



## GENERAL COMMERCIAL TERMS & CONDITIONS

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## 1.0 CONTRACT

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

## 2.0 PRICES

### 2.1 **BASIC PRICES**

Basic prices shall be for the entire scope of work in line with all instructions, specifications and terms and conditions specified in the Tender Documents.

## 3.0 TAXES AND DUTIES

### 3.1 **EXCISE DUTY**

- 3.1.1 Seller/Contractor is required to ensure that excise duty including surcharge 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.
- 3.1.2 Excise duty actually incurred by Seller/Contractor on self manufactured items alone shall be reimbursed at actual against requisite documentary evidence.
- 3.1.3 The invoice cum Excise duty gate pass (Excise Invoice) should contain the name of ultimate consignee as specified in the Order/Contract. If excise duty is paid under protest or dispute, it shall not be reimbursed until and unless the dispute has been finally settled.
- 3.1.4 No excise duty shall be payable by purchaser on inputs, bought out items, raw materials and components consigned directly to site from sources other than Seller/Contractor's factory/works.
- 3.1.5 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.
- 3.1.6 If the Seller/Contractor claims/obtains any refund of the excise duty paid and gets reimbursed, the same shall be refunded to the purchaser immediately.



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

3.1.8 No statutory variations shall be permissible beyond the contractual delivery period.

### 3.2 SALES TAX/VALUE ADDED TAX

3.2.1 Central Sales Tax / Value Added Tax shall be reimbursed only if the same is payable by the Seller / Contractor to the respective Govt. authorities 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.

3.2.2 Purchaser is registered in NOIDA / U.P. State vide Registration Number: -  
Central Sales Tax Registration No. : **ND – 5341151 w.e.f. 01-07-06.**  
UP Trade Tax Registration No. : **ND – 0345907 w.e.f. 01-07-06.**  
UP TIN No. : **09765702874**

3.2.3 Central Sales Tax/Value Added Tax on direct sales by the Seller/Contractor to the purchaser shall be reimbursed, as per tariff applicable on the approved items, but restricted to the percentage and amount shown in the Order/Contract. If it is shown as included in the quoted price, it will not be eligible for reimbursement by the purchaser.

3.2.4 Purchaser proposes to make sale-in-transit under section 6 (2) (b) of Central Sales Tax Act where goods are moving interstate. "C" form shall be issued and exchanged against E1/E2 forms based on quarterly transactions. Seller/Contractor is required to submit his request in the format enclosed as Annexure-VII. No concessional form will be issued for goods moving within the State of U.P.

3.2.5 If documents are submitted through bank, issuance of Form "C" shall not be insisted upon at the time of retirement of document(s).

3.2.6 VAT ( if applicable ) invoice, in proper format prescribed by respective state sales tax act has to be submitted in the name of nodel agency specified in SCC.

### 3.3 SERVICE TAX:

Service tax paid by the seller/contractor to the Govt. Authorities directly shall only be reimbursed at actuals but restricted to the rate and amount mentioned in the order/ contract The offer should clearly indicate the percentage and the total amount.



### 3.4 OTHER TAXES & LEVIES

All other taxes and levies other than ED, Sales tax, service tax shall be deemed to be included in the basic prices unless specified otherwise by bidder in price bid. No variation in other taxes and duties shall be payable by purchaser.

### 3.5 CUSTOMS DUTY

3.5.1 The customs duty element for imported items as per SCC shall be included in the basic prices. No variation in customs duty and exchange rate for imported items shall be payable by purchaser.

3.5.2 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.

3.5.3 Essentiality or Project Authority (PA) certificate as per Import Policy, if required, to avail concessional customs duty, shall be clearly specified in the offer. The import contents (CIF) in terms of as list of items, quantity (CIF value in rupees), foreign currency, country of origin, etc., shall be submitted as part of Price bid. For details refer SCC.

### 3.6 DIRECT TAX

3.6.1 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.

3.6.2 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 provision in Govt. Rules.

### 4.0 STATUTORY VARIATIONS

4.1 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 rates 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.



- 4.2 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 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.
- 4.3 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.

#### 5.0 **TRANSPORTATION & FREIGHT CHARGES**

- 5.1 All despatches shall be only through road carriers approved by the Purchaser/Scheduled Banks.
- 5.2 Road permit/entry permit, if required, as per laws of the state shall be arranged by the Purchaser.
- 5.3 Freight charges shall be payable after delivery of the goods at the project site.

#### 6.0 **VARIATION**

The prices shall remain firm (or with PVC as specified in NIT) for any increase or decrease in the Order/Contract value upto plus or minus 30% unless specified otherwise in technical specification /price format.. The purchaser shall have the right to increase or decrease quantities and scope upto the above extent of value and Seller/Contractor shall be bound to accept the same at the contracted prices without any escalation.



## 7.0 SECURITY DEPOSIT CUM CONTRACT PERFORMANCE BANK GUARANTEE

### 7.1 TIME FOR SUBMISSION

7.1.1 The successful tenderer shall submit security deposit-cum-contract performance bank guarantee as per format given in Annexure-IV, within 30 days of LOI/Order/Contract to cover the due performance of the LOI/Order/Contract and to fulfill the guarantee conditions stipulated in the Order/Contract.

### 7.2 VALUE

The value of bank guarantee shall be 10% of the Order/Contract value excluding taxes, duties and freight charges. If the value of the Order/Contract gets enhanced at any time, the Seller/Contractor shall submit the Bank Guarantee correspondingly to the enhanced value at the time of claiming first payment after Contract amendment, failing which the purchaser shall recover the equivalent amount from the payments due to the Seller/Contractor. For the packages like all types of cables, cable trays, cabling materials, Lighting package etc, initially BG is to be submitted for 10% of order value excluding taxes & duties & freight. However BG value can be proportionately reduced after completion of Guarantee period lot-wise as applicable.

**Note : No SD-cum-PBG shall be required for order/contract value (excluding taxes, duties and freight) upto Rs.10.0 Lacs. However, vendor to submit Corporate Guarantee in lieu of SD-cum-PBG.**

### 7.3 VALIDITY

7.3.1 For supply Order/Contract, the validity of the bank guarantee shall be up-to the contractual delivery period, initially. It shall be later extended to cover the entire guarantee period, two months before expiry of its validity period.

7.3.2 For Order/Contract inclusive of erection and commissioning (E&C), the validity of bank guarantee shall be up-to the contractual E&C completion period, initially. It shall be later extended to cover the entire guarantee period, two months before expiry of its validity period.

7.4 The purchaser shall reserve the right and it shall be lawful on its part to forfeit and en-cash the bank guarantee, in the event of any default, failure or neglect on the part of the Seller/Contractor, in fulfillment of performance of the Order/Contract.



- 7.5 The Security deposit-cum-contract performance bank guarantee shall be revalidated by the seller/contractor, whenever it is warranted, till the complete fulfillment of the contractual obligations. The bank guarantee shall be extended by the seller/contractor at his cost, for a period not less than three months at a time, on the same terms for full value of the Order/Contract, before expiry of the bank guarantee.
- 7.6 Equivalent amount shall be recovered from the payments due to the Seller/Contractor before releasing any payment, in the absence of a valid Bank Guarantee.
- 7.7 The BG should be from Public Sector Banks/Consortium Banks and shall be directly furnished by bank to BHEL/PEM, NOIDA. The BGs from Co-operative Banks are not acceptable. However, BG of other than consortium bank/ public sector bank can be accepted subject to an overall exposure limit (at the unit/region level) of Rs. 10 Crores for banks with net worth of more than Rs.500 Crores as on the last balance sheet date and Rs.5.0 Crores for banks with net worth between Rs.350-500 Crores (a certificate and a copy latest balance sheet to be given by the bank to the purchaser with BG.
- 7.7.1 In case of private sector banks, a clause to be incorporated in the text of BG that it can be enforceable by being presented **at any branch** of the bank.
- 7.7.2 In case of foreign vendors our consortium bank in India should confirm the BG issued by foreign banks.
- 7.7.3 In case of BGs given by non-Consortium banks (Private sector or Public sector), the BGs are to be enforceable in the town / city in which the purchaser is located.
- 7.7.4 The genuineness of the said BG has to be confirmed with the issuing bank.
- 7.7.5 The list of Consortium Banks is as per Annexure XII.
- 8.0 **TERMS OF PAYMENT**
- 8.1 **FOR SUPPLY OF MAIN SYSTEM/EQUIPMENT INCLUSIVE OF START UP AND COMMISSIONING SPARES**
- 8.1.1 For supply package having contract value up to Rs.25 Lacs excluding Taxes, duties & freight.



- 8.1.1.1 Hundred percent (100%) payment along with freight charges against clean receipted LR in original (as proof of delivery of material at site) and submission of all final documents as built drawings, O & M Manuals etc. as applicable duly certified by PEM (Engineering).
- 8.1.2 For Supply package having contract value more than Rs. 25 Lacs.
- 8.1.2.1 Ninety percent (90%) of basic price of materials supplied, as per approved billing schedule along with applicable 100% taxes and duties for the consignment shall be paid against dispatch documents on pro-rata basis.
- 8.1.2.2 **Ten per cent (10%)** of basic price along with freight & octroi, if any will be released on pro-rata basis after submission of **Material Receipt Certificate** (MRC) which is issued by project site engineer (owner/purchaser) and submission of all final documents as applicable duly certified by PEM (Engineering)..

## 8.2 SUPPLY PAYMENT FOR TURN KEY PACKAGES

- 8.2.1 **Five per cent (5%)** one time payment of the total basic price against submission and approval of all basic design documents such as data sheets of major equipments, drawings like PID and layout process calculations, quality plan etc wherever required under category-I or II. Details of the design documents and time schedule shall be finalized in line with the Project requirements in the kick-off meeting after award of the order/contract.

**AND**

**Eighty per cent (80%)** of basic price of materials supplied, as per approved billing schedule, along with applicable 100% taxes and duties for the consignment shall be paid against dispatch documents on pro-rata basis.

**OR**

- 8.2.2 **Eighty Five per cent (85%)** of basic price of materials supplied, as per approved billing schedule wherever 5% payment against clause 8.1.1 not billed or not applicable, along with applicable 100% taxes and duties for the consignment shall be paid against dispatch documents on pro-rata basis.
- 8.2.3 **Five per cent (5%)** of basic price along with freight and **octroi**, if any, will be released on pro-rata basis after submission of **Material Receipt Certificate** (MRC) ,which is issued by the project site engineer (owner/purchaser) after receipt of materials and its physical verification at site.



**Collection of Material Receipt Certificate from the site and its submission for claiming this payment shall be the responsibility of the Seller/Contractor. For only supply contracts MRC shall be arranged by BHEL based upon receipted LR provided by vendor.**

8.2.4 **Ten per cent (10%)** of the total basic price shall be released after i) submission of all final documents including as built drawings, O&M Manuals etc., as applicable and ii) successful completion of PG (Performance Guarantee)/Demonstration Test (s) and handing over of the system/package, if applicable as per order/contract.

### 8.3 FOR ERECTION AND COMMISSIONING

8.3.1 Eighty (80%) percent payment on pro-rata basis for the work completed as per approved billing schedule, shall be released as progressive payment, by the Site authorities, on submission of protocols duly signed by BHEL site official(s)/Owner.

8.3.2 Ten per cent (10%) of the total value shall be released by the site authorities, on successful commissioning of the complete system/package.

8.3.3 Balance ten per cent (10%) of the total value shall be released by the site authorities, on successful completion of the PG / Demonstration test(s) and handing over of the system/package to the Owner.

### 8.4 FOR SUPERVISION OF E&C

100% payment shall be released by the site authorities, on successful completion of E&C, PG / Demonstration test(s) of the system/package to the Owner.

### 8.5 FOR SUPPLY OF MANDATORY/O&M SPARES

8.5.1 **Ninety per cent (90%)** value of spares supplied, along with applicable 100% taxes and duties for the consignment shall be paid against dispatch documents on pro-rata basis.

8.5.2 **Balance Ten per cent (10%)** of spares value along with freight and **octroi**, if any as applicable, will be released on pro-rata basis after submission of **Material Receipt Certificate (MRC)**, which is issued by the project site engineer after receipt of materials and its physical verification at site.



## 8.6 PAYMENT TO FOREGIN VENDORS

100% payment against irrevocable letter of credit/sight draft basis.

### Notes:-

- i) All payment shall be released within 90 days of submission of complete documents as per contract.
- ii) All type of payment to MSED vendors will be released within 45 days of receipt of complete documents as per contract.
- iii) For indigenous supplies all bank charges to vendor's account.
- iv) LC opening / negotiation charges to respective account. LC confirmation charges to vendor's account.

## 8.6 DOCUMENTS TO BE SUBMITTED FOR CLAIMING DESPATCH PAYMENTS.

7 SETS – (1 Set consisting of following documents):-

- a. Invoice
- b. LR
- c. Packing List
- d. MDCC
- e. CQIR Report
- f. Test certificate and Guarantee certificates

3 SETS - (1 Set consisting of following documents):-

- a. Invoice – Original + 2 copies
- b. LR – Original + 2 copies / receipted LR as applicable
- c. Packing list - clearly showing number of packages, gross weight net wet
- d. MDCC – (BHEL/Customer as applicable ) – as per SCC.
- e. Guarantee certificates
- f. Insurance intimation
- g. CQIR Report
- h. PVC Calculation and copy of all applicable indices , if PVC applicable.
- i. Duty drawback documents ( original excise invoice, original disclaimer certificate, original certificate from excise authority for payment of excise duty)
- j. Proof of approval of drawing and document from engineering department to establish contractual delivery date for the purpose of LD & for claiming initial 5% payment.



- k. Proof of submission of final documents including as built drawings, O&M Manual as applicable.

**DOCUMENTS FOR CLAIMING MRC & FREIGHT PAYMENT**

- a. Invoice in duplicate
- b. Copy of MRC
- c. Original money receipt from transporter for freight payment if required as per P.O.

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

The loading details in respect to deviation in payment terms, LD & PVC. Indicated in Annexure – X.

**8.8 BHEL BANKERS FOR LC PAYMENT**

The address of bankers are :

**M/s Canara Bank,  
74, Janpath, New Delhi-110001.**

**M/s IDBI Bank Ltd.,  
Surya Kiran Building,  
11<sup>th</sup> Floor,  
19, Kasturba Gandhi Marg,  
New Delhi – 110 001**

**8.9 MODE OF PAYMENT**

The payment shall be made directly to the Seller/Contractor, by E-transfer. Seller/Contractor to provide necessary information for the same as per annexure IX

8.10 No interest shall be payable by the purchaser on the security amount, bank guarantee amount or balance which may be lying with the purchaser 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.

**9.0 RECOVERY OF OUTSTANDING AMOUNT**

In the event of any amount of money being outstanding at any point in time against the Seller/Contractor, due to excess payment or any other reason



whatsoever, in the present order/contract or any other order/contract, 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.

#### 10.0 **DELIVERY/COMPLETION SCHEDULE**

- 10.1 The Seller/Contractor shall so organize his resources and perform the Order/Contract so as to complete it as per stipulated delivery/completion schedule.
- 10.2 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.
- 10.3 Supply of plant/equipment/stores shall adhere to the quality and specifications as per Order/Contract and shall be delivered at the destination specified in the Order/Contract.
- 10.4 Date of despatch for indigenous supplies( RR/ GR date) and shipment ( AWB/ B/L date) for imported supplies shall be treated as **the date of delivery** for the purpose of levying **Liquidated Damages as per clause 13.**

**10.5 Terms of delivery shall be FOR despatch station.**

#### 11.0 **INSPECTION AND TESTING AT CONTRACTOR'S PREMISES**

- 11.1 Inspection Agency, CQS (BHEL) unless specified otherwise in the contract shall have, at all reasonable times, access to the 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 its manufacture, and if part of the stores is being manufactured at other premises, the Seller/Contractor shall obtain from the Inspection Agency, permission to inspect, examine and test as if the store is being manufactured on the Seller/Contractor's premises.

**An inspection call is to be raised by the Seller/Contractor on BHEL CQS Website.**

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



**Non-conformance from the contract specifications shall be reported by the Seller/Contractor as per part – I of Annexure – V.**

11.2 The Seller/Contractor shall give the Inspection Agency, reasonable notice of any material being ready for testing, and the Inspection Agency shall (unless the inspection of tests is voluntarily waived), on giving reasonable notice to the Seller/Contractor, 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. The 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. The 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".

11.3 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.

#### 11.4 INSPECTION MEASURING AND TEST EQUIPMENTS

11.4.1 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.

11.4.2 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 recognised standards, at recognised 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.

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

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

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

12.0. **MATERIAL DESPATCH CLEARANCE CERTIFICATE (MDCC)**

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

12.2 Purchaser/Owner will issue MDCC to the Seller/Contractor based on the QS Note/Report from the Inspection Agency.

12.3 **Seller/Contractor will not despatch any material before issue of MDCC by the Purchaser/Owner.**

12.4 The satisfactory completion of these tests or the 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.



### 13.0 DELIVERY FAILURE AND TERMINATION/LIQUIDATED DAMAGES

13.1 The parties hereto agree that the timely despatch/delivery and completion of other schedules as stipulated in order/contract shall be the essence of the Order/Contract. If the seller/contractor fails to complete the despatch/delivery and other schedules within the time period stipulated in the order/contract, or within any extension of time granted by the purchaser, it shall be lawful for the 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.

### 13.2 DELAYED DELIVERY

13.2.1 The 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 percent ( $\frac{1}{2}\%$ ) of the total contract price per week or part thereof, subject to a maximum of ten per cent (10%) of the total contract price excluding elements of taxes, duties and freight, if the seller/contractor has failed to deliver any part of the ordered stores within the period stipulated in the Order/Contract.

**NOTE** : If the Order/Contract involves supply for two or more Units/Sets/lots of the Power Project, total value of the Order/Contract to be taken for levy of Liquidated Damages, shall be the Order/Contract value of the particular Unit/Set/lot for which the delay has taken place, provided delivery stipulated in the Order/Contract is Unit/Set/lot wise for **supply packages**. In case of **turnkey packages** LD shall be leviable on the total value ( supply and E & C ) in case of delay in E & C. No LD shall be withheld from supply payments.

13.2.2 The purchaser reserves the right to purchase from elsewhere on account of and at the risk and cost of the seller/contractor with notice to the seller/contractor of the stores due for delivery but not so delivered or their equivalent, without canceling the order/contract in respect of the stores not yet due for delivery. The manner and the method of such purchase shall be at the discretion of the purchaser.

13.2.3 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 costs thereof.

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



#### 14.0 **GUARANTEE FOR PLANT/EQUIPMENT/STORES**

14.1 The Seller/Contractor shall warrant that the stores supplied shall be free from all defects and faults in design & engineering, material, workmanship and 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.

14.2 a) **Guarantee for Supply Packages** – guarantee shall be eighteen (18) months from the last dispatch.

14.2 b) **Guarantee for turnkey jobs:** The guarantee shall be valid for a period as stipulated in the special conditions of the Order/Contract, otherwise, 18 calendar months from the date of completion of supplies or 12 calendar months from the date of satisfactory commissioning, whichever is **later**. Seller/Contractor's liability in respect of any complaints, defects and claims shall not be limited to the supply and installation of replaced parts free of charge, or the repair of defective parts to the extent that such replacements are attributable to or arise from faulty workmanship, material or design, in the manufacture, of the stores but at the option of the purchaser, to the payment of the value, expenditure and damages as mentioned hereafter, provided defects on being discovered are brought to the notice of the Seller/Contractor within a period of three (3) months from the date of expiry of the guarantee period.

14.3 All replacements and repairs during the guarantee period shall be delivered and completed promptly and satisfactorily within a period of three months from the time of reporting the defect/loss/rejection etc. If the Seller/Contractor so desires and the purchaser agrees subject to import control regulation, the replaced parts can be taken over by him or his representative or the same can be arranged to be despatched by the Seller/Contractor or his representative at Seller/Contractor's cost. No claim, whatsoever shall be entertained by the purchaser on account of such replaced parts.

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

14.5 The decision of the purchaser with regard to Seller/Contractor's liability and the amount involved, if any, payable by the Seller/Contractor under the guarantee shall be final, conclusive and binding.

#### 15.0 **INSURANCE**

15.1 Insurance shall be arranged by BHEL.



15.2 Bidders/Vendors shall inform the insurance company, appointed/nominated by BHEL/ Purchaser, the details of despatches under intimation to BHEL such as LR no. & date, Truck nos., P.O. no., project & value.

15.3 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.

#### 16.0. **INTER-CHANGEABILITY AND CHANGES**

16.1 All similar components or parts of similar equipment supplied by the seller/contractor shall be interchangeable with one another.

16.2 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 the purchaser and the seller/contractor.

#### 17.0 **PACKING**

17.1 The packing shall be in conformity with specification and shall be such as to ensure prevention of damages, corrosion, deterioration, shortages, pilferage and loss in transit or storage.

17.2 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.

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

#### 17.4 **PACKING FOR SPARES**

17.4.1 Different types of spares i.e. start-up/commissioning spares and initial spares (mandatory spares and recommended O&M spares) are to be packed separately.

17.4.2 Documents for spares should have stamp/markings for easy identification and separation from Main Equipment.



## 17.5 COLOUR CODING OF TAGS/MARKING/STICKERS

17.5.1 Aluminium stickers are required to be attached to large components but plastic sheet tags should be tied with small components, giving details regarding purchase order, description of the components, quantity etc.

17.5.2 Tags should be of the colour as mentioned below:

Main equipment	: Yellow or white tag
Mandatory spares	: Pink or red tag
Start-up/Commissioning spares	: Blue tag
O&M spares	: Green tag

17.5.3 Similar colour scheme should be followed wherever stickers are pasted on components.


## 18.0 MATERIAL RECEIPT CERTIFICATE

- The Seller/Contractor shall arrange Material Receipt Certificate from the concerned project site, duly signed by the purchaser/owner Site Engineer, after receipt of the material at site and its physical verification wherever E&C is in the scope of seller/ contractor.
- For supply packages – MRC shall be arranged by BHEL. However vendor to provide copy of receipted LRs to enable BHEL to obtain MRC from site.

## 19.0 CONSIGNEE's RIGHT OF REJECTION

19.1 Notwithstanding any approval which Purchaser or the Engineer may have given in respect of the stores or any materials or other particulars or the work or workmanship involved in the performance of the Order/Contract (whether with or without any test carried out by Seller/Contractor or the Inspection Agency or under the direction of the 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 or consignment thereof, within 30 days after actual delivery, thereof to him at the stipulated place or destination, if such stores or part, portion of consignments thereof is not in all respects in conformity with the terms and conditions of the Order/Contract whether on account of any loss, storage, deterioration or damage before despatch or otherwise, whatsoever.

19.2 Rejected goods or materials shall be removed by the seller/contractor within a period of 15 days from the date of receipt of notice of such

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rejection. The expenses to be incurred in respect thereof shall entirely be borne by the seller/contractor.

## **20.0 RISK IN STORES ( FOR E & C CONTRACTS )**

The seller/contractor shall perform the Order/Contract in all respects in accordance with the terms and conditions thereof. The stores and every constituents part thereof, whether in the possession or control of the Seller/Contractor, his agents or servants, or a carrier, or in the joint possession of the seller/contractor, his agent or servants and the purchaser, his agents or servants shall remain in every respect at the risk of Seller/Contractor until their actual delivery to the consignee at the stipulated place or destination or where so provided in the acceptance of offer, until their delivery to a person specified by the purchaser as interim consignee for the purpose of despatch to the consignee. The Seller/Contractor shall be solely responsible for all loss, destructions, damage or deterioration of or to the stores from any cause whatsoever, while the stores after approval by the Inspection Agency are awaiting despatch.

## **21.0 SHORTAGES/DAMAGES**

### **21.1 FOR SUPPLY PACKAGES**

- a) Shortages in sound cases shall be replenished free of cost as early as possible by vendor.
- b) Shortages/Damages during transit/ handling at site, vendor shall supply replacements as early as possible at old contractual rates upon intimation to vendor within 3 months of received LR.

### **21.2 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 costs, 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 in service.

## **22.0 CONFIDENTIALITY**

Seller/contractor shall, at all times, undertake to maintain complete confidentiality of all data, information, software, drawings & documents, etc. belonging to the purchaser and also of the Systems, procedures, reports, input documents, manuals, results and any other company documents discussed and/or finalised during the course of execution of the order/contract.



**23.0 DEFAULT/BREACH OF CONTRACT, INSOLVENCY AND RISK PURCHASE**

- 23.1 If the Seller/Contractor fails to deliver the 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 the 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 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 the Seller/Contractor's default or breach of Order/Contract shall be entitled to cancel the Order/Contract either in whole or portion thereof without compensation to the Seller/Contractor and if the purchaser so desires, he may procure upon such terms and in such manner as he deems appropriate, stores not so delivered or others of a 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.
- 23.2 Cost of the purchases made by the Purchaser at the risk and cost of the seller/contractor shall be worked out after levying 30% overheads as departmental charges on the ex-works cost of materials purchased.



#### **24.0 TERMINATION OF THE CONTRACT**

- 24.1 The purchaser shall have the right to cancel the Order/Contract, wholly or in part, in case he is obliged to do so on account of any decline, diminution, curtailment or stoppage of his business and in that event, the Seller/Contractor compensation claim shall be settled mutually.
- 24.2 The purchaser shall also have the right to cancel the Order/Contract at the risk and cost of the 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 the 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 the prior permission of the purchaser.
- 24.3 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 also get cancelled.

#### **25.0 TRANSFER, SUB-LETTING/ASSIGNMENT/SUB-CONTRACTING**

- 25.1 The seller/contractor shall not sublet, transfer or assign this order/contract or any part thereof or interest therein or benefit or advantage thereof save with the prior consent in writing of the purchaser. In the event of seller/contractor sub-letting, transferring or assigning this 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 the seller/contractor and the seller/contractor shall be liable for any loss or damage which the purchaser may sustain in consequence of, or arising out of such risk purchase.
- 25.2 If the seller/contractor is an individual or a proprietary concern and the individual or the proprietor dies or the partnership is dissolved or substantially affected, then unless the purchaser is satisfied that the legal representative of the individual seller/contractor or the proprietor of proprietary concern and in the case of partnership, surviving partners are capable of carrying out and completing the Order/Contract, the purchaser shall be entitled to cancel the Order/Contract as to its incomplete and without being in any way liable to payment of any compensation to the estate of seller/contractor and/or to the surviving partners of the seller's/contractor's firm on account of the cancellation of the order/contract.
- 25.3 Terms and Conditions shall not get affected in case of merger/amalgamation/re-arrangement/takeover etc.



25.4 The decision of the purchaser that the legal representatives of the 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.

26.0 **FORCE MAJEURE**

26.1 Notwithstanding anything contained in **clause 14.0**, 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 this 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 other within fifteen (15) days from the date of occurrence thereof, neither party shall by reason of such event be entitled to terminate this 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 the purchaser as to whether the deliveries have to be resumed or not shall be final, conclusive and binding on the parties hereto.

26.2 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.

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

27.0 **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.



## 28.0 CONTRACT PERFORMANCE EVALUATION

Performance of the Seller/Contractor in the present Order/Contract shall be evaluated by the Purchaser as per Performance Evaluation System detailed in Annexure – VII. The Seller/Contractor may be de-listed or put under hold or retained based on the performance in the present Order/Contract.

## 29.0 SETTLEMENT OF DISPUTES

29.1 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.

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

29.3 The Seller/Contractor shall continue to perform the Order/Contract, pending settlement of dispute(s).

## 30.0 ARBITRATION

30.1 In the event of any dispute or difference arising out of the execution of the Order/Contract or the respective rights and liabilities of the parties or in relation to interpretation of any provision by the Seller/Contractor in any manner touching upon the Order/Contract, such dispute or difference shall (except as to any matters, the decision of which is specifically provided for therein) be referred to the arbitration of the person appointed by the competent authority of the Purchaser.

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

30.2 In case of order/contract on Public Sector Enterprises (PSE) or a Govt. Deptt., the following clause shall be applicable:-

In the event of any dispute or difference relating to the interpretation and application of the provisions of the Order/Contract, such dispute or difference shall be referred to by either party to the arbitration of one of the



arbitrators in the department of public enterprises. The award of the arbitrator shall be binding upon the parties to the dispute, Provided, however, any party aggrieved by such award may make a further reference for setting aside or revision of the award to the Law secretary, Deptt. of Legal Affairs, Ministry of Law & 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.

30.3 The cost of the arbitration shall be borne equally by the parties.

### **31.0 LAWS GOVERNING THE CONTRACT**

The Contract including all matters connecting with this 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 Indian courts at Delhi/ New Delhi.

### **32.0 JURISDICTION OF COURT**

Courts at Delhi/New Delhi 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.