

**BHARAT HEAVY ELECTRICALS LTD. , RC.PURAM, HYDERABAD****INSTRUCTIONS TO BIDDER (ITB)**

(Attachment to Enquiry No. - Due on Date..... for submission by 11.00 hrs to open from 14.00 hrs.)

NOTE: Bidder to confirm in affirmative by typing "YES" or "Applicable Data" in the response column. Deviations , if any shall be recorded in deviations/comments column (Separate sheet can be attached if needed). Non deviatable clauses are indicated as "NON DEVIATABLE".

Sl. No.	DETAILED TERMS & CONDITIONS	VENDOR RESPONSE (YES/NO)	DEVIATIONS / COMMENT
1	SCOPE OF SUPPLY:		
	Signed & Sealed offers are invited for Scope of Supply and Services as detailed in the enquiry. Relevant enclosures/ supporting documents / catalogue, if any shall be enclosed to the technical offer.		NON DEVIATABLE
2	GENERAL INSTRUCTIONS:		
A	The quotation should be neatly typed and free from over writing/ erasures. Any correction or addition must be authenticated. The offer including annexures and brochures should be submitted in English.		NON DEVIATABLE
B	In case of Single-Part bid Tender, the complete bid shall be submitted in a single sealed cover superscribing the Tender number and due date. Incomplete offers are liable for rejection.		NON DEVIATABLE
C	Bidders to please note that the Terms & conditions contained in this document and Special conditions, if any, are to be read along with the General Conditions of the Contract of BHEL.		NON DEVIATABLE
D	BHEL reserves the right to decide the tender through Reverse Auction (RA) route. Bidders are requested to go through RA guidelines (which are attached) and confirm acceptance of the same. Otherwise the offer is liable for rejection. BHEL will decide (after technical bid opening), at its discretion, to process the tender through Reverse Auction or by opening price bids. Vendors are advised not to quote higher prices in price bid, presuming that there will be an opportunity to reduce the same during Reverse Auction. In case BHEL decides to process the tender by opening the price bids instead of Reverse Auction, there is no provision for revising the quoted prices and vendors may lose the opportunity in view of the higher prices, if any, quoted by them.		
E	Vendors, taking deviations from the specified conditions , may indicate the same clearly in deviation column with reasons for such deviation . However, in case of deviation, BHEL reserves the right to reject the offer or load the Bid suitably for evaluation.		NON DEVIATABLE
F	Offers shall be submitted directly by vendor or his authorized representative /agent only and the offer should be in line with regulatory guidelines (i.e Agency agreement between principal vendor and agent / representative shall be attached which shall be a valid one and cover the scope of services rendered by Agent, Agency Commission etc.). OEM / Mill details shall be provided if supplier is not a manufacturer. Bid envelopes shall bear the name of Supplier. In case of submission through authorized representative/agent, the name of representative/agent should be mentioned additionally apart from supplier name.		NON DEVIATABLE



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G	Bidder can also submit offer through email at his own risk. However, such email offers shall be sent only to tenderbox@bhelhyd.co.in . Supplier shall have no claim on e-mail offers sent on any other e-mail ID. BHEL is no way responsible for non receipt of offers sent thru email due to server break down / Internet failure / tranmission error etc. In case of e-mail offers, vendor name, address including contact details shall be mentioned.		NON DEVIATABLE
H	Offer received after the specified time of submission will be rejected. No further correspondence shall be entertained.		NON DEVIATABLE
I	Unsolicited offers shall not be considered		NON DEVIATABLE
3	OTHER PARTICULARS (Please indicate applicable data)		
A	Name of the Bid currency (freely tradable foreign currency for imports and Indian Rupees for indenogenous purchase).		
B	Name of the Port of loading (applicable to imports).		
4	BID SUBMISSION PROCEDURE:		
i.	For Single Part Bids: Offers addressed to Sr.Manager/CMM, Vendor Complex, BHEL, Hyderabad must be sent in a sealed cover on which tender enquiry number and the due date shall be superscribed and sent by appropriate mode to above address or dropped in tender box located at vendor complex on or before the specified time of submission of offers, preferably in the bidder's envelop.		NON DEVIATABLE
ii.	For two-Part Bids:		
A	Two part bid consisting of i)Techno-commercial Bid - (Part-I), with all technical specification & scope including bill of material etc., EMD (where applicable) and unpriced bid with all applicable Commercial Terms and Conditions, agency commission, duties, taxes and other charges except the price , superscribing enquiry No. (Techno-Commercial Bid) and due date AND ii) Price Bid (Part-II), containing ONLY the price (including agency commission, if any) and the applicable duties/taxes/other charges shall be kept in a separate sealed cover supersubscribing Enquiry no. (Price bid) & due date. Both these covers shall be kept in a Third cover supersubscribing Enquiry no. & due date. All techno commercial terms & conditions mutually agreed prior to price bid opening shall prevail and supercede any terms and conditions specified otherwise in price bid.		NON DEVIATABLE
B	Techno-commercial Bid will be opened on the assigned date and price bids of only techno commercially acceptable bidders shall be opened with advance intimation. In case BHEL opts for Reverse Auction, the date of conducting RA will be intimated separately to all the acceptable bidders.		NON DEVIATABLE
C	The bidders whose bids are techno commercially not accepted will be informed & EMD (Earnest Money Deposit) shall be returned wherever submitted.		NON DEVIATABLE



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D	Bidders will be allowed to submit the impact on their quoted prices due to changes in technical scope, specifications, commercial terms/conditions as specified in NIT and in the opinion of BHEL such changes warrant changes in prices. BHEL at its sole discretion may also invite revised prices if there are major changes in scope. Revised price bids/impact price will not be accepted after opening of technical bids unless otherwise specifically asked by BHEL.		NON DEVIATABLE
E	Bids shall be opened on due time and date in the presence of bidders who may like to be present. Only one representative of each bidder shall be permitted to attend the bid opening.		NON DEVIATABLE
5	Delivery Instructions		
A	Indigenous Purchase		
	Goods shall be delivered on FOR Destination basis to the named destination(s) or as specified in the enquiry.		
B.	Imports		
	The goods shall be delivered on FOB-port of export/FCA or as specified in enquiry. Name of port of export for FOB / FCA delivery shall be indicated against this column.		
6	Documentation:		
A	Indigenous Purchase		
	Seller shall arrange to send to the Purchaser, Excise paid invoice (Original for Buyer and duplicate for Transporter), Commercial invoice, consignee copy of LR, Packing list , Pre-Despatch Inspection report, Test/ Guaranty/ Warranty certificate/ O&M manuals (as applicable) etc. immediately on despatch of the goods. Any addition/ exclusion to such documents shall be as specified in the Purchase Order. The distribution of such documents will be further elaborated in the Purchase order. In case of despatches from vendor works to site, material receipt certified by site office shall be provided.		NON DEVIATABLE
B	Imports		
	Seller shall arrange to send to the Purchaser one set of negotiable and one set of non-negotiable documents consisting of clean on-board Bill of Lading/ Air Way Bill, Original invoice, Packing list, Pre-Despatch Inspection report , Test/ Guaranty/ Warranty certificate/ O&M manuals (as applicable) and other documents as indicated in the Purchase Order etc. In addition, Seller shall also send soft copy of the despatch documents consisting of BL / AWB, Invoice, Shipping list & Test certificates and other documents as indicated in the Purchase Order through e-mail addressed to the concerned Purchase Officer/ Manager.		NON DEVIATABLE

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7	Delivery Schedule		
	The tendered goods shall be delivered within the period stipulated in PO . (In case of Imports, the date of BL / AWB will be reckoned as delivery completion date.)		NON DEVIATABLE
8	Pricing Terms		
	Prices once quoted shall remain firm and valid during execution of PO. Offers with PVC will be outrightly rejected except in cases where specifically called for in the NIT.		NON DEVIATABLE
9	PRICE VALIDITY :		
	Unless other wise specified, offer shall be valid for a period of 90 days from the date of bid opening (Technical bid /part-I in case of two part bid). However the prices quoted for spare parts of the Main equipment shall be kept valid for a period of 180 days from the date of Placement of PO for the main equipment.		
10	Taxes & Duties. (DATA TO BE INDICATED by the bidder against the space provided)		
A	Indigenous Purchase		
	The Taxes and duties e.g. Excise duty, Service Tax, Sales Tax, VAT etc. as applicable shall be quoted in the following manner.		
i	Excise Duty : To be quoted as extra in % or lumpsum as quoted in the price bid.		
ii	CST against form C in %. Bidder shall also indicate full rate of sales Tax where Concesional form can not be issued by BHEL.		
iii	VAT : To be quoted in %.		
NOTE: Bidders to ensure correct applicability of CST / VAT based on the Inter / Intra state movement of goods.			
iv	In case the vendor imports the equipment/items and dispatches directly to BHEL/Destination, the vendor may please indicate whether they can pass on CVD benefit and if so, the quantum of CVD to be indicated here.		
v	Other taxes & duties, if any to be indicated here .		
vi	Taxes deducted at source: Statutory deductions, if any, will be made and the deduction certificate shall be issued. In case vendor does not provide PAN details, the TDS deduction shall be at the maximum percentage stipulated as per the provisions of Income Tax Act.		NON DEVIATABLE
B.	Foreign Purchase (Imports)		
i	The offered price shall be inclusive of all the Taxes and duties as applicable in country of bidder / country of despatch for his quoted FOB / CFR /CIF/FCA price.		NON DEVIATABLE
ii	Taxes deducted at source: Statutory deductions, if any, will be made and the deduction certificate shall be issued. In case vendor does not provide PAN details, the TDS deduction shall be at the maximum percentage stipulated as per the provisions of Income Tax Act.		NON DEVIATABLE

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11	Payment Terms: Unless otherwise specified in Special Conditions, following shall be the terms of Payment.		
A	Indigenous: 100% payment along with taxes, duties, freight & insurance will be made with in 90 days from the date of LR/invoice. However payment would be done only after receipt of original documents, including site acknowledgement on LR (MRC - Material Receipt Certificate at site) / GR clearance at BHEL Stores. For MSEs (covered under MSME Act) which are registered and periodically renewed with BHEL, this period will be 45 days. The taxes and duties that are reimbursed would be the one applicable as on the scheduled Purchase Order delivery date or the amount actually paid whichever is less.		
B	Imports:- 1. Cash against documents / Sight draft Purchaser can also accept payment terms against presentation of documents to the Purchaser's Bank / sight draft. All banking charges outside India will have to be borne by the supplier. OR 2) Against LC: i) 100% payment (less Indian Agency Commission, if any) shall be paid against irrevocable Letter of Credit . ii) LC shall be opened only in the name of vendor on whom purchase order is placed. iii) LC will be opened 1 month prior to the scheduled delivery of PO. LC shall be valid for a period of 3 months including the bank negotiation period of 21 days from the date of opening.		
	Note: 1) No advance payment is acceptable . The offer is liable to be rejected in case advance payment is insisted. However, in exceptional/rare cases, BHEL at its descretion, may consider advance payment against Bank Guarantee for 110% of advance amount issued / confirmed by any of the BHEL consortium banks. 2) Wherever EMD (Earnest Money Deposit) is applicable, it may be noted that no interest will be paid on EMD and the EMD will be paid back to participating bidders only after awardal and acceptance of contract by successful bidder. Successful bidder's EMD will be converted to SD (Security Deposit).		NON DEVIATABLE
12	Penalty clause: In the event of delay in supply of goods, penalty of 0.5% per week or part there of shall be levied on the undelivered portion subject to a maximum of 10% of the order value.		
13	Guarantee / Warranty Period deviations : (Deviation to this clause is not acceptable.)		NON DEVIATABLE

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NOTE: Deviations (Commercial as well as Technical) from the tender specifications and conditions are generally not acceptable. However, deviation if any, shall be brought out clearly with proper justification in the offer. The deviation, if considered by BHEL, shall be loaded for comparison, while evaluating the offer. If a bidder unconditionally withdraws any deviation before price bid opening, the same shall not be loaded. Loading criteria in respect of major commercial conditions where deviations if any are accepted shall be as per clause No.14. The Vendors may specifically note the following.

14	Evaluation and Loading Criteria:
A	Evaluation of prices shall be done item-wise unless otherwise specified in the enquiry. Evaluation 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 incidence of applicable taxes and duties and loading). For evaluation, exchange rate (TT selling rate of State Bank of India) as on the date of bid opening (Part-I, in case of two-part bids) shall be considered. If the relevant day happens to be a bank holiday, then the forex rate as on the previous bank (SBI) working day shall be taken.
B (a)	In case of foreign bidders , the quoted FOB price shall be loaded by the following factors to arrive at the Delivered Cost:
i	- Marine freight and insurance: @ 3% (10% for plates, pipes, rounds & structurals) . In case of CFR offers, Insurance @ 0.1% will be loaded.
ii	- Import duty as applicable at the time of Price/ Part-II bid opening.
iii	- Port handling/ clearing charges & inland freight : @ 3.0% of FOB value (5% for plates, pipes & structurals).
B (b)	In case of Indigenous Bidders , Ex-works offers received (as against FOR Destination mentioned in enquiry) shall be loaded by 3% of Ex-works value (5% for plates, pipes, rounds & structurals) unless otherwise mentioned in enquiry.
C	Deviated Penalty : Any loading on penalty clause shall be 10% or to the extent to which it is not agreed to by the vendor.
D	Deviated Payment Terms : In case BHEL considers any deviation in payment terms, the bids shall be loaded with 18% interest per annum.
15	Procurement directly from the manufacturers/ suppliers shall be preferred. However, no agent shall be allowed to represent more than one manufacturer/ supplier in the same tender. Moreover, either the agent could bid on behalf of the manufacturer/ supplier or the manufacturer / supplier could bid directly but not both. In case bids are received from both from the manufacturer/ supplier and the agent, bid received from the agent shall be ignored.
16	RIGHT OF REJECTION /NON- PLACEMENT OF PO : BHEL reserves the right to accept or reject any or all bid/s in full or part without assigning any reason whatsoever.

**Signature of
Vendor
with date and seal**



BHARAT HEAVY ELECTRICALS LTD. , RC.PURAM, HYDERABAD
General Conditions of Contract for Purchase (GCC)

1. **Applicable Conditions:** These General Conditions of Contract for Purchase apply to all enquiries, tenders, requests for quotations, orders and agreements concerning the supply of goods and the rendering of related services (hereinafter referred to as "deliverables") to Bharat Heavy Electricals Limited, Ramachandrapuram, Hyderabad (hereinafter referred to as "BHEL" or the Purchaser) or its projects/customers.

Any deviations from or additions to these 'General Conditions of Contract for Purchase' require Purchaser's express written consent. The general terms of business or sale of the Seller shall not apply to Purchaser.

Orders, agreements and amendments thereto shall be binding if made or confirmed by the Purchaser in writing. Only the Purchasing department of the Purchaser is authorized to issue the Purchase Order or any amendment thereof.

2. **Definitions**

Throughout these conditions and in the specifications, the following terms shall have the meanings assigned to them, unless the subject matter or the context requires otherwise.

- 2.1 **'The Purchaser'** means BHEL, Ramachandrapuram, Hyderabad-502 032 of Bharat Heavy Electricals Limited (A Govt. of India Undertaking) incorporated under the Companies Act having its registered office at BHEL House, Siri Fort, New Delhi-110049, India and shall be deemed to include its successors and assigns. It may also be referred to as BHEL.
- 2.2 **'The Seller'** means the person, firm, company or organization on whom the Purchase Order is placed and shall be deemed to include the seller's successors, representatives, heirs, executors and administrator as the case may be. It may also be referred to as Contractor, Supplier or Vendor.
- 2.3 **'Contract'** shall mean and include the Purchase Order incorporating various documents viz. tender/offer, letter of intent/ acceptance, the General Conditions of Contract and Special Conditions of Contract for Purchase, Specifications, Inspection/ Quality Plan, Schedule of Prices and Quantities, Drawings, if any enclosed or to be provided by the Purchaser or his authorized nominee and the samples or patterns if any to be provided under the provisions of the Contract.
- In case of any inconsistency or contradiction between any of the documents, the order of precedence shall be Purchase Order, LOI/ LOA followed by: specific conditions, Special Conditions of Contract and General Conditions of Contract for commercial conditions; and specific agreement on technical conditions, Special Technical Conditions and General Technical conditions, tender/ offer.
- 2.4 **'Parties to the Contract'** shall mean the Seller and the Purchaser as named in the main body of the Purchase Order.

3. **Ordering and Confirmation of Order**

The Seller shall send the order Acceptance within two weeks from the date of LOI/ Purchase Order or such other period as specified/ agreed by the Purchaser. Purchaser reserves the right to revoke the order placed If the order confirmation differs from the original order placed, Purchaser shall only be legally bound if agreed explicitly in writing to be in agreement with the deviation. The acceptance of deliverables or supplies by Purchaser as well as payments made in this regard shall not imply acceptance of any deviations.



The purchase order will be deemed to have been accepted if no communication to the contrary is received within two weeks (or the time limit as specified/ agreed by the Purchaser) from the date of PO.

Purchaser, is at liberty to send signed PO through electronic media such as e-mail and the receipt of which shall be treated as receipt of order.

4. Execution

The whole contract is to be executed in the most approved, substantial and workman like manner as per the contracted terms.

5. Progress Report

The Seller shall render such report as to the progress of work and in such form as may be called for by the Purchaser from time to time. The submission and acceptance of such reports shall not prejudice the rights of the Purchaser in any manner.

6. Product Information, Drawings and Documents

Drawings, technical documents or other technical information received by one party shall not, without the consent of the other party, be used for any other purpose than that for which they were provided. They may not, without the consent of the submitting party, otherwise be used or copied, reproduced, transmitted or communicated to third parties. All information and data contained in general product documentation, whether in electronic or any other form, are confidential and binding only to the extent that they are by reference expressly included in the Contract.

The Seller shall, as per agreed date/s but not later than the date of delivery, provide free of charge any information and/or drawings which are necessary to permit the Purchaser to erect, commission, operate and maintain the product. Such information and drawings shall be supplied in the number of copies agreed upon or at least three copies of each.

All intellectual properties, including designs, drawings and product information etc. exchanged during the formation and execution of the Contract shall continue to be the property of the submitting party.

7. Non-disclosure and Information Obligations

The Seller shall provide Purchaser with all information pertaining to the delivery in so far as it could be of importance to Purchaser. The Seller shall not reveal confidential information to its own employees not involved with the tender/ Contract & its execution and delivery or to third parties, unless Purchaser has agreed to this in writing beforehand. The Seller shall not be entitled to use the Purchaser's name in advertisements and other commercial publications including website without prior written permission from Purchaser.

In the event of violation of the confidentiality as agreed, BHEL will take legal action as deemed fit.

8. Inspection and Testing

- 8.1 The goods and stores shall be of approved design and each part/ component may be inspected and tested by the Purchaser prior to shipment and shall fully comply with relevant requirements of Purchaser.



Purchaser has the right to inspect the delivery. In the event of rejection, Purchaser shall inform the Seller accordingly and Purchaser shall be entitled to replacement or repair at its discretion or may proceed to terminate or annul the agreement. All this does not affect Purchaser's right to recover compensation.

- 8.2 Purchaser or his authorized representative shall be entitled at all reasonable times during execution to inspect, examine and test at the Seller's premises the material and workmanship of all stores to be supplied under the Contract, and if the part of the stores are being manufactured at other premises the Seller shall obtain for Purchaser or his authorized representative permission to inspect, examine and test as if the said stores are being manufactured at the Seller's premises. Such inspection, examination and testing, if made shall not release the Seller from any obligation under the Contract.

All costs related to inspections and re-inspections shall be borne by the Seller. The cost of inspection staff/ third party specified by the Purchaser shall be borne by seller unless otherwise specifically agreed. Whether the Contract provides for tests on the premises of the Seller or any of his Sub-contractor/s, Seller shall be responsible to provide such assistance, labour, materials, electricity, fuels, stores, apparatus, instruments as may be required and as may be reasonably demanded to carry out such tests efficiently.

Cost of any type test or such other special tests shall be borne by the Seller unless otherwise specifically agreed in the contract.

- 8.3 The Seller shall give the authorized representative of the Purchaser reasonable notice in writing of the date on and the place at which any stores will be ready for inspection/ testing as provided in the Contract.

9. Quality and Condition of the Deliverables

The Seller shall be responsible for compliance with applicable technical, safety, quality, environmental requirements and other regulations in relation to his products, packaging, and raw and ancillary materials.

10. Packaging and Dispatch

The Seller shall package the deliverables safely and carefully and pack them suitably in all respects considering the peculiarity of the material for normal safe transport by Sea/ Air / Rail/ Road to its destination suitably protected against loss, damage, corrosion in transit and the effect of tropical salt laden atmosphere. The packages shall be provided with fixtures/ hooks and sling marks as may be required for easy and safe handling by mechanical means.

Each package must be marked with Consignee name, P.O Number, Package No., Gross weight & Net weight, Dimensions (LxBxH) and Seller's name. The packing shall allow for easy removal and checking of goods on receipt and comply with carrier's conditions of packing or established trade practices. Packing list of goods inside each package with PO item no. & Quantity must also be fixed securely outside the box to indicate the contents. If any consignment needs special handling instruction, the same shall be clearly marked with standard symbols / instructions. Hazardous material should be notified as such and their packing, transportation and other protection must conform to relevant regulations.

11. Delivery

Except as otherwise indicated in the Purchase Order, delivery shall be FOR (Destination) for indigenous orders and FOB-Port of Export/FCA for imported orders. Trade terms such as EXW,



CFR etc., if stipulated in the order shall be construed in accordance with the version of the INCOTERMS applicable at the time of ordering, without prejudice to the provisions contained in these conditions. The delivery date(s) or delivery period(s) as stipulated in the agreement shall be firm and binding and shall apply to the entire delivery for each PO item. Partial shipments may, however, be permitted by the purchaser.

Unless specifically agreed otherwise, transit insurance coverage for imported consignments is taken by BHEL. Accordingly, the Seller shall send an intimation to the Purchase Officer/ Manager giving Purchase Order No., Shipping particulars, Invoice Value etc. immediately on dispatch of goods.

12. **Penalty:**

The time or period of delivery as stipulated in the schedule of delivery shall be deemed to be the essence of the Contract. Should circumstances arise whereby the deadline for an agreed delivery date(s) or period(s) is expected to be exceeded, the Seller shall inform Purchaser hereof without delay. If delay in delivery is caused by any of the circumstances mentioned in Clause 21 (Force Majeure) or which are caused exclusively by the acts of Purchaser, the Purchaser shall extend the time for delivery by a period which is reasonable having regard to all the circumstances in the case.

If the Seller delays beyond any agreed delivery date(s) or period(s), Purchaser shall levy penalty for such delay @ 0.5 % per week (7 days) or part thereof on delayed portion of the order value subject to a maximum of 10% of the value of the Purchase Order. However, Penalty for delayed delivery will be calculated on 100% of the purchase order value if the material supplied cannot be put to intended use.

The Penalty will be charged on the value of the purchase order excluding statutory levies, freight and insurance wherever not included in the price.

Imposition, recovery or settlement of this penalty shall not affect Purchaser's right to performance, compensation and termination of the agreement.

13. **Transfer of Ownership and Risk**

The risk for the delivery remains with the Seller until the goods are delivered at the agreed place.

14. **Price, Invoicing and Payment**

The agreed prices are fixed prices in the currency as specified in the Purchase Order. They shall include packing, forwarding, loading and carriage to the place specified by the Purchaser and are exclusive of all applicable taxes, duties etc. except for those specifically agreed by the Purchaser. Invoices shall be submitted bearing the Purchase Order number & date, item number/s and supporting documents as called for in the Purchase Order.

The direct payments (excluding LC/documents through Bank on collection basis), shall be made by E-payment mode and not by cheque/ Bank Drafts except in special circumstances. Vendors shall furnish the E-payment particulars in the prescribed formats duly authenticated by their respective Bankers, if not got registered earlier with the Buyer.

Indian Agency commission if payable and so specified in the Purchase Order shall be paid in Indian Rupees, considering the SBI TT selling exchange rate prevailing on the date of tender opening (Part I in case of two part bid) , after successful completion of the contract.



If so stipulated in the order, the Seller shall furnish, on receipt of the Purchase Order or along with order acknowledgement, the Billing break-up of prices (BBU) for approval by the Purchaser in respect of the major items/ components going into the equipment. This BBU is required by the Purchaser for admitting the claims of the Seller if part shipments are contemplated and also to facilitate custom clearance after payment of duties in case of imports.

Purchaser shall be entitled to suspend payment for as long as required supporting documents/ details remain outstanding and any consequential demurrage/ wharfage shall be to the account of the Seller.

Payment does not imply in any respect whatsoever a waiver of Purchaser's right to performance of the agreement. Purchaser is entitled to set off claimable debts against claimable liabilities with the Seller by means of a setoff note.

15. Contract Variations; Increase or Decrease in the Scope of Supply

Purchaser may vary the contracted scope during execution due to exigencies of project requirement.

If the Seller is of the opinion that the variation has an effect on the agreed price or delivery period, Purchaser shall be informed of this immediately in writing along with technical details, and in the event of additional work, submit a quotation with regards to the price and period involved, as well as the effect this additional work will have on the other work to be performed by the Seller. Provided, however, that if unit rates are available in the Contract, the same shall be applied to such additional work. The Seller shall not perform additional work before Purchaser has issued written instructions/ amendment to the Purchase Order to that effect. The work which the Seller should have or could have anticipated in terms of delivering the service(s) and functionality (ies) as described in this agreement and hence to be executed by the vendor without any price implication.

16. Guarantee/ Warranty

Wherever required, and so provided in the specifications/ Purchaser Order, the Seller shall guarantee that the goods supplied shall comply with the specifications laid down, for materials, workmanship and performance. If within the guarantee period the delivery is found to be non-compliant, the Seller shall, for its own account, replace, repair, or re-execute the delivery at Purchaser's discretion when first requested to do so within mutually agreed period, without prejudice to Purchaser's other legal rights. If the Seller continues to default on its obligations, Purchaser has the right to proceed to replace, repair or re-execute the order at the Seller's expense, with or without help from third parties. Purchaser shall notify the Seller of the exercise of this right in advance where possible.

Unless otherwise specified, guarantee period shall be 12 months from the date of commissioning or 18 months from the date of supply whichever is earlier. For capital goods or bought out packages which are intended to be incorporated in installations or systems the Guarantee period shall not start until the time the installations or systems are commissioned, provided always that the period ends not later than 30 months after the date of supply of the goods.

The guarantee period shall be extended by the period during which the goods are not in compliance. A guarantee period as described above shall apply afresh to replaced, repaired or re-executed parts of a delivery.



17. Short Shipments / Warranty / Guarantee Replacements

In case of any short shipments during initial supply, subsequently dispatched by the Seller or as any Guarantee/ Warranty replacement shall be dispatched on "DDP – Delivered Duty Paid BHEL Stores" basis for imported items and "FOR – BHEL Stores/ designated destination" basis for indigenous items. Taxes and duties, if any, paid by indigenous vendor for short supply/guarantee and warrantee replacement, repair activity shall be to vendor's account only.

18. Rejection/ Replacement

The Seller shall arrange replacement / repair under its obligation under the contract within one month from the date of intimation or mutually agreed period. The rejected goods shall be taken away by the seller and replaced on DDP/ FOR - BHEL Stores/ designated destination basis within such period. In the event of the Seller's failure to comply, Purchaser may take appropriate action including disposal of rejections, at the cost and risk of the Seller.

In case defects attributable to Seller are detected during processing of the goods at purchaser's / his subcontractor works, the Seller shall be responsible for replacement/ repair of the goods as required by the purchaser at Seller's cost.

19. Export Administration Regulations

If a delivery includes such technology and / or supply that is subject to the export regulations, the Seller shall obtain due permissions, approvals, license etc.

20. Cancellation / Termination of Contract and Risk Purchase

20.1 Purchaser shall have the right to completely or partially terminate the agreement by means of written notice to that effect without prejudicing its other rights, in the event that:

- the Seller defaults on one or more of the obligations as contained in the agreement;
- the Seller is declared bankrupt, its business has been shut down or liquidated, a substantial part of its assets have been attached/destroyed, or the business has been transferred to a third party;
- any misrepresentation or hiding of material fact if detected at a later stage;
- the delivery is rejected after inspection or re-inspection.

In the event of termination the risk of the items already delivered but not of use to Purchaser, as determined by Purchaser, remains with the Seller. The items shall then be at the Seller's disposal and they are to be collected by the Seller. The Seller shall refund any payments made by Purchaser in terms of the terminated agreement immediately, not later than 30 days.

20.2 In the event of termination due to reasons or defaults by the Seller, the Purchaser may at his option procure such items and in such manner as he deems appropriate, goods not delivered or others of similar description where goods exactly complying with particular are not, in the opinion of the Purchaser, which shall be final, readily procurable, at the risk and cost of the Seller and the Seller shall be liable to the Purchaser for any excess cost. The cost of purchases made by the Purchaser at the risk and cost of the Seller shall be worked out by BHEL after loading handling charges procured from alternate source/s. The Seller shall on no account be entitled to any gain on such repurchases by the Purchaser.



21. Force Majeure

The supplier shall not be considered in default if delay occurs due to causes beyond their control such as Acts of God, Natural Calamities, Fire, Frost, Flood, Civil War, Civil Commotion, Riot, Government Restrictions.

Only those causes that have duration of more than seven days shall be considered cause of force majeure. Notification to this effect duly certified by local chamber of commerce / statutory authorities with supporting documents shall be given by the supplier to BHEL by registered letter/courier service immediately without loss of time.

In the event of delay due to such causes the delivery schedule shall be extended for a length of time equal to the period of Force Majeure or at the option of BHEL the order may be cancelled. Such cancellation would be without any liability whatsoever on the part of BHEL.

In the event of such cancellation the supplier shall refund any amount advanced or paid to the supplier by BHEL and deliver back any material issued to him by BHEL and release facilities, if any, provided by BHEL.

22. Non-waiver of Defaults

If any individual provision of the Contract is invalid, the other provisions shall not be affected.

23. Settlement of Disputes

23.1 Except as otherwise specifically provided in the Contract, all disputes concerning questions of the facts arising under the Contract, shall be decided by the Purchaser, subject to written appeal by the Seller to the Purchaser, whose decision shall be final.

23.2 Any disputes or differences shall to the extent possible be settled amicably between the parties thereto, failing which the disputed issues shall be settled through arbitration.

23.3 The Seller shall continue to perform the contract, pending settlement of dispute(s).

24. Arbitration

All disputes arising in connection with the contract shall be settled by mutual consultation. If no agreement is reached the dispute shall be settled in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and the rules made there under. The dispute shall be referred for arbitration to any arbitrator to be appointed by the Head of the Unit, BHEL-Hyderabad. The award of the arbitrator shall be final and binding on both the Parties. The venue of the Arbitration shall be Hyderabad in India. The Award given by the Arbitrator shall be a speaking award and in English language. All questions, disputes, differences arising under, out of or in connection with this contract shall be exclusive jurisdiction of Sangareddy/Hyderabad Courts, Andhra Pradesh.

25. Applicable Laws and Jurisdiction of Courts

This agreement shall be construed and interpreted in accordance with the laws of India and shall have exclusive jurisdiction of Sangareddy/Hyderabad Courts, Andhra Pradesh, India.