions of Contract form part of the Tender specifications. **All pages of the tender documents shall be duly signed, stamped and submitted along with the offer in token of complete acceptance thereof.** The information furnished shall be complete by itself. The tenderer is required to furnish all the details and other documents as required in the following pages
- ii) Tenderers are advised to study all the tender documents carefully. Any submission of tender by the tenderer shall be deemed to have been done after careful study and examination of the tender documents and with the full understanding of the implications thereof. Should the tenderers have any doubt about the meaning of any portion of the Tender Specification or find discrepancies or omissions in the drawings or the tender documents issued are incomplete or shall require clarification on any of the technical aspect, the scope of work etc., he shall at once, contact the authority inviting the tender well in time (so as not to affect last date of submission) for clarification before the submission of the tender. Tenderer's request for clarifications shall be with reference to Sections and Clause numbers given in the tender documents. The specifications and terms and conditions shall be deemed to have been accepted by the tenderer in his offer. Non compliance with any of the requirements and instructions of the tender enquiry may result in the rejection of the tender.
- iii) Integrity pact (IP) shall be applicable for all tenders / contracts if indicated in NIT. This integrity pact shall be issued as part of the Tender documents and shall be returned by the bidder along with Techno-commercial bid duly filled, signed and stamped by the authorized signatory who signs the bid. Only those vendors / bidders who have entered into such an IP with BHEL shall be considered qualified to participate in the bidding. Entering into this pact shall be a preliminary qualification.

#### **1.2. SUBMISSION OF TENDERS**

- 1.2.1 The tenderers must submit their tenders to Officer inviting tender as per instructions in the NIT.
- 1.2.2 The tenders received after the specified time of their submission are treated as 'Late Tenders' and shall not be considered under any circumstances.
- 1.2.3 Tenders shall be opened by authorized officer of BHEL as specified in the NIT.

- 1.2.4 Tenderers whose bids are found techno commercially qualified shall be informed the date and time of opening of the Price Bids and such Tenderers may depute their representatives to witness the opening of the price bids. BHEL's decision in this regard shall be final and binding.
- 1.2.5 Before submission of Offer, the tenderers are advised to inspect the site of work and the environments and be well acquainted with the actual working and other prevalent conditions, facilities available, position of material and labour, means of transport and access to Site, accommodation, etc. No claim will be entertained later on the grounds of lack of knowledge of any of these conditions.
- 1.3. LANGUAGE**
- 1.3.1 The tenderer shall quote the rates in English language and international numerals. These rates shall be entered in figures as well as in words. For the purpose of the tenders, the metric system of units shall be used.
- 1.3.2 All entries in the tender shall either be typed or written legibly in ink. Erasing and over-writing is not permitted and may render such tenders liable for rejection. All cancellations and insertions shall be duly attested by the tenderer.
- 1.4 PRICE DISCREPANCY:**
- 1.4.1 **Conventional Price Bid opening:** In the case of price bid opening without resorting to Reverse Auction, if there are differences between the rates given by the tenderer in words and figures or in amount worked out by him, the following procedure for evaluation and award shall be followed:
- i) When there is a difference between the rates in figures and in words, the rates which corresponds to the amounts worked out by the CONTRACTOR, shall be taken as correct
  - ii) When the amount of an item is not worked out by the CONTRACTOR or it does not correspond with the rate written either in figure or in words, then the rate quoted by the CONTRACTOR in words shall be taken as correct
  - iii) When the rate quoted by the CONTRACTOR in figures and words tallies but the amount is not worked out correctly, the rate quoted by the CONTRACTOR shall be taken as correct and not the amount.
  - iv) In case of lump sum price, if there is any difference between the amount in figures and in words, the amount quoted by the bidder in words shall be taken as correct.
  - v) In case of omission in quoting any rate for one or more items, the evaluation shall be done considering the highest quoted rate obtained against the respective items by other tenderers for the subject tender. If the tenderer becomes L-1, the notional rates for the omission items shall be the lowest rates quoted for the respective items by the other tenderers against the respective omission items for the subject job and the 'Total quoted price (loaded for omissions)' shall be arrived at. However the overall price remaining the same as quoted originally, the rates for all the items in the 'Total quoted price (loaded for omissions)' shall be reduced item wise in proportion to the ratio of 'Original' total price and the 'Total quoted price (loaded for omissions)'.
  - vi) The 'Final Total Amount' shall be arrived at after considering the amounts worked out in line with 'i' to 'v' above.
- 1.4.2 **Reverse Auction:** In case of Reverse Auction, the successful bidder shall undertake to execute the work as per overall price offered by him during the Reverse Auction process. In case of omission of rates, the procedure shall be as per 'Guidelines for Reverse Auction' enclosed.
- 1.5. QUALIFICATION OF TENDERERS**
- i) Only tenderers who have previous experience in the work of the nature and description detailed in the Notice Inviting Tender and/or tender specification are expected to quote for this work duly detailing their experience along with offer

- ii) Offers from tenderers who do not have proven and established experience in the field shall not be considered
- iii) Offers from tenderers who are under suspension (banned) by any Unit/Region/Division of BHEL shall not be considered.
- iv) Offers from tenderers who do not comply with the latest guidelines of Ministry/Commissions of Govt of India shall not be considered.

#### **1.6. EVALUATION OF BIDS**

- i) Technical Bids submitted by the tenderer will be opened first and evaluated for fulfilling the Pre-Qualification Requirement and other conditions in NIT/Tender documents, based on documentary evidences submitted along with the offer
- ii) In case the same qualifying experience is claimed by more than one agency, then the agency who has executed the work as per documentary evidence submitted shall only be qualified. Scope of qualifying work should be totally with the agency who has executed and in case it is only labour+consumables without T&P, then the responsibility of execution is assigned to the first agency and not to the agency who has executed only as labour supply CONTRACTOR. Further, BHEL reserves the right to ask for further proofs including submission of TDS certificates for the said job
- iii) In case the qualifying experience is claimed by private organizations based on Work Order and completion certificates from another private organization, BHEL reserves the right to ask for further proofs including submission of TDS certificates for the said job
- iv) Assessing Bidder Capacity for executing the current tender shall be as per Notice Inviting Tender
- v) Price Bids of shortlisted bidders shall only be opened either through the conventional price bid opening or through electronic Reverse Auction, at the discretion of BHEL
- vi) Price Bids of unqualified bidders shall not be opened. Reasons for rejection shall be intimated in due course after issue of LOI/LOA to successful bidder and receipt of unqualified acceptance from the successful bidder
- vii) Bidders are advised to also refer to clause no 2.9.4 regarding evaluation of their performance in ongoing projects for the current tender.

#### **1.7. DATA TO BE ENCLOSED**

Full information shall be given by the tenderer in respect of the following. Non-submission of this information may lead to rejection of the offer.

##### **i) INCOME TAX PERMANENT ACCOUNT NUMBER**

Certified copies of Permanent Account Numbers as allotted by Income Tax Department for the Company/Firm/Individual Partners, etc. shall be furnished along with tender.

##### **ii) ORGANIZATION CHART**

The organization chart of the tenderer's organization, including the names, addresses and contact information of the Directors/Partners shall be furnished along with the offer.

##### **iii) Not used**

##### **iv) IN CASE OF INDIVIDUAL TENDERER:**

His / her full name, address and place & nature of business.

##### **v) IN CASE OF PARTNERSHIP FIRM**

The names of all the partners and their addresses, A copy of the partnership deed/instrument of Partnership duly certified by the Notary Public shall be enclosed.

vi) **IN CASE OF COMPANIES:**

- a. Date and place of registration including date of commencement certificate in case of Public Companies (certified copies of Memorandum and articles of Association are also to be furnished).
- b. Nature of business carried on by the Company and the provisions of the Memorandum relating thereof.

1.8 **Not used**

1.9 **EARNEST MONEY DEPOSIT**

1.9.1 Every tender must be accompanied by the prescribed amount of Earnest Money Deposit (EMD) in the manner described herein.

- i) EMD shall be furnished along with the offer in full as per the amount indicated in the Special Conditions of Contract / NIT
- ii) EMD is to be paid in cash (as permissible under Income Tax Act), Banker's Cheque/Pay order or Demand Draft in favour of 'Bharat Heavy Electricals Limited' and payable at 'Hyderabad'
- iii) Electronic Fund Transfer credited in BHEL account (Before opening of tender)
- iv) No other form of EMD remittance shall be acceptable to BHEL

1.9.2 EMD by the bidder will be forfeited as per Tender Documents if

- i) After opening the tender, the bidder revokes his tender within the validity period or increases his earlier quoted rates.
- ii) The bidder does not commence the work within the period as per LOI/ LOA/ Contract. In case the LOI / LOA/ Contract is silent in this regard then within 15 days after award of contract.

1.9.3 EMD shall not carry any interest.

1.9.4 In the case of unsuccessful bidders, the Earnest Money will be refunded to them within a reasonable time after acceptance of award by successful tenderer.

#### 1.10 SECURITY DEPOSIT

1.10.1 Upon acceptance of Tender, the successful Tenderer should deposit the required amount of Security Deposit for satisfactory completion of work, as per the rates given below:

The total amount of security deposit shall be 5% of the contract value. EMD of the successful bidder shall be converted and adjusted towards the required amount of security deposit.

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

1.10.3 Security Deposit may be furnished in any one of the following forms.

- i) Cash (as permissible under the Income Tax Act)
- ii) Pay Order / Demand Draft in favour of BHEL.
- iii) Local cheques of scheduled banks, subject to realization.
- iv) Electronic Fund Transfer credited in BHEL account
- v) Securities available from 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 pledged in favour of BHEL and discharged on the back).
- vi) 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
- vii) 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, duly discharged on the back.
- viii) Security deposit can also be recovered at the rate of 10% from the running bills. However in such cases at least 50% of the Security Deposit should be deposited in any form as prescribed before start of the work and the balance 50% may be recovered from the running bills.

(Note: In case of small value contracts not exceeding Rs.20 lakhs, work can be started before Security Deposit is collected. However, payment can be released only after collection/ recovery of initial 50% Security Deposit).

**NOTE:** Acceptance of Security Deposit against Sl. No. (v) and (vii) above will be subject to hypothecation or endorsement on the documents in favour of BHEL. However, 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.

1.10.4 The Security Deposit shall not carry any interest.

1.10.5 In case the value of work exceeds / reduces from the awarded / accepted value, the Security Deposit shall be correspondingly enhanced / reduced as given below:

- i) The enhanced part of the Security Deposit shall be immediately deposited by the CONTRACTOR or adjusted against payments due to the CONTRACTOR.
- ii) There will be no reduction in Security Deposit value in case of variation in contract value upto the lower limit specified in Quantity variation clause. In case of reduction of contract value beyond the lower limit specified in Quantity Variation clause, then the Security Deposit shall be re adjusted in proportion.
- iii) In case of reduction, the reduced Contract value shall be certified by BHEL Construction Manager after ascertaining / freezing of BOQ / Drawings from the Design / Engineering Centre. The reduced Security Deposit value can only be considered after taking into account the adequacy of the securities held by BHEL to meet the liabilities of the CONTRACTOR for the contract, and the performance of the contract in general. **In such cases, the revised value of Security Deposit shall be worked out only after execution of not less than the lower limit of the revised scope of work/contract value as per quantity variation clause, and as certified by Construction Manager.**



**This reduction in value of Security Deposit shall not entitle the CONTRACTOR to any amendment of Contract and shall be operated at the discretion of BHEL**

- iv) Contract value for the purpose of operating the reduced/increased value of Security Deposit due to Quantity Variation, shall be exclusive of Price Variation Clause, Over Run Compensation and Extra works done on manday rates.

1.10.6 The validity of Bank Guarantees towards Security Deposit shall be initially upto the completion period as stipulated in the Letter of Intent/Award + 3 months, and the same shall be kept valid by proper renewal till the acceptance of Final Bills of the CONTRACTOR, by BHEL

1.10.7 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 fulfill any of the contractual obligations or in the event of termination of contract as per terms and conditions of contract. BHEL reserves the right to set off the Security Deposit against any claims of other contracts with BHEL.

#### 1.11 RETURN OF SECURITY DEPOSIT

Security Deposit shall be refunded/Bank Guarantee(s) released to the CONTRACTOR along with the 'Final Bill' after deducting all expenses / other amounts due to BHEL under the contract / other contracts entered into with them by BHEL.

The recoveries made against 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, with the approval of competent authority. Decision of BHEL in this regard will be final and binding on the CONTRACTOR.

#### 1.12 BANK GUARANTEES

Where ever Bank Guarantees are to be furnished/submitted by the CONTRACTOR, the following shall be complied with

- i) Bank Guarantees shall be from Scheduled Banks / Public Financial Institutions as defined in the Companies Act.
- ii) The Bank Guarantees shall be as per prescribed formats.
- iii) It is the responsibility of the bidder to get the Bank Guarantees revalidated/extended for the required period (subject to a minimum period of six months), as per the advice of BHEL Site Engineer / Construction Manager. BHEL shall not be liable for issue of any reminders regarding expiry of the Bank Guarantees.
- iv) In case extension/further extensions of any Bank Guarantees are not required, the bidders shall ensure that the same is explicitly endorsed by the Construction Manager and submitted to the Regional HQ issuing the LOI/LOA.
- v) In case the Bank Guarantees are not extended before the expiry date, BHEL reserves the right to invoke the same by informing the concerned Bank in writing, without any advance notice/communication to the concerned bidder.
- vi) Bidders to note that any corrections to Bank Guarantees shall be done by the issuing Bank, only through an amendment in an appropriate non judicial stamp paper.
- vii) The Original Bank Guarantee shall be sent directly by the Bank to BHEL under Registered Post (Acknowledgement Due), addressed to the Subcontracting Department of the PE&SD, BHEL, Hyderabad.

### 1.13 VALIDITY OF OFFER

The rates in the Tender shall be kept open for acceptance for a minimum period of **SIX MONTHS** from latest due date of offer submission (including extension, if any) . In case BHEL (Bharat Heavy Electricals Ltd) calls for negotiations, such negotiations shall not amount to cancellation or withdrawal of the original offer which shall be binding on the tenderers.

### 1.14 EXECUTION OF CONTRACT/Framework AGREEMENT

The successful tenderer's responsibility under this contract commences from the date of issue of the Letter of Intent/ Award by Bharat Heavy Electricals Limited. The Tenderer shall submit an unqualified acceptance to the Letter of Intent/Award within the period stipulated therein.

The successful tenderer shall be required to execute an agreement in the prescribed form, with BHEL, within a reasonable time after the acceptance of the Letter of Intent/Award, and in any case before releasing the first running bill. The contract/framework agreement shall be signed by a person duly authorized/empowered by the tenderer.

### 1.15 REJECTION OF TENDER AND OTHER CONDITIONS

1.15.1 The acceptance of tender will rest with BHEL which does not bind itself to accept the lowest tender or any tender and reserves to itself full rights for the following without assigning any reasons whatsoever:-

- a. To reject any or all of the tenders.
- b. To split up the work amongst two or more tenderers as per NIT
- c. To award the work in part if specified in NIT
- d. In case of either of the contingencies stated in (b) and (c) above, the time for completion as stipulated in the tender shall be applicable.

1.15.2 Conditional tenders, unsolicited tenders, tenders which are incomplete or not in the form specified or defective or have been materially altered or not in accordance with the tender conditions, specifications etc., are liable to be rejected.

1.15.3 Tenders are liable to be rejected in case of unsatisfactory performance of the tenderer with BHEL, or tenderer under suspension (hold/banning /delisted ) by any unit / region / division of BHEL or tenderers who do not comply with the latest guidelines of Ministry/Commissions of Govt of India. BHEL reserves the right to reject a bidder in case it is observed that they are overloaded and may not be in a position to execute this job as per the required schedule in line with clause no. 9.0 of the 'NIT'. The decision of BHEL will be final in this regard.

1.15.3 If a tenderer who is a proprietor expires after the submission of his tender or after the acceptance of his tender, BHEL may at their discretion, cancel such tender. If a partner of a firm expires after the submission of tender or after the acceptance of the tender, BHEL may then cancel such tender at their discretion, unless the firm retains its character.

- 1.15.5 BHEL will not be bound by any Power of Attorney granted by changes in the composition of the firm made subsequent to the execution of the contract. They may, however, recognise such power of Attorney and changes after obtaining proper legal advice, the cost of which will be chargeable to the CONTRACTOR concerned.
- 1.15.6 If the tenderer deliberately gives wrong information in his tender, BHEL reserves the right to reject such tender at any stage or to cancel the contract if awarded and forfeit the Earnest Money/Security Deposit/any other money due.
- 1.15.7 Canvassing in any form in connection with the tenders submitted by the Tenderer shall make his offer liable to rejection.
- 1.15.8 In case the Proprietor, Partner or Director of the Company/Firm submitting the Tender, has any relative or relation employed in BHEL, the authority inviting the Tender shall be informed of the fact as per specified format, along with the Offer. Failing to do so, BHEL may, at its sole discretion, reject the tender or cancel the contract and forfeit the Earnest Money/Security Deposit.
- 1.15.9 The successful tenderer should not sub-contract part or complete work detailed in the tender specification undertaken by him without written permission of BHEL's Construction Manager/Site Incharge. The tenderer is solely responsible to BHEL for the work awarded to him.
- 1.15.10 The tender submitted by a techno commercially qualified tenderer shall become the property of BHEL who shall be under no obligation to return the same to the bidder.
- 1.15.11 Unsolicited discount received after the due date and time of Bid Submission shall not be considered for evaluation. However, if the party who has submitted the unsolicited discount/rebate becomes the L-I party, then the awarded price i.e contract value shall be worked out after considering the discount so offered.
- 1.15.12 BHEL shall not be liable for any expenses incurred by the bidder in the preparation of the tender irrespective of whether the tender is accepted or not.
- 1.15.13 Not Used

## **CHAPTER-2**

2.1 **DEFINITION:** The following terms shall have the meaning hereby assigned to them except where the context otherwise requires

- i) BHEL shall mean Bharat Heavy Electricals Limited (of PE&SD, Hyderabad), a company registered under Indian Companies Act 1956, with its Registered Office at BHEL HOUSE, SIRI FORT, NEW DELHI – 110 049, or its Power Sector Regional Offices/PESD HQ or its Authorised Officers or its Site Engineers or other employees authorised to deal with any matters with which these persons are concerned on its behalf.
- ii) “EXECUTIVE DIRECTOR” or ‘GROUP GENERAL MANAGER’ or “GENERAL MANAGER (Incharge)” or “GENERAL MANAGER” shall mean the Officer in Administrative charge of PE&SD, Hyderabad.
- iii) “COMPETENT AUTHORITY” shall mean Executive Director or Group General Manager or General Manager (Incharge) or General Manager or BHEL Officers who are empowered to act on behalf of the Executive Director or General Manager (Incharge) or General Manager of BHEL.
- iv) “ENGINEER” or “ENGINEER IN CHARGE” shall mean an Officer of BHEL as may be duly appointed and authorized by BHEL to act as “Engineer” on his behalf for the purpose of the Contract, to perform the duty set forth in this General Conditions of Contract and other Contract documents. The term also includes ‘CONSTRUCTION MANAGER’ or ‘SITE INCHARGE’ as well as Officers at Site or at the Headquarters of PE&SD, Hyderabad.
- v) “SITE” shall mean the places or place at which the plants/equipments are to be erected and services are to be performed as per the specification of this Tender.
- vi) “CLIENT OF BHEL” or “CUSTOMER” shall mean the project authorities with whom BHEL has entered into a contract for supply of equipments or provision of services.
- vii) “CONTRACTOR” shall mean the successful Bidder/Tenderer who is awarded the Contract and shall include the CONTRACTOR’s successors, heirs, executors, administrators and permitted assigns.
- viii) “CONTRACT” or “CONTRACT DOCUMENT” shall mean and include the Agreement of Work Order, the accepted appendices of Rates, Schedules, Quantities if any, General Conditions of Contract, Special Conditions of Contract, Instructions to the Tenderers, Drawings, Technical Specifications, the Special Specifications if any, the Tender documents, subsequent amendments mutually agreed upon and the Letter of Intent/Award/Acceptance issued by BHEL. Any conditions or terms stipulated by the CONTRACTOR in the tender documents or subsequent letters shall not form part of the contract unless, specifically accepted in writing by BHEL in the Letter of Intent/Award and incorporated in the agreement.
- ix) “GENERAL CONDITIONS OF CONTRACT” shall mean the ‘Instructions to Tenderers’ and ‘General Conditions of Contract’ pertaining to the work for which above tenders have been called for.
- x) “TENDER SPECIFICATION” or “TENDER” or “TENDER DOCUMENTS” shall mean General Conditions, Common Conditions, Special Conditions, Price Bid, Rate Schedule, Technical

	Specifications, Appendices, Annexures, Corrigendums, Amendments, Forms, procedures, Site information, etc and drawings/documents pertaining to the work for which the tenderers are required to submit their offers. Individual specification number will be assigned to each Tender Specification.
xi)	“LETTER OF INTENT/ AWARD” shall mean the intimation by a Letter/Fax/email to the tenderer that the tender has been accepted in accordance with provisions contained in the letter. The responsibility of the CONTRACTOR commences from the date of issue of this letter and all terms and conditions of the contract are applicable from this date.
xii)	“COMPLETION TIME” shall mean the period by ‘date/month’ specified in the ‘Letter of Intent/Award’ or date mutually agreed upon for handing over of the intended scope of work, the erected equipment/plant which are found acceptable by the Engineer, being of required standard and conforming to the specifications of the Contract.
xiii)	“PLANT” shall mean and connote the entire assembly of the plant and equipments covered by the contract.
xiv)	“EQUIPMENT” shall mean equipment, machineries, materials, structural, electricals and other components of the plant covered by the contract.
xv)	“TESTS” shall mean and include such test or tests to be carried out on the part of the CONTRACTOR as are prescribed in the contract or considered necessary by BHEL, in order to ascertain the quality, workmanship, performance and efficiency of the CONTRACTOR or part thereof.
xvi)	“APPROVED”, “DIRECTED” or “INSTRUCTED” shall mean approved, directed or instructed by BHEL.
xvii)	“WORK/SERVICES or CONTRACT WORK” shall mean and include supply of all categories of staff , specified materials, softwares and other tools & equipment required for complete and satisfactory completion of work/services specified in technical specification to the entire satisfaction of BHEL.
xviii)	“SINGULAR AND PLURALS ETC” words carrying singular number shall also include plural and vice versa, where the context so requires. Words imparting the masculine Gender shall be taken to include the feminine Gender and words imparting persons shall include any Company or Associations or Body of Individuals, whether incorporated or not.
xix)	“HEADING” – The heading in these General Conditions are solely for the purpose of facilitating reference and shall not be deemed to be part thereof or be taken as instructions thereof or of the contract.
xx)	“MONTH” shall mean calendar month unless otherwise specified in the Tender.
xxi)	Day’ or ‘Days’ unless herein otherwise expressly defined shall mean calendar day or days of twenty four (24) hours each. A week shall mean continuous period of seven (7) days.
xxii)	“COMMISSIONING” shall mean the synchronisation testing and achieving functional operation of the Equipment with associated system after all initial adjustments, trials, cleaning, re-assembly required at site if any, have been completed and Equipment with associated system is

	ready for taking into service.
xxiii)	“WRITING” shall include any manuscript type written or hand written or printed statement or electronically transmitted messages, under the signature or seal or transmittal of BHEL.
xxiv)	“TEMPORARY WORK” shall mean all temporary works for every kind required in or for the execution, completion, maintenance of the work.
xxv)	‘CONTRACT PRICE’ or ‘CONTRACT VALUE’ shall mean the sum mentioned in the LOI/LOA/Contract Agreement subject to such additions thereto or deductions there from as may be made under provisions hereinafter contained
xxvi)	“COMMENCEMENT DATE” or “START DATE” shall mean the commencement/start of work at Site as per terms defined in the Tender
xxvii)	“SHORT CLOSING” or “FORE CLOSING” of Contract shall mean the premature closing of Contract, for reasons not attributable to the CONTRACTOR and mutually agreed between BHEL and the CONTRACTOR
xxviii)	“TERMINATION” of Contract shall mean the pre mature closing of contract due to reasons as mentioned in the contract
xxix)	“DE MOBILISATION” shall mean the temporary winding up of Site establishment by CONTRACTOR leading to suspension of works temporarily for reasons not attributable to the CONTRACTOR
xxx)	“RE MOBILISATION” shall mean the resumption of work with all resources required for the work after demobilization.
<b>2.2</b>	<b>LAW GOVERNING THE CONTRACT AND COURT JURISDICTION</b>  The contract shall be governed by the Law for the time being in force in the Republic of India. Subject to clause 2.21.1 or 2.21.2 of this contract, the Civil Court having original Civil Jurisdiction at Hyderabad for PESD, shall alone have exclusive jurisdiction in regard to all matters in respect of the Contract.
<b>2.3</b>	<b>ISSUE OF NOTICE</b>
<b>2.3.1</b>	<b><u>Service of notice on CONTRACTOR</u></b> Any notice to be given to the CONTRACTOR under the terms of the contract shall be served by sending the same <b>by Registered Post / Speed Post to</b> or leaving the same at the CONTRACTOR's last known address of the principal place of business (or in the event of the CONTRACTOR being a company, to or at its Registered Office). In case of change of address, the notice shall be served at changed address as notified in writing by the CONTRACTOR to BHEL. Such posting or leaving of the notice shall be deemed to be good service of such notice and the time mentioned to the condition for doing any act after notice shall be reckoned from the date so mentioned in such notice.
<b>2.3.2</b>	<b><u>Service of notice on BHEL</u></b> Any notice to be given to BHEL in-charge/Region under the terms of the Contract shall be served by sending the same by post to or leaving the same at BHEL address or changed address as notified in writing by BHEL to the CONTRACTOR.
<b>2.4</b>	<b>USE OF LAND (NOT APPLICABLE)</b> No land belonging to BHEL or their Customer under temporary possession of BHEL shall be occupied by the CONTRACTOR without written permission of BHEL.

**2.5 COMMENCEMENT OF WORK**

- 2.5.1** The CONTRACTOR shall commence the work as per the time indicated in the Letter of Intent/Award from BHEL and shall proceed with the same with due expedition without delay.
- 2.5.2** If the CONTRACTOR fails to start the work within stipulated time as per LOI/ LOA or as intimated by BHEL, then BHEL at its sole discretion will have the right to cancel the contract. The Earnest Money and/or Security Deposit with BHEL will stand forfeited without any further reference to him without prejudice to any and all of BHEL's other rights and remedies in this regard.
- 2.5.3** All the work shall be carried out under the direction and to the satisfaction of BHEL.

**2.6 MEASUREMENT OF WORK/SERVICES AND MODE OF PAYMENT:**

- 2.6.1** All payments due to the CONTRACTORS shall be made by e mode only, unless otherwise found operationally difficult for reasons to be recorded in writing.
- 2.6.2** For progress running/stage bill payments: - The CONTRACTOR shall present invoice with supporting working sheet in triplicate, duly indicating all relevant details based on technical documents and connected drawings for work done during the month/period/stage under various categories in line with terms of payment as per contract.
- 2.6.3** These measurement sheets will be checked by BHEL Engineer.
- 2.6.4** Payment shall be made by BHEL after effecting the recoveries due from the CONTRACTOR.
- 2.6.5** All recoveries due from the CONTRACTOR for the month/period shall be effected in full from the corresponding running bills unless specific approval from the competent authorities is obtained to the contrary.
- 2.6.6** Passing of bills covered by such measurements does not amount to acceptance of the completion of the work/services measured. Any left out work/services has to be completed, if pointed out at a later date by BHEL.
- 2.6.7** Final measurement bill shall be prepared based on the certificate issued by BHEL Engineer that entire works/services as stipulated in tender specification has been completed in all respects to the entire satisfaction of BHEL. CONTRACTOR shall give unqualified "No Claim" Certificate. The Final Bill shall be prepared and paid within a reasonable time after completion of work/services.



## **2.7 RIGHTS OF BHEL**

BHEL reserves the following rights in respect of this contract during the original contract period or its extensions if any, as per the provisions of the contract, without entitling the CONTRACTOR for any compensation.

**2.7.1** To withdraw any portion of work and/or to restrict/alter quantum of work as indicated in the contract during the progress of work and get it done through other agencies to suit BHEL's commitment to its customer or in case BHEL decides to advance the date of completion due to other emergent reasons/ BHEL's obligation to its customer.

**2.7.2** To terminate the contract or get any part of the work done through other agency or deploy BHEL's own/hired/otherwise arranged resources , at the risk and cost of the CONTRACTOR after due notice of a period of two weeks by BHEL, in the event of:-

- i) CONTRACTOR's continued poor progress
- ii) Withdrawal from or abandonment of the work before completion of the work
- iii) CONTRACTOR's inability to progress the work for completion as stipulated in the contract
- iv) Poor quality of work
- v) Corrupt act of CONTRACTOR
- vi) Insolvency of the CONTRACTOR
- vii) Persistent disregard to the instructions of BHEL
- viii) Assignment, transfer, sub-letting of contract without BHEL's written permission
- ix) Non fulfillment of any contractual obligations
- x) In the opinion of BHEL, the CONTRACTOR is overloaded and is not in a position to execute the job as per required schedule

**2.7.3** To meet the expenses including BHEL overheads on the differential cost at 5%, over and above the Liquidated damages/penalties arising out of "Risk & Cost" as explained above under sl. no.

2.7.2. BHEL shall recover the amount from any money due from CONTRACTOR, or from any money due to the CONTRACTOR including Security Deposit, or by forfeiting any T&P or material of the CONTRACTOR under this contract or any other contract of BHEL or by any other means or any combination thereof

**2.7.4** To terminate the contract or to restrict the quantum of work and pay for the portion of work executed in case BHEL's contract with their customer are terminated for any reason, as per mutual agreement.



**2.7.5** To effect recovery from any amounts due to the CONTRACTOR under this or any other contract or in any other form, the moneys BHEL is statutorily forced to pay to anybody, due to CONTRACTOR's failure to fulfill any of his obligations. BHEL shall levy overheads of 5% on all such payments along with interest as defined elsewhere in the GCC.

**2.7.6** While every endeavour will be made by BHEL to this end, they cannot guarantee uninterrupted work due to conditions beyond their control. The CONTRACTOR will not be normally entitled for any compensation/extra payment on this account unless otherwise specified elsewhere in the contract.

**2.7.7** In the unforeseen event of inordinate delay in receipt of drawings, details, etc, due to which inordinate discontinuity of work is anticipated, BHEL on its own or CONTRACTOR's request at its discretion may consider to short close the contract in following cases:

At the point of requesting for short closure, CONTRACTOR shall establish that he has completed all works possible of completion and he is not able to proceed with the balance works/services due to constraints beyond his control. In such a case, the estimated value of the unexecuted portion of work as mutually agreed, shall however be reduced from the final contract value.

**2.7.9 LIQUIDATED DAMAGES/PENALTY**

If the CONTRACTOR fails to maintain the required progress of work which results in delay in the completion of the work as per the contractual completion period, BHEL shall have the right to impose Liquidated Damage/Penalty at the rate of 0. 5% of the contract value, per week of delay or part thereof subject to a maximum of 10% of the contract value. For this purpose, the period of delay shall be the delay attributable to the CONTRACTOR for the completion of work as per contract. Contract Value for this purpose, shall be the final executed value exclusive of ORC, Extra Works executed on Manday rate basis, Supplementary/ Additional Items and PVC.

**2.8 RESPONSIBILITIES OF THE CONTRACTOR IN RESPECT OF LOCAL LAWS, EMPLOYMENT OF WORKERS ETC.**

The following are the responsibilities of the CONTRACTOR in respect of observance of local laws, employment of personnel, payment of taxes etc. The CONTRACTOR shall fully indemnify BHEL against any claims of whatsoever nature arising due to the failure of the CONTRACTOR in discharging any of his responsibilities hereunder:

- 2.8.1** The CONTRACTOR at all times during the continuance of this contract shall, in all his dealings with local manpower for the time being employed on or in connection with the work, have due regard to all local festivals and religious and other customs.
- 2.8.2** The CONTRACTOR shall comply with all applicable State and Central Laws, Statutory Rules, Regulations, Notifications, etc. such as Payment of Wages Act, Minimum Wages Act, Workmen Compensation Act, Employer's Liability Act, Industrial Disputes Act, Employers Provident Act, Employees State Insurance Scheme, Contract Labour (Regulation and Abolition) Act, 1970, Payment of Bonus & Gratuity Act, Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, The Building and Other Construction Workers' Welfare Cess Act, 1996 and other Acts, Rules, and Regulations for labour/workers as applicable and as may be enacted by the State Government and Central Govt. during the tenure of the Contract and having force or jurisdiction at Site. The CONTRACTOR shall also comply with provisions of and give all such notices to the local Governing Body, Police and other relevant Authorities as may be required by the Law.
- 2.8.3** The CONTRACTOR shall obtain independent License under the Contract Labour (Regulations and Abolition) Act, 1970 for engaging contract labour as required from the concerned Authorities based on the certificate (Form- V) issued by the Principal Employer/Customer.
- 2.8.4** The CONTRACTOR shall pay and bear all taxes, fees, license charges, Cess, duties, deposits, tolls, royalties, commission or other charges which may be leviable on account of his operations in executing the contract.
- 2.8.5** The CONTRACTOR shall be responsible for the proper behavior and observance of all regulations by the staff employed by him.
- 2.8.6** In case the CONTRACTOR is required to undertake any work/services outside the scope of this contract, the rates payable shall be those mutually agreed upon if the item rates are not mentioned in existing contract
- 2.8.7** Any delay in completion of works/or non achievement of periodical targets due to the reasons attributable to the CONTRACTOR, the same may have to be compensated by the CONTRACTOR either by increasing manpower and resources or by working extra hours and/or by working more than one shift. All these are to be carried out by the CONTRACTOR at no extra cost.
- 2.8.8** The CONTRACTOR shall arrange, coordinate his work in such a manner as to cause no hindrance to other agencies working in the same premises.

2.8.9 The CONTRACTOR will be directly responsible for payment of wages to his staff. A pay roll sheet giving all the payments given to the staff and duly signed by the CONTRACTOR's representative should be furnished to BHEL site for record purpose, if so called for.

2.8.10 In case of any class of work for which there is no such specification as laid down in the contract, such work shall be carried out in accordance with the instructions and requirements of the Engineer.

## **2.9 PROGRESS MONITORING, MONTHLY REVIEW AND PERFORMANCE EVALUATION**

2.9.1 A detailed plan/ programme for completion of the contractual scope of work as per the time schedule given in the contract shall be jointly agreed between BHEL and CONTRACTOR, before commencement of work.

2.9.2 Monthly progress review between BHEL and CONTRACTOR shall be based on the agreed programme as above, availability of inputs/fronts etc, and constraints if any,

2.9.3 Performance of the CONTRACTOR shall be assessed as per prescribed formats and shall form the basis for 'Annual/Overall Performance Evaluation' of the CONTRACTOR and also for 'Assessment of Capacity of Bidder' for Tenders where the CONTRACTOR is a bidder. BHEL reserves the right to revise the evaluation formats during the course of execution of the works

## **2.10 TIME OF COMPLETION**

- 2.10.1** The time schedule shall be as prescribed in the Contract. The time for completion shall be reckoned from the date of commencement of work at Site as certified by BHEL Engineers
- 2.10.2** The entire work shall be completed by the CONTRACTOR within the time schedule or within such extended periods of time as may be allowed by BHEL under clause 2.11.

## **2.11 EXTENSION OF TIME FOR COMPLETION**

- 2.11.1** If the completion of work as detailed in the scope of work gets delayed beyond the contract period, the CONTRACTOR shall request for an extension of the contract and BHEL at its discretion may extend the Contract.
- 2.11.2** Based on the progress reviews jointly signed, the works balance at the end of original contract period less the backlog attributable to the CONTRACTOR shall be quantified, and the number of months of 'Time extension' required for completion of the same shall be jointly worked out. Within this period of 'Time extension', the CONTRACTOR is bound to complete the portion of backlog attributable to the CONTRACTOR. Any further 'Time extension' or 'Time extensions' at the end of the previous extension shall be worked out similarly.
- 2.11.3** However if any 'Time extension' is granted to the CONTRACTOR to facilitate continuation of work/services and completion of contract, due to backlog attributable to the CONTRACTOR alone, then it shall be without prejudice to the rights of BHEL to impose penalty/LD for the delays attributable to the CONTRACTOR, in addition to any other actions BHEL may wish to take at the risk and cost of CONTRACTOR.
- 2.11.4** A joint programme shall be drawn for the balance amount of work to be completed during the period of 'Time Extension'
- 2.11.5** At the end of total work completion as certified by BHEL Engineer, and upon analysis of the total delay, the portion of time extensions attributable to (i) CONTRACTOR, (ii) Force majeure conditions, and (iii) BHEL, shall be worked out and shall be considered to be exhausted in the same order. The total period of time extensions shall be the sum of (i), (ii) and (iii) above and shall be equal to period between the scheduled date of completion and the actual date of completion of contract. LD shall be imposed/levied for the portion of time extensions attributable to CONTRACTOR and recoverable from the dues payable to the CONTRACTOR.

**2.12 Not used**

**2.13 Not used**

**2.14 QUANTITY VARIATION**

**2.14.1** The quantities given in the contract are tentative and may change to any extent (both in plus side and minus side). The quoted rates for individual items shall remain firm irrespective of any variations in the individual quantities. No compensation becomes payable in case the variation of the final executed contract value is within the limits of Minus (-) 15% of awarded contract value.

**2.14.2** Compensation due to variation of final executed value in excess of the limits defined in clause above, shall be as follows:

- i) In case the finally executed contract value reduces below the lower limit of awarded Contract Value due to quantity variation specified above, the CONTRACTOR will be eligible for compensation @ 15% of the difference between the lower limit of the awarded contract value and the actual executed contract value.
- ii) In case the finally executed contract value increases above the awarded Contract Value due to quantity variation, there will be no upward revision in the rates for the individual items and also CONTRACTOR is not eligible for any compensation.

**2.15 EXTRA WORKS**

**2.15.1** All rectifications/modifications, and reworks required for any reasons not due to the fault of the CONTRACTOR, or needed due to any change in deviation from specifications and other allied works/services which are not very specifically indicated in the drawings, but are found essential for satisfactory completion of the work, will be considered as extra works.

**2.15.2** Extra works arising on account of the CONTRACTOR's fault, irrespective of time consumed in rectification of the damage/loss, will have to be carried out by the CONTRACTOR free of cost. Under such circumstances, any material and consumable required for this purpose will also have to be arranged by the CONTRACTOR at his cost.

**2.15.4** After eligibility of extra works is established and finally accepted by BHEL engineer/designer, payment will be released on competent authority's approval at the mutually agreed rate.

**2.16 Not used**

2.17 Not used

**2.18 INSURANCE**

2.18.1 It is the sole responsibility of the CONTRACTOR to insure their accidents, materials, infrastructure, services staff, etc. against applicable risks & damages and to pay compensation, if any, to their staffs as per Workmen's compensation Act.

2.18.2 If due to negligence and or non-observation of safety and other precautions by the CONTRACTORS, any accident/injury occurs to the property / manpower belong to third party, the CONTRACTOR shall have to pay necessary compensation and other expense, if so decided by the appropriate authorities.

**2.19 STRIKES & LOCKOUT**

2.19.1 The CONTRACTOR will be fully responsible for all disputes and other issues connected with his labour. In the event of the CONTRACTOR's labour resorting to strike or the CONTRACTOR resorting to lockout and if the strike or lockout declared is not settled within a period of one month, BHEL shall have the right to get the work executed through any other agencies and the cost so incurred by BHEL shall be deducted from the CONTRACTOR's bills.

2.19.2 For all purposes whatsoever, the employees of the CONTRACTOR shall not be deemed to be in the employment of BHEL

**2.20 FORCE MAJEURE**

2.20.1 "Force Majeure" shall mean any event beyond the reasonable control of the parties including but not limited to fire, flood, earthquake or other acts of God, war, riots, civil war and restraints of Governing States, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected. The following events are explicitly excluded from Force Majeure and are solely the responsibilities of the non-performing party : a) any strike, work-to-rule action, go-slow or similar labour difficulty (b) late delivery of equipment or material (unless caused by Force Majeure event) and (c) economic hardship.

2.20.2 If either party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within 15 (fifteen) days after the occurrence of such event.

- 2.20.3 The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered or delayed. The Time for Completion shall be extended by a period of time equal to period of delay caused due to such Force Majeure event.
- 2.20.4 Delay or non-performance by either party hereto caused by the occurrence of any event of Force Majeure shall not
- 2.21 Constitute a default or breach of the Contract.
- 2.22 Give rise to any claim for damages or additional cost or expense occasioned thereby, if and to the extent that such delay or non-performance is caused by the occurrence of an event of Force Majeure.

## **2.21 ARBITRATION**

- 2.21.1 Except as provided 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 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 Power Sector Region issuing the Contract. It shall not be open to the CONTRACTOR to object to such arbitrator only on the ground that such arbitrator is an employee/ ex-employee of BHEL or has dealt with or has expressed any opinion on any issue touching upon 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 Hyderabad (the place from where the contract is issued).

- 2.21.2 In case of Contract with Public Sector Enterprise (PSE) or a Government Department, the following shall be applicable :

In the event of any dispute or difference relating to the interpretation and application of the provisions of the Contract, such dispute or difference shall be referred by either Party for arbitration to the sole arbitrator in the Department of Public Enterprises to be nominated by the Secretary to the Government of India in-charge of the Department of Public Enterprises. The Arbitration and Conciliation Act, 1996 shall not be applicable to arbitration under this clause. 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.

- 2.21.3 The cost of arbitration shall be borne equally by the Parties.

2.21.4 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.

## **2.22 RETENTION AMOUNT**

2.22.1 Retention Amount shall be 5% of executed contract value and shall be recovered at the rate of 5% from each Running/Stage Bill admitted.

2.22.2 Refund of Retention Amount shall be as follows:

- i) 100% of retention amount along with 'Final Bill'

## **2.23 PAYMENTS**

Payments to CONTRACTORS are made in any one of the following forms

### **2.23.1 Running Account/Stage Bills (RA/Stage Bills)**

- i) These are for interim payments when the contracts are in progress. The bills for such interim payments are to be prepared by CONTRACTOR).
- ii) Payments shall be made according to the extent of work/service done as per measurements taken up to the end of the calendar month/stage and in line with the terms of payments described in the Tender documents
- iii) Recoveries on account of statutory deductions, etc are made as per terms of contract
- iv) Full rates for the work done shall be allowed only if the quantum of work/services has been done as per the specifications stipulated in the contract. If the work/services is not executed as per the stipulated specifications, BHEL may ask the CONTRACTOR to re do the work according to the required specifications, without any extra cost. However, where this is not considered necessary 'OR' where the part work is done due to factors like non-availability of material to be supplied by BHEL 'OR' non availability of fronts 'OR' non availability of drawings, fraction payment against full rate, as is considered reasonable, may be allowed with due regard for the work remaining to be done. BHEL decision in this regard will be final and binding on the CONTRACTOR.
- v) In order to facilitate part payment, BHEL Site Engineer at his discretion may further split the contracted rates/percentages to suit site conditions, cash flow requirements according to the progress of work

### **2.23.2 Final Bill**

'Final Bill' is used for final payment on closing of Running Account for works/services or for single payment after completion of works. 'Final Bill' shall be submitted as per prescribed format after completion of works as per scope and upon material reconciliation, along with the following.

- i) 'No Claim Certificate' by CONTRACTOR
- ii) Clearance certificates where ever applicable viz Clearance Certificates from Customer, various Statutory Authorities like Labour department, PF Authorities, Commercial Tax Department, etc
- iii) Indemnity bond as per prescribed format

BHEL shall settle the final bills after deducting all liabilities of CONTRACTOR to BHEL



**2.24 PERFORMANCE GUARANTEE FOR WORKMANSHIP (Not Applicable)**

**2.25 CLOSING OF CONTRACTS**

The Contract shall be considered completed and closed upon completion of all contractual obligations and settlement of Final Bill or completion of Guarantee period whichever is later. Upon closing of Contract, BHEL shall issue a completion certificate as per standard format, based on specific request of CONTRACTOR.

**2.26 REVERSE AUCTION:**

BHEL reserves the right to go for Reverse Auction for Price Bid Opening by BHEL appointed service provider, instead of opening the submitted sealed price bid in the conventional way. The Business Rules for Reverse Auction shall be as per BHEL guidelines issued from time to time.

**2.27 SUSPENSION OF BUSINESS DEALINGS**

BHEL reserves the right to take action against CONTRACTORs who either fail to perform or Tenderers/CONTRACTOR who indulge in malpractices, by suspending business dealings with them in line with BHEL guidelines issued from time to time.

**2.28 OTHER ISSUES**

- 2.28.1 Value of Non judicial Stamp Paper for Bank Guarantees and for Contract Agreement shall be not less than Rs 200/- unless otherwise required under relevant statutes.
- 2.28.2 In case of any conflict between the General Conditions of Contract and Special Conditions of Contract, provisions contained in the Special Conditions of Contract shall prevail.
- 2.28.3 Unless otherwise specified in NIT, offers from consortium/ JVs shall not be considered.
- 2.28.4 BHEL may not insist for signing of Contract Agreements in respect of low value and short time period contracts like providing services for Hot water flushing, Chemical Cleaning, Transportation, etc.

**2.29 FRAUD POLICY**

The bidder along with its associate/ collaborators/ sub-CONTRACTORs/ sub-vendors/ Contractors/ service providers shall strictly adhere to BHEL fraud prevention policy displayed on BHEL website <http://www.bhel.com> and shall immediately bring to the notice of BHEL management about any fraud or suspected fraud as soon as it comes to their notice.

**2.30 LOADING CRITERIA**

**Deviated Penalty:** Any loading on penalty/LD clause shall be 10% or to the extent to which it is not agreed by vendor.

**Deviated Payment Terms:** Deviations on Commercial terms from NIT are generally not acceptable. In case of deviations w.r.t Payment terms, the price will be loaded at Base rate of SBI (as applicable on the date of bid opening/Techno-commercial bid in case of 2 part bids) + 6% for the period of relaxation.