

## Memorandum of Understanding

This Memorandum of Understanding made on exclusive basis on this \_\_\_\_ day of \_\_\_\_\_ between M/s.BHARAT HEAVY ELECTRICALS LIMITED , An existing company registered under the Companies Act, 1956 and having its registered office at BHEL House, Siri fort , New Delhi 110043 (hereinafter called “BHEL”, which expression shall repugnant to the context of meaning thereof, include its successors and assigns) of the ONE PART,

AND

M/s. \_\_\_\_\_, an existing company having its registered office at \_\_\_\_\_, (hereinafter referred to as “SUPPLIER”, which expression shall repugnant to the context of meaning thereof, include its successors and assigns) of the OTHER PART,

1. WHEREAS the “Employer” which means M/s NMDC, hereinafter referred to as ‘CUSTOMER” to whom BHEL shall submit the bid for Design, Supply, Engineering, Installation and Commissioning of MACHINES FOR COAL HANDLING PLANT & ORE HANDLING PLANT as per the scope attached in the technical specification for RMHS PROJECT OF NMDC FOR 3.0 MTPY STEEL PLANT AT NAGARNAR ( Hereinafter referred to as “Project”) against Tender No. GM(C&S)/NISP/RMHS/150 dated 07/07/2010
2. AND WHEREAS pursuant to the discussion between BHEL and SUPPLIER, SUPPLIER has expressed its interest in associating itself with BHEL to participate in the Bid and if successful, to Design, Supply, Engineering, Installation and Commissioning of CIVIL WORKS FOR SILOS UNDER PACKAGE A / ALL CIVIL WORKS OTHER THAN SILOS UNDER PACKAGE B FOR COAL HANDLING PLANT & ORE HANDLING PLANT as per Annexure IA/ ANNEXURE 1 B, in case of award of

work to BHEL by customer upon quoted price and other terms and conditions agreed with customer.

3. WHEREAS SUPPLIER shall furnish all documents / technical details for bid preparation as per NIT requirements. On securing order , Bank Guarantee shall also be furnished by them as per NIT conditions pro-rata to their scope of work.
4. WHEREAS the parties agree that in so far as applicable the rights and obligations of the Main Contract between the Employer and BHEL become part of the Agreement between BHEL and SUPPLIER for agreed scope of work.
5. NOW THEREFORE, in consideration of the above, the following broad understanding is mutually agreed between the parties and their relationship for the project will be guided as follows:

**Article 1 – Purpose of Agreement of Association**

SUPPLIER and BHEL to work jointly to execute the project. BHEL will be the prime Bidder and SUPPLIER will be the Associate for the agreed Scope of work. .

**Article 2 – Responsibility of SUPPLIER and BHEL**

- i) SUPPLIER`s Scope of work will be limited to Design, Supply, Engineering, Installation and Commissioning of CIVIL WORKS FOR SILOS UNDER PACKAGE A / ALL CIVIL WORKS OTHER THAN SILOS UNDER PACKAGE B FOR COAL HANDLING PLANT & ORE HANDLING PLANT as indicated under enclosed Annexure IA/Annexure -IB

- ii) SUPPLIER will quote their most competitive price for Scope given in annexure IA / ANNEXURE 1B, which will be discussed, negotiated and finalized with BHEL before their submission of BID to CUSTOMER.
- iii) SUPPLIER shall offer delivery of equipment to meet requirements of delivery schedule of Customer. However, during negotiations with Customer if any adjustment is required to be done, the same shall be mutually discussed and agreed.
- IV) BHEL along with SUPPLIER will participate in the discussions with customer to give all technical clarifications and also to impress upon customer regarding the capacity to execute such project and also in price negotiations with customer (if required) before order finalisation.
- V) SUPPLIER will initially confirm validity of their offer for one month beyond the Validity desired by Customer in their NIT (for signing MoU) , Subsequently as and when desired by Customer, SUPPLIER will extend the validity of their offer on similar lines.
- VI) Technical Specification and Commercial conditions applicable for this agreement shall be as per enclosure.
- VII) In case of BHEL getting order for the total system from Customer, BHEL will place order on SUPPLIER for their respective Scope of work based on agreed price and terms and conditions.
- VIII) Any further price discounts, to be given to CUSTOMER by BHEL to secure the order, Will be shared by BHEL and SUPPLIER pro-rata for their scope of work

- IX) In case of an order, SUPPLIER and BHEL shall take respective leading role to get the design/ drawing approved by CUSTOMER for respective scope of work.
- X) The specification of the equipment shall be as per tender specification issued by CUSTOMER (enclosed). Further, depending upon the negotiation and technical discussion with CUSTOMER, SUPPLIER shall agree to the specification as finally accepted by CUSTOMER within NIT specifications without any cost implications. Any requirement beyond NIT which will have financial implications will be discussed jointly with CUSTOMER and the resultant financial implication shall be discussed and mutually agreed upon.
- XI) All drawings documents design calculations operation and maintenance manual erection drawings, as-built drawings etc to the extent applicable shall be submitted by SUPPLIER in requisite numbers. These shall be as per CUSTOMER requirement plus two copies for BHEL's use. SUPPLIER will also furnish the reproducible and floppy for GA drawings and micro filming etc as per CUSTOMER's requirement plus(1) one set for BHEL's use.
- XII) SUPPLIER will take entire responsibility for correct design and manufacture of equipment in SUPPLIER's scope.

### **Article 3 – Exchange of Information**

Each party shall exchange with the other party in a timely manner all necessary information required by the other party, so as to effect full and timely performance of the tender/contract.

### **Article 4 – Confidentiality**

Each party shall be obliged to keep in strict confidence, and bind all of its employees/ associates and subcontractors to keep in strict confidence all information received directly or indirectly from the other party under this agreement and shall not at any time, disclose such information to any third party without prior written consent of the other party.

#### **Article 5 – Amendments**

In case of any amendment to this agreement, it must be in writing and signed by the duly authorized representatives of both the parties.

#### **Article 6 – Duration**

This Agreement shall be valid from the date of signing, and continue to be in force, and terminate without prejudice to any antecedent liabilities upon the occurrence any of the following, whichever is earliest:

- a) By mutual agreement
- b) By substituting this Memorandum of Understanding with a detailed Contract
- c) If the contract is awarded by CUSTOMER on other Bidder.

#### **Article 7 – Force Majeure**

Without prejudice and without antecedent liability, neither party shall be responsible for non-performance or non-fulfillment of any or all their obligations under this agreement if such non-performance or non-fulfillment is due to “Force Majeure” as defined in the Tender Document issued by CUSTOMER

#### **Article 8 – EMD/ Security Deposit/ Performance Guarantee**

SUPPLIER shall furnish a Bank Guarantee for 1% of the value of the SUPPLIER'S scope as per MoU within 30 days of signing the MoU. This BG shall be valid till a formal Purchase Order is placed on the SUPPLIER.

BHEL shall agree to furnish DD/ Bank Guarantees for EMD for the entire Project if applicable. SUPPLIER shall furnish BG for Performance Guarantee and other Guarantees for their respective scope of work to BHEL as per Tender/contract conditions agreed with CUSTOMER.

**Article 9 Arbitration**

Any dispute or question that may arise between the parties as to the meaning and or interpretation of any matter pertaining to or arising out of this agreement shall be settled according to Indian Arbitration and conciliation ACT 1996.

**Article 10 Approval of Make**

It shall be the responsibility of SUPPLIER to get the SUPPLIER make of \_\_\_\_\_ approved by CUSTOMER, if necessary. In the event of non-approval of SUPPLIER make of equipment / services, the same shall be deleted from SUPPLIER's scope. BHEL shall offer necessary support to SUPPLIER in the approval process.

In witness whereof BHEL and SUPPLIER through their authorized representatives have executed these present and affixed common seal of their respective companies on the DAY, month and year first mentioned above.

**For BHARAT HEAVY ELECTRICALS LTD.      For      SUPPLIER**