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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 (1/2) 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.