 <p>The logo features the BHEL logo on the left, a large '50' in the center, and a gear on the right. Text includes 'BHEL', '50', and 'Bharat Heavy Electricals Limited'.</p>	<p>ELECTROPORCELAINS DIVISION</p>	<p>GENERAL CONDITIONS OF CONTRACT (GCC)</p> <p>Revision No. R0 (For supply and services)</p> <p>Issued on 01.04.2017</p>
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GENERAL CONDITIONS OF CONTRACTS (GCC)

DEFINITIONS OF TERMS


ABBREVIATIONS

INSTRUCTIONS TO BIDDERS

GENERAL COMMERCIAL TERMS & CONDITIONS

ANNEXURES

**ELECTROPORCELAINS DIVISION
BHARAT HEAVY ELECTRICALS LIMITED**
(A Govt. of India Undertaking)
PROF. CNR RAO CIRCLE, IISc POST
MALLESHWARAM
BANGALORE - 560012

	<p style="text-align: center;">ELECTRO- PORCELAINS DIVISION</p>	<p style="text-align: center;">GENERAL CONDITIONS OF CONTRACT (GCC)</p> <p style="text-align: center;">Revision No. R0 (For supply and services)</p>	<p style="text-align: center;">DEFINITION OF TERMS</p>
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Not for Publication

For Official Use

DEFINITION OF TERMS


Throughout the Tender Documents including the Enquiry Letter, the following words shall have the meanings assigned to them herein, unless the subject matter or the context requires otherwise.

- 1 **Purchaser / BHEL** shall mean **M/s Bharat Heavy Electricals Limited** (A Govt. of India Undertaking) incorporated under the Companies Act 1956 acting through its **Electroporcelains Division (EPD)**, IISc Post, Prof. CNR Rao Circle, Malleswaram, Bangalore - 560012 (Karnataka) which expression shall include its successors and assigns.
- 2 **EXECUTIVE DIRECTOR**" or 'GROUP GENERAL MANAGER or "GENERAL MANAGER (In-charge)" or "GENERAL MANAGER" shall mean the Officer in Administrative charge of EPD, Bangalore.
- 3 **"COMPETENT AUTHORITY"** shall mean Executive Director or Group General Manager or General Manager (In -charge) or General Manager or BHEL Officers who are empowered to act on behalf of the Executive Director or General Manager (In-charge) or General Manager of BHEL.
- 4 **Owner** shall mean the **Customer or Client** for whose project the enquiry is issued by Purchaser and shall include its successors and assigns as well as authorized officer(s)/ representative(s).
- 5 **Consultant** shall mean the agency appointed by Owner or Purchaser to provide consultancy services for the project and shall include its successors and assigns as well as authorized officer(s)/ representative(s).
- 6 **Tenderer** shall mean the Firm/ Company/ Organization which quotes against the Tender Enquiry issued by Purchaser. It may also be referred as **Bidder or Vendor**.
- 7 **"CONTRACT"** or "CONTRACT DOCUMENT" shall mean and include the Agreement of Purchase order / Work Order, the accepted appendices of Rates, Schedules, Quantities if any, General Conditions of Contract, Special Conditions of Contract, Instructions to the Bidders, Drawings, Technical Specifications, the

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Special Specifications, if any, Integrity Pact (if applicable), the Tender documents, subsequent amendments mutually agreed upon and the Letter of Intent/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.

- 8 **Seller/Contractor** shall mean the Firm/ Company/ Organization with whom the Order/Contract is made and shall be deemed to include its successors, representatives, heirs, executors, administrators and permitted assigns, as the case may be. It may also be referred as **Supplier**.
- 9 **Sub-Contractor** shall mean the person/ firm/ company/ organization to whom any part of the work has been sub-contracted by Seller/ Contractor, with the written consent of Purchaser, and shall include sub-contractor's heirs, executors, administrators, representatives and assigns.
- 10 **"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 'RESIDENT MANAGER1 or 'SITE INCHARGE1 as well as Officers at Site or at the Headquarters at Bangalore.
- 11 **"GENERAL CONDITIONS OF CONTRACT"** shall mean the 'Instructions to Bidders1 and 'General Conditions of Contract pertaining to the work for which above tenders have been called for.
- 12 **"TENDER SPECIFICATION"** or **"TENDER"** or **"TENDER DOCUMENTS"** shall mean General Conditions, Common Conditions, Special Conditions, Price Bid, Rate Schedule, Technical Specifications, Appendices, Annexure, Corrigenda, Amendments, Forms, procedures, Site information, etc and drawings/ documents pertaining to the work for which the bidders are required to submit their offers or any other document(s) as mentioned in NIT. Individual specification number will be assigned to each Tender Specification.
- 13 **LETTER OF AWARD / INTENT"** shall mean the intimation by a Letter/Fax/email to the bidder that the tender has been accepted in accordance with provisions contained in the letter. The responsibility of the contractor


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commences from the date of issue of this letter and all terms and conditions of the contract are applicable from this date

- 14 **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.
- 15 **"PLANT"** shall mean and connote the entire assembly of the plant and equipments covered by the contract.
- 16 **"EQUIPMENT"** shall mean equipment, machineries, materials, structural, electrical and other components of the plant covered by the contract.
- 17 **"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.
- 18 **"APPROVED", "DIRECTED" or "INSTRUCTED"** shall mean approved, directed or instructed by BHEL.
- 19 **"WORK or CONTRACT WORK"** shall mean and include supply of all categories of labour, specified consumables, tools and tackles and Plants required for complete and satisfactory site transportation, handling, stacking, storing, erecting, testing and commissioning of the equipments to the entire satisfaction of BHEL.
- 20 **"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.
- 21 **"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.

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- 22** "TEMPORARY WORK" shall mean all temporary works for every kind required in or for the execution, completion, maintenance of the work.
- 23** '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
- 24** "COMMENCEMENT DATE" or "START DATE" shall mean the commencement/start of work at Site as per terms defined in the Tender.
- 25** "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
- 26** "TERMINATION" of Contract shall mean the premature closing of contract due to reasons as mentioned in the contract.
- 27** "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
- 28** "RE MOBILISATION" shall mean the resumption of work with all resources required for the work after demobilization.
- 29** **Site** shall mean and include the land and place on which the power station and related facilities are to be constructed and any adjacent land which may be allocated or used by Owner or Seller/ Contractor in performance of the Order/ Contract.
- 30** **Tests on completion** shall mean such tests as prescribed in specifications and/ or tests mutually agreed upon by Purchaser and Seller/ Contractor, to be performed by Seller/ Contractor after erection of equipment to establish its satisfactory operation as per specifications.
- 31** "COMMISSIONING" shall mean the synchronization 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

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completed and Equipment with associated system is ready for taking into service.


- 32 Initial Operation or Trial Operation or Reliability Run** shall mean continuous integrated operation of the contracted/ ordered plant and materials under varying loads as proof of satisfactory operation for a specified period.
- 33 Inspection Agency (IA)** shall mean person(s) authorized by Purchaser / Owner to inspect the stores as per Order/ Contract at Contractor's/ Sub-Contractor's works. Vendors to raise inspection call on BHEL EPD.
- 34 Month** shall mean calendar month. 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.
- 35 Consignee** shall mean the official(s)/ person(s) to whom the stores are required to be delivered in the manner indicated in the Order/ Contract.
- 36 Plant/ Equipment/ Stores** shall mean the goods, machinery, components, parts, spares etc. required to be supplied by Seller/ Contractor as per Order/ Contract.
- 37 Contract Engineer (CE)** shall mean the official who signs the Order/ Contract on behalf of Purchaser.
- 38 Site Engineer** shall mean officer of Purchaser/ Owner authorized to receive and verify the in-coming stores, and issue Material Receipt Certificate (MRC)/ Stores Receipt Voucher (SRV).
- 39 Site Inspection Agency (Site IA)** shall mean person(s) authorized by Purchaser/ Owner to inspect the stores/ works included in Order/ Contract at the Project Site.
- 40 GENERAL**

The words incorporating singular shall include plural and vice-versa, the words incorporating masculine gender shall include feminine gender and vice-versa, and the words incorporating persons shall include bodies, corporate, limited liability companies, partnership and other legal entities.


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ABBREVIATIONS

AWB	Airway Bill
BL	Bill of Lading
BOQ	Bill of Quantity
CAD	Cash Against Documents
CENVAT	Central Value Added Tax
CFR	Cost & Freight
CIF	Cost, Insurance and Freight
CIP	Carriage & Insurance Paid (up to destination)
CPT	Cost Freight Paid
CQ	Corporate Quality
CVD	Countervailing Duty
DMS	Document Management System
EMD	Earnest Money Deposit
E&C	Erection and Commissioning
FOB	Free on Board
GR	Goods Receipt
GRN	Goods Receipt Number
H1 bidder	Bidder quoting highest landed cost to BHEL
IP	Integrity Pact
IEM	Independent External Monitor
L1 Bidder	Bidder quoting lowest landed cost to BHEL
LC	Letter of Credit
LOI	Letter of Intent
LOA	Letter of Award


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LR	Lorry Receipt
MDCC	Material Despatch Clearance Certificate
MRC	Material Receipt Certificate
MSMED	Micro Small and Medium Enterprises Development
NIT	Notice Inviting Tender
O&M	Operation & Maintenance
PBG	Performance Bank Guarantee
P&ID	Process & Instrumentation Diagram
PO	Purchase order
PQR	Pre-Qualification Requirement
PVC	Price Variation Clause/compensation
QS	Quality Surveillance
RA	Reverse Auction
RAB	Running Account Bill
RBI	Reserve Bank of India
RFQ	Request for Quotation
RR	Railway Receipt
SAD	Special Additional Duty
SCC	Special Conditions of Contract

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GENERAL

These general terms & conditions shall apply to all enquiries, notice inviting tenders, request for quotations concerning the supply of goods and / or rendering of services to Bharat Heavy Electricals Ltd., - Electroporcelains Division (hereinafter referred to as BHEL or the Purchaser) or its Projects / Customers.

1.0 GENERAL INSTRUCTIONS

- 1.1 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 full understanding of the implications thereof. The specifications and terms & conditions shall be deemed to have been accepted unless otherwise specifically commented upon in 'Deviation sheets by the tenderer in his offer. Noncompliance with any of the requirements and instructions in the Tender Enquiry may result in rejection of the tender.

Integrity Pact (IP) will be applicable for all tenders/ contracts valuing more than a specific value or if specified in NIT/ RFQ. Integrity Pact document shall be issued as part of tender and shall be returned by bidders along with their technocommercial bids, duly signed by authorized signatories. Only those vendors/ bidders who enter into Integrity Pact with BHEL would be qualified to participate in the bidding process.

- 1.2 All commercial terms and conditions, except prices, should be submitted as part of techno-commercial offer (Part-I) along with unpriced copy of Annexure-II, which may be opened first. The price part (Part-II) along with price copy of Annexure-II is to be submitted in a separate sealed cover (or to be uploaded in website in case of e-procurement) along with techno-commercial offer. Purchaser reserves the right to open both the Parts at the same time.


- 1.3 A declaration as per Annexure-III must be sent before opening of Price Bids.

2.0 PROCEDURE FOR SUBMISSION & OPENING OF TENDERS

- 2.1 Tenders shall be submitted in **Two parts** on or before the Due Date and time indicated in the NIT/ RFQ.

PART - I : Techno-Commercial Bid

comprising of Technical Offer, Annexure-I, Commercial Terms & Conditions, Unpriced copy of Price Bid& Annexure II, PQR documents (if applicable) in two

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(2) sets.

PART - II: Price Bid

Containing Prices, cost of withdrawal of deviation as per Annexure-II, to be submitted in original, strictly, as per Price Schedule of BHEL for complete scope of Tender Enquiry.

NOTE: Offers are liable to be rejected for changes made by vendors in the Price Schedule, except those specified in the unpriced bid and accepted by Purchaser.


- 2.1.1 PART-I (Techno-Commercial bid) may be opened on Due Date and time specified in the NIT/ RFQ, or extension thereof, in presence of tenderers who may like to attend. Incomplete offers are liable to be rejected. Purchaser reserves the right to open both Part-I and Part-II together.
- 2.1.2 PART-II containing prices shall be submitted along with Part-I but in a separate sealed cover. Corrections/amendments shall be properly authenticated, else the offer is liable to be rejected.
- 2.1.3 Any discount/revised offer submitted by a bidder on its own shall be accepted provided it is received on or before the due date and time of offer submission. The discount shall be applied on pro-rata basis to all items unless specified otherwise by the bidder.

Unsolicited discounts/revised offers given after due date and time of offer submission shall not be accepted.

In case there is no change in the technical scope and/or specifications and/or commercial terms & conditions, the bidder/s shall not be allowed to change his/their price bids after the due date, within the validity period.

In case of changes in scope and/or technical specification and/or commercial terms & conditions, having price implications, techno-commercially acceptable bidders shall be asked by BHEL (after freezing the scope, technical specifications and commercial terms & conditions) to submit the impact of such changes on their price bid. A cut-off date and time shall be given to all the techno-commercially acceptable bidders to submit the impact on their price bids.


In the event of any bidder, after finalizing the technical specification & scope of supply, opting to revise and submit their latest price bid instead of submitting impact on their price bid asked by BHEL, then their original price (i.e. the previous bid) shall also be opened.

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Price Impact/ Discount/ Revised Price Bid shall be duly superscribed as:

“Price Impact / Discount/ Revised Price Bid (Part-II) (delete whichever is not applicable), Revision No. ___ against Tender Enquiry No. _____ dated ____”

- 2.2 After technical & commercial examination of the offers received and clarifications obtained (if required), Part-II (Revised Price Bid/ Original Price Bid along with Price Impact and Discount, if any) shall be opened, for which the date and time shall be intimated to technically and commercially acceptable bidders in case of public opening. BHEL may opt to finalise the prices through Reverse Auction amongst technically and commercially acceptable bidders. BHEL reserves the right to open the earlier price bids, if any, submitted by the bidder(s), if required.
- 2.3 No correspondence shall be entertained from the tenderers after opening of Part-II (Price bid), except clarifications (if any) asked by BHEL in writing.
- 2.4 **Instructions regarding centralised tender room and tender opening:**
- a) Vendors are advised to submit the tenders in the tender box, containing Part-I & II offers in separate covers, preferably cloth lined envelopes should be used, properly marked before due date and time.
 - b) BHEL-EPD shall not accept any tender in torn condition and return the same to the courier immediately with the Stamping "Returned to Sender-Package Damaged". Offers in damaged condition will not be considered and no request for extension on this account will be considered.
 - c) Bidder's representative shall deposit the offer in tender box only.
 - d) Bidders shall be allowed in the tender room in area identified for bidders and only one/two authorized representative(s) from each bidder shall be allowed.
 - e) Bidder shall not be allowed to carry mobile/camera /laptop in the tender room. The same shall have to be deposited at security in advance and taken back after tender opening.
 - f) In case of two part bid system, bidder's representative(s), witnessing the tender opening shall have to sign on all the envelopes containing the price bids. Thereafter, all the price bid envelopes shall be put in a bigger envelope / box and the same shall be properly sealed. The sealed envelope / box shall have to be signed by the tender opening official(s) / committee of Purchaser and bidder's representatives.

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- g) Details of offers shall be read out to bidders and in no case the offers shall be handed over to any of the bidders for noting down.
- h) Please ensure tender submission, minimum 1 hour before scheduled tender opening time.

Late tenders shall not be accepted.

2.5 Purchaser may negotiate the tender with L1 bidder after RA/ price bid opening.

2.6 MARKING ON ENVELOPES

2.6.1 Following shall be superscribed on the envelopes which shall be addressed by name and designation to the official inviting tender:

PART-I : 1. TENDER ENQUIRY No. AND ITEM DESCRIPTION
 2. DUE DATE FOR OPENING
 3. "TECHNO-COMMERCIAL BID".

PART-II : 1. TENDER ENQUIRY NO AND ITEM DESCRIPTION
 2. DUE DATE FOR OPENING
 3. "PRICE BID".

2.6.2 Both Parts - I & II shall be submitted in separate sealed covers duly superscribed as indicated above and shall be enclosed further in a main cover duly sealed and superscribed as:


"TENDER FOR _____ AGAINST TENDER ENQUIRY NO. _____ DUE ON _____ CONTAINING PART-I & PART-II BIDS"

2.6.3 Envelope not marked with tender enquiry number is liable to be ignored and may not be opened.

2.7 BID SUBMISSION

2.7.1 Tenders shall be addressed to BHEL officials by name & designation and sent to the following address:

Tender Box at the reception of EPD,
Bharat Heavy Electricals Ltd.
ELECTROPORCELAINS DIVISION
Opp. IISc, PROF. C N R RAO CIRCLE ,
MALLESWARAM , BANGALORE - 560 012
Attention: 1) Mr.

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2) Mr.

- 2.7.2 Tenders can either be deposited in tender room in person or sent by Courier/Registered or Speed Post to the above mentioned address. It shall be bidders' responsibility to ensure that tenders are delivered latest by 14:00 hours (IST) of the enquiry due date.
- 2.7.3 Bidder can also submit offer through email, if called for in the enquiry, at the email address indicated in the enquiry. Such email offers shall be sent only on designated email-id to reach before 14.00 hrs of the tender due date. BHEL will not be responsible for incomplete offers and the ones delivered late through e-mail.
- 2.8 Tenders received after the Due Date and Time of submission as mentioned at 2.7.2 shall be rejected.
- 2.9 Name of vendor's dealing person with Contact No(s), Email ID and Address of correspondence shall be provided in the bid as per ANNEXURE XVIII.
- 2.10 Unsolicited tenders will not be entertained.
- 2.11 **OFFER SUBMISSION IN E-PROCUREMENT**


Tenders shall be submitted in Two parts on or before the Due Date and time indicated on the portal as per the following instructions:

PART - I : Technical & Commercial bid

Comprising of following:

1. PQ qualification documents (Mandatory, if shown on portal)
2. Annexure-I to GCC (Mandatory)
3. General conditions of contract, GCC (Mandatory)
4. Special conditions of contract, SCC (Mandatory)
5. Technical offer, comprising of technical specification and other documents as asked in technical specifications e.g. drawings, test report etc. (Mandatory)
6. Annexure-III to GCC (Declaration about completeness of price) - (Mandatory)
7. Annexure-XII to GCC (Optional)

“NO DEVIATION CERTIFICATE” FOR COMMERCIAL TERMS AND

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CONDITIONS as per General Conditions of Contracts (GCC, Rev.01), Special Conditions of Contracts and RFQ in case of no deviations

8. Integrity Pact Agreement (Mandatory if shown on portal, not applicable otherwise)
9. Unpriced copy of Annexure-II, cost of withdrawal of deviation (Mandatory)
10. Supplier details as per detail annexure.

Any deviation not mentioned in un-priced copy of this format, but mentioned in the priced copy, shall not at all be accepted.

Bidder to note all the points mentioned in "Notes" of Annexure-II to GCC Rev.01.

Cost of withdrawal for the deviations, for which, the "Cost of withdrawal" is not specified, shall be taken as NIL.

The vendors shall be forced by the system to upload the above documents which are marked mandatory. The Annexure mentioned at Sl no 2, 6 & 7 (if applicable), above should be duly filled by the bidder and should be printed on their letter head before uploading.

PART - II: Price bid


Containing

1. Prices as per price format,
2. Cost of withdrawal of deviation as per Annexure-II, to be uploaded strictly as per Price Schedule of BHEL for complete scope of Tender Enquiry.

NOTE: Offers are liable to be rejected for changes made by vendors in the Price Schedule, except those specified in the unpriced bid and accepted by Purchaser.

The clause nos 2.6 & 2.7 above of this GCC shall not be applicable in case of eprocurement

- 3.0 In case of TURNKEY PACKAGES total **erection & commissioning charges** including service tax should be minimum 15% (or as specified in NIT) of the total quoted package price (excluding mandatory spares but including all taxes and freight), failing which the break-up of prices shall be adjusted accordingly for ordering.

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4.0 Authority of the person signing the tender on behalf of the tenderer:

A person signing the tender or any other document in respect of Order/Contract on behalf of the tenderer, without disclosing his authority to do so shall be deemed to warrant that he has the authority to bind the tenderer. If it is discovered at any time that the person so signing had no authority to do so, the Purchaser may, without prejudice to any other right or remedy, cancel the Order/Contract and make or authorize the purchase of the stores at the risk and cost of such tenderer and hold such tenderer liable to Purchaser for all costs and damages arising from cancellation of the Order/Contract including any loss which Purchaser may sustain on account of such purchase.

Notes:


- a) Bids of Indian supplier shall be in Indian Rupee only.
- b) Bids of foreign suppliers shall preferably be in currency of the country of origin and on CPT/ CFR basis. In case of supplies from Indian origin, it shall be in INR on F.O.R BHEL EPD BANGALORE - 12.
- c) An authorized representative/ agent can represent only one bidder for the given package.

5.0 CLARIFICATIONS REQUIRED BY BIDDERS

Technical and commercial clarifications required before submission of the tender should be addressed to the official(s) inviting the tender. The bidders are requested to submit all their queries/clarifications by the date specified in the NIT after which it will be presumed that there are no queries/clarifications and BHEL will be under no obligation to reply queries/clarifications raised after the date.

6.0 DEVIATIONS - LISTING

- 6.1 Tenders shall be submitted strictly in accordance with the requirements of tender documents. In case of deviations from NIT, the tenderer shall give cost of withdrawal of such deviation in Sealed Cover as per Annexure-II.
- 6.2 If bidder insists for price variation clause (PVC) where NIT specifies Firm price, the offer should contain:-
 - a) PVC Formula
 - b) Ceiling for PVC
 - c) Base date and applicable indices for the base date.

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Open ended PVC formula is not acceptable. Indices shall be based on Government of India/ RBI publications/ IEEMA/ LME etc. However, BHEL reserves the right to accept/ reject the offer with PVC.

7.0 VALIDITY OF OFFER

Vendors' offers shall be submitted with the following validity periods:

- i) Original offer shall be valid for 90 days from Part-I opening.
- ii) If revised price bid/ price impact is asked by BHEL, the validity of the same shall be 60 days from the date of revised price bid/ price impact or 120 days from Part-I opening, whichever is later.
- iii) Prices of Recommended Spares, O&M Spares and Mandatory Spares (wherever these are Optional items) shall be valid till two years from the date of PO.
- iv) Unit prices for scope addition/ deletion shall be valid till two years from the date of PO.
- v) Prices of optional items shall be valid till the contract period for placement of order.
- vi) Offers with shorter validity are liable to be rejected.


8.0 LANGUAGE & CORRECTIONS

- a) Tenderer shall quote the rates in Hindi/English language and international numerals only. Total Price shall be entered in figures as well as in words. For the purpose of tender, metric system of units shall be used.
- b) All entries in the tender shall either be typed or written legibly in ink. Cancellations, corrections, insertions, erasements, over-writing (if unavoidable) shall be authenticated with signature and seal by the bidder.

9.0 PRICE DISCREPANCY

Following shall be considered for evaluation and ordering for non-conformities/ errors/ discrepancies in price bid:

- (a) If, in the price structure quoted for the required goods/ services/ works, there is discrepancy between the unit price and the total price (which is obtained by multiplying the unit price by the quantity), the unit price shall prevail and the total price corrected accordingly, unless in the opinion of the Purchaser there is an

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obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price corrected accordingly.

(b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected.

(c) If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject of (a) and (b) above.

(d) If there is such discrepancy in an offer, the same shall be conveyed to the bidder with target date upto which the bidder has to send his acceptance on the above lines and if the bidder does not agree to the decision of the Purchaser, the bid is liable to be ignored.


(e) Taxes and duties if not specified clearly as extra shall be considered as included in the basic price and, therefore, shall not be reimbursed.

10.0 TENDERER TO INFORM HIMSELF FULLY

10.1 Tenderer shall closely peruse all clauses, specifications & drawings etc. indicated in tender documents before quoting. In case of any doubt about meaning of any portion of tender specifications or discrepancies or omissions in drawings/tender document or clarifications regarding scope of work etc., tenderer shall contact the official(s) inviting the tender for clarifications, before submitting the offer.

10.2 Tenderer shall make independent enquiries as to conditions and circumstances affecting cost estimates, and possibility of executing supplies/works as described. Tenderer shall be deemed to have inspected and examined the site and its surroundings and to have satisfied himself as to the form and nature of the site, the quantities and materials necessary for completion of the work and means of transport and access to the site, the accommodation required, general labour position at site and to have quoted prices taking into consideration the risks, contingencies and other circumstances which may influence or affect execution of the Order/Contract.

10.3 It is the responsibility of tenderer to keep himself informed about all taxes & duties applicable on materials/services as prevailing at the time of tendering. If the rates assumed by tenderer are less than the tariff rates prevailing at the time of tendering, the tenderer will be himself responsible for such under quotations.

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11.0 ETHICS IN BUSINESS DEALINGS & FRAUD PREVENTION POLICY

11.1 The Bidder along with its associate/collaborators/sub-contractors/sub vendors/ Consultants/ 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."

11.2 Integrity commitment, performance of the contract and punitive action thereof:

11.2.1 Commitment by BHEL:

BHEL commits to take all measures necessary to prevent corruption in connection with the tender process and execution of the contract. BHEL will during the tender process treat all Bidder(s) in a transparent and fair manner, and with equity.


11.2.2 Commitment by Bidder/ Supplier/ Contractor:

(a) The bidder/ supplier/ contractor commit to take all measures to prevent corruption and will not directly or indirectly influence any decision or benefit which he is not legally entitled to nor will act or omit in any manner which tantamount to an offence punishable under any provision of the Indian Penal Code, 1860 or any other law in force in India.

(b) The bidder/ supplier/ contractor will, when presenting his bid, disclose any and all payments he has made, and is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract and shall adhere to relevant guidelines issued from time to time by Govt. of India/ BHEL.

© The bidder/ supplier/ contractor will perform/ execute the contract as per the contract terms & conditions and will not default without any reasonable cause, which causes loss of business/ money/ reputation, to BHEL.

If any bidder/ supplier/ contractor during pre-tendering/ tendering/ post tendering/ award/ execution/ post-execution stage indulges in mal-practices, cheating, bribery, fraud or and other misconduct or formation of cartel so as to influence the bidding process or influence the price or acts or omits in any manner which tantamount to an offence punishable under any provision of the Indian Penal Code, 1860 or any other law in force in India, then, action may be taken against such bidder/ supplier/ contractor as per extant guidelines of the company available on www.bhel.com and/or under applicable legal provisions".

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12.0 INTEGRITY PACT

Vendors shall have to enter into Integrity Pact with BHEL if specified in NIT/ RFQ, failing which vendor's offer will be rejected (Refer Annexure-IX).


13.0 REVERSE AUCTION

BHEL reserves the right to go for Reverse Auction (RA) (Guidelines as available on www.bhel.com) instead of opening the sealed envelope price bid (priced format submitted along with the offer in case of e-procurement), submitted by the bidder. This will be decided after techno-commercial evaluation. Bidders to give their acceptance with the offer for participation in RA. Non-acceptance to participate in RA may result in non-consideration of their bids, in case BHEL decides to go for RA.

Those bidders who have given their acceptance to participate in Reverse Auction will have to necessarily submit 'Process compliance form' (to the designated service provider) as well as 'Online sealed bid' in the Reverse Auction. Nonsubmission of 'Process compliance form' or 'Online sealed bid' by the agreed bidder(s) will be considered as tampering of the tender process and will invite action by BHEL as per extant guidelines for suspension of business dealings with suppliers/ contractors (as available on www.bhel.com).

The bidders have to necessarily submit online sealed bid less than or equal to their envelope sealed price bid (priced format submitted along with the offer in case of e-procurement) already submitted to BHEL along with the offer. The envelope sealed price bid of successful L1 bidder in RA, if conducted, shall also be opened after RA and the order will be placed on lower of the two bids (RA closing price & envelope sealed price) thus obtained. The bidder having submitted this offer specifically agrees to this condition and undertakes to execute the contract on thus awarded rates.

If it is found that L1 bidder has quoted higher in online sealed bid in comparison to envelope sealed bid (priced format submitted along with the offer in case of e-procurement) for any item(s), the bidder will be issued a warning letter to this effect. However, if the same bidder again defaults on this count in any subsequent tender in the unit, it will be considered as fraud and will invite action by BHEL as per extant guidelines for suspension of business dealings with suppliers/ contractors (as available on www.bhel.com)."

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14.0 REJECTION OF TENDER AND OTHER CONDITIONS

14.1 Acceptance of tender will rest with Purchaser and does not bind him to accept the lowest or any tender and reserves to itself full rights for the following without assigning any reasons whatsoever:

- a) To reject any or all the tenders.
- b) To split the work amongst two or more tenderers (where E&C is not in tenderer's scope).
- c) To award the work in part. (where E&C is not in tenderer's scope).
- d) To increase or decrease the quantities.
- e) To reject any commercial or technical deviation given in offer.

14.2 Standard pre-printed conditions of tenderer attached to offer will not be accepted and only those mentioned in the body of offer will be considered.

14.3 Purchaser will not be bound by any power of attorney granted by tenderer or by changes in composition of the firm made subsequent to award of Order/Contract. Purchaser may, however, recognize such power of attorney and changes after obtaining proper legal advice, the cost of which will be chargeable to the Seller/Contractor concerned.

14.4 If tenderer deliberately gives wrong information, Purchaser reserves the right to reject such an offer at any stage or cancel the Order/Contract, if awarded, and forfeit the security deposit and bank guarantee.


15.0 DEVIATIONS FROM NIT

15.1 Deviations (Commercial as well as Technical) from NIT are generally not acceptable. In case of deviations from NIT, the tenderer shall give cost of withdrawal of such deviation in Sealed Cover as per Annexure-II.

16.0 Loading For Commercial Deviations (where cost of withdrawal not given)

16.1 For deviations w.r.t. Payment terms, Liquidated damages, Firm prices and submission of E1/ E2 forms before claiming 10% payment, if a bidder chooses not to give any cost of withdrawal of deviation loading as per Annexure-VIII will apply.

17.0 Interest Rate for loading will be taken as 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 sought by the bidders.

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18.0 DISCOUNT

Discount offered by any bidder in the original price bid, against the present Tender Enquiry, which is also indicated to be applicable to any other Enquiry, shall be considered against the present Tender Enquiry only. In case only percentage discount is indicated, the same shall be applicable to optional prices also.

Discount offered shall be valid for full duration of offer validity.


Any conditional discount shall not be considered for evaluation.

19.0 EVALUATION CRITERIA

- 19.1 Evaluation of the tender shall be on the basis of delivered cost, i.e. 'total cost to BHEL' w.r.t the finalized technical scope and commercial conditions (after considering, inter alia, Customs Duty and CENVAT/ VAT/ Service Tax/Entry Tax as applicable) and taking into consideration loadings, if any, and all available financial advantages.
- 19.2 Exchange rate (TT selling rate of State Bank of India) applicable on the date of Part-I bid opening shall be considered for evaluation of foreign bids. If the relevant day happens to be a bank holiday in India, then the FOREX rate as on the previous bank working day shall be taken for evaluation.
- 19.3 Foreign suppliers shall ensure that the benefits as applicable under Comprehensive Economic Partnership Agreement (CEPA) with Government of India are disclosed in the bid & relevant documents such as Certificate of Country of Origin, issued by the appropriate authority in the country of Export, is provided by the vendor along with dispatch documents. Bids shall be evaluated with such applicable benefits. In the event of Seller failing to provide appropriate documents for Purchaser to avail disclosed concessional duty benefits in India, financial loss, so incurred, will be to the Seller's account.
- 19.4 The quoted CFR price shall be loaded by the following to arrive at the Delivered Cost:
- Import duty as applicable at the time of Part-II (Price) bid opening.
 - Terminal handing charges at destination & other charges & Inland freight will be loaded at 1% of CFR value.

20.0 FOREIGN SUPPLIERS & INDIAN AGENTS OF FOREIGN SUPPLIERS

Please refer 'Annexure-V' for guidelines.

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21.0 MICRO & SMALL & MEDIUM ENTERPRISES

Extant regulations of Govt. of India titled “Public Procurement Policy for Micro & Small Enterprises (MSE’s) Order dated 23.03.2012” will be applicable.

22.0 Authorisation for participation in EPS portal through DSC

E-Tender Participation requirements

Either Principal or authorised agent shall register their Digital Signature Certificate (DSC) (Class 3- SHA2- 2048 BIT- SIGNING & ENCRYPTION). You are advised to pls go through the FAQ available in the web portal

(<https://bheleps.buyjunction.in>). DSC shall be registered for the authorised person and all transaction done using that DSC against our tenders shall be taken as valid communication and shall be binding on principal/agent and is valid legally.

For foreign Principal


In case of Principal (being foreigner) they may apply for DSC through Indian embassy at their country and can register with us for participating in E-tenders. Details of the applicable procedure is available in the webpage <http://www.cca.gov.in/cca/>

For Indian agent

In case of agents participating/registering their DSC (of authorised person), it will be at the sole authorisation of principal to their agents to participate on their behalf and all transactions done using that DSC against our tenders shall be known as valid communication and shall binding on principal and is legally valid.

DSC Authorisation


Pls intimate the authorised person name, Mail ID for registering DSC with us to participate in E-Tenders

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GENERAL COMMERCIAL TERMS & CONDITIONS

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1.0 ACCEPTANCE OF ORDER

Seller/Contractor should acknowledge and accept the LOI/ Purchase Order issued by BHEL within 7 days of its receipt. Seller/Contractor should examine the LOI/ Purchase Order immediately upon receipt and bring to the notice of BHEL, within 7 days of receipt, any discrepancy with regard to scope of work, rates, taxes & duties, agreed terms & conditions etc. for due rectification. If the Seller/Contractor fails to give such intimation / acceptance within seven days, the Seller/Contractor shall be deemed to have agreed to supply the stores as per LOI/ Purchase Order.

2.0 CONTRACT

Contract between Purchaser and Seller/Contractor is merely a contract and shall not be treated as partnership between the parties to the contract.

3.0 PRICES

Prices shall be for the entire scope of work in line with the tender documents and subsequent clarifications/confirmations.

4.0 TAXES AND DUTIES

4.1 EXCISE DUTY for Indigenous purchase


4.1.1 Seller/Contractor is required to ensure that excise duty including cess, if any, is quoted as per the existing tariff on the date of the offer and all benefits as per existing rules have been considered.

4.1.2 Excise duty actually incurred by Seller/Contractor on self-manufactured items shall be reimbursed against documentary evidence.

Excise duty paid by bidder on inputs, bought out items, raw materials and components consigned directly from sources other than Seller/Contractor's factory/works shall be included by the bidder in the quoted ceiling amount of excise duty and the same shall be payable extra at actuals limited to the ceiling amount.

4.1.3 If excise duty is paid under protest or dispute, it shall not be reimbursed till the dispute is settled. If the Seller/Contractor claims/obtains any refund of the excise duty paid, the same shall be refunded to the Purchaser immediately

4.1.4 Invoice cum Excise duty gate pass (Excise Invoice) should contain the name of the ultimate consignee as per Order/Contract/ Special Conditions of Contract.

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4.1.5 If required by Purchaser, the Seller / Contractor will provide a certificate stating that CENVAT benefit has been availed of on the inputs and the same has been passed on to the Purchaser.

4.1.6 Excise duty shall be paid at actuals against documentary evidence but restricted to the amount and percentage indicated in the Order/Contract.

4.2 SALES TAX/VALUE ADDED TAX (VAT) for Indigenous purchase

4.2.1 Central Sales Tax / Value Added Tax shall be reimbursed only if the same is paid by the Seller / Contractor to the respective Govt. authorities on direct sales by the Seller/ Contractor to the Purchaser, meeting all statutory requirements and availing all exemptions/concessions under the respective Central Sales Tax / Value Added Tax Acts. The offer should clearly indicate CST/VAT percentage and the total amount along with concessional form(s), if any.

4.2.2 Purchaser is registered in Bangalore, Karnataka vide following Registration Numbers:


Central Sales Tax Registration No. : 00850070 w.e.f. 06-03-1999.

Karnataka TIN. : 29470052861

4.2.3 Central Sales Tax/Value Added Tax shall be reimbursed, as per tariff applicable, but restricted to the percentage and amount shown in the Order/Contract. If it is shown as included in the quoted price/ not applicable, it will not be reimbursed by the Purchaser.

4.2.4 For the purchase re-sold items, purchaser proposes to make sale-in-transit under section 6 (2) (b) of Central Sales Tax Act where goods movement is inter-state. Form-C shall be issued and exchanged against Form-E1/E2 based on quarterly transactions. Seller/Contractor is required to submit his request in the format enclosed at Annexure-VI within 30 days from end of the Quarter, giving State-wise invoice details. In compliance with the notification No. CCW/CR-44-2013-14 dt. 29/04/2014 issued by Commercial Tax Dept., Govt. of Karnataka, vendors shall submit all the requisite documents within 10 days of dispatch for the purpose of issuance of 'C' forms. Timely issuance of 'C' form will depend on the compliance of this condition.

Note: In case of non-receipt of E1/E2 forms amount of differential tax payable by BHEL shall be to vendors' account. Submission of E1/E2 forms shall be ensured by Vendor within the time specified in sales tax act.

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4.2.5 For the purchase re-sold items, VAT invoices, in format prescribed by the respective State Sales Tax Act, have to be submitted in the name of Nodal Agency, if specified in Special Conditions of Contract.

4.3 **SERVICE TAX for Indigenous purchase**

4.3.1 Service Tax and Cess leviable on taxable services for the time being in force paid by the Service Provider /contractor to the Government authorities directly shall only be paid at actuals against documentary evidence of Service tax payment (Service Tax remittance challan) made to concerned Service tax authorities corresponding to the tax claimed in the previous invoice / RAB, but restricted to the rate and amount mentioned in the order/contract. The offer should clearly indicate the percentage and the total amount of service tax as well cess. Cess to be indicated as separate line item in invoice.


4.3.2 Service provider/Contractor to ensure their registration for “Intended Service” to be provided, before claiming Service tax under the “intended category”. Decision of BHEL shall be final w.r.t. the “Intended category” in which the service will be falling.

4.3.3 If required by the Purchaser, the Service Provider/Contractor will provide a certificate stating that “CENVAT Benefit has been availed of on the input and the same has been passed on to the purchaser” or “CENVAT Benefit has not been availed of on the inputs”.

4.3.4 Vendor shall comply with the Point of Taxation Rules, as contemplated under the Service Tax Rules. In case, the CENVAT credit could not be availed by BHEL within the time limit (statutory), due to delay in submission of invoice(s) or for any other reason(s) attributable to vendor(s)/contractor(s), liability towards the loss of such CENVAT credit shall be to the vendor(s)/contractor(s) account. TDS shall be made for IT as per Income Tax act.

4.4 **OTHER TAXES & LEVIES for Indigenous purchase**

All taxes and duties other than Excise Duty, Sales Tax/ VAT, Service Tax shall be deemed to be included in the Ex-Works prices unless specified otherwise by the bidder in the price bid. No variation in other taxes and duties shall be payable by Purchaser. However, statutory variation in Octroi will be payable extra against documentary evidence. Anti-dumping duty, if any, shall be in the account of bidder and shall be included in their price. No separate payment shall be made by BHEL for the same.

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4.5 **CUSTOMS DUTY for Indigenous purchase**

- 4.5.1 Customs Duty element for imported items as per Special Conditions of Contract shall be included in the Ex-Works prices. No variation in customs duty and exchange rate for imported items shall be payable by Purchaser.
- 4.5.2 Seller/Contractor shall arrange for his own import license, if required, since Purchaser will not provide any import license. Therefore, Seller/Contractor alone shall be responsible for any delay in getting import license or non-availability of the same or completion of other related formalities. Purchaser shall not be responsible for any financial liability, whatsoever, on this account.
- 4.5.3 Essentiality Certificate or Project Authority Certificate (PAC) as per Import Policy, if required to avail concessional customs duty, shall be clearly specified in the offer. Import content (CIF value in rupees) with list of items, quantity, foreign currency, country of origin etc., shall be submitted by the bidder as part of Price bid.

4.6 **DIRECT TAX for Indigenous purchase**


- 4.6.1 Purchaser shall not be liable towards income tax of whatever nature including variations thereof, arising out of this Order/Contract, as well as tax liability of the Seller/Contractor and his personnel.
- 4.6.2 Deductions of Tax at source at the prevailing rates shall be effected by the Purchaser before release of payment, as a statutory obligation, if applicable. TDS certificate will be issued by the Purchaser as per statutory provisions.

4.7 **FOREIGN PURCHASE - Imports**


The offered prices shall be inclusive of all the Taxes and duties as applicable in the country of bidder / country of dispatch for the quoted price as per incoterms (FOB/CFR/CIF/CPT etc.). Any variation in the same will be in sellers account.

5.0 **STATUTORY VARIATION for Indigenous purchase**

- 5.1 If the rates for taxes and duties in respect of the quoted materials and/or services assumed by the Seller/Contractor are less than the tariff prevailing at the time of tendering, Seller/Contractor will be responsible for such under quotations. However, if the rates assumed are higher than the correct rates prevailing at the time of tendering, the difference will be to the credit of the Purchaser.

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- 5.2 Statutory Variations in Excise Duty, Service Tax and Central Sales Tax/Value Added Tax only on self-manufactured items/services rendered by vendor himself on the rates prevailing at the time of delivery/ completion in comparison to the date of offer, will be to the account of the Purchaser. No other variations such as on customs duty, exchange rate, minimum wages, prices of controlled commodities, any other input etc. shall be payable by the Purchaser.
- 5.3 Notwithstanding the above, where the actual completion of the supply occurs beyond the period stipulated in the Order/Contract or any extension thereof, variations referred to above, will be limited to the rates prevailing on the dates of such agreed completion periods only. For variations after the agreed completion periods, the Seller/Contractor alone shall bear the impact for the upward revisions and for downward revisions, purchaser shall be given the benefit of reduction in taxes/duties. This will be without prejudice to the levy of penalty for delay in delivery/completion schedule.
- 5.4 Any new tax structure (like Goods & Services Tax) as and when implemented by the Government shall become applicable in addition to or in lieu of existing tax structure.
- 6.0 PRICE BASIS:**
- 6.1 For Supply:**
- 6.1.1 Indigenous purchase** - Firm, till the completion of contract (or with PVC if specified in NIT). Ex-works, inclusive of packing & forwarding charges. Taxes, duties and freight to be paid in line clause no 4 above.
- 6.1.2 Foreign purchase:** Firm, till the completion of contract (or with PVC if specified in NIT). CFR/CPT/CIF/CIP Indian (air) port basis inclusive of testing, inspection, sea worthy packing & forwarding charges to be paid in line with GCC.
- 6.2 For E&C:**
- Firm till completion of the contract (or with PVC if specified in NIT). WCT if any, to be included in price. Service tax along with cess to be indicated separately and will be reimbursed at actuals. TDS shall be made for IT as per Income Tax act.
- 6.3 Prices shall remain Firm (or with PVC if specified in NIT) for any increase or decrease in the Order/Contract value (Ex-works) upto plus or minus 30% within contract period unless specified otherwise in NIT. The Purchaser shall have the right to increase or decrease quantities and scope upto the above extent of value and

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Seller/Contractor shall be bound to accept the same at the contracted prices without any escalation.

7.0 DRAWING SUBMISSION & APPROVAL:

Drawing submission & Approvals as per technical specification is the responsibility of the vendor.

8.0 DELIVERY TERMS

8.1 Indigenous Purchase

Goods shall be delivered on 'FOR Destination' basis to the named destination unless otherwise called for in the enquiry.

8.2 Foreign Purchase - Imports

8.2.1. Goods shall be dispatched by sea, unless stated otherwise in the enquiry or purchase order.


8.2.2. The goods shall be delivered on CFR basis to the ICD-BANGALORE unless specified otherwise in enquiry or Purchase order.

8.2.3 The quote should be inclusive of all charges, including testing, packing, inspection etc. Additionally ocean freight (LILO basis) for CFR, ICD BANGALORE shall also be quoted separately as per price format.

8.2.4. Goods shall be handled for ocean freight / air freight by BHEL's freight forwarder only, under FOB contracts and OBL / HAWB issued by BHEL appointed forwarder or his authorized agent(s) shall only be accepted for negotiation.

8.2.5 For CFR terms, shipped in Break Bulk/ Container, supplier shall quote the freight charges on LILO (LINER IN LINER OUT) basis. Alternately shipment by container is also acceptable and In such cases B/L should bear the endorsement that "14 free days for Container Detention is applicable" and it would be presumed by BHEL that the freight charges quoted is on LILO (LINER IN LINER OUT) basis including extra charges, if any, like Container Imbalance Charges, Trade Imbalance charges, Port congestion charges or any other charges payable to the Liner. No other charges other than the quoted Freight rate will be paid by BHEL excepting applicable Terminal Handling Charges, Container cleaning Charges, DO charges to Shipping Liner at Discharge Port.

8.2.6 In the event there is a delay by the Supplier in negotiating / submitting the document, any demurrage / wharfage arising out of the same shall be to the account of the Supplier and shall be deducted from the final payment. Also, in such cases, the Supplier shall authorize the Steamer / Shipping agent / transporter to freely release the consignment to BHEL by providing a "Surrender Bill of Lading". Over-seas Suppliers have to give a No-Objection Certificate to BHEL,

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authorizing BHEL to get the Delivery Order from the Steamer Agent without producing the Original Bill of Lading. This is required to ensure avoidance of incidence of demurrage that may arise in case of delayed presentation of documents by the Seller.

8.3 Delivery shall be staggered in the manner as indicated in the tender for each item. Vendors shall submit their offer accordingly.

9.0 TERMS OF PAYMENT

9.1 SUPPLY PACKAGES (Main Supply and Mandatory Spares)

9.1.1 For indigenous purchase

Hundred percent (100%) of basic price of materials supplied, as per PO, along with 100% taxes and duties (as applicable) & freight charges, shall be paid on pro-rata basis after 45 days from the date of receipt of goods & receipt of complete documents as per order/ contract subject to acceptance of materials.

9.1.2 For Foreign Purchase – Imports

Hundred percent (100%) payment on CAD basis after 45 days from the date of receipt of documents specified in PO at BHEL BANK. Respective bank charges to respective account.


9.1.3 PG TEST, INSTALLATION CHECK, SUPERVISION OF ERECTION / COMMISSIONING CHARGES

100% payment shall be released after successful completion of the activity.

Vendors shall submit documents for payment directly to BHEL. Payment will be released within 45 days after receipt of complete documents as per order/ contract.

Note:

- 1) For indigenous suppliers, if the documents are routed through Bank, then all bank charges will be to vendor's account.
- 2) Foreign bidders can opt for payment (less agency commission, if applicable) through irrevocable and unconfirmed letter of credit. In that case for evaluation purpose, prices of foreign bidders will be loaded on account of payment through LC, equal to loading specified against 'Payment through Bank' in Annexure-VIII. No loading will be done if foreign vendors agree for 75 days issuance LC or submit the documents on collection basis for payment within 75 days of submission of complete documents.

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- 3) LC opening/ negotiation/ confirmation charges will be to vendor's account.
- 4) Any negative PVC, if not adjusted in earlier payments, will be adjusted at the time of subsequent payment.

9.2 DOCUMENTS TO BE SUBMITTED BY VENDOR

9.2.1 For Recognition of Dispatch

Copy of the following documents by e-mail/ fax immediately on despatch:

- a. Invoice
- b. LR /BL/AWB
- c. Packing List
- d. Insurance Intimation
- e. Dispatch Clearance


9.2.2 For Claiming Payments (under clause 9.1.1, 9.2.1, 9.3.1): (under clause 9.1.1)

- a. Original Excise Invoice & Duplicate for transporter - original+3 copies
- b. Consignee Copy of LR
- c. Packing List - clearly showing number of packages, gross weight and net weight. - original+3 copies
- d. MDCC from BHEL/Customer - as per SCC - 4 copies
- e. Guarantee Certificate - Original + 3 copies
- f. Insurance Intimation - 4 copies
- g. PVC Calculation and copy of all applicable indices, if PVC applicable. - 4 copies
- h. Duty drawback documents (original excise invoice, original disclaimer certificate, original certificate from excise authority for payment of excise duty), if applicable. - original + 3 copies

It is the responsibility of the vendor to submit invoices along with documents required for effecting payment within the stipulated period mentioned in the applicable statute for this tender. Non-submission of invoices due to delay/reasons attributable to vendor resulting in / leading to loss of tax credit for BHEL will be into vendor's account.

(Under clause 9.1.2)

- a. Commercial Invoice - original+3 copies
- b. Original clean on board Bill of Lading or clean copy of OBL in case of Telex.
- c. Packing List - clearly showing number of packages, gross weight and net weight container wise also. - original+3 copies
- d. Delivery/ship/airplane schedule mentioning the estimated date of Arrival (ETA) at port & destination in case of CFR/CPT.

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- e. MDCC from BHEL/Customer – as per SCC – 4 copies
- f. Guarantee Certificate – Original + 3 copies
- g. Insurance Intimation - 4 copies
- h. PVC Calculation and copy of all applicable indices, if PVC applicable. – 4 copies
- i. Original Certificate of country of Origin issued by chamber of commerce.
- j. One set of original test certificates & O&M manual where called for.
- k. Fumigation certificate wherever cargo is packed in wooden packing or packing of plant origin material is used wherever called for.
- l. TUV/UL certificates where ever called for.

In case the Seller decides to negotiate all 3 originals of BL through negotiating Bank, non-negotiable documents (NND) consisting of copy of BL / HAWB & all originals at sl.no. 9.2.2 (Except OBL) will be couriered to Purchaser. Soft Copy of same documents at sl. 9.2.2 will also be sent by e-mail to the Purchaser at his e-mail address given in the PO with one copy to be mailed at ketan@bhelepd.com & rb@bhelepd.com. Other documents, as required, will be separately indicated in the Purchase Order.


Additional expenditure, if any, incurred by the Purchaser by way of detention / demurrage, resulting out of delay attributable to the Seller in providing negotiable documents, will be recovered from the Seller.

Note for 9.2.2 Additionally, vendor may furnish mfg clearance/drg/docs approval date etc. for the purpose of determining contractual delivery for expeditious processing of Invoices.

9.2.3 For Claiming Payment for Services involving Service Tax

- a. Invoice as per rule 4A of Service Tax Act – Original + 1 copy
- b. Copy of Service Tax registration certificate
- c. Copy of challan for Service Tax payment corresponding to service tax claimed in the previous invoice
- d. Certification for having carried out the work as applicable.

9.2.4 All your invoices against our order shall reach BHEL –EPD addressed to:
 HEAD OF DEPARTMENT/MATERIAL MANAGEMENT,
 BHEL – ELECTROPORCELAINS DIVISION,
 Opp. IISc, PROF. C N R RAO CIRCLE,
 MALLESWARAM, BANGALORE - 560 012

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- a. The envelope shall be super-scribed with P.O No. / W.O No., and the Bill / Invoice numbers & Contact person.
- b. Bills / invoices which are brought personally by vendors to EPD are to be dropped in the "BHEL-EPD vendor bills Box" kept near Tender Box at the Reception Office.
- c. Any additional tax implication to BHEL due to delay in submission of bills by Vendor beyond one month shall be to vendor's account.

9.8 **LOADING DETAILS IN CASE OF DEVIATIONS:-**

Loading details in respect to deviations in Payment Terms, LD, PVC indicated in Annexure - VIII.

9.9 **BHEL'S BANKERS**

List of the consortium bankers of BHEL-EPD is as per Annexure-X.

9.10 **MODE OF PAYMENT**

Payments shall be made directly to the Seller/Contractor by E-transfer. Seller/Contractor to provide necessary information for the same as per Annexure-VII.


- 9.11 No interest shall be payable by the Purchaser on the security amount, bank guarantee amount or balance payment or any money which may become due owing to difference or misunderstanding or any dispute between the Purchaser and the Contractor, or any delay on the part of Purchaser in making periodical or final payment or any other aspects incidental thereto.

10.0 **RECOVERY OF OUTSTANDING AMOUNT**

In event of any amount of money being outstanding at any point of time against the Seller/Contractor due to excess payment or any other reason whatsoever, in the present order/contract or any other order/contract from any BHEL Unit, the outstanding amount shall be recovered from the payments due to the Seller/Contractor or at any other appropriate time and manner/mode as deemed fit by the Purchaser at its sole discretion.

11.0 **CONTRACT PERFORMANCE BANK GUARANTEE**

- 11.1 No Bank Guarantee is required where original Order/ Contract value is up to Rs. 25 Lakhs (excluding taxes, duties and freight).
- 11.2 For original order / contract values above Rs. 25 Lakhs (excluding taxes, duties and freight), only if specified in SCC, the vendor shall submit Contract Performance


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Bank Guarantee within 10 days from the date of LOI/LOA (as per Annexure-IV) for 10% of Order/ Contract value (excluding taxes, duties & freight) to cover the due performance of Order/ Contract and to fulfill the guarantee conditions stipulated in the Order/ Contract. However, BG value can be proportionality reduced after completion of Guarantee period Unit-wise/ Lot-wise/ Set-wise, as applicable.

- 11.3 In case the order is to be placed in foreign currency, the BG must also be in foreign currency, so specified by the Purchaser. Foreign vendors seeking payment through Letter of Credit (LC) should submit the Bank Guarantee before LC opening.
- 11.4 Value of the Bank Guarantee (at the time of submission) shall remain unchanged for any subsequent variations in order/ contract value up to 20%. Beyond this, the Seller/ Contractor shall arrange to enhance or reduce the value of the Bank Guarantee accordingly.
- 11.5 Validity of the Bank Guarantee shall be for the entire Guarantee period + 3 months claim period. Initially, it should be at least 18 months + 3 months claim period, later extended to cover the entire guarantee period, two months before its expiry.
- 11.6 Purchaser reserves the right to encash the bank guarantee and forfeit the amount in the event of any default, failure or neglect on part of the Seller/ Contractor in fulfillment of performance of the Order/ Contract.
- 11.7 Equivalent amount shall be recovered from payment due to the Seller/ Contractor, before releasing any payment, in absence of a valid bank guarantee.
- 11.8 Bank Guarantees shall be from Consortium Bank as per Annexure-X. Bank guarantees from cooperative banks/ non-scheduled banks are not acceptable.
- 11.9 In case of private sector banks, a clause to be incorporated in the text of bank guarantee that it can be enforced by being presented at any branch of the bank located in Bangalore.
- 11.10 Two witness signatures from bank officials, other than the bank official who has already signed is a must. BG is to be submitted directly by the issuing bank to concerned purchase officer, under registered post (A/D).
- 11.11 The Bank Guarantee to be provided in the hard and not in the SFMS format". Our bank details are as follows:

Name of Site/division: BHEL EPD

Name of Bank: IDBI BANK, SPECIALIZED CORPORATE BRANCH

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Branch Address: 102, SHAKTHI COMFORT TOWER,
 KH ROAD, BANGALORE- 560027
 PH NO 67121025
 KIND ATTN: Mr. MANMOHAN SOMA
 ALT: Mrs. VP SHIVA SHAKTI
 PH NO 67121059.
Branch IFSC Code: IBKL0000377
Account No: 008103000003605

11.12 Wherever the contract is for supply of Goods processed on labour basis from BHEL supplied materials, the materials shall be issued against a suitable Bank guarantee as specified in the Enquiry.

12.0 GUARANTEE FOR PLANT/EQUIPMENT/ STORES

12.1 Seller/ Contractor shall warrant that the stores supplied shall be free from all defects and faults in design & engineering, material, workmanship & manufacture and shall be of the highest grade and consistent with the established and generally accepted standards and in full conformity with the Order/ Contract specifications, drawing or samples, if any.


12.2 Guarantee period for **Supply** shall be eighteen (18) months from the date of last dispatch or as per SCC whichever is later.

12.3 All replacements and repairs during the guarantee period shall be delivered and completed promptly and satisfactorily within a period of one months from the time of reporting the defect/ loss/ rejection etc or any mutually agreed period without prejudice to purchaser's other legal rights. If the Seller/ Contractor so desires and the Purchaser agrees, subject to import control regulations, the replaced parts can be taken over by Seller/ Contractor or his representative or can be dispatched at Seller/ Contractor's cost. No claim, whatsoever shall be entertained by Purchaser on account of such replaced parts.

12.4 All the replaced and replenished stores shall also be guaranteed as per above clauses.

12.5 Decision of Purchaser with regard to Seller/ Contractor's liability and the amount involved, if any, payable by Seller/ Contractor under the guarantee shall be final, conclusive and binding. However, vendor's maximum liability will be limited to the total contract value including taxes, duties and freight.

13.0 DELIVERY / COMPLETION SCHEDULE

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- 13.1 Supply of plant/equipment/stores shall not be considered complete until they have been inspected and accepted at the place and destination specified for delivery by the time stipulated under the terms & conditions of the Order/Contract. Mere payment by itself shall not constitute acceptance of the goods or materials in any manner, whatsoever.
- 13.2 Vendor shall strictly adhere to delivery schedule. In case of non compliance to agreed schedules / milestones, then it would be presumed that vendor / contractor is not fulfilling contractual obligations. BHEL reserves the right to take suitable action like operating "Risk & cost clause".


14.0 INSPECTION AND TESTING AT CONTRACTOR'S PREMISES

- 14.1 Purchaser's nominated Inspection Agency shall have at all reasonable times access to Seller/ Contractor's premises or works and shall have the power at all reasonable times to inspect drawings of any portion of the work or examine the materials and workmanship of the stores during their manufacture, and if part of the stores is manufactured at other premises, the Seller/Contractor shall arrange for inspection, examination and testing by the Inspection Agency as if the store is manufactured on the Seller/Contractor's premises.

Inspection calls should be given adequate notice of one week or as mutually agreed period in advance in writing to the purchaser about the date & place where goods will be ready for inspection & testing, as provided for in the contract.

Such inspection, examination and testing by itself shall not relieve the Seller/Contractor from any obligation under the Order/Contract.

- 14.2 Seller/Contractor shall give Inspection Agency reasonable notice of any material being ready for testing and the Inspection Agency shall (unless the inspection of tests is voluntarily waived) attend at the Seller/Contractor's premises within fifteen (15) days of the date on which the material is notified as being ready. All standard shop tests, physical and chemical tests required by the standards or as may be prescribed or approved as per Order/ Contract shall be conducted by the Seller/Contractor. Purchaser/Inspection Agency reserves the right to waive any of the above tests requirements and to prescribe new tests, if found necessary, to complete the work so as to conform to the best practices. Seller/Contractor shall forthwith forward to the Inspection Agency, duly certified copies of the test certificates in quadruplicate, for approval. Further copies of the shop test certificates shall be bound with the instruction manuals referred to in "Seller/Contractor's documents, drawings and instruction manuals".

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14.3 Where the Order/Contract provides for tests/inspections at the premises or works of the Seller/Contractor or any sub-contractor, the Seller/Contractor, except specified otherwise, shall provide free of charge such assistance, labour, materials, electricity, fuel, water, stores, apparatus, measuring instruments and test equipment including any other facilities as may be reasonably required to carry out such tests efficiently. In case of inspection by BHEL or BHEL CUSTOMER, the cost of to & fro passage and boarding & lodging shall be borne by purchaser/customer, unless otherwise specifically agreed. In case of foreign vendors the cost of third party inspection, where called for shall be deemed to be included in the quoted price.

14.4 Inspection calls shall be addressed to BHEL-EPD Purchase Department irrespective of inspection categories.

14.5 INSPECTION MEASURING AND TEST EQUIPMENTS


14.5.1 Inspection Measuring and Test Equipments (IMTE) whether used by the Seller/Contractor or sub-contractor shall be calibrated, maintained and controlled. Calibration shall be valid and IMTE maintained in sound condition during usage.

14.5.2 In addition to above, Seller/ Contractor shall ensure the following :

- a) Measurement uncertainty is known and consistent with required measurement capability of the IMTE.
- b) Selection of IMTEs is compatible with the necessary accuracy and precision of required measurement.
- c) IMTEs are calibrated at the required intervals against certified equipments having known valid relationship to nationally recognized standards, at recognized calibration labs.
- d) Calibration records are available and traceable to the particular IMTE.
- e) In case, during recalibration, the IMTE is found out of calibration, report on action taken to validate the previous results along with both calibration records of the IMTE to be furnished to Inspection Agency.
- f) IMTEs are stored, handled and preserved such that accuracy and fitness are maintained and safeguarded from adjustments.

NOTE: Purchaser's decision on acceptability of the product in such cases shall be binding.

14.5.3 Responsibility of usage of valid and calibrated IMTEs by his sub-contractor(s) shall be of the Seller/ Contractor.

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14.5.4 In case, calibration records are required by purchaser, copies of the same shall be furnished.

14.6 Seller/Contractor shall be fully responsible for the Quality of products supplied by sub-contractors.

15.0 MATERIAL DESPATCH CLEARANCE CERTIFICATE (MDCC)

15.1 When the tests have been satisfactorily completed at Seller/Contractor's works, the Inspection Agency shall issue a certificate to that effect within fifteen (15) days after completion of the tests, but if the tests were not witnessed by the Inspection Agency or his representative, the certificate would be issued within fifteen (15) days after receipt of the test certificates by the Purchaser.

15.2 Purchaser/Owner will issue MDCC to the Seller/Contractor based on inspection report/ test certificates.

15.3 No item / equipments shall be dispatched without obtaining Material Dispatch clearance certificate from BHEL-EPD Purchase Department irrespective of inspection categories.


15.4 Satisfactory completion of tests or issue of MDCC shall not bind the Purchaser/Owner to accept the supply/ equipment should it, on further tests after erection, be found not to comply with the contract provisions.

16.0 DELIVERY FAILURE AND TERMINATION/LIQUIDATED DAMAGES

16.1 Timely dispatch/delivery and completion of other schedules as stipulated in Order/Contract shall be the essence of Order/Contract. If the Seller/Contractor fails to complete the dispatch/delivery and other schedules within the time period stipulated in Order/Contract, or within any extension of time granted by Purchaser, it shall be lawful for Purchaser to recover damages for breach of Order/Contract without prejudice to any other rights and/or remedies provided for, in the Order/Contract and hereunder. For any delay not attributable to the Seller/Contractor, the Seller/Contractor must report the same to Purchaser immediately.

16.2 DELAYED DELIVERY

16.2.1 Purchaser reserves the right to recover from the Seller/Contractor, as agreed liquidated damages and not by way of penalty, a sum equivalent to half (½) percent of the total contract price per week or part thereof, subject to a maximum of ten (10) percent of the total contract price excluding elements of taxes, duties and freight, if

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the Seller/ Contractor fails to deliver ordered stores within the period stipulated in the Order/Contract.

However, In case of staggered delivery schedule, the LD shall be half (1/2) percent of the undelivered portion per week or part thereof, subject to a maximum of ten (10) percent of the contract price **excluding** elements of taxes, duties and freight, if the Seller/ Contractor fails to deliver any part of the ordered stores within the period stipulated in the Order/Contract.

NOTE:

1. LR/ RR date for indigenous supplies and AWB/ BL date for FOB/CIF/CIP/CFR/CPT contracts shall be treated as the date of dispatch for levying LD as per Clause 16.
2. In case of any amendment/revision, LD shall be linked to the amended/ revised contract value and delivery date(s).
3. If Order/ Contract involves two or more Units/ Sets/ Lots, then Liquidated Damages shall be for order/ contract value of the delayed Unit/ Set/ Lot, provided delivery stipulated in the Order/ Contract is Unit/ Set/ Lot wise, however total LD amount shall be limited to 10% of total order value. (excluding taxes, duties and freight)


16.2.2 Purchaser reserves the right to purchase from elsewhere on account of and at the risk and cost of Seller/Contractor, with notice to Seller/Contractor, the stores due for delivery but not so delivered, or their equivalent without cancelling the Order/Contract in respect of stores not yet due for delivery. The manner and method of such purchase shall be at the discretion of the Purchaser. The actual excess cost incurred for such purchases will be recovered from the bidder.

16.2.3 Purchaser reserves the right to cancel the Order/Contract or a portion thereof for the stores not so delivered at the risk and cost of the Seller/Contractor and the Seller/Contractor shall be liable to the Purchaser for any excess cost thereof. The actual excess cost incurred for such purchases will be recovered from the bidder.

16.2.4 Seller/Contractor shall continue performance of the Order/Contract, under all circumstances, to the extent not cancelled.

17.0 INSURANCE

17.1 Insurance shall be arranged by BHEL.

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17.2 Vendors shall inform the Underwriters, appointed/ nominated by BHEL/ Purchaser, the details of dispatches under intimation to BHEL such as LR No./BL/AWB and date, Truck No./vessel details/flight details, P.O. No. and value.

17.3 Insurance as applicable for field work such as third party liability, workmen compensation, Seller/Contractor's own Tools & Plants and automobile shall be arranged by the Seller/ Contractor.

18.0 INTER-CHANGEABILITY AND CHANGES

18.1 All similar components or parts of similar equipment supplied by Seller/Contractor shall be interchangeable with one another.

18.2 Even though all the work and materials necessary for satisfactory completion of the works may not be detailed in the specifications and schedules, the cost will be considered to be within the contract price and no extra charges shall be payable. However, if there are substantial changes in the specifications of the stores/plant, consequential changes in prices shall be mutually agreed between Purchaser and Seller/Contractor.

19.0 PACKING AND DISPATCH MARKING

19.1 Packing shall be in conformity with specifications and shall be such as to ensure prevention of damages, corrosion, deterioration, shortages, pilferage and loss in transit or storage.


19.2 In case of shipment by sea, the packing shall be sea-worthy and of international standards.

19.3 Packing List shall be submitted as per standard format along with advance set of documents for claiming payment which shall also indicate:-

- a) Packing size.
- b) Gross weight and net weight of each package.
- c) Contents of the package with quantity of each item separately.


19.4 The number of each package in a shipment shall be shown in fraction, numerator showing number of the package and the denominator showing total number of packages in a lot I consignment. The packages number shall be generally prepared in the sequence in which they will be required for erection.

19.5 Each package delivered under the Contract shall be marked by and at the expense of the supplier and such marking must be distinct and in English language (all previous irrelevant markings being carefully obliterated). Such marking shall

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show the description and quantity of contents, the name and address of consignee. the gross weight and net weight of the package, the name of the Contractor with a distinctive number of mark sufficient for purposes of identification. All markings shall be carried out with such materials as to ensure quickness of drying. fastness and indelibility. Each equipment or parts of equipment shall, when shipped or railed or otherwise dispatched be tagged with reference to the assembly drawings and corresponding part numbers. Each bale or package shall contain a packing note quoting specifically the name of the Contractor, the number and date of contract and the name of the office placing the contract, nomenclature of the stores and include a schedule of parts for each complete equipment giving the part numbers with reference to the assembly drawing and the quantity of each part, drawings nos. and tag numbers.

- 19.6 Besides wherever necessary, packing shall bear a special marking " TOP", " BOTTOM", "DO NOT TURN OVER", "KEEP DRY", "HANDLE WITH CARE".etc.
- 19.7 All packing cases, containers (excluding marine container), packing and other similar materials shall be new.
- 19.8 Notwithstanding anything stated in this clause, the Contractor shall be entirely responsible for loss, damage or depreciation or deterioration to the materials & supplies due to faulty and/or insecure packing.
- 19.9 Each and every package box shall be marked with the following, as a minimum:
- (i). Name and address of Consignee:
 - (ii). Project reference:
 - (iii). Contract No.:
 - (iv). Packing No.: (1110. 2110, 3110 when there are 10 packages For one consignment)
 - (v). Net Weight/Gross Weight:
 - (vi). Port of Loading:
 - (vii). Destination Port
 - (viii). Packing Mark: [symbols indicating "TOP" and other special markings as indicated above.
 - (ix). Type of Equipment:
- "E" (for Equipment supply)

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"T" (for Tools & Tackles)

"S" (for Mandatory Spares)

19.10 PACKING FOR SPARES

19.10.1 The commissioning spares shall be properly packed separately in separate box and each spare shall be properly tagged giving details (to match the description given in the packing slip) to facilitate their proper identification. Three copies of packing list is to be kept inside the box and one copy in a special packet at the outer side of the Box.

19.10.2 The Mandatory spares shall be properly packed separately in separate box indicating Mandatory Spares in bold letters and each spare shall be properly tagged giving details i.e. item number of the equipment in line with the Ultimate Customer/Owner Contract & Number per item (to match the description given in the packing slip) to facilitate their proper identification by ultimate Customer/Owner. Three copies of packing list along with Manufacturing drawing no. Reference. Catalogue reference etc. is to be kept inside the box and one copy in a special packet at the outer side of the Box.

20.0 STORAGE INSTRUCTIONS

Successful tenderer shall be required to submit detailed instructions for storage of supplies within two weeks of date of issue of LOI/ Order/ Contract.


21.0 MATERIAL/GOODS RECEIPT CERTIFICATE

Seller/Contractor shall arrange Material/Goods Receipt Certificate from the consignee, duly signed by Purchaser/Owner Site Engineer after receipt & physical verification of the material, wherever E&C is in the scope of Seller/ Contractor.

For Supplies, Material/Goods Receipt Certificate shall be arranged by BHEL. Vendor to provide copy of receipted LRs to enable BHEL to obtain MRC from site.

22.0 CONSIGNEE'S RIGHT OF REJECTION

22.1 Notwithstanding any approval of Purchaser or Engineer in respect of stores or materials or other particulars or work or workmanship involved in performance of order/contract (with or without any test carried out by Seller/Contractor or Inspection Agency or under direction of Contract Engineer), and notwithstanding delivery of the stores where so provided to the consignee, it shall be lawful for the consignee, on behalf of the Purchaser, to reject the stores or any part/ portion of consignment thereof, within 30 days after actual delivery at the stipulated place or

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destination, if such stores or part/ portion of consignment thereof is not in conformity with terms and conditions of order/contract whether on account of any loss, storage, deterioration or damage before despatch or otherwise, whatsoever.

22.2 Rejected goods or materials shall be removed by Seller/Contractor within a period of 15 days from the date of receipt of notice of such rejection. The expenses to be incurred in respect thereof shall be borne entirely by the Seller/Contractor.

23.0 RISK IN STORES (FOR E&C CONTRACTS)

Seller/ Contractor shall perform the order/ contract in all respects in accordance with terms and conditions thereof. Stores and every constituent part thereof, whether in possession or control of the Seller/Contractor, his agents or servants, or a carrier, or in joint possession of Seller/ Contractor, his agent or servants and Purchaser, his agents or servants, shall remain in every respect at the risk of Seller/Contractor until their actual delivery to consignee at the stipulated place or destination or where so provided in acceptance of offer, until their delivery to a person specified by Purchaser as interim consignee for the purpose of despatch to the consignee. Seller/Contractor shall be solely responsible for all losses, destructions, damages or deterioration to the stores from any cause whatsoever, while the stores await dispatch after approval by the Inspection Agency.

24.0 SHORTAGES/DAMAGES

24.1 FOR SUPPLY PACKAGES


- a) Shortages in sound cases shall be replenished free of cost by the vendor, as early as possible.
- b) For shortages/damages during transit/ handling at site, vendor shall supply replacements, as early as possible, at the old contractual rates upon intimation to vendor within one months of receipted LR.

24.2 FOR E&C PACKAGES

Any shortages or damages during unloading and handling at site, including at the time of erection and commissioning, shall be made good by the Seller/ Contractor at his risk and cost, to meet the project schedule. In case of faults/ discrepancies in any material, component, sub-assembly, assembly, etc., the same shall be supplied/replenished free of cost to enable the equipment to be put to service.

25.0 CONFIDENTIALITY

Seller/Contractor shall, at all times, undertake to maintain complete confidentiality of all data, information, software, drawings & documents, etc. belonging to the


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Purchaser and also of systems, procedures, reports, input documents, manuals, results and any other company documents discussed and/or finalised during the course of execution of order/contract.

26.0 DEFAULT/BREACH OF CONTRACT, INSOLVENCY AND RISK PURCHASE

26.1 If Seller/Contractor fails to deliver goods or materials or any installment thereof within the period(s) fixed for such delivery or delivers goods or materials not of the contracted quality and failing to adhere to the contract specifications or at any time repudiates or otherwise abandons the contract before expiry of such period or refuses or is unable to supply goods or materials covered by the Order/Contract either in whole or in part or otherwise fails to perform the Order/Contract or commits any breach of Order/Contract not herein specifically provided for or in the event of the death or insanity or if the Seller/Contractor being an individual or if a firm on a partnership thereof, shall at any time, be adjudged insolvent or shall have a receiving order for administration of his estate made against him or shall take any proceeding for composition under any Insolvency Act for the time being in force or make any assignment of the Order/Contract or enter into any arrangement or composition with his creditors or suspend payment or if the firm is dissolved under the Partnership Act or if the Seller/Contractor being a company is wound up voluntarily or by order of a Court or a Receiver, Liquidator or Manager on behalf of the debenture holders and creditors is appointed or circumstances shall have arisen which entitles the Court of debenture holder and creditors to appoint a receiver, liquidator or manager, the purchaser without prejudice to his right to recover any expenses, losses or damages to which the Purchaser may be put to incur or sustain by reason of Seller/Contractor's default or breach of Order/Contract, Purchaser shall be entitled to cancel the Order/Contract either in whole or portion thereof without compensation to Seller/Contractor and if the Purchaser so desires, may procure upon such terms and in such manner as deemed appropriate, stores not so delivered or others of similar description where stores exactly complying with particulars are not, in the opinion of the Purchaser, which shall be final, readily procurable, at the risk and cost of the Seller/Contractor and the Seller/Contractor shall be liable to the Purchaser for any excess costs provided that the Seller/Contractor shall continue the performance of the Order/Contract to the extent not cancelled under the provisions of this clause. The Seller/Contractor shall on no account be entitled to any gain on such repurchases.

Except for Clause 26.2, vendor's maximum liability will be limited to the total contract value including taxes, duties and freight.

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26.2 Recovery on account of purchases made by Purchaser at the risk and cost of Seller/ Contractor shall be worked out as follows:

Excess of new purchase cost over old purchase cost, where the total value of new PO is more than total value of old PO.

27.0 TERMINATION OF CONTRACT

27.1 Purchaser shall have the right to cancel Order/Contract, wholly or in part, in case they are obliged to do soon account of any decline, diminution, curtailment or stoppage of their business and in that event, the Seller/Contractor compensation claim shall be settled mutually.


27.2 Purchaser shall have the right to cancel order/contract at the risk and cost of Seller/Contractor in case either the Seller/Contractor himself or any of his representative or agent is found to have been a previous employee of the Purchaser immediately before retirement and has within a period of two years of such retirement accepted the employment of the Seller/Contractor either as a Seller/Contractor or as an employee without having obtained prior permission of Purchaser.

27.3 In case of cancellation of main supply order/ contract, all other associated orders/ contracts like mandatory spares/ recommended spares/ E&C/ supervision of E&C would also get cancelled.

28.0 TRANSFER, SUB-LETTING/ASSIGNMENT/SUB-CONTRACTING

28.1 Seller/Contractor shall not sublet, transfer or assign order/contract or any part thereof or interest therein or benefit or advantage thereof save without the prior consent in writing of Purchaser. In the event of Seller/Contractor sub-letting, transferring or assigning order/contract or any part thereof or interest therein or benefit or advantage thereof without such permission, the Purchaser shall be entitled to cancel the Order/Contract and to purchase the stores from elsewhere at risk and costs of Seller/Contractor and the Seller/Contractor shall be liable for any loss or damage which Purchaser may sustain in consequence of or arising out of such risk purchase.

28.2 If Seller/Contractor is an individual or proprietary concern and the individual or the proprietor dies or the partnership is dissolved or substantially affected, then unless the Purchaser is satisfied that legal representative of individual seller/contractor or proprietor of proprietary concern and surviving partners of partnership firm are capable of carrying out and completing the order/contract, the Purchaser shall be entitled to cancel the order/ contract as to its incomplete portion

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and without being in any way liable to payment of any compensation to estate of seller/contractor and/or to surviving partners of seller's/contractor's firm on account of cancellation of the order/contract.

- 28.3 Decision of Purchaser that legal representatives of deceased seller/contractor or surviving partners of the seller's/contractor's firm can not carry out and complete the order/contract shall be final and binding on the parties hereto.
- 28.4 Terms and Conditions shall not get affected in case of merger/amalgamation/takeover/re-arrangement etc.

29.0 FORCE MAJEURE


29.1 Notwithstanding anything contained in Clause 13.0, if at any time during the continuance of the Order/Contract, the performance in whole or in part by either party of any obligations under the Order/Contract shall be prevented or delayed by reason of any war hostilities, acts of the public enemy, restrictions by Govt. of India, civil commotion, sabotage, fires, floods, explosion, epidemics, quarantine restrictions, strike, lock-outs, or acts of God (hereinafter referred to as 'event'), then, provided notice of the happening of such event is given by either party to the other within fifteen (15) days from the date of occurrence thereof, neither party shall by reason of such event be entitled to terminate the Order/Contract nor shall have any claim for damages against each other in respect of such non-performance and delay in performance. Performance under the Order/Contract shall be resumed immediately after such event has come to an end or ceased to exist and decision of Purchaser as to whether the deliveries have to be resumed or not shall be final, conclusive and binding on the parties hereto.

29.2 In the event of the parties hereto not able to agree that a force majeure event has occurred, the parties shall submit the disputes for resolution pursuant to the provisions hereunder, provided that the burden of proof as to whether a force majeure event has occurred shall be upon the party claiming such an event.

29.3 Notwithstanding the above provisions, Purchaser shall reserve the right to cancel the Order/Contract, wholly or partly, in order to meet the overall schedule and make alternative arrangements for completion of delivery and other schedules.

30.0 INDEMNIFICATION

Seller/Contractor shall fully indemnify and keep indemnified the Purchaser against all claims of whatsoever nature arising during the course and out of the execution of this Order/Contract.


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31.0 SETTLEMENT OF DISPUTES

- 31.1 Except as otherwise specifically provided in the Order/Contract, all disputes concerning questions of the facts arising under the Order/Contract, shall be decided by Purchaser, subject to written appeal by the Seller/Contractor to the Purchaser, whose decision shall be final.
- 31.2 Any dispute or difference shall be, to the extent possible, settled amicably between the parties hereto, failing which the disputed issues shall be settled through arbitration.
- 31.3 Seller/Contractor shall continue to perform the order/contract, pending settlement of dispute(s).

32.0 ARBITRATION & CONCILIATION

- 32.1 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 Unit/Region/Division issuing the Contract.
- 32.2 The Arbitrator shall pass a reasoned award and the award of the Arbitrator shall be final and binding upon the parties.
- 32.3 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 **Bangalore**. The cost of arbitration shall be borne as per the award of the Arbitrator.
- 32.4 Subject to the arbitration in terms of Clause 32.0 above, the Courts at **Bangalore** shall have exclusive jurisdiction over any matter arising out of or in connection with this Contract.
- 32.5 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.

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32.6 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. The parties to the dispute will share equally the cost of arbitration as intimated by the Arbitrator.”

33.0 LAWS GOVERNING THE CONTRACT

Contract, including all matters connected with contract, shall be governed by the Indian Law, both substantive and procedural, for the time being in force including modification thereto, and shall be subject to the exclusive jurisdiction of the Indian courts at Bangalore.


34.0 JURISDICTION OF COURT

Courts at Bangalore shall have exclusive jurisdiction to decide the dispute, if any, arising out of or in respect of the contract(s) to which these conditions are applicable.

35.0 ORDER OF PRECEDENCE

In the event of any ambiguity or conflict between the Tender Documents, the order of precedence shall be in the order below:

1. Amendments/Clarifications/Corrigenda/Errata etc issued in respect of the tender documents by BHEL.
2. Notice Inviting Tender (NIT)
3. Price Schedule

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4. Special Conditions of Contract (SCC)
5. Technical specification & scope of work
6. General Conditions of Contract (GCC)

36.0 SUPPLIER PERFORMANCE MONITORING AND RATING SYSTEM

Seller/Contractor's performance will be evaluated as per Supplier Performance Monitoring and Rating System of BHEL. Please refer BHEL website www.bhel.com for details.

37.0 DEALING WITH BANNED SUPPLIERS/ CONTRACTORS IN BHEL

Offers of the bidders who are on the banned list, as also the offers of the bidders who engage the services of the banned firms, shall be rejected. The list of banned firms is available on BHEL website www.bhel.com.