

(The Agreement shall be made for respective option for which the Tenderer is selected)

DRAFT FRAMEWORK AGREEMENT ON SUPPLY OF AMMONIA

(Framework Agreement No.: _____)

agreed and made between

TERMoeLEKTRARNA ŠOŠTANJ, d.o.o.,

Cesta Lole Ribarja 18, SI-3325 ŠOŠTANJ,

Represented by Mr. Arman Koritnik, MSc.

Further on referred to as: **"Buyer"**

ID No. for VAT: SI92189903.

Company registration No.: 5040388000.

and

NAZIV PODJETJA/ COMPANY NAME

Naslov podjetja / Address

ki ga zastopa direktor/ica / Represented by

Further on referred to as: **"Seller"**

ID No. for VAT: SI _____.

Company registration No.: _____.

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 Buyer has on _____, published a public procurement for »Supply of Ammonia (Dobava amonijaka)«.

The public procurement has been conducted according to the negotiated procedure in accordance with Article 45 of the Public Procurement Act (ZJN-3).

The decision on awarding the agreement became final as on _____.

The Parties herein initially establish, that for carrying out its core business operations the Buyer needs an uninterrupted supply of 24% ammonia (further on referred to as: Goods).

Based on annual demand for Goods, the Buyer has on public procurement portal (*Portal javnih naročil*) published Tender Dossier for supply of Goods, on _____. The supplier _____ has submitted its Tender No. _____ dated _____, which the Buyer has reviewed and confirmed its eligibility. The respective Tender has been selected as successful and the present Draft Framework Agreement shall be concluded on its basis.

The Tender Dossier the respective Seller's Tender shall be a component part of the present Draft Framework Agreement. All documents composing the Draft Framework Agreement 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. Draft Framework Agreement;
2. Tender;
3. Tender Dossier.

2. SUBJECT OF DRAFT FRAMEWORK AGREEMENT

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 Parties to the present Draft Framework Agreement agree, that the Seller shall supply to the Buyer ammonia, with technical specification as defined in details in the Seller's Tender No. _____ of _____ and upon negotiations, as defined in final Offer _____ of _____; both documents shall form a component part of the present Draft Framework Agreement.

By signing the present Draft Framework Agreement, the Seller herein undertakes to sell to the Buyer and to deliver the required quantity of Goods, defined in item 3.1 of the present Draft Framework Agreement, and the Buyer herein undertakes to pay the agreed price.

3. MODE OF SUPPLY AND DELIVERY DATES

3.1

The Parties herein agree to separately define each delivery date for each individual delivery.

The deliveries shall be made successively, planned monthly quantity of delivered Goods (with road tanker or rail tanker) will amount to ca. 330 tonnes. The Goods shall be transferred into a tank with capacity of 1000 m³. The tank shall be filled in a manner assuring that the tank is at any time half full/half empty (available for refilling).

The Buyer plans that, every three month a quantity of ca. 1,000 tonnes of Goods will be required.

The Seller shall deliver the Goods to the Buyer in perfect condition, as bulk goods, with tanker trucks, each with capacity of ca. 23 tonnes and in wagon trucks with capacity of ca. 45 tonnes.

The Parties to the present Draft Framework Agreement agree, that the Buyer's contact person responsible for placing orders for Goods shall be _____.

The Seller shall deliver Goods in full to the Buyer's takeover place not later than 5 working days from receipt of the written order.

The Seller herein undertakes to record the code of ordered Goods on each bill of delivery. The code for 24 % ammonia is 303855.

3.2

If for reasons of its own doings the Seller should fail to deliver the Goods or fail to deliver a min. amount of Goods in a quantity half the volume of the tank, the Seller must pay to the Buyer damages for delayed delivery amounting to 1 % of the value of individual order for each day of delay. For each such individual value of indemnification the Seller shall account for discount and charge it on each individual invoice issued.

Also, the Seller shall pay to the Buyer indemnification amounting to 1 % of the value of undelivered quantity of Goods, if by the fault of the Seller the quantity of delivered Goods in the tank fails to reach half the volume of the tank, at all times.

In addition to contract penalty, the Seller must pay to the Buyer for damages caused to the Buyer due to Seller's breach of obligations assumed by the present Draft Framework Agreement.

The Parties to the present Draft Framework Agreement herein agree, that the Buyer shall not be bound to inform the Seller of reserving the right to contract penalty in case the Buyer assumed the Seller's fulfilment of obligations after the Seller made a delay.

In case the Seller is not capable of delivering the Goods in due time or is not able to assure at least a quantity half the volume of the tank for reasons of events of force majeure or any other justifiable reasons, the delivery date as defined in the present Draft Framework Agreement shall be extended accordingly. The transport risk shall be on account of the Seller.

4. SAFETY DATA SHEET

The Seller herein undertakes that in case of issuing a new Safety Data Sheet, after the previous version is out-dated, a new version of Safety Data Sheet shall be sent to the Buyer.

5. QUALITY OF GOODS AND COMPLAINTS

5.1

With each shipment of Goods, the Seller herein undertakes to enclose respective chemical analyses sheet.

5.2

The Parties to the present Draft Framework Agreement herein agree, that the Buyer shall have the right to take a sample from the Goods and send it to analyses in an independent accredited laboratory.

In case the Seller by its own fault fails to deliver to the Buyer Goods of proper quality, pursuant to item 5.1 of the present Draft Framework Agreement or in case of identified deviances from the submitted chemical analyses sheet – the Seller shall pay to the Buyer penalties amounting to 0,2% per day, or max. 15% of the total value of the present Draft Framework Agreement, until delivery of compliant Goods.

5.3

The Parties to the present Draft Framework Agreement herein agree, that the Seller must comply with requirements of REACH.

5.4

The Buyer shall carry out quality and quantity inspection of the delivered Goods, and shall promptly inform the Buyer of any apparent defect.

In case the Buyer should detect a quality failure or have doubts in quality of Goods, it shall promptly inform the Seller in order to take arbitrary sample.

In case that the during the analyses of the arbitrary sample the Parties to the present Draft Framework Agreement should determine that the quality of the Goods fails to comply with defined requirements, the Seller herein undertakes to remove the non-compliant Goods at its own costs and deliver new quantity of ordered goods complying with the defined requirements at its costs and also cover the costs of the analyses.

In case where complaint refers to damages caused during transport, or in case upon acceptance of goods from the forwarding agent, deficit in quantity of delivered goods is confirmed, a complaint protocol shall be drawn up, signed by the forwarding agent or the Buyer's representative accepting the Goods.

6. PRICE OF DRAFT FRAMEWORK AGREEMENT

6.1 Price per unit

The Parties to the present Draft Framework Agreement herein agree, that the Buyer shall buy and the Seller shall sell the Goods to the Buyer during the validity period of the present Draft Framework Agreement at price _____ EUR/t (VAT excluded). *(fill in according to selected option: for Goods delivered in road tanker or for Goods delivered in rail tanker)*. VAT shall be charged according to currently applicable legislation. The Price is fixed for a period of three months and is understood DDP Šoštanj (according to Incoterms 2010).

The Price per unit is subject to change only every three months considering the market price trends, and must be justified with documented proof (publicly published index).

After expiry of the above defined period, the Seller shall have the right to inform the Buyer of justified changes in Price, which must be valid from start and until the end of the three-month period, upon submitting proper documented proof (method of price calculation, including index, separately for the fixed and variable part of the offered unit price), which may be verified by the Employer, proving that the increase in price of Goods is depending on the market price trends.

Any changes in Price must be communicated to the Buyer in writing, within min. 5 business days prior to expiration date of the three-month period, by mail to the Employer's address, or by email to the e-mail address: _____.

If the Seller should fail to send the changes in Price within the above defined term, it shall be understood that the Price for the following three-month period shall remain unchanged.

6.2 Value of the Draft Framework Agreement

The Parties to the present Draft Framework Agreement herein agree that the max. estimated value of the Draft Framework Agreement shall be in total of EUR _____ (VAT excluded). VAT shall be charged according to currently applicable legislation.

7. PAYMENT TERMS AND PAYMENT MODALITY

The basis for calculation shall be the bill of delivery signed by both Parties, the Buyer's weight ticket, the packing list and any other documents related to the supply of Goods (a transport document, CMR, etc.). All documents listed shall be annexed to the invoice.

The Supplier herein undertakes to send a correct and accurate invoice to the Buyer' registered office within 3 working days from the date of supply of Goods.

The Supplier herein undertakes to settle the invoice for respective delivery within 60 days from the date of delivery of Goods by making a payment to the bank account: _____ held with _____.

The Buyer shall be obligated to settle the issued invoice no later than until the day of maturity.

The default interest shall be charged in the amount of interest rate for 6-month EURIBOR valid on the invoice due date. The Buyer shall be obligated to pay the charged interest within 30 days from issuing the invoice.

8. OTHER OBLIGATIONS OF THE SELLER AND BUYER

8.1

The Seller herein undertakes to deliver the Goods in due time, in accordance with terms and conditions defined in the present Draft Framework Agreement, and to inform the Buyer in case of any problems occurring during delivery.

The Buyer herein undertakes to accept the delivered Goods and to cooperate with the Seller in implementation of provisions defined in the present Draft Framework Agreement.

8.2 Protection of business secrecy

By signing the present Draft Framework Agreement, the Seller herein exclusively undertakes to keep confidential any information or documents that might be disclosed during execution of the present Draft Framework Agreement, 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 Draft Framework Agreement herein agree, that for the purpose of the Draft Framework Agreement, the personal data exchanged during execution of the present Draft Framework Agreement shall also be treated and confidential information.

Confidential information/documents must not be disclosed to any third party in any case, except in case the Buyer explicitly and in writing agree with disclosing of specific information.

In case of breaching this confidentiality clause, the Seller must reimburse the damages caused by any such breach.

Notwithstanding the above, the Buyer as entity liable to enable access to public information, must make public all legally defined data from the transaction.

The Seller is aware of the confidential nature of the data and shall reveal the results only to the Buyer and to any third party only upon previous written consent of the Buyer. In case of breaching this contractual obligation, the Seller shall be liable for any damages resulting from breach of such obligation.

8.3

The Buyer herein undertakes to inform the Seller of the Environment Protection System ISO 14001/2004, evident from the Requirements for control system. During deliveries, the Seller herein undertakes to take into account the Environment Protection System ISO 14001/2004, Occupational Health and Safety System OHSAS 18001 and Information Security Management System ISO 27001. Requirements related to control system shall be enclosed to the present Draft Framework Agreement forming its component part.

8.4 Damage from pollution

Throughout the period of execution of this Draft Framework Agreement, the Seller shall be obliged to consistently observe all applicable regulations from the field of environmental protection. If the Buyer suffers any damage, including the payment of a fine or a financial penalty, due to the violation of regulations from the field of environmental protection which would be the result of Seller's action or omission, the Seller shall commit to fully compensate the Buyer for such damage. In such case, the Buyer shall have an independent claim/receivable towards the Seller based on such contractual provision. The Seller shall be obliged to settle such a receivable based on the issued invoice within 8 days from issue of invoice.

8.5

The Parties to the present Draft Framework Agreement 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.

9. ANTI-CORRUPTION CLAUSE

The present Draft Framework Agreement shall be null and void in case any person on behalf of or on account of the other Party of the present Draft Framework Agreement 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 Draft Framework Agreement 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 Draft Framework Agreement by the Buyer or by the other Party of the present Draft Framework, or providing of any such benefits is enabled to the other Party of the present Draft Framework Agreement.

10. SOCIAL CLAUSE

The present Draft Framework Agreement shall terminate in case the Buyer is informed of the fact that the competent government authority or court with final decision finds violation of labour, environmental or social legislation by the Seller.

The present Draft Framework Agreement shall terminate on the date the Buyer is informed of the circumstances on the grounds of which the present Draft Framework Agreement is terminated.

11. RESPONSIBLE PERSONS FOR IMPLEMENTATION OF THE DRAFT FRAMEWORK AGREEMENT

For easier implementation of the present Draft Framework Agreement 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 Draft Framework Agreement.

Responsible person of the Seller shall be _____ (@_____). Responsible person of the Seller shall be authorised to provide execution of the Buyer's instructions.

If the Parties to the present Draft Framework Agreement should replace the nominated persons, as defined herein, they must both inform each other of any such replacement taking place.

12. FORCE MAJEURE

Events of force majeure shall include any unexpected situation which occurs after concluding the present Draft Framework Agreement and could not have been foreseen, prevented or avoided in spite of due care, and which shall cause delays in fulfilment of obligations defined in the present Draft Framework Agreement or incapacity to fulfil related obligations. Events of force majeure shall be natural disasters or catastrophes, for example epidemics, nuclear disasters, fire, flood, storm or earthquake; acts or failure to act by civil or military authorities related to changes in legislation, restrictions of using or trading with foreign currency, revocation or cancellation of export and import permits, institution of state of emergency, allocations of quotas or restrictions for use of materials or labour force; war or mobilisation, civil war or uprising, riots, sabotage or revolution; strike or lockout. The event of force majeure includes but is not limited to disturbances in the production plant of the supplier or its sub-supplier which are

consequence of events of force majeure and result in delays in deliveries of crucial raw material and component parts.

In case of event of force majeure it shall be considered that during the period of the event of force majeure the affected Party shall not be treated as being in delay with fulfilment of its obligations affected by the events of force majeure. The affected Party shall be free of any responsibility for damages caused to the other Party in case of events of force majeure.

The Party affected by the event of force majeure must immediately inform the other Party of the present Draft Framework Agreement on emergence and termination of the event of force majeure, its extent and its consequences. Failure to do so, the Party shall not have the right to call upon the event of force majeure. The deadlines defined in the present Draft Framework Agreement shall be accordingly extended for the duration time of the event of force majeure, by making a written agreement between the Parties.

13. DURATION VALIDITY OF THE DRAFT FRAMEWORK AGREEMENT

The present Draft Framework Agreement shall be made for a period of three (3) years, starting on _____ until _____ (defined by the Buyer after concluded final procedure) or until consuming the total quantity of Goods.

14. FINAL PROVISIONS

Eventual modifications or amendments shall be made by the Parties to the present Draft Framework Agreement in a form of an Annex to the present Draft Framework Agreement.

The present Draft Framework Agreement 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 Celje District Court.

The Parties to the present Draft Framework Agreement herein agree, that the Buyer shall have the right to withdraw from the present Draft Framework Agreement in writing, without previous period of notice and without having to identify reasons for cancellation of the present Draft Framework Agreement.

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

Signed on: _____

Signed on: _____

COMPANY NAME

General Manager:

TERMOELEKTRARNA ŠOŠTANJ d.o.o.

General Manager:

Arman Koritnik, MSc.

Attachment:

Requirements for system control (16 pages).