**Client’s contract number: 46000**

**Provider's SAP No.:**

|  |
| --- |
| CONTRACT FOR Work |
| concluded pursuant to Article 536 et seq. Act No. 513/1991 Coll. Commercial Code as amended (hereinafter referred to as the "**Contract**") |
| concluded by and between: |
| Business name: | **Slovenské elektrárne, a.s.** |
| Seat: | Mlynské nivy 47, 821 09 Bratislava  |
| Company ID No.: | 35 829 052 |
| Tax ID No.: | 2020261353 |
| VAT ID No.: | SK2020261353 |
| The person acting on behalf of the company: | Francisco Morejon, Project Director MO34 |
|  | Giorgio Tatta, Director of Procurement MO34 |
| Registered in: | the Commercial Register of the District Court Bratislava I, Section: Sa, File No.: 2904/B |
| (hereinafter referred to as the “**Client**”) |
| And |
| Business name: | **Xx** |
| Seat: | Xx |
| Company ID No.: | Xx |
| Tax ID No.: | Xx |
| VAT ID No.: | Xx |
| The person acting on behalf of the company: | Xx |
| Registered in: | Xx |
| (hereinafter referred to as the “**Contractor**”) |
| (hereinafter referred to jointly as “**the Parties**” or individually as “**the Party**”) |

1. SUBJECT-MATTER OF THE CONTRACT
	1. Purpose of the Contract

The purpose of this Contract is to lay down the rights and obligations of the Parties and the terms and conditions of the business relationship between the Parties, which shall apply to the performance of the Works referred to in clause 1.2 hereof by the Contractor to the Client.

* 1. Specification of the subject-matter of performance

Pursuant to the terms and conditions of this Contract, part of which are the **General Terms and Conditions of Slovenské elektrárne, a.s. (SE as a Customer,)** (hereinafter referred to as the "**GTC**") pursuant to clause 3.1 herein, the Contractor undertakes to perform for the Client and the Client undertakes to take over from the Contractor and pay the price for the performance of the following Works:

 **”JOB M29B Piping and Electrical Installation works of Firefighting Systems Unit 4”**

(hereinafter referred to as the “**Works**”or **“Work**” or “**subject-matter of the Contract**” or “**subject of performance**”)

The detailed technical specification of the Work is provided in the Annex No. 2 hereto (hereinafter referred to as “**Technical Specification**”).

* 1. Waste Disposal or Recovery
		1. Handling of waste **is** also part of the subject-matter of the Contract. The Parties agreed that part of the subject-matter of the Contract is also a Contractor’s obligation to:
1. Waste collection;
2. Waste transportation;
3. Mediation of waste recovery and / or disposal;
4. Waste disposal;
5. Waste recovery;
6. Waste processing.
	* 1. The Contractor undertakes to ensure and prove to the Client that handling of waste is included in Contractor’s business activities registered in relevant Commercial or Trade register.
		2. The Contractor undertakes to prove before starting of waste handling to be a person authorised to handle those waste types, clearly specified pursuant to the Waste catalogue issued by the decree of the Ministry of Environment of the Slovak Republic No. 365/2015 Coll., that will be generated at fulfilment of its obligations resulting from the subject-matter of this Contract, in compliance with the Waste act No. 79/2015 Coll. as amended (hereinafter referred to as the **“Waste act”**), and undertakes to ensure the validity of authorizations throughout the whole time of waste handling under this Contract. Documents proving this fact are:
7. Registration certificate for waste collection or transportation, issued by the state waste administration body in the Contractor’s seat or business place.

The Contractor undertakes to submit the waste collection or transportation registration certificate to the Client before starting such activity. The registration certificate shall be accompanied by a copy of a contract concluded with an entity authorised to handle the waste pursuant to the Waste act to ensure waste recovery or disposal for the Contractor.

or

1. Registration certificate issued by the state waste administration body in the Contractor’s seat or business place for businessman or mediator, if the Contractor doesn’t perform such activity as part of activities for which another authorization has been granted to him (e.g. authorization, operation of waste recovery or disposal facility, etc.).

The Contractor undertakes to submit the businessman’s or mediator’s registration certificate to the Client before starting such activity. The registration certificate shall be accompanied by a copy of a contract concluded with an entity authorised to handle the waste pursuant to the Waste act to ensure waste recovery or disposal for the Contractor.

or

1. Approval for operation of waste disposal facility issued to the Contractor by the state waste administration body.

or

1. Approval for operation of waste recovery facility issued to the Contractor by the state waste administration body.

or

1. Approval for mobile waste disposal or recovery facility issued to the Contractor by the state waste administration body.

or

1. Authorization granted to the Contractor by the Ministry of Environment of the Slovak Republic for waste processing (processing and recycling of used batteries and accumulators, recovery or disposal of waste oils, processing of old vehicles, processing of electric waste, preparation of electric waste for reuse, preparation of batteries and accumulators for reuse)

Failure to submit minimally one of the abovementioned documents to the Client shall be considered material breach of this Contract entitling the Client to withdraw from the Contract with immediate effect due to material breach of the Contract.

* + 1. The Contractor undertakes to perform waste disposal or waste recovery in compliance with the Waste Actand with the terms and conditions stipulated in in the **Site Safety and Technical Conditions of Performance** in SE (MO34 project), forming **Annex No. 4** of this Contract (hereinafter referred to as the "**SSTC**").
		2. The Contractor undertakes to submit to the Client documents proving type and amount of waste generated as result of performing the Contract, including the waste catalogue number, waste handling method (collection, recovery or disposal), weight slips and, in case of generated hazardous waste, also the copies of hazardous waste accompanying letters sent by the Contractor to relevant district authority, and this within ten (10) days after each calendar month.
		3. The Contractor undertakes to submit the Client a confirmation that disposal or recovery of the waste in compliance with this Contract was performed and shall do so within ten (10) days after each calendar year during which the subject of Performance was performed. The Contractor undertakes to submit to the Client the following documents and information:
1. waste type and catalogue number;
2. waste amount;
3. date of waste removal from Client’s premises;
4. waste handling code;
5. weight slips;
6. copies of hazardous waste accompanying letters; and
7. denomination of the final waste recovering / disposing entity.
	* 1. The Parties agreed that at handling waste the Contractor undertakes to comply, in addition to the obligations stated in Annex 1 – GTC, article XXIV Environmental protection, throughout the Contract validity period, also with the following obligations:
8. keep and maintain records of waste amounts on the waste registration sheet;
9. provide the Client with cooperation at keeping of waste type and amount records and handling records;
10. provide to the Client, upon request, complete and true information on the waste handling manner, no later than within thirty (30) days from the delivery of written request; provide document copies proving the foregoing, if requested by the Client.

The Parties agreed that the Contractor cannot dispose or recover iron scrap, non-ferrous metals and the parts of waste specifically determined by the Client, including waste that is suitable for further use in household. These wastes remain the property of the Client.

1.4 Documents to be delivered

The Contractor undertakes to hand over to the Client the documents mentioned in the article 6 of the Technical Specification forming Annex No. 2 hereto.

 1.5  Quality Assurance

Provisions of the clause 18.2 of the GTC forming an Annex 1 hereto are not applicable to this Contract. Conditions related to this article of the Contract are included in Annex No. 2 – Technical specification article 7 QUALITY ASSURANCE AND QUALITY CONTROL REQUIREMENTS.

1. Contract Conclusion and changes
	1. Validity

This Contract is valid from the day of its signature.

* 1. Effect

This Contract shall enter into effect upon the date of its validity pursuant to the clause 2.1 herein.

* 1. Variation procedure
		1. The variation procedure is governed by the rules set out in this clause 2.3.
		2. Right to vary
			1. The variation procedure may be initiated by the Client or Contractor mainly from the following reasons (for the avoidance of any doubt, the Client or Contractor may initiate the variation procedure also from other reasons):
				1. On the basis of a change in the scope, quality, quantity, method or timing of works additionally required by the Client compared to the specification of the Work defined in this Contract,
				2. On the basis of a change in the scope, quality, quantity, method or timing of work resulting from additional requests of supervisory bodies of the Slovak Republic compared to the specification of the Work defined in this Contract, or
				3. On the basis of a change in the applicable law related to the execution of the Work from the date of signing of the Contract

(hereinafter referred to as “**Variation**”).

* + - 1. The Client may initiate a Variation at any time by:
				1. Instructing the Contractor to perform the Variation; or
				2. Requesting the Contractor to submit a proposal for Variation.
			2. The Contractor must implement each instruction to perform a Variation and shall be bound by each instruction to perform a Variation, unless it promptly, but in any case within 3 business days, notifies the Client in writing (specifying the details and attaching supporting documents) that:
				1. It cannot execute the Variation for technical reasons; or
				2. The Variation would pose a threat to the safety of the Work.

Upon receiving this notice, the Client shall cancel, confirm or vary the instruction to perform a Variation.

* + - 1. The Contractor shall not make any Variation unless the Client issues an instruction to perform a Variation or approves a Variation.
		1. If, prior to issuing an instruction to perform a Variation, the Client requests the Contractor to submit a proposal for Variation, the Contractor shall:
			1. Notify the Client, within 3 business days, of the reason why it cannot comply with the request for a proposal for Variation (if that is the case); or
			2. Notify the Client, within 3 business days, that it may comply with the proposal for Variation, but for specified reasons it cannot submit the proposal for Variation under preceding clause to the Client within 10 business days; in such case, the Contractor shall notify the Client of the time within which it is able to submit the proposal for Variation to the Client; or
			3. Submit to the Client, within 10 business days, the proposal for Variation containing:
				1. A description of the proposed design and construction works to be performed and a time schedule for its performance;
				2. The Contractor’s proposal for all necessary modifications to the delivery deadlines pursuant to clause 6.6; and
				3. The Contractor’s proposal for adjustment to the Contract Price.
		2. After receiving the proposal for Variation from the Contractor in accordance with the preceding clause, the Client shall approve or reject, or comment on, the received proposal. Until the Client approves the received proposal for Variation, the Contractor may not suspend any work on the Work and must continue to perform its obligations under this Contract.
		3. Variation procedure
			1. The Contractor shall confirm in writing its receipt of each instruction for Variation.
			2. If the Variation has impact on the price for the Work, after issuing an instruction to perform a Variation or approving a proposal for Variation, the Parties shall hold negotiations and agree the adjustment of the price for the Work in accordance with the following principles:
				1. The adjustment of the price for the Work must be based on a valuation of each item of materials and works required to implement the Variation, and the unit prices and hourly charge-out rates set out in annexes hereto shall be used; and
				2. If annexes hereto don’t include such an item of materials or works, the applicable rate or price for a similar material or a similar work under the standard prices on the market at the time of implementation of the Variation shall be used.
			3. If the Parties do not agree on the adjustment of the Contract price pursuant to preceding paragraph (ii) of this clause, the price determined by the Client in accordance with the principles set out in the preceding paragraph (ii) of this clause shall apply, unless it is decided otherwise in accordance with article 15.
			4. For the avoidance of any doubt, the Parties acknowledge that in the case of disputes associated with the variation procedure, the Contractor may not suspend works on the execution of the Work and must carry on in accordance with the provisions of this Contract, as well as implement the instructions for Variation of the Client.
			5. Every instruction to perform a Variation must be signed either by the Contract Manager of the Client or by the relevant executive of the Client in accordance with the Client’s corporate documents.
			6. If the Client will reduce the scope of the Work by utilizing the procedure under this clause, the Contractor is not entitled to claim financial compensation from the Client.
		4. All Variations approved by the Client are subject to the procedure as specified in clause 4.2 GTC and shall be subject to an amendment to the Contract. For the avoidance of doubt, the Contractor shall be entitled and also obliged to start executing an additional Performance or changes of the Performance on the basis of a written agreement between the Parties, approved by the persons designated for this purpose in the clause 4.22 hereof, or in the case of issuing order to carry out the Variation from the Client to the Contractor in accordance with the clause 2.4.2(ii)(a).

Other conditions related to this article of the Contract are included in Annex No. 1 –GTC, art. IV. Conclusion of the Contract and Amendments.

1. Contract Interpretation
	1. General Terms and Conditions of Slovenské elektrárne, a.s.

The Contractor takes note and explicitly agrees, that other conditions applicable to this Contract are included in the General Terms and Conditions of Slovenské elektrárne, a.s. SE as a Customer (**GTC**), version **01.10.2018** which form the **Annex No. 1** to this Contract.

The Contractor declares that they have acquainted with the contents of the GTC, their contents is familiar to them and takes note of the fact that the GTC are binding and undertakes to adhere to their provisions by signing this Contract.

* 1. Site Safety and Technical Conditions

The Contractor undertakes to adhere to the terms and conditions included in Site Safety and Technical Conditions of Performance in SE (MO34 project), version 01.06.2018, which form an Annex No. 4 hereto (hereinafter referred to as the "SSTC"), while performing the Work in the premises of the Client.

* 1. Priority of provisions
		1. In case of any conflict between the terms and conditions stipulated herein and the terms and conditions stipulated in the Annexes hereto, or its parts, the text of this Contract shall prevail.
		2. In case of any conflict between the provisions of the individual Annexes, the Technical Specification shall prevail over SSTC.
		3. In case of any conflict between the terms and conditions stipulated in the GTC and terms and conditions stipulated in SSTC, the SSTC shall prevail over the GTC.

Other conditions related to this article of the Contract are included in the Annex No. 1 –GTC, art. V. Interpretation.

1. Communication
	1. Contact Persons

The contact person in contractual matters is:

On behalf of the Client:

**Antonio Poli,** antonio.poli@seas.sk

On behalf of the Contractor:

**xxx**

* 1. Contract Managers

For the purpose of performing the organizational and implementing acts on the basis of the provisions of this Contract, the following persons are appointed:

Contract Manager on behalf of the Client:

**Antonio Poli,** antonio.poli@seas.sk

Contract Manager on behalf of the Contractor:

**xxx**

* 1. Communication language

Notwithstanding the provision of Annex No. 1 – GTC, art. III. Language, clause 3.3, the Parties have agreed that the communication language shall be English.

Other conditions related to this article of the Contract are included in Annex No. 1 –GTC, art. VI. Communication.

1. Price and Payment Terms and Conditions
	1. Price
		1. The Parties have agreed that the maximum price for the performed Works pursuant to the clause 1.2 herein shall be:

**xxxxxxx EUR, VAT excluded**

(in words: xxxxxxxxxxxxxxx EUR, VAT excluded)

(hereinafter referred to as the “**Price**”)

5.1.2 The above-mentioned Price represents the Client's financial limit for the payment for the Work provided by the Contractor (hereinafter referred to as the “**Maximum Price**”). The Client is not obliged to spend the Price and the Contractor is not entitled to demand from the Client any payment of potential balance of the Price, if any, at the end of the contract period due to the fact that the Price has not been spent by the Client in full. The Price for the Work shall be calculated according to

(i) the unit rates for works; or

(ii) time related charge items of labour rates and equipment rental rates;

 where relevant volume of the works performed in respective calendar month (hereinafter also “Invoicing Period“) shall be confirmed by the Parties in the Monthly Progress Protocol. For avoidance of any doubts, time related charge items of labour rates and equipment rental rates shall not be applied to works which may be calculated based on unit rates (i.e. calculation based on point (ii) above may be applied only to unforeseen activities required in writing by the Client, other than works under the unit rates items as specified in the Annex No. 3 – Price List). The detailed list of (i) unit rates and (ii) time related charge items of labour rates and equipment rental rates forms an Annex No. 3 - Price List.

5.1.3 The Parties have agreed that the price for works performed in respective Invoicing period (calendar month) shall be paid on the basis of an invoice issued by the Contractor on a monthly basis. The basis for the issuing of an invoice by the Contractor shall be the Monthly Progress Protocol for respective calendar month (herein referred to as “the Monthly Progress Protocol”) elaborated in compliance with clause 5.1.4 hereof and confirmed by the authorized person of the Client and of the Contractor pursuant to clause 4.2 hereof.

5.1.4 The Monthly Progress Protocol shall include the quantity of works performed during the relevant Invoicing Period and price stated according to article 5.1.5. The Monthly Progress Protocol shall be confirmed by authorized person pursuant to clause 4.2 hereof of the Client and of Contractor. For avoidance of any doubt the confirmation of the Monthly Progress Protocol does not constitute acceptance or takeover of the Works or Work part or recorded quantities.

 For VAT purposes, works performed in respective month is considered as a Repeated Supply with Monthly invoice period according to the Act No. 222/2004 Coll. on VAT (hereinafter “VAT Act”). The last date of the calendar month in which the Work part will be supplied is considered as date of Supply for particular monthly invoice in accordance with the VAT Act.

5.1.5 The price for the works performed within the relevant Invoicing period (calendar month) shall be calculated on the basis of the quantity of the works confirmed by the Parties in the Monthly Progress Protocol, multiplied by the relevant unit rates or time related charge items of labour rates and equipment rental rates according to this Contract.

5.1.6 An integral part of the invoice shall also be a copy of the Monthly Progress Protocol**.**

5.1.7 The Parties have agreed that the price of the material delivered by the Contractor during the Work performance hereunder is included in the unit rates for the Work.

5.1.8 Value Added Tax (VAT) shall be applied in line with respective regulations. Contractor shall indicate in the invoice also the particular code of Section F of Classification of Products by Activity (Commission Regulation 1209/2014).

* 1. Price contents
		1. Notwithstanding the provisions of clause 7.1.5 of the GTC, forming Annex No. 1 hereto, the Contractor declares that they are fully acquainted with the full scope and character of the Work and that they have fully evaluated and assessed all works of permanent or temporary character needed for full performance resulting from their obligations under this Contract, and that when bidding the price for Work, the Contractor:
			1. had been fully acquainted with the design documentation, technical specification, and this Contract including the Annexes hereto;
			2. has examined the conditions at the construction site, or the place of the Work provision;
			3. in the price calculation for the Work the Contractor has considered all technical terms and deadlines in the scope stipulated in the design documentation, technical specifications and in the Contract;
			4. the Price for the Work includes all works, materials, and equipment needed for provision of Work even in case that they were not defined in the design documentation, technical specification, and this Contract, however the character of the Work requires such works, materials, and equipment in compliance with the design documentation, technical specification and this Contract,
			5. has considered in the agreed terms pursuant to this Contract all their requirements from the Client related to the subject matter of this Contract, that they knew about in the time of concluding the Contract or considering to all circumstances should have or could have known about.
	2. Payment Terms

Invoice Maturity

The maturity period of an invoice shall be **60 days from the date of delivery** of the invoice to the Client.

* 1. Not used.
	2. Bank guarantee

5.5.1 **General conditions**

(i) In order to secure its obligations under this Contract, the Contractor shall submit to the Client an unconditional and irrevocable bank guarantee (bond) in a wording acceptable to the Client, based on which a bank is obliged to fulfil the Client's claim upon first written request. A bank guarantee shall always be deemed acceptable, if issued in form and with content substantially as in Annex No. 8 hereto, by a bank which has none of the ratings worse than:

• Moody’s – „Baa3”; or

• Fitch – „BBB-”; or

• Standard & Poor´s – „BBB-”.

(ii) If the rating of the bank that issued a bank guarantee deteriorates during the period of existence of such bank guarantee in such a way that it will no longer achieve the levels mentioned in the previous paragraph (i) in the clause herein, the Client is entitled to notify the Contractor in writing and the Contractor undertakes to submit at its own cost within 10 days upon receiving the notice a new bank guarantee issued by a bank with rating meeting the conditions specified in the previous paragraph (i) herein and also meeting content and formal requirements stipulated in this Contract. The Client returns the existing bank guarantee to the Contractor only after submitting a new bank guarantee issued based on this clause.

(iii) If the Contractor fails to submit a bank guarantee within the deadline and in compliance with the conditions stated above in the paragraphs (i) or (ii) of this clause herein, the Client is entitled to draw the full amount of the existing bank guarantee and/or to retain money in the amount equal to full amount of the valid bank guarantee issued by the bank which rating is downgraded and does not meet the above mentioned criteria.

5.5.2 **Performance Bond**

The Contractor shall ensure and submit to the Client at its own cost a bank guarantee for an amount equal to 10% of the price for Work specified in the clause 5.1.1 herein (hereinafter referred to as the "**Performance Bond**") to secure their liabilities in compliance with this Contract, at latest within 15 days upon concluding the Contract. The Client is not obliged to perform payment of the first invoice issued by the Contractor based on this Contract, unless the Contractor provides a Performance Bond issued in compliance with this Contract.

(i) The Contractor undertakes to ensure that the Performance Bond will be valid during the whole period of performance of the Work, at least 30 days following the completion, handover, and Takeover of the Work by the Client in compliance with this Contract.

(ii) Every time the Maximum Price for Work is increased by more than 5%, the Contractor shall ensure a proportional increase of the amount of the Performance Bond within 20 days from the day on which such adjustment of the Maximum Price occurred.

(iii) Not used;

(iv) If during the performance of the Work there is a delay in the deadline of the Work completion, the Contractor undertakes to ensure at its own cost the extension of validity of the Performance Bond so that its validity expires at the earliest on the 30-th day after completion, handover, and takeover of the Work by the Client in compliance with this Contract, namely within 15 days from the day on which such delay in the Work occurred, but not later than 10 days before the expiry date of the Performance Bond validity.

(v) The Client may claim payment under the Performance Bond if:

(A) the Client becomes entitled towards the Contractor to:

I. a contractual penalty as per art. XV of the GTC forming the Annex No. 1 hereto, if the Contractor does not pay the contractual penalty within 10 working days after its due date, while in such case the Client shall be entitled to satisfy their claim from the Performance Bond in the amount of the due contractual penalty; or

II. any amount of money related to Contractor's failure to remove defects of the Work within 10 working days upon the deadline for removing the defects of the Work, while in such case the Client shall be entitled to satisfy their claim from the Performance Bond in the amount of the total costs and expenses of the Client on removing such defect, or

III. any amount of money related to Contractor's failure to remedy a breach of this Contract by the Contractor within 10 working days upon the deadline stipulated in the request for remedy of Contractor's breach of the Contract, while in such case the Client shall be entitled to satisfy their claim from the Performance Bond in the amount of the total costs and expenses of the Client on remedy of such Contract breach;

IV. any amount payable in connection with compensation for damages as per article 8 herein, that the Contractor fails to pay to the Client within 10 working days upon its maturity, while in such case the Client shall be entitled to satisfy their claim from the Performance Bond in the due amount of damage compensation.

(B) the Contractor fails to extend validity of the Performance Bond in compliance with paragraph (iv) of this clause; in such case the Client shall be entitled to satisfy their claim from the Performance Bond in full amount of the Performance Bond provided by the Contractor;

(C) the Contractor fails to submit the Performance Bond in compliance with clause 5.5.1(i),(ii) and/or 5.5.2(i) herein; in such case the Client shall be entitled to satisfy their claim from the Performance Bond in in full amount of the Performance Bond provided by the Contractor;

(D) the Contractor fails to increase proportionally the amount of the Performance Bond in compliance with paragraph (ii) of this clause herein; in such case the Client shall be entitled to satisfy their claim from the Performance Bond always in full amount of the Performance Bond provided by the Contractor;

(E) Not used;

(F) the Client becomes entitled to terminate this Contract due to its breach by the Contractor; the Client shall be entitled to satisfy their claim from the Performance Bond in full amount of the Performance Bond.

(G) the Contractor fails to submit a Warranty Bond as per clause 5.5.3 herein; the Client shall be entitled to satisfy their claim from the Performance Bond in the amount in which the Warranty Bond should have been submitted by the Contractor.

(vi) If the Contractor fails to increase proportionally the amount of the Performance Bond, or if the Contractor fails to ensure validity of the Performance Bond during the whole period of the Work performance in compliance with this Contract, the Client is entitled to retain any outstanding payments in the value equal to full amount of the Performance Bond or any outstanding part of it provided that the Client does not exercise his rights arising from the paragraph (v) of this clause in full amount of the outstanding Performance Bond. The rules under the paragraph (v) of this clause shall apply to retained money accordingly. The Client shall return a part of the retention money reduced by a sum which the Client has claimed from the Contractor pursuant to the paragraph (v) of this clause within 30 (thirty) days from the day of completion, handover, and takeover of the Work by the Client pursuant to this Contract.

5.5.3 **Warranty Bond**

In order to secure obligations of the Contractor under this Contract, the Contractor shall at its own cost ensure and submit to the Client a bank guarantee for an amount equal to 5% of the total price invoiced for the Works according to this Contract for Work (hereinafter referred to as the "**Warranty Bond**"), at latest within 15 days from the day of handover and takeover of all the Work by the Client pursuant to this Contract.

If the Contractor fails to meet the obligation stipulated in this clause herein and fails to submit a Warranty Bond in compliance with this Contract, the Client is entitled to withhold from any payments due to the Contractor an amount equal to 100% of the amount of the required Warranty Bond. The rules under the paragraph (iv) of this clause shall apply to retained money accordingly. The Client shall, within the 30th day following the expiration of the warranty period as defined in article 9 of the Contract, return such part of the withheld money which the Client has not used to satisfy their claims towards the Contractor pursuant to the paragraph (iv) of this clause.

(i) The Contractor undertakes to ensure that the Warranty Bond will be valid during the whole time of the warranty period including its potential interruptions, and it can expire at the earliest on the 30-th day after expiry of the warranty period.

(ii) In the event of extension of the warranty period, the Contractor shall at its own cost, within 15 days from the extension of the warranty period, but not later than 15 (fifteen) days prior to the date of expiry or cessation of the Warranty Bond, ensure extension of validity of the Warranty Bond corresponding to the extension of the warranty period.

(iii) Not used;

(iv) The Client may claim payment under the Warranty Bond if:

(A) the Client becomes entitled to claim any amount of money from the Contractor in relation to the Contractor's failure to remove defects of the Work in compliance with this Contract; in such case the Client shall be entitled to satisfy their claim from the Warranty Bond in the amount of the contractual penalty as per clause 6.6 of this Contract for Work and clause XV of the GTC, forming the Annex No. 1 hereto, and costs and expenses of the Client on removing such defect;

(B) the Contractor fails to extend validity of the Warranty Bond in compliance with paragraph (i) or (ii) of this clause herein; in such case the Client shall be entitled to satisfy their claim from the Warranty Bond in full amount of the Warranty Bond provided by the Contractor;

(C) the Contractor fails to submit the Warranty Bond in compliance with clause 5.5.1(i), (ii) and/or 5.5.3(i), (ii) herein; in such case the Client shall be entitled to satisfy their claim from the Warranty Bond in full amount of the Warranty Bond provided by the Contractor;

(D) Not used;

(E) the Client becomes entitled to terminate this Contract due to its breach by the Contractor; and the Client shall be entitled to satisfy their claim from the Warranty Bond in the total value of the Warranty Bond.

1. Work Performance
	1. The Place of Work performance

This Contract applies to the following plant of the Client:

Slovenské elektrárne, Závod 3. a 4. blok Elektrárne Mochovce, 935 39 Mochovce.

* 1. Place of Handover and Takeover of the Work

The place of handover and takeover of Work provided regularly shall be:

Slovenské elektrárne, Závod 3. a 4. blok Elektrárne Mochovce, 935 39 Mochovce

* 1. Personnel performing the subject of performance of the Works

The Contractor undertakes that the subject of performance will be carried out by personnel with professional competence in compliance with legal regulations of the Slovak Republic and Client's requirements pursuant to, *inter alia*, the Technical Specification forming Annex No. 2 hereto. Particularly, but not limited to, the Supplier’s personnel performing the erection activities must be holding an authorization issued according to Article 11c of the Act 314/2001 Coll. by third party that is a general provider of Fire Fighting systems Unit4. The Client has the right to audit a process of achieving the authorization for erection works.

The key persons used for the execution of the work (specified in the tender conditions) shall be chosen by the Contractor; all agreements between them and the Contractor are the Contractor’s sole responsibility and will have no effect on the Client’s obligations under this Contract. The Client has the right to approve and/or exclude key persons of the Contractor. The Contractor cannot replace any key person already approved by the Client without explicit approval by the Client of the replacement person.In the case of disapproval/exclusion the Contractor must provide best effort to substitute disapproved/excluded staff member.

* 1. Work Performance

The Contractor undertakes to do everything necessary for due and timely performance of the Work (i.e. to carry out all performances needed for due and timely performance and completion of the Work), so that the Work complies fully with all valid legal regulations. The Contractor further expressly undertakes to follow Client's instructions regarding Work performance. In case of unsuitability of the Client's instructions the Contractor shall proceed pursuant to the relevant provisions of Slovak Commercial Code. If, while performing the Work, any essential facts occur that the Parties did not have any knowledge of, the Contractor shall be obliged to inform the Client about them immediately on the place and without undue delay and to record these facts in the Log Book, if it is kept. If the Contractor fails to inform the Client in compliance with the previous sentence, the Client is not obliged to accept any comments to the facts that were found out later, and they are considered known to the Contractor before signing the Contract.

* 1. Inspections and Tests

The Contractor shall be obliged to carry out testing or technical inspection (hereinafter referred to as the "Test") of the Work before its handover in compliance with the Technical Specification, which forms Annex No. 2 hereto.

* 1. Deadline for Delivery and Takeover of the Work
		1. The Contractor undertakes to start performing the Work from the first day of effectiveness of the Contract and to perform the Work within the following deadlines:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Lot Designation** | **Lot Description** | **Start of Erection** | **Completion of Erection** | **Completion of Set-up** | **Take over of the Work** |
| 1A.1 [*Balance*] | WATER MIST system (SEISMIC resistant) in 805/1-02 and 806/1-04, Unit 4 (connection to NI with classified valves excluded)  | ContractAward | 159 days from Contract award | 45 days from erection completion | 30/04/2020 |
| 1A.2 | WATER MIST system (NOT SEISMIC resistant) in 805/1-02 and 806/1-04, Unit 4 | ContractAward | 113 days from Contract award | 26 days from erection completion | 30/04/2020 |
| 1B.1 [*Balance*] |  WATER MIST system (SEISMIC resistant) in 805/1-02 and 806/1-04, Unit 4 (connection to NI with classified valves) Unit 4- Electric Actuator valves  | Contractaward | 159 days from Contract award | 45 days from erection completion | 30/04/2020 |
| 1C.1 | WATER CURTAIN system in Lengthwise Unit 4 | Contract award | 90 days from Contract Award | 24 days from erection completion | 30/04/2020 |
| 3A.1 | WATER MIST system (NOT SEISMIC resistant) in 490/1-02 Unit 4 | Contractaward | 113 days from Contract award | 26 days from erection completion | 30/04/2020 |
| 4A.1 [*Balance*] | WATER MIST system (SEISMIC resistant) in NI Unit 4 | Contractaward | 159 days from Contract award | 45 days from erection completion | 30/04/2020 |

**Erection completion** means that minimally following conditions were completed by Contractor:

* Mechanical and electrical erection was finished
* Red pen as built drawings were issued
* Declaration of readiness to energization as per the Decree 508/2009 was issued
* All related inspection steps according ITP plan were successfully finished and related protocols were issued (with participation of Client’s inspectors), pressure tests and preconstruction test were done, Contractor issued Declaration of Conformity
* Individual tests were realized and Contractor is ready for functional check
* Flushing activities were successfully finished and all temporaries were dismounted
* Erection ATD documentation were completed by Contractor and approved by the Client
* Conformity check with The Nuclear Regulatory Authority of the Slovak Republic (ÚJD SR) successfully finished

**Functional checks completion** or **Set-up** means the completion of all functional checks required to set up the Works for its first start-up as prescribed by this Contract, applicable law and by the Authorities. The Set-up occurs after Erection completion.

**Takeover** **of the Work** means takeover as per article 6.7 of this Contract.

* + 1. The deadlines given in Clause 6.6.1 of the Contract must be precisely respected by the Contractor so that the works on the Work performance are not affected, postponed, or delayed in any way by the Contractor.
		2. If the Contractor is not able to meet the above mentioned deadlines during common working hours, they are obliged - either independently or by order of the Client - to provide for Work performance in more shifts or during overtime hours, without causing the Client any additional costs. The agreed price, unit rate, time related charge, items of labour rates and equipment rental rates for the Work shall not change in such case.
		3. The Client shall be entitled to claim from the Contractor a contractual penalty in the amount of 10,000 EUR for delayed contractual deadline Completion of Erection and Completion of Set-up, specified in Clause 6.6.1, for every, even a started, week of delay irrespective of the fact, whether the later deadline milestones were or were not met.
	1. Takeover of the Work
		1. The Contractor shall be obliged to invite the Client to take over the Work at least **5 working days** before the agreed date of Work performance.
		2. A takeover protocol shall be elaborated on takeover of the Work, in line with the template forming the Annex No. 5b hereto, (hereinafter referred to as the “**Takeover Protocol**”) signed by both Parties and containing the following:
* description of the Work;
* List of deliverable documents;
* the goods codes as per the Common Customs Tariff in case that the delivery of goods is a part of the performed Work;
* in case of taking over the last Work performed hereunder, also information about the number of unreturned entry identification cards or permits (hereinafter referred to as “**the Entry ID Card**”) assigned to the Contractor's personnel;
* legible first names and surnames and signatures of the Contract Managers of both Parties pursuant to clause 4.2 hereof;
* the date of takeover of the Work by the Client;
* place of takeover of the Work.
	+ 1. The Contractor shall continuously provide the Client with documentation and certificates related to performed Work and at the latest before the start of the takeover process, the Contractor is obliged to hand over to the Client complete documentation and certificates necessary for taking over and using the Work.

Other conditions related to this article of the Contract are given in Annex No. 1 hereto – GTC, art. IX. Performance execution.

1. Subcontractors

The Contractor shall perform the Work also using the following subcontractors:

|  |  |  |  |
| --- | --- | --- | --- |
| Name of the Subcontractor | Company ID No.: | Subject of performance | share in the total/maximum price of works (%)\* |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
| Total: |  |

Note:

\* the data is not to be indicated in case of self-employed worker

Other conditions related to this clause of the Contract are given in Annex No. 1 – GTC,art. X. Subcontractors.

1. damage Compensation

Notwithstanding the provisions of clause 13.1 of the GTC, forming Annex No. 1 hereto, for the purpose of this Contract the Parties agree that:

The total maximum compensation of the Contractor to the Client for damage arisen under or in connection with this Contract shall not exceed 100% of the total Price, this limitation does not apply to situations where damage was caused by the Contractor´s gross negligence (as defined below), wilful act, breach of intellectual property rights and art. XVI. SUSPENSION OF WORKS AND TERMINATION OF THE CONTRACT of the GTC. This total maximum liability shall also exclude any loss or damage arising in respect of claims that are covered by the proceeds of insurance affected and maintained in accordance with this Contract where the Contractor shall reimburse to the Client any deductibles (in Slovak *spoluúčasť*) paid by the Client to insurance company. The Parties are not entitled to claim damage compensation exceeding the total maximum liability.

For the purposes of this Contract, "Gross Negligence" means a conscious failure of a person to act with professional care.

Other conditions related to this article of the Contract are given in Annex No. 1 hereto – GTC, art. XIII. Liability for Damage.

1. WARRANTY AND LIABILITY FOR DEFECTS

Provisions related to warranty and liability for defects are given in Annex No. 1 hereto – GTC, art. XIV. Warranty and Liability for Defects.

1. contractual penalties and Sanctions

Provisions related to contractual penalties and sanctions are given in Annex No. 1 hereto – GTC, art. XV. Contractual Penalties and Sanctions. Contractual penalties specified in Clause 6.6.4 are applicable for contractual deadlines specified in clause 6.6 of the Contract for Work.

The Parties have agreed on limiting the total amount of the contractual penalties to the total cap of **15%** of the Maximum Price.

1. Discontinuation of works and termination of the contract

Provisions related to discontinuation of works and termination of the Contract are given in Annex No. 1 hereto – GTC, art. XVI. Suspension of Works and Termination of the Contract.

 11.1 In the event of a material breach of the Contract by the Contractor according to article 16.4 of the Annex No. 1 hereto – GTC, the Client is entitled to make a change to the Contract consisting in the change of the Contractor, by replacing the current Contractor (the “Original Contractor”) with the new Contractor, in accordance with § 18 of the Public Procurement Act. The change of the Contractor will be done by the Client in the form of a written amendment to this Agreement concluded between the Client and the subject which as the tenderer in the public procurement fulfilled (i) the selection criteria, (ii) all the requirements for the subject of the contract, including fulfillment of the obligations under the tender documents and its bid was evaluated as the next best in the Public Procurement (hereinafter referred to as the “New Contractor”). The relationship between the Original Contractor and the Client will be settled in accordance with this Contract article 16 of the Annex No. 1 hereto – GTC. In order to establish the contract relationship between the New Contractor and the Client, appropriate amendments to the Contract will be made.

11.2 No later than within 10 working days after the request of the Client, the Original Contractor is obliged to provide to the Client all the necessary cooperation in order to enable the change the Contract pursuant to this Article of the Contract. In particular the Original Contractor is obliged to execute all acts necessary for the proper performance of the Contract until the change of the Contractor, submit to the Client all necessary information and documents regarding the delivered performance under the Contract in order to avoid any possible damage.

11.3 In the case of breach of the obligation of the Original Contractor pursuant to par. 11.2 of this Article of the Contract (failure to provide cooperation), the Client is entitled to the payment of a contractual penalty by the Original Contractor in the amount of 10% of the Price.The obligation to compensate for damages incurred as a result of a breach of an obligation secured by a contractual fine remains unencumbered by the payment of the contractual penalty.

1. Management systems of the contractor

The Parties have agreed that for the purpose of this Contract the Contractor shall meet quality assurance and quality control requirements in compliance with attached Technical Specification in the Annex No. 2.

1. Insurance

Conditions related to this article of the Contract are given in Annex No. 7 hereto –Insurance.

Annex No. 1 hereto – GTC, art. XX. Insurance, shall not apply

1. Confidentiality of information AND Personal data protection

Provisions related to confidentiality of information are given in Annex No. 1 hereto –GTC, art. XXII. Confidentiality of Information.

Notwithstanding the provisions of clause 22.1 of the GTC, forming Annex No. 1 hereto, for the purpose of this Contract the Parties have agreed, that the limitations stated in the clause 22.1 of the GTC shall not apply also to the disclosure of confidential information to banks of the Client provided that Client’s banks are bound by a non-disclosure duty of at least the same extent as set forth in the clause 22.1 of the GTC.

The Parties have agreed that the reference to the Act No. 122/2013 on Personal Data Protection as amended in the clause 23.1 of the GTC, forming Annex No. 1 hereto shall be replaced by the reference to the REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL (GDPR).

1. Jurisdiction
	1. Disputes

Notwithstanding the provisions of clause 29.2 of the GTC, forming Annex No. 1 hereto, the Parties have agreed that all disputes which originate in relation to the fulfilment of this Contract shall be resolved pursuant to the arbitration rules of the International Chamber of Commerce – ICC (hereinafter only the “**Rules**”) by one or more arbiters appointed in compliance with the stated Rules. The place of the arbitration proceedings shall be Zurich, Switzerland and the entire arbitration proceedings shall be conducted in the English language.

* + 1. Unless agreed otherwise by the Parties, the following shall apply:
			1. three arbiters shall decide the dispute; at least one of them has to have completed legal education at a university in the Czech Republic or in the Slovak Republic;
			2. the Client and the Contractor shall appoint one arbiter each. These two arbiters shall appoint the third arbiter who shall chair the arbitration court. Unless these three arbiters are appointed within 30 days since the day when a Party submitted the dispute to the decision in the arbitration proceedings, these three arbiters shall be appointed according to the Rules.
		2. By this reference, the Rules shall be deemed to have been included in this Contract. The Parties are bound by a verdict of the arbitration court, including a decision on costs.
		3. In the case of a dispute, the Contractor may not suspend the fulfilment of the subject-matter hereof and shall proceed pursuant to the terms and conditions stipulated herein and according to the instructions of the Client.

Other conditions related to this article of the Contract are given in Annex No. 1 hereto – GTC, art XXIX. Disputes.

1. Assignment of Receivables

Notwithstanding the provisions of clauses 11.1, 11.2 and 14.20 of the GTC, forming Annex No.1 hereto, for the purpose of this Contract the Parties agree that:

Each Party undertakes neither to assign or otherwise dispose or trade, either with or without consideration, the receivables resulting from the Contract, nor to establish pledge rights over the receivables resulting from the Contract without the previous written consent of the other Party. Otherwise such act is invalid. In case of breach of the above-mentioned, the Client may claim from the Contractor a contractual penalty pursuant to clause 15.7 of the GTC.

No Party shall be entitled to transfer its obligations resulting from the Contract without the previous written consent of the other Party. Otherwise, such transfer of obligations shall be invalid.

Sub-clause 11.1 and 11.2 of GTC shall not apply and the Party (Contractor or Client) may, without the prior written consent from the other Party, assign or pledge its existing (and future) rights to monetary performance against the other Party arising from this Contract in favour of the financing bank, which shall extend credit to the Party for the purpose of performance of this Contract, provided that such assignment or pledge of receivables in favour of this financing bank serves as a guarantee of the credit extended by the financing bank to the relevant Party.

The Client is not entitled to make a unilateral assignment of its rights resulting from the warranties provided by the Contractor for Performance, to any third person, or several third persons

1. Special provisions
	1. Partnership clause

The Contractor takes note that by signing this Contract, they are obliged to respect the provisions of the Partnership Clause, version 01.10.2014, wording of which has been published at the web site:

<http://www.seas.sk/procurement>

and declares that they have become acquainted with the Partnership Clause and its contents is known to them and takes note of the fact that the Clause is binding.

* 1. Job Offer

The Client and the Contractor have agreed that during the fulfilment of this Contract and six months after the completion of the performance hereunder, the Contractor shall not, directly or indirectly, offer employment to the Client's employees who participated in the fulfilment of this Contract. Any breach of this obligation shall be deemed a material breach of the Contract and the Client shall be entitled to claim a contractual penalty in the amount of **EUR 3,300** for each proved breach of this ban.

* 1. Protection of sensitive information pursuant to Atomic Act

The Parties take note of the fact that during performance of this Contract, sensitive information which is subject to protection pursuant to Act No. 541/2004 on Peaceful Use of Nuclear Energy (Atomic Act) as amended (hereinafter referred to as the "Atomic Act") can be shared by and between the Parties. Sensitive information or documents containing sensitive information must not be published, provided to a third party and the Parties are obliged to proceed so that the information provided to individual persons during the performance of the Contract was limited to information inevitable for performance of this Contract. The Parties have agreed that in case of doubt, it is assumed that any information is of sensitive character as per Section 3 (14) of the Atomic Act. If the Contractor breaches the provisions of this clause, such breach shall be deemed as leak of confidential information and for such breach the Client shall be entitled to claim a contractual penalty pursuant to clause 15.8 of the GTC, forming Annex No. 1 hereto.

1. Final provisions
	1. Annexes

The following Annexes form an integral part of this Contract:

Annex No.1 – General Terms and Conditions of Slovenské elektrárne, a.s., (general Works), version **01.10.2018**

Annex No.2 – Technical specification (PNM34482639)

Annex No.3 – Price List

Annex No.4 – Site Safety and Technical Conditions of Performance in SE (MO34 project), version **01.06.2018**

Annex No.5 – Takeover Protocol – template

Annex No.6 – Declaration on Tax Position and Interrelation

Annex No.7 – Insurance

Annex No.8 – Bank Guarantees form

* 1. Counterparts

This Contract has been executed in **2** counterparts, of which each Party shall receive **one** counterpart.

* 1. Expression of Will

The Parties hereby declare that they have read this Contract before signing, it was concluded based on their true and free will, certainly, seriously and clearly, not in distress or under other obviously disadvantageous conditions, that they understand its contents and, as a sign of their consent, they add their signatures hereto without any reservations and fully conscious.

|  |
| --- |
| In \_\_\_\_\_\_\_\_\_\_\_\_\_, dated \_\_\_\_\_\_ In \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, dated \_\_\_\_\_\_ |
| On behalf of and for the Contractor: |  | On behalf of and for the Client: |
|  |  | **Slovenské elektrárne, a.s.** |
|  |  | Francisco Morejon, Project Director MO34 |
|  |  |  |
|  |  | Giorgio TattaDirector of Procurement MO34 |