DRAFT CONTRACT FOR SUPPLY OF REHEAT OUTLET HEADERS WITH CONNECTING TUBES FOR THE BOILER OF UNIT 5

(Contract No.: _____-B5)

agreed and made between

TERMOELEKTRARNA ŠOŠTANJ, d.o.o.,
Cesta Lole Ribarja 18, 3325 ŠOŠTANJ,
Represented by mag. Arman Koritnik, General Manager
Further on referred to as: **"Buyer"**
ID No. for VAT: SI92189903.

and

COMPANY NAME
Address _____
Represented by _____
Further on referred to as: **"Seller"**
ID No. for VAT: _____.

whereas

1. PRELIMINARY PROVISIONS

On the Public Procurement Portal, publication No. _____, dated _____ and at the same time in the Official Journal of the European Union, publication No. _____, dated _____, the Employer TEŠ published public procurement for "Reheat outlet headers with connecting tubes for the boiler of Unit 5".
Public procurement was performed under negotiated procedure, published in compliance with Article 45 of Public Procurement Act (ZJN-3).
The decision on awarding the contract became final on _____ .

The Parties herein initially establish, that for carrying out its core business operations the Buyer requires supply of reheat outlet headers with connecting tubes for the boiler of Unit 5 (further on referred to as: Goods).

The Seller _____ submitted the Tender No. _____ , dated _____, and based on negotiations the Seller delivered final Tender No. _____ , dated, _____, and the Buyer reviewed and confirmed its suitability. The specified Tender is the most advantageous and represents the basis for the conclusion of this Contract. The Contract shall be made after finished public procurement procedures. Specified Tender (number _____, dated and number _____, dated) represents an integral part of present Contract.

The Tender Dossier and the respective Seller's Tender shall be a component part of the present Contract. All documents composing the Contract shall be considered as complete unit and shall be interpreted as such. In case of eventual discrepancies or misunderstandings as to the specific obligations, the following order shall apply for interpretation purpose, unless agreed otherwise:

1. Contract;
2. Tender, protocols on completed negotiations included;
3. Tender Dossier.

The General Conditions of both Parties shall be explicitly excluded. Ruling language for all contract related issues and documents shall be English.

2. SUBJECT OF CONTRACT

The Seller's products assortment includes products complying with Buyer's requirements and furthermore, the Seller is capable of organizing transport of Goods, offering to the Buyer uninterrupted supply of Goods.

The Contract Parties herein agree, that the Seller shall supply to the Buyer Goods and the Buyer commits to buy the Goods listed above, which are defined in details in the Seller's Tender Nos. _____ as mentioned, above and final Tender No. _____ of _____, enclosed to the present Contract and forming its component part.

By signing the present Contract, the Seller herein undertakes to sell to the Buyer and to deliver the required quantity of Goods, and the Buyer herein undertakes to pay the agreed price.

3. QUALITY OF GOODS

3.1
The Seller herein undertakes that the quality of the delivered Goods shall comply with data agreed in the Technical specifications, which constitute an integral part of the Contract.

The seller will 30 days after date of contract submit to Buyer detail QA/QC plan (including base material testing) for approval.

The Seller shall ensure free access to his manufacturing and testing facilities (including subsuppliers) for Buyer`s inspection personal to inspect the quality of material, products and documentation as well to be present by testing of products which are in the scope of delivery in this Contract.

With the delivery, the Seller shall accompany a list of supplied parts and materials used and also complete technical documentation acc. to Tender requirements.

3.2
In case of non-compliant quality of the delivered goods and non-compliant material, the Seller must immediately start eliminating the malfunctions/defects or deliver new Goods (within 2 months). Any costs resulting from elimination of malfunctions/defects shall be covered by the Seller.

4. METHOD OF SUPPLY AND DELIVERY TERMS

4.1
The Seller must deliver the Goods DAP Sostanj Power Station, according to Incoterms 2010. The Parties herein agree that the Seller shall deliver Goods subject to present Contract, in the Buyer`s warehouse not later than 31 March 2018.

The Buyer shall confirm acceptance of the receipt of the goods by legible signature on the delivery note.

4.2
Title to the supplies shall pass to the Buyer upon delivery in accordance with delivery terms provision as specified above. In case the Seller by its own fault fails fulfil obligations in accordance with this Contract within the agreed time for delivery as specified in the paragraph above, the Seller shall pay to the Buyer liquidated damages for delay amounting to 0,25% of the value of the delayed part(s) per full day, max. 15% of the total contractual value of the goods, without value added tax. The amount of the liquidated damages for delay shall be determined on the basis of the Price defined in Article 5 herein. Payment of such liquidated damages for delay shall be the Buyer's sole remedy and the seller's sole obligation in case of delay under the exclusion of any other compensation for delay under any legal theory.

If the damage incurred to the Buyer due to Seller's breach of its contractual obligations exceeds the amount of liquidated damages, the Buyer shall have the right to claim a difference to total contract value.

In case the Seller is unable to deliver the Goods within agreed upon time on account of the events of force majeure, the delivery term defined in the present Contract shall be proportionally extended.

5. CONTRACT PRICE

5.1
The Parties herein agree, that the contract prices are fixed, with validity as per commitment period, VAT excluded , Parity: DDP Sostanj (Incoterms, 2010).

The prices per unit shall be, as follows:

Pos.	Title	Quantity	Price/unit in EUR/pc
1.	Reheat outlet headers	4	_____
2.	Connecting tubes to header	368	_____
3.	Transitional tubes	368	_____
4.	Header hangers (U hangers)	8	_____
5.	Sealing boxes	46	_____

5.2 Contractual value
The Parties to the present Contract herein agree that the total values shall be EUR _____as per table above (VAT excluded). VAT shall be charged according to currently applicable legislation.

6. PAYMENT TERMS AND PAYMENT MODALITY
(choose the suitable option)

The basis for calculation shall be the delivery note signed by both Parties, enclosed to the invoice.

The Seller herein undertakes to issue an invoice to the Buyer within 5 (five) days at latest from the date of supply of Goods to the Buyer's registered office.

Option 1

The Buyer shall be obligated to settle the issued invoice no later than 30 days after the date of delivery to the bank account _____.

Option 2

The Buyer shall be obligated to settle the issued invoice for Goods, in the following manner:

- 25% of the total contractual value, payable as advance payment within 30 days after the date of issuing the invoice for advance payment under condition of providing respective advance payment guarantee, without deduction,

  - 75% of the total contractual value, payable after delivery DDP Sostanj (Incoterms 2010) within 30 days after invoice date, without deduction.

  - to the bank account: _____
    (Account Number: _____)
    IBAN: _____
    BIC: _____

The Buyer shall be obligated to settle the issued invoice no later than 30 days after the date of the respective invoice.
The default interest shall be charged in the amount of interest rate for 6-month EURIBOR valid on the invoice date. The Buyer shall be obligated to pay the charged interest within 30 days from issuing the invoice.

7. WARRANTY, WARRANTY PERIOD AND OBLIGATIONS DURING WARRANTY PERIOD

The Seller warrants the quality of the goods supplied for the period of 24 months from the date of delivery as per DAP Sostanj, Incoterms 2010.

The Seller herein undertakes to eliminate free of charge eventual malfunctions and defects resulting from malfunctions, defects of deficiencies detected in Goods, on the basis of the received documents, within a time period mutually agreed upon by the parties.
The Seller's obligation regarding defects is restricted to the scope agreed and defined in the attached Technical Specification and exclusively limited, to the Seller's choice, to the repair or replacement of the defective supply.
The Seller shall perform such repair or replacement, taking into account the nature of the defect and the operational needs of the Buyer.

If the Seller unreasonably neglects or refuses to remedy Defects for which it is responsible, the Buyer may, upon giving the Seller 7 days notice, engage another skilled contractor to remedy such Defects. The Seller is responsible for the reasonable Cost of such remedial work.

As soon as the Seller has performed his obligations by repair or replacement of the supplies under warranty, the full warranty period shall become effective, again, but shall expire the latest 36 months after the initial transfer of risk (acc. to delivery DAP Sostanj, Incoterms 2010). ("*Stop of Evergreen*").
The rights, remedies and liabilities as set out in the above articles are the sole and exclusive remedies for all defects that are found after transfer of risk and are in lieu of other warranties and guarantees whether written, oral implied or statutory.
No rights can be derived from the warranty, if:

- The Seller proves that the defect is due to deterioration resulting from breach by the Buyer of its obligations under this Agreement
- The Seller proves that the defect is caused by wear and tear, which is typical for these supplies if they are used under working conditions comparable to the working conditions they are exposed to by the Buyer.

8. LIMITATION OF LIABILITY

Notwithstanding any other provision of the Contract, whether express or implied, the Seller's aggregate liability with respect to any and all losses, damages or claims arising out of the Contract, its performance or breach, whether such liability is based in contract, warranty, tort (including negligence of any kind), strict liability or otherwise, shall not exceed 100% of the Contract price.

Except for any liquidated damages specifically provided for in this Contract, Seller shall in no event, whether as a result of breach of contract, warranty, indemnity, tort (including negligence), strict liability or otherwise, be liable for indirect, special, incidental or consequential damages including but not limited to loss of profits or revenues, loss of data, loss of use of equipment, cost of capital, cost of substitute equipment, services or facilities, downtime cost, cost of replacement of steam or electric power or claims of third parties or claims of Customers for service interruptions.

This limitation shall not apply in cases of willful misconduct or gross negligence or where Seller is compulsory liable by law.
Any liability of Seller shall cease at the end of the warranty period as set forth in this Contract.

9. SUBCONTRACTING

The Seller shall be entitled to subcontract the supply or any part of the supply to affiliate companies and/or licensees of the Seller only after Buyer's consent. The subcontractors shall full fila all requirements as required for the Seller.

10. FORCE MAJEURE

Neither party shall be liable for any delay in performing or failure to perform any of its obligations under this Contract caused by events beyond its reasonable control *("Force Majeure Event*").
Subject to the Agreement of both Parties, that the event, that has occurred was beyond reasonable control, Force Majeure Events contain, without being limited to, war and civil war, riots, civil commotion and terrorists acts, mobilization, act or failure to act of any local state or national government authority, sabotage, lockout, embargo, industrial dispute, shortage or restriction of power supply, any kind of natural disaster.
However, any delay or failure by a sub-contractor or supplier of the Buyer will not relieve the Buyer from liability for delay or failures except where that delay or failure is also beyond the reasonable control of the sub-contractor or supplier concerned.

The Party claiming a Force Majeure event will promptly notify the other in writing of the reasons for the delay or stoppage (and the likely duration) and will take all reasonable steps to overcome the delay or stoppage.
If the Party claiming the Force Majeure Event has complied with the clause above its performance under this Contract will be suspended for the period that the Force Majeure event continues and the Party will have an extension of time for performance, which is reasonable and in any event equal to the period of

delay or stoppage. With regards to such delay or stoppage:

1. Any costs arising from the delay or stoppage will be borne by the parts incurring those costs;
2. Either Party may, if the delay or stoppage continues for more than 90 continuous days, terminate this Agreement with immediate effect on giving written notice to the other Party and neither Party will be liable to the other for such termination; and
3. The Party claiming the Force Majeure Event will take all necessary steps to bring that event to a close or to find a solution by which this Agreement may be performed despite the Force Majeure Event.

11. TERMINATION BY DEFAULT

If the Seller abandons the delivery or is in material breach of contract, the Buyer may give a written notice referring to this clause and stating the default.
If the Seller has not taken all practical steps to remedy such default within 14 days after the Buyer's notice, the Buyer may by a second notice given within a further 21 days, terminate all or parts of the contract. The Seller shall stop all activities under the contract.
If the Buyer fails to pay in accordance with the contract or is in material breach of contract, the Seller may give a written notice referring to this clause and stating the default. If the default is not remedied within 14 days after such notice, the Seller may suspend all or part of the deliveries.
If the default is not remedied within 28 days after the Buyer's receipt of the Seller's notice, the Buyer may by a second notice terminate all or parts of the contract.

12. TERMINATNION BY INSOLVENCY

If a party is declared insolvent or gets bankrupt under any applicable law, has a receiving order made against him or goes into liquidation, the other party may by notice terminate the contract immediately.

13. PAYMENT UPON TERMINATION

After termination, the Seller shall be entitled to payment of the unpaid balance of the value of the works executed and parts delivered including any unavoidable cost resulting from the termination (e.g. termination of subcontracts, interruption production, etc.). In case of termination for default by the Seller, the Seller shall only be entitled to payment of the unpaid balance.

14. OTHER OBLIGATIONS OF THE SELLER AND BUYER

The Seller herein undertakes to cooperate with the Buyer in accordance with provisions defined in the present Contract, to deliver the Goods in time and in accordance with terms and conditions defined in this Contract.

The Buyer herein undertakes to accept the delivered Goods and to cooperate with the Seller in accordance with the provisions defined in the present Contract.

Protection of business secrets/ Confidentiality
By signing the present Contract, both Parties herein exclusively undertake to keep confidential any information or documents that might be disclosed during execution of the present Seller, or which the Seller may disclose or create at its own and are related to the Buyer or its business operations or to natural or legal entities connected with the Buyer. The Parties to the present Seller herein agree, that for the purpose of the Seller, the personal data exchanged during execution of the present Seller shall also be treated and confidential information.
Both Parties must not disclose any confidential information/documents to any third party in any case, except in case the other Party explicitly and in writing agree with disclosing of specific information.
In case of breaching this confidentiality clause, the breaching Party must reimburse the damages caused by any such breach.

Notwithstanding the above, the Buyer as liable entity to access to public information is bound to publish statutory data referring to the concluded legal transaction.The Parties to the present Seller herein agree to immediately inform each other in writing in case of any change made to the relevant data: bank account data, ID number for VAT, registered office or change in core activities, changes in status or business operations, financial problems in regular operations or company winding up.

15. ANTI-CORRUPTION CLAUSE

The present Contract shall be null and void in case any person on behalf of or on account of the other Party of the present Contract should promise, offer or provide to the representative, agent or Buyer's signatory any illegal benefit for awarding the contract, making the contract under more favourable terms, omitting due supervision over the performance of obligations defined in the present Contract or for performing any other act or omission, by which damage is caused to the Buyer, or providing of illegal benefits is enabled to representative, agent or signatory of the present Contract by the Buyer or by the other Party of the present Contract, or providing of any such benefits is enabled to the other Party of the present Contract.

16. SOCIAL CLAUSE

This contract shall cease to be valid if the Buyer become aware that the competent government authority or a court, by way of a final decision, have established that the Seller is in breach of labour, environmental or social law provisions.
The Contract shall cease to be valid on the date when the Employers become aware of the circumstance representing the ground for dissolution based on the preceding paragraph.

17. INTELLECTUAL PROPERTY

The Seller guarantees that the use of the Works will not infringe any intellectual property rights or any other rights of Third Parties.

The intellectual and/or industrial property rights on all drawings, calculations, specifications, documents or any data carriers (including software) and know-how to be made available or to be produced by the Seller in the scope of this Agreement shall rest and continue to rest with the Seller. The Seller grants to the Buyer and unconditional right to use the Seller's intellectual property rights for maintaining and modifying the Works (deliveries and services).

The Parties have defined in the attached Technical Specification, to which extent the Seller will deliver drawings and data to the Buyer. Drawings or data that would allow the Buyer to produce the delivered supplies by themselves or by any Third Party or to execute the services or Works themselves or by any Third Party will only be submitted if the Seller expressly agrees upon it in writing.

18. ASSIGNMENT

The parties may not assign any of their rights and delegate any of their obligations under this Contract other than to any of their affiliates without the prior consent of the other party. Notwithstanding the above, the Seller, without the consent of the Buyer may factor, sell, assign, or otherwise transfer to any Affiliate or any third party any accounts receivable arising under this Contract. Nevertheless, the Buyer shall not be obliged to transfer the accounts receivables to any other Party then the Seller and all administration of the Contract shall be done only between the Parties.

19. NO NUCLEAR USE

The Supplies provided hereunder are not intended, in whole or in part, for application (and will not be used) in connection with or nearby any nuclear installation or activity and the Buyer warrants that it will not use the parts for any such purpose, or permit others to use the parts for any such purpose.

20. EXPORT CONTROL NOTE – NO USE FOR WEAPONS

1) The Seller's obligations are conditioned upon Buyer's compliance with all European Union, United States and other applicable trade control laws and regulations, and in no circumstances the Seller shall be obliged to perform any action penalized or restricted by Export Administration Regulations (EAR) of the U.S. Commerce Department and the Tax Reform Act of 1976 (TRA) of the U.S. treasury Department. The Buyer shall not trans-ship, re-export, divert or direct or otherwise make or allow any disposition equipment, materials, services, technology, technical data, software, or other information or assistance or product thereof furnished by the Seller under this Contract other than in and to the Site.
2) If requested by the Selelr, the Buyer shall send to the Seller an official statement (e. g. in the form of an End User Certificate), issued and duly signed by the owner of the end-use of supplied equipment or part thereof, as the case may be, which is subject to the said laws and regulations (in particular foreign export control regulations) issued and duly signed by owner.

3) The Buyer hereby certifies that the equipment, materials, services, technology, technical data, software, or other information or assistance or product thereof furnished by the Buyer under this Contract will not be used in the design, development, production, stockpiling or use of chemical, biological, or nuclear weapons.
4) The Seller reserves the right to rescind the offer or to cancel the order, in case TEŠ does not comply with its obligations under 1) – 3) above.

21. CHANGE IN LAW

In case of change in law (including the introduction of new laws and the repeal of modification of existing laws) or in the judicial or official governmental interpretation of such laws, made after the date of contract coming effective, which affect the Seller in the performance of its obligations under the contract, the Seller shall be entitled to
- Extension of time, if the Seller suffers any delay thereof and
- Payment of any additional cost, if any.

22. RESPONSIBLE PERSONS FOR IMPLEMENTATION OF THE CONTRACT

In order to facilitate the implementation of the present Contract the Parties herein agree to both nominate responsible person.
Responsible person of the Buyer shall be _____ (_____._____@te-sostanj.si). Responsible person of the Buyer shall be authorised to provide the Seller with instructions in accordance with the provisions defined in the present Contract.
Responsible person of the Seller shall be Mr._____ (_____@_____). Responsible person of the Seller shall be authorized to provide execution of the Buyer's instructions.
If the Parties to the present Contract should replace the nominated persons, as defined herein, they must both inform each other of any such replacement taking place.

23. FINAL PROVISIONS/ DISPUTE RESOLUTION

Eventual modifications or amendments shall be made by the Parties to the present Contract in a form of an Annex to the present Contract.
The present Contract shall come into force as on the date of signing by both Parties.

Eventual misunderstandings shall be solved by the Parties in an amicable manner. Should this not be possible, the dispute shall be finally solved by the competent Ljubljana District Court.

The present Contract is composed in two (2) copies, one (1) copy for the Buyer and one (1) for the Seller.

If either party commits a material breach of its contractual obligations and such material breach disables or could have disabled or substantially hinder the fulfilment of the other party obligations, such other party shall have the right to immediately upon it ascertains such material breach, however not later than 30 days from the day the breach was committed, notify such breach to the breaching party in written and demands that the party either ceases with the breach or remedies the consequences of its breach within the set cure period, which cannot be shorter than 30 days. If the breaching party does not comply and does not cease with the breach or remedy the consequences of its breach within the cure period, the other party shall have the right to terminate the Contract by a termination notice after the expiration of the cure period. The period of notice is 30 days.

This Contract including all attachments constitutes the entire agreement of this contract of both parties in relation to its subject matter and supersedes and cancels all previous agreements, commitments, promises, representations and undertakings (whether or not in writing) not contained or referenced herein in respect of the subject matter of this Contract.

Signed on: _____	Signed on: _____
COMPANY NAME General Manager:	**TERMOELEKTRARNA ŠOŠTANJ d.o.o.** General Manager: M.Sc. Arman Koritnik