



**NEK**

## **DRAFT CONTRACT**

For



### ***DELIVERY OF OSC NUCLEAR HVAC EQUIPMENT – CHILLERS with CONDENSERS (Mod. 1056-NA-L)***

concluded on ..... 2018 by and between:

**NUKLEARNA ELEKTRARNA KRŠKO d.o.o.**  
Vrbina 12, 8270 Krško, Slovenia,

represented and duly authorized by

**Mr. Stanislav Rožman, President of the Management Board and  
Mr. Hrvoje Perharić, Member of the Management Board.**

**(hereinafter referred to as "PURCHASER" or "NEK" or "NPP Krško")**

**on one part**

**and**

.....

**Represented and duly authorized by**

.....

**(hereinafter referred to as "SELLER" or "Contractor")**

**on the other part**

Whereas, SELLER represents that it is fully qualified to provide PURCHASER with the OSC NUCLEAR HVAC EQUIPMENT - CHILLERS with CONDENSERS (Mod. 1056-NA-L) and shall do so in accordance with the terms and conditions herein specified,

and

Whereas, the representatives of SELLER and PURCHASER possess proper and sufficient authority to agree, and

Now therefore, SELLER and PURCHASER have agreed as follows:

Subject of the Contract:

***Delivery of OSC NUCLEAR HVAC EQUIPMENT - CHILLERS with CONDENSERS (Mod. 1056-NA-L)*** (hereinafter referred to as "CHILLERS with CONDENSERS")

The following documents shall constitute the Contract:

- **PART I: General Terms and Conditions (this Document)**
- **PART II: NEK Technical Specification NEK Technical Specification No. SP-B3007, Rev. 0 (hereinafter referred to as "SP-B3007")**
- **PART III: NEK QA Specification QS-610, Rev. 1**
- **PART IV: Proposal**

# PART I - GENERAL TERMS AND CONDITIONS

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## 0 DEFINITIONS AND ABBREVIATIONS

As used throughout the Contract, the following terms shall have the meaning set forth hereinafter:

**PURCHASER** shall mean NUKLEARNA ELEKTRARNA KRŠKO (NPP Krško),  
Vrbina 12, 8270 Krško, Slovenia,

represented by  
Mr. Stanislav Rožman, President of the Management Board  
and  
Mr. Hrvoje Perharić, Member of the Management Board

**SELLER or CONTRACTOR** shall mean

.....  
.....

represented and duly authorized by .....

**PARTY or PARTIES** shall mean PURCHASER or/and SELLER as herein under referred to individually or collectively.

**CONTRACT** shall mean the agreement between PURCHASER and SELLER consisting of General Terms and Conditions of the Contract (*PART I*), NEK Technical Specification No. SP-B3007, Rev. 0 (*PART II*) and Proposal No: ..... (*PART IV*).

The Contract documents are complementary, and what is called for by any one of them shall be binding as if called for by all. Any conflicts in the Contract documents shall be reasonably resolved by PURCHASER after mutual discussion with SELLER. The validity dates of documents commence with the Effective date of the Contract.

**SCOPE OF DELIVERY or WORK** shall mean all equipment, material and services including all labour, supervision, management and engineering services, testing, QA, packing and shipping and all other requirements necessary to perform the Contract.

**TECHNICAL REPRESENTATIVES** shall mean the PURCHASER's and the SELLER's designated representatives through whom all technical, commercial, Quality Assurance and matters shall be channelled.

**COMMERCIAL REPRESENTATIVES** shall mean the PURCHASER's and the SELLER's designated representatives through whom commercial matters will be evaluated.

**SP-B3007** shall mean *NEK Technical Specification No. SP-B3007, Rev. 0.*

**PROPOSAL** shall mean SELLER's Proposal/Bid No.: ..... dated .....

**PLANT, NE Krško, NEK, NPP Krško** shall mean *Nuclear Power Plant Krško.*

**NUCLEAR SITE** shall mean territory of the Nuclear Power Plant, situated in Krško, Slovenia, all within the licensed nuclear site.

**APPROVED** shall mean the status of any document to be furnished by the SELLER to PURCHASER under Contract which is approved by PURCHASER with or without comments but which is not rejected by PURCHASER. The date for the resolution of PURCHASER's comments shall be mutually agreed upon prior to the approval. In no circumstances can the approval relieve SELLER from the responsibility for failures within SELLER's Scope of Delivery.

**TOTAL CONTRACT PRICE** shall mean all inclusive total price to be paid to the SELLER as per Article 7.1 of the Contract.

**TQRs** shall mean Technical and Quality Requirements as defined in the Technical Specifications.

**DAP** shall mean delivered at NE Krško as per Incoterms 2010

**VAT** shall mean Value Added Tax

## **1 SELLER'S SCOPE OF DELIVERY**

SELLER shall perform:

Delivery of CHILLERS with CONDENSERS fully in accordance with NEK Technical Specification SP-B3007 (Part II of the Contract).

Detailed description of SELLER's Scope of Delivery together with the Technical and Quality Requirements is given in NEK Technical Specification (Part II of the Contract).

SELLER may utilize subcontractor(s) for part of the Scope of Delivery provided always that they meet high standards of competence, experience and capacity in relation to the tasks to be entrusted to them.

SELLER shall notify to PURCHASER the names of the subcontractors proposed to perform a part of the Scope of Supply and shall not award any principle part of the Scope of Supply to any subcontractor without prior written approval of PURCHASER. The refusal should be justified by PURCHASER.

Full overall responsibility always remains on SELLER's side concerning participation of SELLER's subcontractors.

All risk of loss or damage to the Scope of Delivery furnished under this Contract shall pass to PURCHASER upon delivery pursuant to Article 6. From the date that risk of loss of or damage to the Scope of Delivery passes to the PURCHASER as provided above, PURCHASER shall, by insurance or otherwise, assume the complete risk of loss of or damage to the Scope of Delivery no matter how caused and shall hold SELLER harmless from any such liability. Title to the Scope of Delivery shall pass upon the delivery and payment of the Scope of Delivery.

## **2 PURCHASER'S RESPONSIBILITIES**

PURCHASER is responsible for the work and information as stated in Section 18.2 of SP-B3007.

## **3 QUALITY ASSURANCE, TECHNICAL AND OTHER REQUIREMENTS**

SELLER shall meet all Quality Assurance requirements, design, performance, material, fabrication and technical requirements as well as procedures, codes and standards as stated in NEK Technical Specification (Part II of the Contract) and NEK QA Specification QS-610, Rev. 1 (Part III of the Contract).

For the Scope of Delivery, SELLER's QA Program is documented in

.....  
(Identification No., Title, Revision No., Date of Issue)

and shall be submitted to PURCHASER as controlled copy document.

## 4 DELIVERABLES TO BE PROVIDED TO PURCHASER

SELLER shall submit to PURCHASER all deliverables as stated in Section 5 of SP-B3007.

## 5 SCHEDULE REQUIREMENTS

<i>Item</i>	<i>Milestone Description</i>	<i>Delivery Schedule</i>
1.	Approval of detailed Manufacturing and QC Inspection Plan, PQP (project quality plan), PMM (project management manual)	T0* + 1 months
2.	Approval of equipment design documents (drawings, calculations, system design requirements, equipment procurement specifications) and copies of Purchase Orders for main material	T0* + 4 months
3.	Successfully performed Factory Acceptance Testing	T0* + 7 months
4.	DAP Delivery of Chillers and Condensers to NPP Krsko Site	T0* + 8 months

T0\* = Effective Date of Contract

## 6 DELIVERY TERMS AND CONDITIONS

All equipment, material, parts, components as well as all other deliverables of SELLER's Scope of Delivery as stated in Art. 1 above shall be delivered **DAP NPP Krško** as per Incoterms 2010.

Delivery of shipping documents

Immediately after shipment is ready for dispatch, in order to ensure timely receipt and customs clearance, SELLER or its forwarding agent shall send to PURCHASER the following information and documents:

- estimated time of arrival of shipment at NEK site
- shipping invoice with description of goods, quantity, unit and total price per each item and total price
- packing list
- copy of AWB or RWB or B/L, etc. (relative to means of transportation)

These documents must be identical in description and value to the original ones accompanying the shipment. The use of EUR-1 Form for optimizing of customs formalities shall be mandatory whenever feasible.

## 7 PRICE

7.1 The Fixed and Firm Total Contract Price DAP NPP Krško for the Scope of Delivery as per Art. 1 above under the terms and conditions of this Contract is:

**EUR** ..... (excl. V.A.T.)

(in words: ..... EUR)

7.2. The price structure is given below:

Item #	Description	NEK Item #	Qt	Fixed price per item	Subtotal
1	CHILLER.WATER, SC:AQ, Minimum cooling capacity: 464051 btu/hr (136kW), TAG NO.: VA782CHL-001/ 002	41615 1	2		
2	CONDENSER,SC:AQ, TYPE:REMOTE AIR COOLED CONDENSER, TAG NO.: VA782CND-001/ 002	41615 0	2		
3	Transportation DAP NPP Krško				
<b>Fixed and Firm Total Price</b>					

## 8 PAYMENT TERMS AND SCHEDULE

### 8.1. Payment terms

All payments under this Contract will be made by means of a bank transfer, net due thirty (30) days upon receipt of the items listed in each instalment below at NEK site. The invoice shall be approved or rejected within 15 days from the receipt. If the invoice is not rejected within 15 days from the receipt, it is considered to be approved. The invoice shall include information on the date of the milestone completion.

All banking charges imposed by PURCHASER's bank shall be borne by PURCHASER. All banking charges imposed by SELLER's bank shall be borne by SELLER.



Payment of the Total Contract Price as stated in Art. 7 will be made in four instalments as follows:

#### **8.1.1 First instalment (5%)**

The first instalment to the amount of **EUR .....** (5% of the Total Contract Price as per Art. 7) will be paid upon PURCHASER approval of detailed Manufacturing and QC Inspection Plan(s), PQP (project quality plan), PMM (project management manual) against appropriate SELLER's Invoice approved by PURCHASER.

#### **8.1.2 Second instalment (15%)**

The second instalment to the amount of **EUR .....** (15% of the Total Contract Price as per Art. 7) will be paid upon PURCHASER's approval of equipment design documents (drawings, calculations, system design requirements, equipment procurement specifications) and copies of Purchase Orders for main material and against appropriate SELLER's Invoice approved by PURCHASER.

#### **8.1.3. Third instalment (20%)**

The third instalment to the amount of **EUR .....** (20% of the Total Contract Price as per Art. 7) will be paid upon successfully performed Factory Acceptance Testing and against appropriate SELLER's Invoice approved by PURCHASER.

#### **8.1.4. Fourth instalment (60%)**

The fourth instalment to the amount of **EUR .....** (60% of the Total Contract Price as per Art. 7) will be paid upon delivery of the CHILLERS with CONDENSERS for OSC NUCLEAR HVAC EQUIPMENT (Mod. 1056-NA-L) at NPP Krško Site and documentation stated in Technical Specification accepted by PURCHASER, against appropriate SELLER's Invoice and the Warranty Guarantee to the amount of 10% of the Total Contract Price in the form and content according to Appendix A with the validity of 30 days after the end of warranty period as stated in Art. 12.

If the Bidder engages the Subcontractor who wants to be paid directly and they submit the Attachment D - Subcontractor's Data and Bidder's Consent for Direct Payment, NEK is obliged to pay the Subcontractor directly.

Beside the invoice submitted by the SELLER to the PURCHASER with total amount of the payment due including the value of subcontractor work specified separately, the SELLER shall also approve and submit the invoice and specifications of its subcontractors for each payment milestone.

The SELLER authorizes the PURCHASER to make direct payments to the subcontractors for their services and supplies, based on the approved invoices addressed to SELLER.

## 8.2 Guarantees

### Warranty Guarantee

The Irrevocable Standby Letter of Credit or Warranty Guarantee in the form and content as in Appendix A, against which the fourth instalment shall be paid, shall be submitted to PURCHASER as stated in Article 8.1.4 above, with a validity of 30 days after the end of Warranty period as stated in Art. 12.2 below.

If SELLER does not fulfil its obligations under Articles 7 and 12 within reasonable mutually agreed period of time in no case exceeding the warranty period as stated in Article 12.2, PURCHASER is then entitled to call for the Irrevocable Standby Letter of Credit or Warranty Guarantee stipulated in Article 8.1.4 above and provided in Appendix A up to its total amount.

The above mentioned Bank Guarantee shall be issued at SELLER's cost by a first class SELLER's bank acceptable to PURCHASER and shall be returned by PURCHASER to SELLER on its date of expiry.

## 9 INSPECTIONS, TESTS

All tests and inspections shall be performed in accordance with NEK Technical Specification (Part II of the Contract).

## 10 LIQUIDATED DAMAGES FOR DELAY

In case of delay in delivery as per Art. 1 above under the terms and conditions of this Contract, due to reasons solely attributable to SELLER, SELLER shall pay to PURCHASER liquidated damages as follows:

- .....% (min. 0,5%) of the Total Contract Price (see Art. 7.1) per week of delay in delivery as per Milestone No. 4 of Article 5 above but maximum up to 15% of the Total Contract Price (excl. V.A.T.) as stated in Art. 7.1. PURCHASER shall claim payment of liquidated damages only after the additional grace period granted by PURCHASER which shall last as long as the delay does not jeopardize the vital planned activities.

In any case the payment of the liquidated damages shall be the sole and exclusive remedy available to the PURCHASER and the exclusive liability of the SELLER for all claims arising from the delay with Contract requirements and shall not exceed 15% of the Total Contract Price (excl. V.A.T.) as stated in Art. 7.1.

## 11 SAFETY AND HEALTH AT WORK

N/A.

## 12 WARRANTY

12.1 SELLER warrants that all the hardware furnished under this Contract shall be new and free from liens, encumbrances and defects in title and shall be free from defects in design, workmanship and material and that the Hardware delivered under this Contract shall achieve the performance and functional requirements as stipulated in NEK Technical Specifications (Part II. of this Contract). Approval of designs, drawings, samples, test results, suppliers and schedules by PURCHASER shall not in any way limit or diminish the SELLER's warranties hereunder.

12.2 The warranty mentioned in paragraph 12.1 above shall be for the period of ..... years (2 years as the minimum) after successfully finished Site Acceptance Test(s) of the delivered Chillers with Condensers per Article 1 of this Contract.

Should the Site Acceptance Test(s) be performed later than 6 months after the delivery of Hardware to NEK Site due to the reasons solely attributable to PURCHASER, the warranty period shall commence 6 months after the delivery of Hardware.

12.3 SELLER shall remedy at his own cost all faults and Hardware deficiencies pursuant to Article 12.1 above, other than normal wear and tear or faults or deficiencies attributable to PURCHASER detected and reported in writing claim to SELLER by PURCHASER provided that such PURCHASER's claim has been received by SELLER within the warranty period. The reporting shall be made within thirty (30) days after the detection of the fault or deficiency. The remedy shall be made by (i) replacement or repair of the faulty or deficient unit (spare part or equipment) at SELLER's option approved by PURCHASER, such approval being not unreasonably withheld, and within shortest reasonable period of time to be determined between the Parties.

SELLER's obligations to remedy faults or deficiencies under the warranty shall be deemed to have been fulfilled when SELLER delivered the replacement unit to PURCHASER and PURCHASER has inspected and accepted it. A refusal shall be for justified reasons only. SELLER shall pay the transportation and insurance cost from Krško Site to the designated facility and back to DAP NPP Krško.

A fresh warranty period shall commence for the repaired or replaced material/equipment. The duration of the fresh warranty shall be ..... years (2 years as the minimum) after the remedy.

- 12.4 If SELLER does not fulfil his obligations under Article 12.3 above within a mutually agreed upon period of time, PURCHASER shall be entitled to correct the defective pieces of the Spare Parts at the expense of SELLER provided that such expense shall not exceed the price of the above defective pieces as reasonably evaluated by PURCHASER and SELLER on the basis of the current international market prices.
- 12.5 If it becomes necessary for SELLER to repair or provide replacement Spare Part(s) under these warranties, PURCHASER, without cost to SELLER, shall, to the extent necessary for SELLER to perform its warranty obligations, (i) provide reasonable access to the defective part(s) (ii) make available to SELLER, PURCHASER's facilities, equipment and tools available on Site, and (iii) provide reasonable access to the defective hardware, and (iv) perform any necessary decontamination.
- 12.6 SELLER shall guarantee the delivery of required replacement parts for the Chillers with Condensers delivered under this Contract for the period of qualified lifetime to ensure the system intended functioning and operation. SELLER shall be entitled to appropriate remuneration in accordance with SELLER's standard rates.  
In case SELLER does not fulfil its above said obligation, SELLER shall reimburse NEK for all the costs of engineering services done in order to modify the Equipment due to SELLER's inability to provide required spare parts.

### **13 TAXES**

- 13.1 SELLER shall be responsible for the payment of all taxes, duties, tariffs, fees and other like charges of SELLER arising from or in connection with the subject matter of the Contract.
- 13.2 Regardless of article 13.1. the PURCHASER shall be responsible for the payment of customs duties and relevant Slovenian VAT in case that per Delivery Terms and Conditions of this Contract PURCHASER is the importer of goods.

### **14 LICENSES, PERMITS, AND AUTHORIZATIONS**

N/A

### **15 INSURANCE AND INDEMNITY**

- 15.1 PURCHASER's Insurance at PURCHASER's Cost

PURCHASER represents that it is the responsible operator of the Plant. Therefore, in no event and under no circumstances shall SELLER, its subcontractor, suppliers, directors, agents and the personnel employed by any

of them, (hereinafter collectively referred to as the "Indemnified Parties"), irrespective of their activities under this Contract be considered as being the nuclear operator of the Krško Nuclear Power Plant. For its own protection and the protection of the Indemnified Parties, the PURCHASER has in effect and shall maintain in force Material Damage Insurance Policy including machinery break down covering also nuclear and fire perils, and Third Party Liability Insurance Policy against liability and risks arising out of or resulting from a Nuclear Incident (as defined in the Convention on Third Party Liability in the Field of Nuclear Energy of 29th July 1960, as amended by the Additional Protocol of 28th January 1964 and by the Protocol of 16th November 1982 - the Paris Convention) provided in accordance with Slovenian Nuclear Liability Legislation and available within the Slovenian Insurance Market.

## 15.2 SELLER's Insurance at SELLER's Cost

**Equipment Insurance.** SELLER shall procure and maintain in full force and effect, until their removal, insurance of SELLER's materials, equipment, tools and other objects on Site.

**Liability Insurance.** SELLER shall procure and maintain in full force and effect until leaving the Site insurance against damage to or loss of the property of PURCHASER and damage or loss and injury to third parties (including without limitation PURCHASER's subcontractor and suppliers and its or their employees), occasioned by any negligent act or omission of SELLER, its subcontractor and suppliers and its and their employees.

**Scope of Delivery Insurance.** SELLER shall procure and maintain in full force and effect until leaving the Site Insurance of the Scope of Services and Delivery for its full replacement value insofar as it relates to equipment and material, at any time against damage or loss howsoever caused. PURCHASER shall be a named insured under such insurance. Any proceeds under such insurance shall be applied towards the repair or replacement of any part of the Scope of Delivery damaged or lost.

**Personnel insurance.** SELLER in respect of all personnel employed by SELLER and its subcontractors for work on Site shall procure and maintain such insurance against occupational injury as is lawfully required from employers in the relevant jurisdiction(s).

**Insurance** arranged in pursuance of the above Articles shall be with a recognized international insurer. SELLER upon request shall submit to PURCHASER certificates of insurance policies.

## 16 LIABILITY

- 16.1 SELLER's Liability and Indemnity. SELLER shall be liable in respect of, and hereby agrees to indemnify and hold PURCHASER and its subcontractor and all of its or their officers, agents, servants and employees ("Indemnatee") harmless from any claim, loss, damage, liability or expense on account of damage to the property of PURCHASER and of damage to the property of, and injury (including death) to, any third party (such term including employees of PURCHASER's and SELLER's subcontractor and suppliers of any tier) to the extent that such claim, loss, damage, liability or expense arises out of or results from acts or omissions attributable to SELLER, its subcontractor and suppliers of any tier and their respective directors, officers, agents, servants or employees during their performance of the Work or from defects in design, workmanship and material of the Scope of Services and Delivery.
- 16.2 PURCHASER's Liability and Indemnity. PURCHASER shall be liable in respect of, and hereby agrees to indemnify and hold SELLER, its subcontractor and suppliers and all of its or their directors, officers, agents, servants and employees (hereinafter referred to as the "Indemnatee") harmless from any claim, loss, damage, liability or expense on account of damage to the property of and/or injury (including death) to the Indemnatee or any third party which arises out of or results from acts or omissions attributable to PURCHASER or its subcontractors, or any of its or their respective directors, officers, agents, servants or employees.
- 16.3 The Indemnified Parties as defined in Article 15.1 shall in no event be liable with respect to any loss of, damage to property, loss of or damage to the Plant and to any property at the Site (including third parties or PURCHASER's property), except if the loss of or damage to the Plant and to any property at the Site (including third parties or PURCHASER's property) was caused willfully or by gross negligence by Indemnified Parties as defined in Article 15.1, and/or injury (including death), caused by or resulting from a Nuclear Incident and PURCHASER shall indemnify, hold harmless and waive any and all claims and rights of recourse against SELLER.
- 16.4 Definition. For purposes of this Contract, "Nuclear Incident" shall have the meaning assigned to it by the Paris Convention on Third Party Liability in the field of Nuclear Energy of 1960 as amended by the Protocol of 1964 and 1982 , including any nuclear risks such as contamination as provided with Slovenian Nuclear Liability legislation.
- 16.5 A party to the Contract who employs a subcontractor to perform its obligations under the Contract shall be liable to the other party, as for its own actions, for the non-performance or improper performance of the party's obligations by the subcontractor.



16.6 Damages, to which parties to the Contract are entitled in accordance therewith, shall be paid against the indemnified party's invoice sixty (60) days net. If SELLER fails to pay damages in accordance with the Contract against said PURCHASER's invoice, the PURCHASER is entitled to demand the payment out of the guarantee valid at that time SELLER's Bank Good Performance Guarantee or Bank Guarantee for Good Performance During Warranty Period.

16.7 The total and cumulative liability of the SELLER, including any claim, warranty, cost and expenses of any kind arising out of or resulting from any cause whatsoever, whether based on contract, tort (including negligence), strict liability or otherwise shall in no event exceed 100% of the Total Contract Price. In no event and under no circumstances shall SELLER and PURCHASER be liable for unavailability of plant, plant outage, plant shutdowns or services interruptions, loss of use of equipment or replacement power, costs of capital, loss of profits or revenues or loss of use thereof, arising at any time, whether founded on contract, tort (including negligence), strict liability or otherwise as well as any indirect or consequential losses or damages of any nature.

The limitations under this Article shall not apply for damages which are caused willfully or by gross negligence on the part of SELLER, its subcontractors and all of their directors, officers, agents, servants and employees.

16.8 SELLER shall only be liable for damages occurring up to the end of the pertinent Warranty Period if such damages are reported to the SELLER immediately after occurrence or discovery of the damage.

## **17 PROPRIETARY INFORMATION**

### **17.1 PURCHASER's Information**

Information such as but not limited to all originals of engineering and related data, plans, maps, drawings, computer programs, and specification furnished in any form by PURCHASER in connection with the Scope of Delivery under this Contract shall remain PURCHASER's property. SELLER agrees not to use or release to any third party such Information except for purposes of performance of SELLER's obligations under the Contract unless prior written consent of the contrary is given by the PURCHASER. With respect to such information being disclosed to a subcontractor of SELLER, SELLER shall cause the subcontractor to execute such undertakings as are necessary to give effect to this provision. SELLER shall give PURCHASER a receipt for property furnished by PURCHASER and shall be responsible for safekeeping and return to PURCHASER upon request, upon termination of the Contract, or upon termination of the services to which such property applies.

**17.2 SELLER 's Information**

Information such as but not limited to all originals of engineering and related data, plans, maps, drawings, computer programs, and specification furnished in any form by SELLER or its subcontractor in connection with the Scope of Delivery under this Contract shall remain SELLER 's or its subcontractor's property.

PURCHASER agrees not to use or release to any third party such information except for purposes of verification of the design of the Scope of Delivery, for commissioning, operation, testing, analyses, maintenance, and repairs and the installations at Site and the design and execution of any modification therein or extension thereof and agrees to disclose such information to third parties only for obtaining licenses, permits and other official approvals or as required by law.

In case of disclosure to third parties, PURCHASER shall cause the party to which information is to be provided to execute such undertakings as are necessary to give effect to this provision, save in the case of disclosure to public authorities where PURCHASER shall limit as far as practicable the scope of information so furnished.

The ownership for SELLER's software shall remain with SELLER. SELLER grants the PURCHASER a non-exclusive, non-transferable, personal right to use the software and firmware supplied under the Contract for operation, maintenance and repairing the deliveries of the SELLER under this Contract.

SELLER's proprietary information may not be disclosed to any competitor of SELLER in the field of design and/or construction without SELLER's prior approval.

SELLER shall have the right to call for arbitration in the event PURCHASER violates Article 17.2, and also to seek and receive provisional ruling awaiting the valid arbitral decision.

- 17.3 The provision of this Article shall not apply to Information, notwithstanding any confidential designation thereof, which is known to the receiving Party without any restriction as to disclosure or use at the time it is furnished, which is or becomes generally available to the public without breach of any agreement, or which is received from a third party without limitation or restriction on said third party or to the receiving Party at the time of disclosure.



## **18 CLAIMS**

Any claim of a Party to the Contract shall be in writing, justified in detail and shall be immediately submitted by the Party through a letter or fax, to the authorized representative of the other Party and in no event later than thirty (30) days after discovery of basis for such claim. In case the basis of the claim is of such a nature that it requires longer claim submittal period, then this period will be adequately prolonged. The claiming Party will inform the other Party thereof in advance. No claim shall be valid under the Contract if submitted to the other party 30 days after the expiry of the respective warranty period. The Party against whom the claim has been made shall notify the claiming Party of its acceptance or dismissal of the claim within thirty (30) days after the receipt of the claim. If no such notification is received by the claiming Party within the said time, the claim is deemed to have been accepted by the other Party.

All claims shall be resolved satisfactorily within mutually agreed time period

## **19 ARBITRATION**

- 19.1 Any differences or disputes arising from or in connection with this Contract shall be settled by an amicable effort on the part of both the Parties to the Contract. An attempt to arrive at a settlement shall be deemed to have failed as soon as one of the Parties to the Contract so notifies the other Party in writing.
- 19.2 If an attempt by the parties to arrive at a settlement has failed, any differences or disputes arising out of or in connection with the Contract shall be finally settled in accordance with the Arbitration Rules of the International Chamber of Commerce (Paris) by three arbitrators appointed in accordance with the said Rules. Any such arbitration shall take place in Zurich (Switzerland) and shall be conducted in the English language. The procedural law of this place shall apply where the Rules are silent.
- 19.3 Any arbitral award shall be rendered in writing and be final and binding upon the Parties. To enforce compliance with such arbitration decision, it may be entered in the appropriate court in either SELLER's country or Slovenia, assuming the country otherwise has jurisdiction over the Parties. The arbitral tribunals shall decide on the matter of costs of the arbitration.
- 19.4 All disputes shall be settled in accordance with the provisions of this Contract. Arbitration under this Article is the sole remedy for disputes arising out of the Contract, its performance or the enforcement thereof.

- 19.5 Performance under this Contract shall continue if reasonably possible during any disagreement or court proceeding, and no funds payable to either Party under the Contract shall be withheld on account of such disagreement or proceeding.

## **20 SUBSTANTIVE LAW**

All differences, disputes or claims shall be settled in accordance with the provisions of the Contract, otherwise in accordance with the substantive law in force in Switzerland, without reference to any Swiss conflict of laws and connexity rules incompatible with such choice of law.

## **21 FORCE MAJEURE**

- 21.1 Neither Party to the Contract shall be considered to be in default in the performance of its obligations to the extent that the performance of any such obligation is hindered, prevented or delayed by a Force Majeure circumstance, occurred after entering into the obligations, and which could not be foreseen by the Party in entering into obligations.
- 21.2 A force majeure circumstance shall mean any circumstance existing which is beyond a Party's reasonable control and which is not a result of its fault or negligence, including but not limited to: acts of God, such as storm, flood, or earthquake; acts or omissions of civil or military authority,; war (declared or undeclared), acts or omissions of governmental authority, such as quarantine, embargo, priorities of trade, delay or failure to issue Construction Permit as well as any necessary export or import license and/or permit; civil disturbances, such as revolution, rebellion, riots, or insurrection; sabotage, transport accident, strikes, work stoppages, lockouts, or other labor difficulties, fuel or energy shortage, or any other circumstances beyond reasonable control of the Party, which may interfere with the commencement or progress of the Scope of Delivery. The deficiency of labor force and/or defects in material and/or strike of local character with SELLER's suppliers and subcontractors will not be deemed as Force Majeure.
- 21.3 Upon the discovery of the occurrence of any such Force Majeure circumstance, the Party affected by it shall within thirty (30) days of becoming known notify the other Party thereof, and of its estimated effect, by a registered letter, shall use diligent efforts to eliminate such circumstance and mitigate its effects, and shall keep the other Party fully informed of the progress of its efforts. In the notice of the Force Majeure circumstance, the Party shall indicate the cause of the Force Majeure circumstance, its beginning date and anticipated duration with the confirmation by a competent authority, such as Chamber of Commerce, of the validity of the notice. The affected Party shall also notify in the same way the other Party of the termination of the Force Majeure circumstance. However, this communication is dispensed with

if the impact of the conditions of Force Majeure on compliance with the contractual obligations becomes obvious to the other Party in any other way. If the circumstances of Force Majeure also affect the postal routes, the thirty (30) days period for notification shall be deemed to apply only after termination of the obstacles in postal transmission.

- 21.4 The time for the performance of the obligation of the affected Party shall be extended by a time equal to the duration of the Force Majeure circumstance. Any exceptions to the above shall be mutually agreed upon by the Parties.
- 21.5 If either Party is prevented from performance of the Contract for a continuous period in excess of three weeks because of Force Majeure either Party may suspend the Scope of Delivery. If furthermore a Force Majeure impediment exceeds one (1) month individually or three (3) months in aggregate due to Force Majeure the Contract may be terminated if both the Parties agree in writing with such decision provided that neither Party is entitled to any profit on the account of the other Party. The termination shall take effect at the date mutually agreed by the Parties. In case the Scope of Delivery is suspended or terminated, the SELLER shall be paid for the Scope of Delivery performed up to the date of suspension or termination.
- 21.6 Under Force Majeure circumstances, each Party bears its own costs.

## **22 SUSPENSION OF WORK AND TERMINATION**

### **22.1 Suspension of Work and Termination of Contract by PURCHASER for Default**

PURCHASER shall have the right to suspend the Work or to terminate the Contract for material default, except for a case of Force Majeure as defined in Art. 21, including the case of SELLER's insolvency or bankruptcy, collusion or significant discontinuances of SELLER in the execution of the Work with serious delays in the Project Time Schedules.

PURCHASER shall give SELLER written notice of any default which may be a basis for termination hereunder, and shall provide SELLER the opportunity to cure or institute acceptable action to cure such default in a period not to exceed thirty (30) days, or longer period as mutually agreed, from receipt of such notice. Such suspension or termination will be by a written order to SELLER whereupon SELLER shall immediately comply therewith

If the default is not cured PURCHASER can terminate Contract and shall have the power to complete the Work herein described and take possession of the Work completed or then in progress. SELLER shall assign to PURCHASER all the right, title and interest of SELLER in each subcontract and to continue such subcontracts, or to settle or pay any or all claims arising out of termination of such subcontracts. The expense so charged shall be deducted

by PURCHASER out of such monies as may be due to SELLER under the Contract. PURCHASER shall not be required to obtain a lowest bid for the Work of completing the Contract, but the expenses to be deducted shall be reasonable under the circumstances and on the basis of the current international market prices.

## 22.2 Suspension of Work and Termination of Contract for Convenience by PURCHASER

1. The performance of the Work under this Contract may be terminated by PURCHASER at any time, for its convenience. Any such termination shall be by submittal to SELLER of a written Notice of Termination, which shall be effective upon receipt. In such case, SELLER shall be entitled to such part of the Contract price as reasonably allocable to the Scope of Services and Delivery already executed and reimbursement of all direct and documented expenses demonstrably incurred including demobilization costs in the termination of this Contract and SELLER's subcontracting arrangements.
2. After receipt of a Notice of Termination, SELLER shall:
  - a. Stop Work under the Contract on the date specified in the Notice of Termination.
  - b. Place no further subcontracts and terminate the existing ones.
  - c. Settle all outstanding liabilities and all claims arising out of such termination of subcontracts
  - d. Upon payment, transfer title to PURCHASER to the fabricated Hardware and completed work or work in process, completed, or partially completed plans, drawings, information, software and other property (except for SELLER proprietary software) which, if the Contract had been completed, would have been required to be furnished to PURCHASER.
3. After receipt of a Notice of Termination, SELLER shall submit to PURCHASER his termination claim. Such claim shall be submitted promptly but in no event later than five (5) months from the effective date of termination. Should SELLER fail to submit his termination claim within the time allowed, PURCHASER may determine, on the basis of information available, the amount due to SELLER by reason of the termination and shall thereupon pay to SELLER the amount so determined, which shall be the sole amount to which SELLER shall be entitled as a result of such termination.  
In no event shall SELLER be entitled to any amounts for anticipated profits or overheads or the like.

4. PURCHASER shall have the authority to suspend the Work for Convenience for such period as it may deem necessary. For the suspension under this clause SELLER shall be entitled to receive payment for the part of the Works performed up to the date of suspension including all additional costs and expenses demonstrably accruing to SELLER and its subcontractors or suppliers as consequence of the suspension and shall be entitled to an equitable adjustment of price and schedule. Should such suspension exceed a maximum period of 6 months, SELLER and PURCHASER shall mutually agree how to proceed. If the agreement is not reached SELLER shall be entitled to terminate the Contract within next six months and be entitled to the reimbursement as stated in article 22.2., first paragraph. If it should become necessary to stop Work for an indefinite period, SELLER shall store all materials in such manner that they will not obstruct or impede activities at the Site unnecessarily nor become damaged in any way, and it shall take every precaution to prevent damage or deterioration of the Work performed.

22.3 In case of material breach of the Contract by PURCHASER including but not limited to PURCHASER's failure to make payment and if PURCHASER fails to make good such material breach within reasonable time after having been informed by SELLER in writing, SELLER may terminate the Contract. In case of termination, SELLER shall have the remedies as stated in article 22.2

## **23 CHANGES**

In case that certain services and supplies are not included in the original Contract, but due to unpredicted circumstances unknown at the time of Contract signature have become necessary for the completion of the Project and without difficulties cannot be performed separately from the Contract, according to the Slovenian Public Tendering Law (Article.35) the SELLER can be invited for negotiation.

The SELLER shall, at the PURCHASER's request, make changes in design or equipment, material or services, not included in the original Contract, but due to unpredicted circumstances unknown at the time of the conclusion of the Contract, if changes in design, equipment, material or services become necessary for the completion of the Project and cannot be performed separately from the Contract without significant difficulties. In such a case the PURCHASER shall invite the SELLER to negotiations by means of a formal letter, while the negotiations shall be subject to the rules provided in this Article.

Any changes to this Contract shall not have any effect until the SELLER and the PURCHASER have agreed on the price to be paid to the SELLER, the delivery or the performance schedule, Quality Assurance conditions and other affected terms and conditions, so as to reflect any changes in (i) SELLER's efforts which may be required, 2) the scope of work, 3) the time of the

performance and the impact on the schedule, 4) the warranties, and 5) the costs to complete.

Upon receipt of the formal letter with the invitation for negotiations, which must include a description of the object of the change and the reasons for such a change, the SELLER shall prepare and submit to the PURCHASER a proposal for a Change Order in written form, which shall:

- a) describe the scope of the proposed change,
- b) quote in term of man-hours, rates, prices or otherwise as appropriate, the estimated increase or decrease in the total price that would result from the implementation out of the requested change,
- c) specify those terms and conditions which are affected by the change, including time for performance and warranties, and
- d) if appropriate, indicate the date on which the SELLER would proceed with the change.

If changes are to be required by any Governmental Agency or Authority, including the United States Nuclear Regulatory Commission, such a requirement will constitute an obligation for the PURCHASER to initiate the new public procurement procedure as required.

The PURCHASER and the SELLER agree that negotiations for change of this Contract shall be considered an independent procedure in which the SELLER may submit reservations with a technically viable justification or other conditions, insofar as they apply only to the object of the change.

In the event negotiations regarding changes requested by the PURCHASER do not lead to a Change Order but do have an impact on the schedule, the project schedule will be extended appropriately.

The SELLER may propose changes to the PURCHASER, but may not implement them without the prior written consent of the PURCHASER.

Any changes to this Contract shall be made in writing; the Parties agree that changes in any other form shall be considered void.

Any amendment, enforcement or change of interpretation of any Slovenian Government or any other applicable laws, rules, regulations and decrees or other decision and their requirements for compliance as the same shall relate to the Scope of Services and Delivery, whatsoever issued, amended or enforced by any competent authority (including codes and standards and safety regulations) after the date of signature of the Contract will result in an equitable adjustment of price and schedule.



## **24 ANTI-CORRUPTION CLAUSE**

The Contracting Parties shall undertake not to give, promise or receive any present or payment in cash or in any other valuable object to or from each other either directly or indirectly or through any official, officer or any other individual employed in the government or any authority (division, department, agency) or through any political party or any candidate of any political party with the intention of bribing so that any official, officer or any other employee, party or candidate would be tempted to abuse his/her position or to exert influence on any law or any decision made by government or any other competent government department with the purpose to obtain or retain a deal or to direct a deal to a commission agent or to any of his assistants, representatives, distributors, subsidiary companies or any other associated companies. In case the act stated in this paragraph has been committed or attempted to be committed, the Contract that had been concluded or had come into force already shall become null and void. In case the Contract is not valid yet, it shall be deemed not to be concluded.

## **25 SOCIAL CLAUSE**

During their involvement in this public procurement order, economic subjects shall fulfil all applicable obligations in the field of environmental, social and labour laws, as they are set out in the European Union legislation, national legislation, collective agreements or the rules of international environmental, social and labour regulations and if they do not fulfil the above stated obligations the Contract will be terminated.

Applicable international social and environmental conventions are listed in Attachment X of EU Directive 2014/24/EU and Attachment XIV of EU Directive 2014/25/EU.

## **26 OTHER PROVISIONS**

N/A.

## **27 ASSIGNMENT**

No Party shall assign this Contract in whole or in part without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the above, SELLER may assign this Contract or any portion thereof to an entity in which SELLER holds a majority or controlling interest or which holds a majority or controlling interest in SELLER or which is majority held or controlled by the same parent entity.

## **28 ENTIRE AGREEMENT**

The Contract shall constitute the entire and definitive agreement between Parties thereto with respect to the terms and conditions which shall govern. The Contract will supersede all prior written or oral communications between the Parties concerning the subject matter of the Contract which communication upon signature of the Contract by both Parties shall become null and void. No waiver, alteration or modification of the Contract shall be binding to the Parties unless made in writing and signed by duly authorized representative of the Parties.

## **29 LANGUAGE**

SELLER and PURCHASER agree that the official version of the Contract, the Appendices and the Technical and Quality Requirements shall be in English.

All notices, communications or approvals contemplated hereunder shall be in English.

All Technical Documentation, specifications, drawings, reports specified in the Technical and Quality Requirements and all other documents referred to by this Contract and any of its constituting part are required to be in English.

## **30 EFFECTIVE DATE OF CONTRACT**

The effective date of the Contract shall be the date of the Contract signature as provided on first page of the Contract.



## 31 NOTICES

Any notice pursuant to this Contract shall be deemed to have been duly made when sent to the following address:

### **PURCHASER:**

Nuklearna Elektrarna Krško  
Vrbina 12  
8270 Krško  
Slovenia

Attention: Mr. Vladimir Butković for technical issues  
Phone: +386 748 02 417  
e-mail: vladimir.butkovic@nek.si

Mr. Gregor Cerjak for commercial issues  
Phone: +385 748 02 329  
e-mail: gregor.cerjak@guest.nek.si

### **SELLER:**

Attention:

For commercial issues:

## **32 ATTACHMENTS**

The following Attachments are constituent integral parts of this Document Part I General Terms and Conditions, as listed below, and are attached hereto.

**ATTACHMENT A:** Warranty Guarantee

**ATTACHMENT B:** Statement Of Received Payment For Subcontractor's Part Of Services, Delivery Or/And Civil Works (if applicable)

**ATTACHMENT C:** Subcontractor's Data and Bidder's Consent for Direct Payment (in case there are any subcontractors and they request direct payment)

In witness thereof the Parties have signed this Contract in two (2) identical originals of which each Party hereto retains one (1).

For **SELLER**

For **PURCHASER:**

**Nuklearna Elektrarna Krško d.o.o.**

Stanislav Rožman  
President of the Management Board

Hrvoje Perharić  
Member of the Management Board

## ATTACHMENT A

Date

Name and address of the Beneficiary

**TYPE OF GUARANTEE:** Warranty Guarantee

**GUARANTEE NO.:** ..... (draft)

**THE GUARANTOR:** .....

**THE APPLICANT:** .....

**THE BENEFICIARY:** .....

**THE UNDERLYING RELATIONSHIP:** The Applicant's obligation during warranty period in respect of the Agreement No. .... dated .....concluded between Beneficiary and the Applicant for .....at a total price of EUR .....  
According to the Conditions of the above Agreement a Warranty Guarantee in the amount of ..... % of the total contractual price, i.e. EUR ....., is required.

**GUARANTEE AMOUNT AND CURRENCY:** EUR .....  
(in words: Euro ...../100)

**ANY DOCUMENT REQUIRED IN SUPPORT OF THE DEMAND FOR PAYMENT, APART FROM THE SUPPORTING STATEMENT THAT IS EXPLICITLY REQUIRED IN THE TEXT BELOW:** none

**FORM OF PRESENTATION:** Paper presentation only by registered mail or any courier service. The demand must be presented through the intermediary of your bank confirming that your signature(s) on your demand for payment appear to conform to specimen(s) held in your bank's records.

**PLACE FOR PRESENTATION:** .....

**EXPIRY:** .....

As Guarantor, we hereby irrevocably undertake to pay the Beneficiary any amount up to the Guarantee Amount upon presentation of the Beneficiary's complying demand, in the form of presentation indicated above, supported by such other documents as may be listed above and in any event by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, indicating in what respect the Applicant is in breach of its obligations under the Underlying Relationship.

Beneficiary's statement must state, that the Applicant after the receipt of request to make good a deficiency in the warranty period under the Underlying Relationship, hasn't fulfilled his contractual warranty obligations under the Underlying relationship.

Any demand under this Guarantee must be received by us on or before Expiry at the Place for presentation indicated above.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication no. 758.

Or

**IRREVOCABLE LETTER OF CREDIT ISSUED BY SELLER'S BANK  
(SPECIMEN FORM FOR CONTRACT PERFORMANCE GUARANTEE)**

With the same obligations as stated in the above bank guarantee.

ATTACHMENT B

**STATEMENT OF RECEIVED PAYMENT FOR SUBCONTRACTOR'S PART OF SERVICES, DELIVERY OR/AND  
CIVIL WORKS ( if applicable)**

**CONTRACTOR:**\_\_\_\_\_

and

**SUBCONTRACTOR:**\_\_\_\_\_

hereby declare that the Subcontractor stated above has received all payments

due for his part of the services, delivery and/or civil works under the Contract  
No. \_\_\_\_\_

for the \_\_\_\_\_.  
(subject of the public tender)

Place and Date:

Stamp:

Bidder's Signature:

Subcontractor's Signature:

In accordance with article 94.6 of ZJN-3, the Purchaser shall receive this statement in 60 days after the main Contractor issues the final invoice.

ATTACHMENT C

**Subcontractor's Data and Bidder's Consent for Direct Payment (if applicable)**

Bidder.....

.....

We declare that we will engage below stated subcontractor for the part of the Scope of Delivery under the Contract for

.....

Name and head office: .....

TAX number: .....

Registration number: .....

IBAN: .....

Statutory representative: .....

Scope of services and delivery to be performed by subcontractor:

.....

Value of the services and delivery to be performed by subcontractor:

.....without VAT..... with VAT

Place of performance of work: .....

Deadline for performance of work:

.....

We declare to be engaged in above stated Scope of Delivery performance as subcontractor to the Contractor.

Please indicate your option:

1. We request to be paid directly by Purchaser at our account number, for our part of performed scope of Services and Delivery based on the invoice approved by the Contractor.
2. We do not request to be paid directly by Purchaser and therefore we declare that we are informed that no later than 60 days after signing the hand over protocol we and the Contractor need to submit the Statement Att.11 of this Bidding documentation to NEK that we have been reimbursed for the performed services, delivery and/or civil works

With signature of this statement we declare the fulfillment of the following conditions:

- subcontractor fulfills all the conditions requested with this Bidding documentation for his part of the work, delivery or civil works.

We authorize the Purchaser to acquire the necessary data for this public procurement process, which will confirm the fulfillment of the above conditions.

Place and date:

Stamp:

Bidder's Signature:

\_\_\_\_\_

\_\_\_\_\_

Subcontractor's Signature: