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MINISTRY OF EDUCATION,  
YOUTH AND SPORTS

# Support structure of the COMPASS Upgrade tokamak

## Purchase Contract

*CU\_CUPG-02\_PTD\_Annex2-Purchase Contract*

# Purchase Contract

concluded in accordance with Section 2079 et seq. of Act No. 89/2012 Coll., Civil Code,  
as amended (hereinafter the "**Civil Code**")

## 1. Parties of the Contract

### Ústav fyziky plazmatu AV ČR, v. v. i.

*(Institute of Plasma Physics of the Czech Academy of Sciences)*

With its registered seat at: Za Slovankou 1782/3, 182 00 Prague 8

Postal address: U Slovanky 2525/1a, 182 00 Prague 8

ID No.: 61389021

VAT No.: CZ61389021

Registered with the Register of public research institutions kept by the Ministry of Education, Youth and Sports of the Czech Republic in compliance with Act No. 341/2005 Coll., on public research institutions

Represented by: prof. RNDr. Radomír Pánek, Ph.D., Director

Bank details: Československá obchodní banka, a. s.

Account No.: 101256398/0300; IBAN: CZ89 0300 0000 0001 0125 6398, SWIFT: CEKOCZPP

Data mailbox No.: "zipnqqk"

(hereinafter the "**Buyer**")

and

### Dal Ben S.p.A.

With its registered seat at: via G. Di Vittorio 12, 30029 San Stino di Livenza (VE), Italy

ID No.: REA VE-282419

VAT No.: IT03091480271

Registered with Camera di Commercio Industria Artigianato e Agricoltura di Venezia Rovigo

Represented by: [REDACTED]

Bank details: Intesa Sanpaolo

Account No.: IBAN IT06Y0306936310100000003518, SWIFT CODE/BIC: BCITITMM

Data mailbox No.: n.a.

(hereinafter the "**Seller**")

(the Buyer and the Seller jointly also as the "**Parties**" or individually as the "**Party**")

are entering on the day, month and year specified below into this purchase contract (hereinafter the "**Contract**").

## **2. Fundamental provisions**

- 2.1. The Seller won the public procurement procedure announced by the Buyer pursuant to Act No. 134/2016 Coll., on Public Procurement, as amended (hereinafter the "**PPA**"), for tender entitled "**Support structure of the COMPASS Upgrade tokamak**" (hereinafter the "**Tender**").
- 2.2. The Seller acknowledges that the Buyer considers the participation of the Seller in the public procurement in fulfilment of the qualification requirements as confirmation of the fact that the Seller is able to act with the knowledge and care associated with his profession or condition in the performance of this Contract, in accordance with the provisions of Section 5(1) of the Civil Code, with the understanding that any failure to exercise such professional care shall be to his detriment. The Seller shall not abuse its professional quality or its economic position to create or take advantage of the dependence of a weaker party and to create an obvious and unjustified imbalance in the mutual rights and obligations of the Parties.
- 2.3. The initial and binding documents for delivery of the subject of matter of this Contract are also:
  - (i) Technical specification and all its annexes (hereinafter "**Technical Specification**"), which forms an integral part of this Agreement as Attachment No. 1. This Technical Specification was also included in the Tender Documentation as Annex 1 thereto;
  - (ii) A statement by the Seller that the performance offered by it in the Bid meets all requirements defined in the Technical Specification and the Contract, which was part of the Seller's bid submitted in the Tender (hereinafter the "**Bid**") and which forms an integral part of this Contract as Annex No. 2;
  - (iii) Price Schedule and Deliverables, which forms an integral part of this Contract as Annex No. 3. It is a table listing the individual items constituting the performance under this Contract and the unit purchase prices for these items (hereinafter the "**Price Schedule and Deliverables**");
  - (iv) Timetable of the performance, which forms an integral part of this Contract as Annex No. 4. It is a binding schedule prepared by the Seller and submitted in its Bid (hereinafter the "**Timetable**");(hereinafter the "**Initial Background Documents**").
- 2.4. The Seller declares that it has all the professional prerequisites necessary for the delivery of the subject matter of the Contract, it is entitled to its performance and there are no obstacles on its part that would prevent it from delivering the subject matter of this Contract to the Buyer.
- 2.5. The Seller declares that it assumes the risk of change of circumstances within the meaning of Section 1765 (2) of the Civil Code.

- 2.6. The Parties declare that they shall keep confidential the facts which come to their knowledge in connection with this Contract and its performance and the disclosure of which could cause them harm. This is without prejudice to the Buyer's obligations under the law.
- 2.7. The Seller acknowledges that the subject matter of this Contract is part of the COMPASS-U: Tokamak for cutting-edge fusion research – Phase II, Reg. No. CZ.02.01.01/00/23\_013/0008119 (hereinafter the "**Project**"). The Seller acknowledges that as the purchase price is financed from the subsidy, the Seller's failure to fulfil any obligation may have an impact on the financing. The determination of expenditures as ineligible and any levy or administrative penalties imposed as a result of a breach of this obligation would constitute damage incurred by the Buyer.
- 2.8. The Seller acknowledges that the delivery deadlines specified in the Contract are essential for the Buyer due to the interdependence of the Project and the deadline by which the Project is to be completed, and that the Buyer may incur damage in the event of failure to comply.
- 2.9. The Seller declares that in connection with this Contract he complies and shall further comply with all legal regulations imposing international sanctions including those imposed as coercive measures applied against States, non-State entities or individuals that pose a threat to international peace and security.

### **3. Subject matter of the Contract**

- 3.1. The subject matter of this Contract is the Seller's obligation to deliver to the Buyer and transfer to the Buyer the ownership title to the support structure, the specific parameters of which are set out in the Technical Specification, together with the performance under Article 3.2 of this Contract (all the aforementioned hereinafter referred to as the "**Support Structure**"), while the object of purchase as subject matter of this Contract further includes the framework performance according to Article 3.7 of this Contract.
- 3.2. The Support Structure as a performance of the Seller also includes:
- (i) Preparation of the documents specified in the Technical Specification and their delivery and ownership transfer to the Buyer ("**Documentation**");
  - (ii) the provision of input materials and manufacture of the Support Structure components;
  - (iii) carrying out ongoing inspections in accordance with the Technical Specification;
  - (iv) the supply of the lifting handling fixtures described in the Technical Specification;
  - (v) carrying out the test of the assembly of the support structure at the production site pursuant to Article 7.1 of the Contract at the Seller's premises in accordance with the Technical Specification ("**Assembly of the support structure at the production site**");
  - (vi) providing the product with "Declaration of compliance with the order" (by order meaning compliance with the requirements of the Technical Specification). This is a document of control 2.1 according to EN 10204;
  - (vii) preparation of a list of all delivered items for inspection by the Buyer;

- (viii) removal and disposal of unwanted packaging and other materials used by the Seller in relation to the Support Structure in the course of performance of this Contract;
- (ix) warranty service on the Structure provided by the Seller to the Buyer within the time limits specified in Article 10, Paragraph 10.9 of the Contract; and
- (x) the supply of spare parts for the Support Structure (including spare connection material), where the required spare parts are described in the Technical Specification.

3.3. The Buyer undertakes to take delivery of the Support Structure in due and timely manner and to pay to the Seller the price for the Support Structure specified in Article 5.2.1 of this Agreement.

3.4. If other supplies and works not expressly mentioned in this Contract are required by the nature of the matter to meet the Buyer's requirements under this Contract including its annexes and for the proper performance hereof and/or function of the Support Structure, the Seller undertakes to procure or perform such supplies and works at its own expense and to include them in its performance without affecting the purchase price under this Contract.

3.5. The Seller undertakes, under the terms and conditions set out in this Contract, to deliver the Support Structure to the Buyer on time and duly, at its own expense and under its own responsibility, and to hand it over to the Buyer, including the performance of all activities specified in paragraph 3.2 of this Article of the Contract. The Seller shall be responsible for ensuring that the Support Structure and its components comply with this Contract, the Initial Background Documents and applicable legal, technical and quality standards.

3.6. The Seller is obliged to deliver the Support Structure including its individual parts and the performance described in Articles 3.1 and 3.2 of this Contract within the Timetable deadlines, but no later than within the deadlines specified in the Contract, and its performance must comply with the following four milestones consecutively during the course of its implementation:

**Milestone 1** means the date of approval of Quality Plan. Preparation of a Quality Plan and submission to the Buyer for approval shall be made by the deadline specified in Annex no. 1 - Technical Specification;

**Milestone 2** means the date of approval of Production and assembly documentation. Preparation of Production and assembly documentation and submission to the Buyer for approval must be completed by the deadline specified in Annex 1 - Technical Specification. This milestone shall only be deemed to have been met once the Production and Assembly Documentation has received an "A" or "B" rating from the Buyer (the rating rules are set out in Annex No. 1 - Technical Specification);

**Milestone 3** means the date at which the Seller demonstrates to the Buyer that it has procured and has stocked on its premises more than 75 % of the material to be used in the manufacture of the Support Structure against the List of production materials. Said achievement of more than 75 % of the material shall be assessed in terms of the weight of the material so procured and stocked. The material to be so assessed must already be in the form of semi-finished product after all volumetric material forming steps (i.e., casting, casting + HIP, forging, rolled plate etc.).

**Milestone 4** means the date of signing the Protocol of the support structure assembly at the production site, unless Support Structure defects are indicated in the Protocol of the support structure assembly at the production site. In the event that the Protocol of the support structure assembly at the production site contains Support Structure defects, Milestone 4 shall mean the date of removal of such defects by the Seller;

(Milestone 1, Milestone 2, Milestone 3 and Milestone 4 are collectively referred to as "**Milestones**").

3.7. In the event that a demand arises from the Buyer for

- technical support in the assembly at the Buyer's premises
- technical support of the Seller to the Buyer in incorporating possible changes in the design of the Support Structure resulting from the ongoing development of the Tokamak COMPASS Upgrade based on the optimisation of the design of all its parts and the examination of possible stress scenarios and analyses or during the installation of the Structure at the place of performance pursuant to Article 7.2 of the Contract,
- demand for Storage of the support structure at the place of performance pursuant to Article 7.1 and 7.3 of the Contract,
- transporting the Support Structure or parts thereof from the place of performance pursuant to Article 7.1 and 7.3 of the Contract to the place of performance pursuant to Article 7.2 of the Contract; and/or
- oversized transport of the Support Structure or its parts as oversize and over-dimensional cargo from the place of performance under Article 7.1 and 7.3 of the Contract to the place of performance under Article 7.2 of the Contract,

the Seller undertakes to carry out these activities for the Buyer upon the Buyer's order, up to the maximum extent that the Buyer is entitled to order under this Article of the Contract. The Buyer shall be entitled to order any items within the types of performance defined in Article 3.7.1 of this Contract or any combination thereof and to any extent up to the maximum limit, i.e., the aggregate of the Purchase Price for the Support Structure and the prices of all such ordered performances shall reach at maximum either the estimated value of the Public Contract specified in the Tender Documentation or the Total Purchase Price pursuant to Articles 5.1 and 5.4 of this Contract, whichever is higher. The Seller acknowledges and agrees that the Buyer may order from the Seller, within the above limitation, a different (i.e. lower or higher) scope of performance under Article 3.7.1 of this Contract than the maximum expected scope for a given type of required performance, or the Buyer may also order this maximum expected scope, but is not obliged to order any performance under Article 3.7.1 of this Contract; Seller may not require Buyer to order any performance under Article 3.7.1 of this Contract, nor may Seller require Buyer to make any payment or reimbursement in connection therewith, other than the corresponding portions of the

price to be paid for the subject matter actually ordered and properly delivered under the items under Article 3.7 of this Contract. The price of the ordered performance shall be determined, in accordance with the calculation set forth in Article 5.2 of this Contract, as the product of the scope (ordered quantity) of the item ordered in accordance with Article 3.7.1 of this Contract and the applicable unit price set forth for such performance in the Price Schedule and Deliverables. For the avoidance of doubt, the Parties agree that the possibility of ordering such performance is a framework agreement of the Parties on possible subcontracts, not an institute of so-called multiple works awarded under the relevant provisions of PPA (hereinafter also referred to as "**Technical support, storage and transport**" or "**The framework performance**").

- 3.7.1. The framework performance (Technical support, storage and transport) within the meaning of Article 3.7 of this Contract are:
- 3.7.2. Technical support during assembly at the place of performance according to Article 7.2 of the Contract (hereinafter the "**Technical support during assembly**"). The maximum expected scope of this performance is set out in Article 5.2.2 of this Contract. For the sake of clarity, this activity is referred to in the Tender Documentation as "Technical support during assembly" as the technical support provided by the Supplier during the assembly at the Contracting Authority's premises.
- 3.7.3. Storage of the Support Structure by the Seller after the Acceptance of the Support Structure (hereinafter the "**Storage**") at the place of performance pursuant to Article 7.1 and 7.3 of the Contract. The maximum anticipated scope of this performance is set forth in Article 5.2.3 of this Contract. For clarity, this activity is referred to in the Tender Documentation as "Storage" to be provided by the Supplier.
- 3.7.4. Transportation of the Support Structure from the place of performance under Article 7.1 of the Contract to the place of performance under Article 7.2 of the Contract by the Seller (hereinafter the "**Transportation**"). The maximum anticipated scope of this performance is set forth in Article 5.2.4 of this Contract. For clarity, this activity is referred to in the Tender Documentation as "Transportation" provided by the Supplier.
- 3.7.5. Transport of the Support Structure as oversized and overweight cargo by the Seller from the place of performance according to Article 7.1 of the Contract to the place of performance according to Article 7.2 of the Contract, where oversized and overweight cargo is considered to be cargo that exceeds the limits set by the relevant legal regulations, i.e., in particular the provisions of Sec. 25 (6) a) of Act No. 13/1997 Coll., on roads (carriage of particularly heavy or large objects and the use of vehicles whose dimensions or weight exceed the limits laid down by special regulations), Sec. 43a of Act No. 361/2000 Coll., on road traffic, and Sec. 5 (maximum permissible weights of road vehicles) and Sec. 7 (dimensions) of Regulation No. 209/2018 Coll. (hereinafter the "**Oversized transport**"). The maximum expected scope of this performance is set out in Article 5.2.5 of this Contract. For clarity, this activity is referred to in the Tender Documentation as "Oversized transport" provided by the Supplier.

- 3.7.6. Technical support of the Seller to the Buyer in incorporating possible changes in the design of the Support Structure resulting from the ongoing development of the Tokamak COMPASS Upgrade based on the optimization of the design of all its parts and the examination of possible stress scenarios and analyses (hereinafter the "**Technical support for design changes**"), according to the items listed below:
- a) Work of the Project Manager / Engineer / Mechanical Designer / Technician / Production Worker / Assembly Worker,
  - b) Work of CNC machine (including CNC machine operator),
  - c) Work of conventional/classical machine tool (including machine operator),
  - d) Welding work (including all costs for welding equipment + welder's work),
- while the maximum expected scope of this performance is set out in Article 5.2.6 hereof.
- 3.7.7. Technical support during assembly shall be provided exclusively by professionally qualified technical personnel of the Seller who have personally participated in the Assembly of the support structure at the production site. The Seller undertakes to reserve for the Buyer sufficient capacity of such technical staff for a period of 3 years from the Handover. The specific technical staff will be selected by the Buyer and identified in each individual Order of Technical support.
- 3.8. The Seller undertakes to carry out Technical Support, Storage and Transport on the basis of a binding order of the Buyer for Technical Support, Storage or Transport following the agreement of the Parties on the terms of the order, in particular on the volume of work required for a given output and the date of implementation of the respective activities (hereinafter the "**Order**").
- 3.8.1. In derogation from the provisions of § 2415 et seq. Civil Code on the storage contract, the Parties agree that, as regards Storage or Order of Storage, the Seller has all costs related to Storage already included in the price of Storage payable under the Contract, has no right to terminate or otherwise prematurely terminate Storage or to effect a self-sale without the Buyer's consent, and is obliged to indemnify the Buyer for any damage to the stored item incurred during the period of Storage, not only if it is caused by him but also if it is due to the nature of the stored item or to a defect in the item or its packaging, without being able to exonerate himself from this liability, and in other cases he shall only be liable for the damage if he fails to prove that he could not have prevented it even with the exercise of professional care.
- 3.8.2. In derogation from the provisions of Section 2555 et seq. of the Civil Code on the contract of transport, the Parties agree that, as regards Transportation or Oversized transport or Order of Transportation or Oversized transport, the Seller has all costs associated with the Transportation or Oversized transport already included in the Transportation or Oversized



transport price payable under the Contract, has no lien on the shipment, and is obligated to indemnify the Buyer for damage to the shipment incurred during the Transportation or Oversized transport, not only if caused by him, but also if caused by the nature or defect of the transported consignment or by a defect in its packaging, without being able to exempt himself from such liability for damage, and in other cases he shall only be liable for damage if he fails to prove that he could not have prevented the damage even with the exercise of professional care.

- 3.8.3. In relation to Transportation or Oversized transport, the Parties agree that one Order shall be issued for each shipment (within the meaning of Article 8.6 of the Technical Specification).
- 3.8.4. In relation to Transportation or Oversized transport, the Parties agree that if it is necessary to use external lifting equipment (crane or other equipment) for unloading of the consignment at the place of performance pursuant to Article 7.2 of the Contract, the Buyer shall provide such external lifting equipment at its own expense and at the time (date and time) specified in the Order placed by the Buyer with the Seller for the relevant Transportation and/or Oversized transport. In the event that the Seller's haul is delayed from the date (date and time) specified in the Order, the Seller shall reimburse the Buyer for all hourly costs of the external lifting equipment caused by such delay for each hour of delay until the Seller's haul arrives at the place of performance pursuant to Article 7.2 of the Agreement. This is without prejudice to the contractual penalty pursuant to Article 12 of this Contract.
- 3.8.5. The Order for Technical Support will specify the scope and extent of the ordered activities, the date of their execution and will include the necessary technical documents.
- 3.9. The Buyer may order Technical support during assembly within 3 years of handover of the Support Structure. The Buyer may order Storage, Transportation or Oversized transport within 24 months of handover of the Support Structure. The Buyer may order Technical Support during the incorporation of possible changes to the design of the Support Structure up to the signing of the Handover Protocol and, if such changes ordered by the Order have impact on the handover date of the Support Structure, the Seller shall have the right, but only with the agreement of the Buyer, to postpone the handover date of the Support Structure by the time necessary to implement such changes, up to a maximum of 6 months. The same applies for postponement of a Milestone date stipulated in the Timetable, unless the ordered changes have no impact on the Milestone.
- 3.10. The Buyer is entitled to cancel its Order for Technical Support, Storage or Transport at any time, but is obliged to pay the Seller the part of the price that corresponds to the costs actually incurred by the Seller up to the moment of cancellation of the respective Order. The Seller shall provide the Buyer with written and verifiable evidence of the costs incurred.
- 3.11. The Seller acknowledges and agrees that the Buyer is not obliged to order any performance of the Seller under this Contract within the scope of Technical Support, Storage and Transport. Accordingly, the Seller shall not be entitled to claim any Technical Support, Storage or

Transportation Order from the Buyer in connection with this Contract, nor shall the Seller be entitled to demand payment from the Buyer for any payments other than the price for the Technical Support, Storage and Transportation actually ordered and performed.

- 3.12. The Seller shall, within five (5) business days of receipt of the Order, accept the terms and conditions set out in the Order, which is in accordance with this Contract, and confirm this in writing to the Buyer. The Parties agree that if the Seller fails to respond within five (5) business days, the Seller shall be deemed to have accepted the Order. Unless otherwise agreed by the Parties, the Seller shall commence performance under the Order (i.e., commence the relevant Technical Support, Storage or Transport) within the time specified in the Order, which shall not be less than fifteen (15) business days from receipt of the Order, and shall thereafter provide performance within the time required in the Order and complete performance within the time specified therein.
- 3.13. If an Order for Technical Support, Storage or Transport contains a requirement that is beyond the terms of this Contract, the Tender Documentation or the Seller's Bid submitted in the Tender, which the Seller has not committed to, the Seller shall notify the Buyer within ten (10) business days of receipt of the Order, otherwise the Buyer shall be deemed to have committed to it, without any claim for price increase.
- 3.14. If the Buyer asks the Seller to make a geometric change to the Support Structure with respect to some of its components, the production of which has not yet started, and if this change does not require increased quantities of input raw materials or a change in processing technology, the Seller shall make this change without affecting the date and price of the Support Structure. If, during the course of the performance of the subject matter of this Contract, there are changes in the design of the Support Structure impacting the amount of material or number of parts required to manufacture the Support Structure, this shall be considered and addressed as extra/less work in accordance with the PPA.

#### **4. Ownership transfer and passing of the risk of damage to the property**

- 4.1. Ownership title to the Support Structure shall pass to the Buyer upon handover and acceptance of the Support Structure. Handover and acceptance of the Support Structure shall mean the signing by both Parties of a Handover Protocol in which the Buyer declares that it accepts the Support Structure ("***the Handover***").
- 4.2. The risk of accidental damage to the Support Structure shall pass to the Buyer at the earliest at the time of Handover pursuant to Article 4.1 of this Agreement, unless the following conditions precedent are fulfilled, which the Parties hereby negotiate in accordance with Section 2082(2) of the Civil Code: If Buyer orders Storage no later than at the time of Handover, the risk of accidental damage to the Support Structure shall pass to Buyer only at the time of Handover of the Support Structure after completion of Storage. Provided that Buyer orders Transportation or Oversized Transport no later than at the time of such Handover after Storage, the risk of accidental damage

to the Support Structure shall pass to the Buyer only at the time of Handover of the Support Structure to the Buyer at the construction Site of the Buyer's facility pursuant to Article 7.2 of the Contract. This does not exclude the Seller's liability for any damage to the Support Structure arising during Storage, Transportation or Oversized transport.

- 4.3. The handover within the meaning of Article 4.1 of this Contract does not relieve the Seller from liability for damages resulting from defects in the Support Structure. Until Handover, the Seller shall bear the risk of damage to the Support Structure.
- 4.4. After the Handover, the Seller undertakes to allow the Buyer, at the Buyer's request, to transport the Support Structure from the place of performance under Article 7.1 of the Contract to the place of performance under Article 7.2 of the Contract. In this connection, the Seller undertakes to provide all necessary assistance, in particular to enable the Support Structure to leave the place of performance pursuant to Article 7.1 of the Contract without any problems. This provision shall not apply to the extent in that the transportation of the Support Structure will be carried out on the basis of Orders of Transportation or Oversized transport.

## **5. Purchase Price and payment terms**

- 5.1. The total purchase price has been agreed by the Parties as the overall price for the subject matter of the Contract, in the amount of **CZK 281.574.244,48 excluding VAT** (in words: two hundred eighty-one million five hundred seventy-four thousand two hundred forty-four and forty-eight cents Czech Koruna excluding the value added tax, hereinafter the "**Total Purchase Price**"). The Total Purchase Price represents the Total Bid Price of the Supplier selected in the Tender for the Public Contract. In accordance with the legal regulations, 21% VAT in the amount of CZK 59.130.591,34 shall be added to the Total Purchase Price, i.e., the Total Purchase Price is CZK 340.704.835,82 including VAT.
- 5.2. The Total Purchase Price shall consist of the following price items as values filled in simultaneously in the respective cells of Annex No. 3 - Price Schedule and Deliverables:
  - 5.2.1. The price for the Support Structure according to Article 3.1 and 3.2 of this Contract is **CZK 272.914.244,48 excluding VAT** (in words: two hundred seventy-two million nine hundred fourteen thousand two hundred forty-four and forty-eight cents Czech Koruna excluding VAT, see the relevant value for the Support Structure in the column "Offer price of the Item/Task in CZK excluding VAT" on the sheet "The Price Schedule" in in Annex No. 3 - Price Schedule and Deliverables).
  - 5.2.2. The price for Technical support during assembly shall not exceed **CZK 1.800.000,00 excluding VAT** (in words: one million eight hundred thousand Czech Koruna excluding VAT) and is calculated on the basis of unit prices and quantities according to the "Technical support during assembly" in Price Schedule and Deliverables (see the value in the column "Offer price of the Item/Task in CZK excluding VAT").

- 5.2.3. The price for Storage shall not exceed **CZK 1.680.000,00 excluding VAT** (in words: one million six hundred and eighty thousand Czech Koruna excluding VAT) and is calculated on the basis of unit prices and quantities according to the "Storage " in Price Schedule and Deliverables (see the value in the column "Offer price of the Item/Task in CZK excluding VAT").
- 5.2.4. The price for Transportation shall not exceed **CZK 570.000,00 excluding VAT** (in words: five hundred and seventy thousand Czech Koruna excluding VAT) and is calculated on the basis of unit prices and quantities according to the item "Transportation" in Price Schedule and Deliverables (see the value in the column "Offer price of the Item/Task in CZK excluding VAT").
- 5.2.5. The price for Oversized transport shall not exceed **CZK 240.000,00 excluding VAT** (in words: two hundred and forty thousand Czech Koruna excluding VAT) and shall be calculated on the basis of unit prices and quantities according to the item " Oversized transport" in Price Schedule and Deliverables (see the value in the column "Offer price of the Item/Task in CZK excluding VAT").
- 5.2.6. The price for Technical support for design changes shall not exceed **CZK 4.370.000,00 excluding VAT** (in words: four million three hundred and seventy thousand Czech Koruna excluding VAT) as the sum of the products of the unit price and the estimated quantity for each of the following items , i.e. hourly rates of "Work of the Project Manager / Engineer / Mechanical Designer / Technician / Production Worker / Assembly Worker", "Work of CNC machine (including CNC machine operator)", "Work of conventional/classical machine tool (including machine operator)" and " Welding work (including all costs for welding equipment + welder's work)" in Price Schedule and Deliverables (i.e. the sum of the values for the above items from the column "Offer price of the Item/Task in CZK excluding VAT").
- 5.3. The Total Purchase Price shall include all costs associated with the performance of the subject matter of this Contract, including the cost of insurance for Support Structure up to the time of Handover, any duties, fees, etc. The unit prices for Technical Support shall include, without limitation, all travel and subsistence expenses of the Seller's employees. The Purchase Price shall be independent of price and exchange rate changes, unless otherwise expressly provided in this Contract or its annexes.
- 5.4. The Total Purchase Price, upon its adjustments (if any) made in accordance with this Contract (including the application of price clauses stipulated hereby, taking into account the EU inflation and the effect of the Alloy surcharge on the price of the Support Structure), shall not be exceeded; in addition to the aforementioned clauses, the price may only be varied by a written amendment to this Contract made in accordance with PPA, inclusive of the case of adjustment of the price including VAT due to a change in the VAT rate according to the effective legal regulations.
- 5.4.1. **Calculation of the "Alloy surcharge"**: the material surcharge called "Alloy surcharge" is only taken into account for technically significant items from the bill of materials required for the production of the Support Structure (see column "M" on the sheet "BOM - pricing" in Annex

No.3 - Price Schedule and Deliverables) and includes in its calculation the basic material inputs of the steel alloy without being the full sum of all costs necessary for the production of the steel alloy. Information on the calculation of the material surcharge and references to the source data are provided in Annex No. 3 - Price Schedule and Deliverables on the "BOM - Pricing" sheet on lines 134 to 144. The prices of the material inputs, including the USD/CZK and Euro/CZK exchange rates necessary for the calculation of the material surcharge, have been prescribed for the purposes of the Bid as the average price (and average exchange rate) for the calendar month preceding the month of commencement of the Tender. For the purpose of determining the total unit price of a given item (i.e. column "P" in Annex No.3 - Price Schedule and Deliverables on the "BOM - pricing" sheet) and the total price per item (i.e. column "R" in Annex No.3 - Price Schedule and Deliverables on the "BOM - pricing" sheet) at the time of handover of the item or handover of the entire Support Structure, a material surcharge calculated on the averaged prices for the calendar month preceding the month of approval of the "Production and assembly documentation" will be determined, unless the Parties agree otherwise (e.g. if the Seller manufactures the semi-finished products itself and orders the input raw materials under its own responsibility prior to the approval of the production documentation, the material clause shall be calculated on the average of the calendar month preceding the Seller's material order notification). Change in the final prices of items where "Alloy surcharge" is included in the price is possible in both directions, i.e., either an increase or a decrease in price. If due to the increase/decrease of the "Alloy surcharge" value the total price for the Support structure changes by more than +10 % or -10 % (this fact will be known to the Parties at the time of approval of the "Production and assembly documentation"), the Parties shall have the right to withdraw from the Contract.

5.4.2. **Calculation of the inflation clause:** For the delivery of the Support Structure, price increases above 7% annual inflation will be taken into account as follows. At the time of handover of each part of the Support Structure or partial delivery thereof, the rate of increase in consumer prices from the calendar month preceding the signing of the Contract to the month preceding the handover of the part or partial delivery shall be calculated in accordance with the data published by Eurostat as Harmonised Index of Consumer Prices (HICP) - monthly data (monthly rate of change) at the following link:

[https://ec.europa.eu/eurostat/databrowser/view/PRC\\_HICP\\_MMOR/default/table?lang=en&category=prc.prc\\_hicp](https://ec.europa.eu/eurostat/databrowser/view/PRC_HICP_MMOR/default/table?lang=en&category=prc.prc_hicp),

i.e. increase factor  $X = (1+M1)*(1+M2)*...*(1+Mn)$ , where M1 is the month-on-month inflation rate given for the calendar month of signing the Contract (expressed as a decimal number, not as a percentage), M2 for the next month, etc. up to Mn for the month preceding the handover of the given part of the Support Structure or its partial delivery.

If  $X > 1.07^{(n/12)}$ , the sum of "Semi-product unit price [CZK]/pc." and "Unit price of completion [CZK]/pc." of a given part of the Support structure or its partial delivery is increased by the factor  $Y = X - 1.07^{(n/12)}$ .

Note: The inflation clause does not apply to the Alloy surcharge.

**5.5. Framework agreement on the terms of continuous purchase of part of the material by the Buyer from the Seller to the extent taking into account the needs and budgetary constraints of the Buyer during the implementation of the subject matter of the Contract:**

- 5.5.1. With regard to the needs and budgetary constraints of the Buyer related to the financing of the Project and its sources, including the funds from the Czech Academy of Sciences provided on an annual basis, the need for cash-flow management, the interest of efficiency and cost minimization, and while maintaining the appropriate standard of public funds management entrusted to the Buyer in accordance with the so-called "private debtor/creditor" principle, the Buyer must be able to continuously finance the purchase of materials necessary for the production of the Support Structure, both by advances within the meaning of Article 11 of this Contract, as well as by payments of partial purchase prices for the material transferred into the ownership of the Buyer. In view of the foregoing, the Parties agree that the Buyer shall have the right, at its sole discretion, to purchase from the Seller, on an ongoing basis during the performance of the subject matter of the Contract, the material or parts thereof required for the manufacture of the individual parts of the Support Structure on the following terms and conditions.
- 5.5.2. The Buyer can purchase material from the Seller on an ongoing basis pursuant to this Article 5.5 hereof only for those parts for which the "Semi-product unit price" is filled in column "N" on the "BOM-pricing" sheet within the "Annex 3 - Price Schedule and Deliverables". (Note: if not filled in, it means that the Seller has included all of its costs for the part in the Unit price of completion quoted for the part in the "BOM - pricing" sheet in Annex No. 3 - Price Schedule and Deliverables submitted in the Bid).
- 5.5.3. The Buyer shall take over the purchased material or parts thereof from the Seller as a partial performance of the relevant part of the Support Structure for which the material is intended. The protocol shall specify which material it is, for which part of the Support Structure this material is intended, its quantity and weight according to the "List of production materials", which is part of the "Production and assembly documentation", and the date of acceptance. By signing the protocol, the Seller confirms that he is entitled to transfer the ownership of the material specified in the protocol to the Buyer. The signature of both Parties shall transfer the ownership title of the material referred to in the protocol from the Seller to the Buyer.
- 5.5.4. For the material taken over in the protocol, the Buyer shall pay the Seller the partial purchase price calculated according to the actual quantity and weight of the material and the prices or other data specified in the "Annex 3 - Price Schedule and Deliverables" on the "BOM-pricing" sheet. The purchase price of the material shall be the sum of the items in column "N" (i.e., "Semi-product unit price") and column "M" (i.e., "Alloy surcharge"). The quantity and weight of the material to be purchased will be taken from the "List of production materials", which is part of the "Production and assembly documentation".

- 5.5.5. In case of the purchase of material required for a particular part of the Support Structure, the inflationary increase under the above rules of Article 5.4.2 of the Contract shall apply only to the values set out in the "Semi-product unit price" column for that part and such inflationary increase in the price of the material as a sub-performance of such part shall be calculated similarly under the rules as at the time of handover and acceptance of the material. Upon delivery of the same part of the Support Structure in completed state, the Buyer shall pay to the Seller only the price in the "Total unit price" column reduced by the sum of the "Semi-product unit price" and the "Alloy surcharge" (i.e. the price of that part of the Support Structure reduced by the price paid for the material of that part of the Support Structure) and to this price difference (i.e. this surcharge) shall be added the inflationary increase according to the rules of Article 5.4.2 of the Contract (if the conditions for its application are met). No further or other repeated or duplicate price increases for the same part of the Support Structure may be made with reference to Article 5.4.2 of the Contract; this is without prejudice to the application of the inflation clause to other parts of the Support Structure or to its application to such sub-performances to which the inflation clause has not yet been applied.
- 5.5.6. The Buyer shall be entitled, at its discretion, to require the Seller to charge the price of the purchased material against any advance payments already provided by the Buyer to the Seller according to Article 11 of this Contract; in such a case, the Buyer shall actually pay the Seller just the remaining portion of the price for which such advance payments were insufficient.
- 5.5.7. Unless the Buyer requests the Seller in writing to release the purchased material and the Seller releases it to the Buyer, the Seller shall continue to store the material purchased by the Buyer free of charge until such time as such material becomes part of the relevant part of the Support Structure by its use in the manufacture of that part of the Support Structure and the Seller hands it over to the Buyer.
- 5.5.8. The material from the relevant semi-finished product actually used by the Seller for the manufacture of a particular part of the Support Structure shall continue to be deemed to be the property of the Buyer for the purposes of this Contract. However, unusable scrap and waste material resulting from machining shall belong to the Seller, who shall take possession of such material for further possible use at its discretion. For doing so, the Seller is giving the Buyer a discount as follows: The price of extra material contained in a semi-product compared to the net weight of a finished part has been included in the "Semi-product unit price" (set out in the "Annex3-Price Schedule and Deliverables" on the "BOM- pricing" sheet in column "N") and the discount for keeping this extra material in a form of scrap or waste material was reflected by the Seller in the Unit price of completion (column "O").
- 5.5.9. In the event that unused material (i.e., unprocessed semi-finished material, in original dimensions, thicknesses, etc.) purchased by the Buyer remains after the completion of the Support Structure, the Seller shall be obliged to hand it over to the Buyer at the latest upon



Handover of the Support Structure, who shall arrange for its transportation, unless the Parties agree otherwise.

- 5.6. The price for the Support Structure pursuant to Article 5.2.1 of this Contract before payment shall be firstly reduced by (i) the total amount of actual payments of price for the material purchased by the Buyer on an ongoing basis pursuant to Article 5.5 of this Contract, (ii) the total amount of remaining advance payments provided by the Buyer to the Seller pursuant to Article 11 of this Contract (i.e. not accounted for against payments for purchased material or partial performance) and (iii) the total amount of payments for partial performances taken over by the Buyer pursuant to Article 5.7 of this Contract. Subsequently, the reduced Purchase Price shall be increased by the inflation clause pursuant to Article 5.4.2 of this Contract (if and where applicable). The Buyer agrees to pay the Purchase Price (upon the aforementioned adjustments) to the Seller on the basis of an invoice duly issued by the Seller meeting the requirements under this Contract, following the Handover of Support Structure. In the event of the Seller handing over the Support Structure to the Buyer with defects (i.e., even one defect or deficiency expressly identified in the Handover Protocol), the Buyer shall have the right to reject the Seller's invoice and withhold payment up to 100 % of the price for the Support Structure pursuant to clause 5.2.1 of this Contract until such defect or deficiency has been remedied. This shall be without prejudice to the Buyer's right to pay to the Seller, on the basis of a duly issued invoice, portions of the purchase price for the Support Structure pursuant to Article 5.2.1 of this Contract to the extent corresponding to the relevant portions of the Support Structure or partial performances thereof (including materials) duly delivered by the Seller to the Buyer and accepted by the Buyer
- 5.7. Without prejudice to Article 4 of this Contract, the Buyer shall have the right to take over continuously as a partial performance from the Seller any part of the Support Structure, i.e., the parts listed in Annex 3 on the "BOM - Pricing" sheet, or partial performances (parts) thereof, and to purchase such part under the following conditions:
- 5.7.1. the partial performance shall meet all requirements specified in the Technical Specification,
- 5.7.2. a protocol shall be made of the handover and acceptance of the partial performance, which shall include the identification of the Parties, the specification of the partial performance in such scope and structure that the price of the partial performance can be determined (in the manner described in the following paragraph), and the date of acceptance,
- 5.7.3. the price of the partial performance shall be determined according to its specification and the price items listed in columns "M", "N" and "O", from which the "Total unit price" of the relevant part of the Support structure listed in column "P" in Annex 3 on the sheet "BOM - pricing" is calculated, adjusted according to the price clauses calculated at the time of acceptance of the partial performance. Specifically, the price of the sub-delivery shall be adjusted as follows: The sum of the prices "Semi-product unit price [CZK]/pc." and "Unit price of completion [CZK]/pc." shall be increased by the inflationary increase pursuant to the rules of Article 5.4.2 of the Contract (if the conditions for its application, including the exclusions



set out in Article 5.5 of the Contract, are met) and this price shall be adjusted for any increase or decrease due to the change in the price of materials expressed by the Alloy surcharge calculated in accordance with the rules set out in Article 5.4.1 of the Contract. Against the price of the partial performance so calculated shall be set off the appropriate proportion of the payments advanced by the Buyer to the Seller pursuant to Article 11 of this Contract attributable to that partial performance (i.e., with regard to the advance payments made and not settled at that time and the ratio of the amount of the additional payment of the price for the partial performance to the remaining unpaid price for the Support Structure),

- 5.7.4. by signing the protocol, the Seller confirms that he is entitled to transfer the ownership right to the partial performance specified in the protocol to the Buyer. The signing by both Parties shall transfer ownership title to the whole of the partial performance set out in the handover protocol from the Seller to the Buyer and shall continue to be considered part of its ownership for the purposes of this Contract, even if they are incorporated into the Support Structure,
- 5.7.5. the handed over and accepted partial performance shall be stored by the Seller free of charge for the Buyer until the Handover of the Support Structure, unless the Buyer requests the Seller in writing for earlier release of this performance and the Seller releases it to the Buyer,
- 5.7.6. in the event that the partial performance is accepted with defects (i.e., even with one defect or incompleteness explicitly stated in the handover protocol of the partial performance), the Buyer has the right to reject the Seller's invoice and to suspend payment until the defect or incompleteness is removed,
- 5.7.7. if the Seller fails to remedy the defects specified in the handover protocol of the partial performance within the time limit set out in this protocol, the Seller undertakes to pay the Buyer a contractual penalty of 0.05% of the price of the handed over partial performance excluding VAT for each, even commenced, seven calendar days of delay,
- 5.7.8. in the event that during the test of the Assembly of the support structure at the production site, defects in the delivered sub-performances are found, all costs for the correction of defects in the partial performances (whether already delivered or not yet delivered) shall be charged to the Seller. If a defect in a delivered partial performance is found to be irreparable, the Seller shall deliver a new partial performance to the Buyer free of charge and without delay,
- 5.7.9. the warranty period for the Support Structure (including the already delivered partial performances) starts only after the signing of the Handover Protocol according to Article 4.1 of the Contract, and
- 5.7.10. once the total scope of the partial performances taken over pursuant to Article 5.7 of this Contract and so purchased prior to the Handover of Support Structure pursuant to Article 4.1 of the Contract reaches 80 % of the purchase price for the Support Structure, the Buyer may

withhold payment of the remaining 20 % of the purchase price for the Support Structure until the Handover of Support Structure pursuant to Article 4.1 of the Contract.

- 5.8. The Seller is entitled to invoice part of the purchase price for Technical Support, Storage, transport according to their unit prices and the actual extent of their provision to the Buyer, but not more than up to the exhaustion of the total frame of the respective Order. The Seller will invoice in this way usually once a month by means of partial invoices, by an amount equal to the product of the relevant unit price (i.e. hourly rates of Technical support during assembly, unit prices for Storage, Transportation, Oversized transport or hourly rates of Technical support for design changes) and the relevant quantity of ordered and delivered performance (i.e. the actual hours worked by the Technical support during assembly, the time of Storage and the weight of the stored items, or the number of loads of Transportation, the number of loads of Oversized transport, or the actual hours of Technical support for design changes), in each case according to the unit prices set out in the Price Schedule and Deliverables. The total invoiced amount (sum of the partial invoices) for Technical support during assembly provided under this Contract shall not exceed the price for Technical support during assembly pursuant to Article 5.2.2 of this Contract, except to the extent that the Buyer, pursuant to Article 3.7 of the Contract, orders and the Seller delivers Technical support during assembly in excess of the maximum anticipated scope of such item, to the detriment of the failure of any other item pursuant to Article 3.7 of the Contract to reach the maximum scope that the Buyer would otherwise be entitled to order. A similar limitation and similar exception thereto shall apply to the maximum anticipated price frames for Storage, Transportation, Oversized transportation or Technical support for design changes with the modification that the maximums of the respective aggregate price are set forth in Articles 5.2.3 through 5.2.6 of this Contract.
- 5.9. As a basis for issuing and subsequently also as a part of the invoice for the performance of the Order (i.e. ordered Technical support, Storage, Transportation or Oversized transport), the Seller is obliged to submit to the Buyer a statement of the scope of the provided performance (i.e. hours worked in Technical support with identification of the employee/employees and with a description of the activities performed for a given calendar month performed within the scope of the ordered performance, the scope of Storage or the relevant Transportation or Oversized transport). It shall be the responsibility of the Seller to prepare and submit the statement to the Buyer's Authorized Person for approval. The Buyer's Authorized Person for approval of the statement shall be designated separately for each Order and the identification of such Buyer's Authorized Person shall be included in each Order. The Buyer's approval of the statement shall constitute confirmation of the extent of the performance provided (e.g., the number of hours worked by the Seller's professional staff for a given period). The Buyer's Authorised Person shall confirm the approval of the statement by signing the statement. Only on the basis of the statement agreed by the Buyer's authorised person can an Invoice for the performance provided under the Order be issued.
- 5.10. The invoice is due thirty (30) days from the date of delivery to the Buyer. The date of payment of the invoiced amount shall be deemed to be the date of its dispatch to the Seller's account. Tax

documents - invoices issued by the Seller on the basis of this Contract must contain in particular the following data in accordance with the relevant legislation of the Czech Republic:

- (i) the Buyer's name and registered office,
- (ii) the Buyer's tax identification number,
- (iii) the Seller's name and registered office,
- (iv) the Seller's tax identification number,
- (v) the tax document registration number,
- (vi) the scope and object of performance,
- (vii) the date of issue of the tax document, the date on which the performance is effected or the consideration is received, whichever is earlier, if different from the date of issue of the Tax Document, (
- (viii) the price of the performance and
- (ix) a statement that the charged performance is provided for the purposes of the Project.

5.11. Tax documents - invoices must comply with double taxation agreements, if applicable.

5.12. The Buyer reserves the right to request that the Purchase Price be stated in the invoice in the structure of items specified by him in advance. The Buyer must communicate this request to the Seller in good time.

5.13. If the tax document - invoice is not issued in accordance with the payment terms set forth in this Contract or does not meet the required legal requirements, the Buyer is entitled to return the tax document - invoice to the Seller as incomplete or incorrectly issued for completion or reissue within ten (10) business days from the date of its delivery to the Buyer. In such case, the Buyer shall not be in default of payment of the purchase price or any part thereof and the Seller shall issue a corrected invoice with a new, identical due date, which shall commence on the date of delivery of the corrected or newly prepared tax document - invoice to the Buyer.

5.14. The Buyer's and the Seller's invoicing details are given in heading of this Contract.

5.15. Payment on tax document – invoice issued by the Seller does not constitute acceptance of the object of purchase (including the Support Structure) or any item or task thereof or a statement on flawlessness of invoiced performance or conclusive acceptance of flawlessness of the object of purchase or any item or task hereunder.

5.16. The Seller shall not be authorized to perform set offs of its receivables against the Buyer, unless prior written consent is granted by the Buyer.

5.17. **Direct payments to subcontractors at their request:** The Buyer shall be entitled to direct payments to the Seller's subcontractors (i.e., to transfer amounts already due for payment for the performance of the subject matter of the Contract to subcontractors) at their request under the following conditions:

- 5.17.1. Seller's subcontractor applies for a direct payment by a written request delivered to the Buyer,
  - 5.17.2. the written request includes the requested amount of payment corresponding to the relevant portion of the Purchase Price for the item or task and its justification demonstrating the extent of the part of the item or task carried out by the subcontractor as well as the fact that the relevant portion of Price for this part is already due under the Contract,
  - 5.17.3. the written request is forwarded by the Buyer to the Seller for review or comments and, based on this possible review or comments, the Buyer will not assume any significant doubt as to the appropriateness of the subcontractor's request
  - 5.17.4. such transfer (i.e., direct payment) is prevented neither by legal regulations nor international sanctions and
  - 5.17.5. the payment is transferred by the Buyer directly to the subcontractor.
- 5.18. By providing the payment by the Buyer directly to the Seller's subcontractor according to the above paragraph, the Seller loses the right to the Purchase Price under this Contract in the amount of the payment so provided to the subcontractor (i.e., this payment is deducted from the Purchase Price to which the Seller himself would otherwise be entitled).

## **6. Dates for performance**

- 6.1. The dates for performance of the Deliverables under this Contract in relation to the Milestones are set out in this Contract, the Technical Specification and the Timetable; in the event of a conflict, the order of precedence under Article 16.3 of the Contract shall apply. The Deliverables under this Contract shall be performed by the Seller to the Buyer on the following dates:
  - 6.1.1. The Seller shall hand over the Support Structure to the Buyer within 30 months of the Contract coming into force, unless this deadline is extended in accordance with Article 6.1.4 of the Contract.
  - 6.1.2. Storage, Transportation and Oversized Transport shall be provided and completed on the date(s) specified in the Order, but no later than 24 months after handover of the Support Structure.
  - 6.1.3. Technical support during assembly at the Buyer's premises shall be provided and completed on the date(s) specified in the Order, but not later than 3 years after handover of the Support Structure.
  - 6.1.4. Technical support for design changes of the Support Structure shall be provided and completed by the deadline for the handover of the Support Structure, which may be extended

by the time necessary for the implementation of such changes, in accordance with Article 3.9 of the Contract.

## **7. Place of performance**

- 7.1. The place of performance of the Support Structure are the Seller's premises at the following address: via G. Di Vittorio 12, 30029 San Stino di Livenza (VE), Italy.
- 7.2. The place of performance of the Technical support during assembly, Transportation and/or Oversized transport are the Buyer's premises at: U Slovanky 1770/3, 182 00 Praha 8 - Libeň.
- 7.3. The place of storage of partial performance and the Support structure shall be the same as the place of performance referred to in Article 7.1 hereof, unless agreed otherwise by the Parties.
- 7.4. The place of performance for the purposes of communication and delivery of the Documentation shall be the Buyer's registered office referred to in Article 1 of this Contract.
- 7.5. By way of derogation from the provisions of Section 2126 of the Civil Code, the Parties agree that the Seller is not entitled to use the self-help sale institute established therein.

## **8. Other terms of delivery**

- 8.1. After the Assembly of the support structure at the production site has been carried out, a Protocol of the support structure assembly at the production site will be drawn up between the Parties, which will contain the following mandatory particulars:
  - (i) details of the Seller and the Buyer,
  - (ii) a description of the Support Structure, or parts thereof, to which the Assembly of the support structure at the production site relates,
  - (iii) the date on which the Assembly of the support structure at the production site was carried out,
  - (iv) an indication of whether the Support Structure complies with the conditions of the Assembly of the support structure at the production site in accordance with the Technical Specification,
  - (v) a list of the Seller's qualified personnel who physically participated in the assembly work throughout the course of the assembly,
  - (vi) the date of signing of the Protocol of the support structure assembly at the production site by the Parties,
  - (vii) the signatures of the persons representing the Parties in technical matters;
  - (viii) an attachment will be the measurement inspection report demonstrating the achievement of the required tolerances of the overall support structure assembly;  
(hereinafter the „**Protocol of the support structure assembly at the production site**“).

- 8.2. The Parties have agreed that deviations found in the Assembly of the support structure at the production site from the Technical Specification, the approved Production and Assembly Documentation and approved changes during manufacture shall be considered as defects of the Support Structure. In the event that defects of the Support Structure are found, a Record of defects in Assembly of the support structure at the production site will be made with a deadline for their correction. After the defects have been removed, a test will be carried out and the result will be confirmed by a record in the Protocol of the support structure assembly at the production site signed by both Parties.
- 8.3. The Seller agrees to allow the Buyer's representatives to be present during the assembly, disassembly and packing of the Support Structure at the production site. The Seller shall notify the Buyer of the Seller's readiness to commence the assembly work at least ten (10) business days in advance in writing (email notification shall be deemed sufficient) to the address of the responsible representative for communication with the other Party in technical matters.
- 8.4. The contents of the shipping frames, boxes and packing shall be recorded by means of shipping documents signed by the persons representing the Parties in technical matters for both Parties (hereinafter the "**Shipping Documents**"). The mandatory particulars of the Shipping Documents are:
- (i) details of the Seller and the Buyer,
  - (ii) a description of the parts of Support Structure which the Shipping Documents relate to,
  - (iii) a statement of the verified weight of each part of the Support Structure which is the subject of these Shipping Documents,
  - (iv) the date on which the Shipping Documents were executed and
  - (v) signatures of the persons representing the Parties in technical matters.
- 8.5. The Seller agrees to allow the Buyer's representatives to be physically present and supervise the quality of the work performed during all manufacturing operations related to the production of the Support Structure, in particular during material machining, welding operations and all finishing operations, if the Buyer so requests. The Buyer shall not be obliged to exercise its rights under this provision.
- 8.6. Unless otherwise expressly provided in the Contract, all items and tasks required for performance under this Contract shall be provided by the Seller.
- 8.7. The Seller is obliged to deliver to the Buyer the Support Structure as new, in quality and technical design compliant with this Contract, applicable regulations of the European Union and compliant with the requirements set forth by the legislation of the Czech Republic and technical standards applicable to the Support Structure.

- 8.8. The Seller declares that the object of purchase (including the Support Structure) it delivers under this Contract fully complies with the conditions set out in the Initial Background Documents under the terms of this Contract.
- 8.9. The Seller undertakes that no third-party rights, in particular no right of pre-emption, lien or lease, shall encumber the Support Structure as of the date of transfer of ownership title to the Support Structure.
- 8.10. The Seller, taking into account the obligations of the Buyer arising in particular from the PPA and from Act No. 340/2015 Coll., on special conditions of effectiveness of certain contracts, publication of these contracts and on the Register of Contracts (Act on the Register of Contracts), agrees to publish all information relating to the binding relationship established between the Seller and the Buyer by this Contract, in particular the actual content of this Contract.
- 8.11. The Seller declares that there is no execution pending against him and he has no overdue debts, the fulfilment of which could be enforced in execution under Act No. 120/2001 Coll., the Execution Code, Act No. 99/1963 Coll., the Code of Civil Procedure, Act No. 500/2004 Coll., the Administrative Proceedings Code, or Act No. 280/2009 Coll., the Tax Code, all as amended.
- 8.12. The Seller shall be obliged to carry out the works on the Support Structure through the person(s) who has (have) demonstrated their qualifications within the Seller's qualification in the Tender and involve such person(s) in the activities provided under this Contract in the extent to that the Seller's qualification was demonstrated through them. Any change in that(those) person(s) shall be subject to the Buyer's approval, which should not be withheld if the Seller demonstrates at least the same level of qualification of the replacing person(s) compared to the replaced one(s) and compliance with international sanctions.
- 8.13. The Seller shall be obliged to inform the Buyer without undue delay about any and all significant changes of circumstances affecting or threatening the performance of this Contract. As regards international sanction(s) applicable against the Seller and/or at least one of its subcontractors, the Seller shall be obliged to constantly monitor whether he or his subcontractors are subject to international sanctions imposed by legal regulations (including those imposed as coercive measures applied against States, non-State entities or individuals that pose a threat to international peace and security), inform immediately the Buyer about any affection by such sanctions and, with his consent, replace according to Article 8.12 hereof its subcontractor(s) against which sanction(s) preventing or endangering the performance of the Contract applies(y).
- 8.14. The Buyer reserves the right to either remove a particular part of the object of purchase (including the Support Structure) from the scope of the Contract or request the Supplier for adequate replacement of the particular part in case that: a) this part is affected by international sanctions including those imposed as coercive measures applied against States, non-State entities or individuals that pose a threat to international peace and security; or b) this part should be performed by a Seller's subcontractor (including those given on the list of subcontractors within

the Bid indicating which performances will each of the subcontractors perform; with possible changes by procedure under Article 8.12 hereof) affected by the above international sanctions and the subcontractor has not been replaced.

- 8.15. Such procedure is without prejudice to all performances of the rest of the subject matter of the Contract (object of purchase minus its part/component affected by the international sanction).
- 8.16. In the event that the Buyer's own material, including that purchased by the Buyer pursuant to Article 5.5 hereof, is destroyed, damaged or rendered unusable by error, improper treatment, misconduct or breach of duty by the Seller, the Seller shall promptly remedy the situation by replacing the material fully and free of charge to the Buyer, without prejudice to any claims for damages or penalties that may arise as a result of improper or late delivery of the object of purchase (including the Support Structure).

## **9. Handover and takeover**

- 9.1. For the purposes of the handover procedure, the Seller must submit to the Buyer:
- (i) a list of the Support Structure components to be handed over,
  - (ii) a statement by the Seller that the Support Structure and parts thereof are in compliance with applicable law, technical standards and in accordance with the Technical Specification performance and commercial terms set out in this Contract.

If the Seller fails to submit to the Buyer all of the above documents, the subject matter of this Contract shall not be deemed to have been properly completed and to meet the conditions for handover.

- 9.2. The Seller undertakes to ensure that all Documentation is handed over to the Buyer on the dates specified in the Technical Specification and, if no such date is specified in the Technical Specification, prior to the Handover of the Support Structure.
- 9.3. A handover protocol shall be drawn up between the Parties on the course of the handover procedure for the acceptance of the Support Structure and shall contain the following mandatory particulars:
- (i) details of the Seller and the Buyer,
  - (ii) brief description of the Support Structure, or parts thereof, which are subject to handover,
  - (iii) an indication as to whether the Support structure has complied with the conditions and all tests defined in the Technical Specification and all inspection and test certificates have been delivered to the Buyer,
  - (iv) an indication as to whether all Documentation has been delivered to the Buyer,
  - (v) the date from which the warranty period starts according to the provisions of Article 10.2 of the Contract (i.e., whether already on the date of signing of the Handover Protocol for



the Support Structure by the Buyer or only from the date of removal of the last defect by the Seller if the Support Structure was accepted with defects),

- (vi) specifying the defects identified and the deadline for their removal,
- (vii) an indication as to whether all Shipping Documents have been signed by both Parties and, if so, whether they indicate any defects in the Support Structure components being taken over,
- (viii) an indication as to whether the Support Structure has complied with the conditions of Assembly of the support structure at the production site,
- (ix) a statement by the Buyer as to whether or not it accepts the Support Structure or any part thereof,
- (x) date of signing of the handover protocol for the Support Structure and
- (xi) signatures of persons representing the Parties in technical matters  
(hereinafter the „**Handover Protocol**“).

9.4. The Buyer shall not be obliged to accept the Support Structure or any part thereof which is defective or deficient, even if such defects or deficiencies do not, on their own or together with others, prevent the proper use of the Support Structure. If the Buyer does not exercise its right not to accept the Support Structure with defects, the Parties shall list in the Handover Protocol the defects found in the Support Structure and the manner and date of their removal. If no agreement on the deadline for removal of defects is reached between the Parties in the Handover Protocol, the Seller shall remove the defects within 48 hours of signing the Handover Protocol by the Buyer.

9.5. If the Support Structure and/or its components have defects that could not be discovered upon handover (hidden defects) and if they are covered by the warranty period according to Article 10.1 of this Contract, the Buyer is entitled to claim them at the Seller within this period. If the Support Structure and/or its components are subject to a warranty period longer than under Article 10.1 of this Contract, the Buyer shall be entitled to claim such defects at the Seller within such longer warranty period.

9.6. In the event that the Seller notifies the Buyer that the Support Structure is ready for handover, and during the handover procedure it turns out that the Support Structure is not ready for handover to the Buyer, the Seller shall reimburse the Buyer for all costs incurred by the Buyer in connection with the unsuccessful handover procedure.

## **10. Warranty and claims arising from defects in delivery**

10.1. The warranty period for the Support Structure is 60 months. The stated warranty for the quality of the Support Structure also applies to the outputs of Technical support for design changes.

10.2. The warranty period starts on the date of signing of the Handover Protocol for the Support Structure by the Buyer. If the Support Structure is accepted by the Buyer with one or more defects, the warranty period starts from the date of removal of the last defect by the Seller.

- 10.3. For those parts of the Support Structure that have their own warranty certificates, the warranty period shall be for the length indicated therein, but not less than the length specified in paragraph 10.1 of this Article of the Contract.
- 10.4. The Buyer shall apply to the Seller for removal of the defect of the delivery without undue delay after its discovery, but no later than on the last day of the warranty period, unless otherwise expressly provided for elsewhere in this Contract, by written notification sent to the responsible representative in technical matters of the Seller. Even a claim sent by the Buyer on the last day of the warranty period shall be considered to have been timely made.
- 10.5. In the written notification, the Buyer shall specify the description of the defect and the manner in which the defect is to be remedied. The Buyer is entitled to:
- (i) require the defects to be remedied by supplying a replacement Support Structure or parts thereof for the defective Support Structure or parts thereof;
  - (ii) require the defects to be remedied by repair, if the defects are repairable; or
  - (iii) require a reasonable discount on the purchase price
- 10.6. The choice between the aforementioned claims from defects in the delivery belongs to the Buyer. The Buyer is also entitled to withdraw from the Contract if the Contract is materially breached by the delivery of defective Support Structure. A material breach shall be considered to occur whenever the delivery (or part thereof) fails to achieve or ceases to achieve within the warranty period the minimum parameters required by the Buyer and specified in the Initial Background Documents or in this Contract.
- 10.7. The Seller undertakes to remove the claimed Support Structure defects free of charge.
- 10.8. The Seller undertakes to initiate the operations aimed at removing the defect within 3 days from the date of receipt of the claim notification from the Buyer, within that period it undertakes to examine the claim, diagnose the defect, notify the Buyer whether it accepts the claim and inform the Buyer in writing whether a specialized spare part is required for the removal of the defect. Saturdays, Sundays and public holidays shall not be included in the time limit given in the first sentence of this paragraph.
- 10.9. Provided that it is unnecessary to procure replacement parts to remedy a Support Structure defect, the Seller shall remedy the defect within ten (10) business days of receipt of the claim notification. Saturdays, Sundays and holidays shall not be included in the time limit given in the first sentence of this paragraph. If it is necessary to procure Support Structure spare parts commonly available on the European Economic Area (EEA) market to remedy the Support Structure defect, the Seller shall remedy the defect within fifteen (15) business days from the date of receipt of the claim notification. If specialized spare parts are demonstrably required to remedy the Support Structure defect, the Seller shall remedy the defect within six (6) weeks from the date of receipt of the claim notification, unless the Parties subsequently agree otherwise. Specialized

spare parts are understood as those that have to be custom-made or spare parts that are not commonly available in the European Economic Area within five (5) business days from the date of receipt of the claim notification.

- 10.10. In the event that the Seller fails to resolve the claim notified by the Buyer and at the same time fails to notify the Buyer of the removal of the defect even within twenty (20) business days after the deadlines set out in Articles 10.8 and 10.9 of this Contract, the Buyer shall be entitled to withdraw from the Contract.
- 10.11. Even if the Seller does not acknowledge the defect, the Seller shall be obliged to remedy the defect within the time limits specified in paragraphs 10.8 and 10.9 hereof, unless the Parties agree otherwise. If the Seller does not recognize the defect, the validity of the claim shall be verified by an expert examination ordered by the Buyer. In the event that the claim is found by the expert to be justified, the Seller shall also bear the costs of the expert's examination. If it is proven that the Buyer has claimed the defect unjustifiably, the Buyer is obliged to refund to the Seller the reasonable and demonstrably incurred costs of removing the defect.
- 10.12. The Parties shall draw up a protocol on the removal of the claimed defect in which they confirm the removal of the defect. The warranty period shall be extended by the time elapsing from the date of the claim notification until the defect is removed.
- 10.13. If the Seller fails to remove the defect within the time limits specified in Articles 10.8 and 10.9 hereof, or within the time limit agreed by the Parties, or if the Seller refuses to remove the defect, the Buyer shall be entitled to have the defect removed at its own expense and the Seller shall be obliged to reimburse the Buyer for the cost of removal of the defect within five (5) business days after the Buyer calls upon the Seller to do so. However, this course of action by the Buyer shall not relieve the Seller of liability for defects and the Seller's warranty shall continue to the extent agreed herein.
- 10.14. The warranty shall not apply to defects caused by the Buyer's improper handling, improper or inadequate maintenance, or failure to comply with manufacturers' regulations for the Support Structure maintenance which the Buyer has accepted from the Seller or which the Seller has advised the Buyer of in writing. The warranty shall also not apply to defects caused by the Buyer's gross negligence or wilful misconduct.
- 10.15. The Parties herewith exclude the provisions of Section 1925 of the Civil Code, the sentence after the semicolon. The claim from defective performance may be asserted simultaneously with the right to compensation for damage.

## **11. Advance payments**

- 11.1. The Buyer shall be entitled to provide the Seller with certain advance payments for the Support Structure at the Seller's request within the framework set out below.

- 11.2. Upon the Seller's request for advance payments pursuant to Article 11.1 of this Contract, the Buyer may, at its discretion, make such payments either partially or fully up to the following cumulative amounts:
- 11.2.1. in an amount not exceeding 10 % of the price for the Support Structure pursuant to Article 5.2.1 of this Agreement after this Contract becomes effective;
  - 11.2.2. in an amount not exceeding 20 % of the price for the Support Structure pursuant to Article 5.2.1 of this Contract in the event that the Production and assembly documentation is rated "A" or "B", as specified in the Technical Specification, by the Buyer;
  - 11.2.3. in the amount not exceeding 10 % of the price for the Support Structure pursuant to Article 5.2.1 of this Contract after the Seller demonstrates to the Buyer that the Seller has in stock more than 25% of the material for the performance of the Support Structure from the List of production materials (which is part of the Production and assembly documentation), the 25% share to be assessed in terms of the weight index of the stocked material; the material, in order to be assessed as such, must have undergone volume forming (i.e. after operations such as rolling, forging, drawing, extrusion, HIP) if such volume forming is part of the production process; and/or
  - 11.2.4. in the amount not exceeding 20 % of the price for the Support Structure pursuant to Article 5.2.1 of this Contract after the date by which the Seller has committed in the Timetable to meet Milestone 3 has passed, provided that the Seller at that time demonstrates it has in stock more than 75 % of the material required for the Support Structure from the List of production materials (which is part of the Production and assembly documentation), the 75 % share to be assessed in terms of the weight index of the material stocked; the material, in order to be assessed as such, must have undergone volume forming (i.e. after operations such as rolling, forging, drawing, extrusion, HIP) if such volume forming is part of the production process.

## **12. Contractual penalties**

- 12.1. In the event that the Seller is in default of Milestone 3 by the deadline specified in the Timetable, the Seller agrees to pay the Buyer a contractual penalty of 0,01 % of the price for the Support Structure pursuant to Article 5.2.1 of this Contract (excluding VAT) for each (even commenced) day of delay, but up to a maximum of 3 % of the price for the Support Structure pursuant to Article 5.2.1 of this Contract (excluding VAT).
- 12.2. In the event that the Seller is in default of Milestone 4 by the deadline specified in the Timetable, the Seller agrees to pay the Buyer a contractual penalty of 0,033% of the price for the Support Structure pursuant to Article 5.2.1 of this Contract (excluding VAT) for each (even commenced) day of delay, but up to a maximum of 4 % of the price for the Support Structure pursuant to Article 5.2.1 of this Contract (excluding VAT).

- 12.3. The Buyer agrees to return to the Seller any sums received by the Buyer from the Seller as contractual penalties pursuant to Articles 12.1 and 12.2 of this Contract by settlement in the final invoice for the Support Structure, provided that the Handover happens no later than the date set out in paragraph 6.1.1 of the Contract. The rule under this Article 12.3 shall apply even if defects are specified in the Handover Protocol at the Support Structure Handover.
- 12.4. In the event that the Seller is in default of the Handover date referred to in paragraph 6.1.1 of the Contract, the Seller undertakes to pay to the Buyer a contractual penalty in the amount of 0,033 % of the price for the Support Structure pursuant to Article 5.2.1 of this Contract (excluding VAT) for each (even commenced) day of delay, but up to a maximum of 5 % of the price for the Support Structure pursuant to Article 5.2.1 of this Contract (excluding VAT).
- 12.5. The Seller shall also be obliged to pay the Buyer a contractual penalty in the following cases:
- 12.5.1. if the Seller fails to remedy the identified defects of the Support Structure or its parts specified in the Report on defects of the Assembly of the support structure at the production site and/or Handover Protocol within the period specified in these documents, the Seller undertakes to pay to the Buyer a contractual penalty of 0,02 % of the price for the Support Structure pursuant to Article 5.2.1 of this Contract (excluding VAT) for each (even commenced) seven calendar days of delay;
- 12.5.2. if the Seller is in default with the removal of a warranty defect or other defects, the timely removal of which is not secured by another contractual penalty expressly agreed in this Contract and which prevent or significantly hinder the use of the object of purchase, the Seller undertakes to pay the Buyer for each individual case of such defect a contractual penalty of CZK 50 000,00 for each (even commenced) seven calendar days of delay.
- 12.6. In the event that the Seller's transport is delayed by 2 or more hours in the case of Transportation and/or Oversized Transport compared to the date set out in the Order for such transport, the Seller shall pay the Buyer a contractual penalty of CZK 2 000,00 for each additional hour the transport is delayed, up to a maximum of CZK 12 000,00 per day of delay and up to a total cumulative value of CZK 50 000,00 for that delayed transport (the second and subsequent day of delay starts at 9:00 a.m.).
- 12.7. The Seller is obliged to pay the Buyer a contractual penalty of CZK 10 000,00 for each commenced week of delay in the provision of Technical support during assembly (i.e., when the Technical support ordered by the Order is not provided by the Seller at all, on time or in the required scope and quality).
- 12.8. if the Seller is in delay with any of his obligation according to Article 8.13 hereof in connection with international sanctions, the Seller shall be obliged to pay to the Buyer a contractual penalty in the amount of CZK 5 000,00 per each commenced day of delay.

- 12.9. For the avoidance of doubt, the Parties agree that in the event of simultaneous default by the Seller in more than one of its obligations under this Contract, the breach of which gives rise to an obligation of the Seller to pay the Buyer a contractual penalty, such contractual penalties shall be cumulative in such case.
- 12.10. Unless otherwise expressly provided for in this Contract in the provision dealing with the relevant contractual penalty, the general rule shall be that any contractual penalties provided for in this Contract, the amount of which is calculated (e.g., as a percentage) of the price, shall be calculated on the basis of prices excluding VAT.
- 12.11. The contractual penalty is due within 30 (thirty) days from the date of delivery of a written demand for payment to the Seller. The Buyer is entitled to set off its claim for the contractual penalty against the Seller's claim for payment of the purchase price.
- 12.12. If the Buyer fails to pay the purchase price, or part thereof, within the terms specified in this Contract, the Buyer is obliged to pay the Seller default interest at the statutory rate on the amount due, until it is paid, unless the Buyer proves that the delay in payment of the purchase price was caused by a delay in the release of funds by the provider of subsidies, purposed public funds or other aid to the activities of the Buyer as a research organization from public funds.
- 12.13. The incurrance of the obligation to pay the contractual penalty, the claim for payment of the contractual penalty or the actual payment of the contractual penalty under this Contract by the Seller shall in no way affect the Buyer's right to the fulfilment of the subject matter of this Contract by the Seller in accordance with this Contract, or to the fulfilment of the Seller's obligations under this Contract.
- 12.14. In addition to the right to payment of the contractual penalty, the Buyer shall be entitled to compensation for damage (including actual damage and loss of profit due to the Seller's delay) to the extent that its amount exceeds the amount of the contractual penalty; this is without prejudice to the Buyer's right to full compensation for the damage incurred otherwise than by breach of the obligation to which the contractual penalty applies. Neither the incurrance of the Seller's obligation to pay the contractual penalty nor its actual payment shall affect the Buyer's right to compensation for damage to the above extent nor the right to withdraw from the Contract. The Parties hereby exclude the application of the provisions of Section 2050 of the Civil Code. Withdrawal from the Contract shall not extinguish the right to contractual penalty.
- 12.15. The Parties agree that, having regard to the nature of the obligations whose performance is secured by the contractual penalties, they consider the contractual penalties herein reasonable.
- 12.16. If either Party breaches its obligation under this Contract or should or could have known of such breach, it shall without undue delay inform the other Party that may suffer damage and warn it of the possible consequences, in which case the Party that has suffered damage shall not be entitled to compensation for damages that it could have avoided after being warned under this Contract.

12.17. A Party shall be relieved of its obligation to pay a contractual penalty under this Contract if it is subject to an event precluding liability, including an event of Vis Maior, under the terms of Article 14 of this Contract, as a result of which the Party is temporarily unable to perform its obligation. Similarly, each Party shall be released from its obligations under this Contract if that Party is temporarily unable to perform its contractual obligation due to a demonstrable breach of a legal obligation by the other Party. The Party shall promptly notify the other Party in writing of such facts, otherwise it shall be liable to the other Party for damage caused by its failure to comply with this notification obligation.

### **13. Termination of the Contract**

13.1. This Contract may be terminated by fulfilment, by agreement of the Parties or by withdrawal from the Contract for the reasons set out in law or in the Contract.

13.2. The Buyer is also entitled to withdraw from the Contract without any sanctions if any of the following occurs:

- (i) The Buyer is withdrawn, not provided or not paid the financial subsidy for the implementation of the Project or a part thereof, or is called by the subsidy provider to return it or by the financial administration authority to deduct it, or otherwise loses funding for the implementation of the Project,
- (ii) Any expenditure, or any part thereof, which may be incurred under this Contract is declared ineligible by the subsidy provider or other auditing body,
- (iii) The Seller loses its authorization to carry out the activities required of the performance of this Contract; the Seller shall promptly inform the Buyer of this fact and that it may be subject to proceedings leading to the possible revocation of its authorization to carry out the activities necessary for the implementation of this Contract,
- (iv) The Seller's "Production and assembly documentation" receives a "C" rating from the Buyer two times in a row,
- (v) The conditions of Article 10.10 of this Contract are fulfilled (delay of the Seller in settling the claim notification),
- (vi) There is a material breach of the obligations imposed on the Seller by this Contract (see Article 13.3 of this Contract),
- (vii) The Seller enters into liquidation,
- (viii) The Seller's assets are subject to insolvency (or similar) proceedings in which a bankruptcy has been declared, or an insolvency petition has been dismissed because the assets are insufficient to cover the costs of the insolvency proceedings, or the bankruptcy has been revoked because the assets were wholly insufficient, or compulsory administration has been imposed under special legislation, or
- (ix) It becomes apparent that the Seller has provided information or documents in the Bid which do not correspond to the facts and which have had or could have had an influence

on the outcome of the Tender procedure that resulted in the conclusion of this Contract (Section 223(2) PPA).

- 13.3. A material breach of this Contract shall be considered:
- (i) default by the Seller in the performance of any deadline under the Timetable lasting more than 4 months,
  - (ii) assignment or transfer of the Seller's rights and obligations under this Contract to a third party without the Buyer's written consent,
  - (iii) if the Seller, in the performance of this Contract, repeatedly (consistently) violates the laws, regulations, technical standards and norms of the Czech Republic or other states to which it has committed itself by this Contract,
  - (iv) it is revealed that, at the time of the procurement procedure for the Tender including the period from the expiry of the deadline for the submission of bids to the date of signature of this Contract by both Parties, there were prohibitions or restrictions resulting from international sanctions in force, for instance, in connection with a Russian involvement on part of the Seller or any of its subcontractors affecting the Tender or Contract, especially if contrary to the affidavit of the Seller or any of its subcontractors on no Russian involvement declared in the Seller's Bid; or
  - (v) international sanctions imposed after signing this Contract apply on any part of the object of purchase, the Seller and/or at least one of its subcontractors.
- 13.4. The Buyer is also entitled to withdraw from the Contract only in relation to a certain part of the performance hereunder.
- 13.5. The Seller is entitled to withdraw from the Contract in the event of a material breach of the Contract by the Buyer. A material breach of the Contract shall be considered a failure to pay the purchase price according to Article 5.1 of this Contract, or part thereof, within the period set forth in this Contract, although the Seller has notified the Buyer of such breach in writing and has provided the Buyer with a sufficiently long additional period of time to comply with this obligation.
- 13.6. Failure to pay the price for Technical support during assembly pursuant to Article 5.2.2 of this Contract, or any part thereof, shall entitle the Seller to withdraw from the Contract only with respect to the performance of such Technical support. For the avoidance of doubt, the Parties declare that failure to pay the price for the said Technical Support pursuant to Article 5.2.2 of this Contract, or part thereof, shall not give rise to the Seller's right to withdraw from this Contract as a whole. The same applies for the Seller's withdrawal for non-payment for Technical support for design changes, Storage, Transportation or Oversized transport.
- 13.7. Either Party shall be entitled to withdraw from the Contract if the addition/subtraction of the "Alloy surcharge" results in an increase of more than +10 % or -10 % in the total price for the Support Structure within the meaning of and subject to the terms and conditions of Article 5.4.1 of this Contract.



- 13.8. Either Party shall be entitled to withdraw from the Contract on the grounds of a prevailing Vis Maior event if the Parties fail to agree to take reasonable measures and conditions to mitigate the consequences of the Vis Maior event and to facilitate the continuation of performance under this Contract in the manner and on the terms set out in Article 14.4 of this Contract.
- 13.9. Withdrawal shall be made in writing and shall be effective on the date of delivery to the other Party, with the consequences of withdrawal "ex tunc", unless the Parties agree otherwise.
- 13.10. In case of withdrawal from Contract under Article 13.3 (iv) hereof, the Buyer is entitled to keep and acquire ownership to all already performed and/or obtained parts of the object of purchase free of any payment for these parts (without obligation to pay any part of the Total Purchase Price or any other price) and to claim repayment of all advance payments already paid to the Seller; the Seller shall bear this in consequence for his misrepresentation or assumption of unreasonable risk with respect to the international sanctions, save for the Buyer's right to pay any part of the price either to the Seller or directly to his subcontractor(s), provided that the payment does not conflict with applicable international sanctions.

#### **14. Vis Maior events**

- 14.1. Neither Party shall have any claim for damages, penalties, late payment interest or other sanctions against the other Party by reason of a breach of their obligations under this Contract if such breach is caused by an event of Vis Maior that prevents that Party from performing the obligation under this Contract. Vis Maior under this Contract shall include an impediment which has arisen independently of the will of the obliged Party and which prevents it from performing its obligation, if it cannot reasonably be expected that the obliged Party would have averted or overcome such impediment or its consequences and, furthermore, that the obliged Party would have foreseen such impediment at the time of the conclusion of this Contract.
- 14.2. The Party affected by a Vis Maior event is obliged to inform the other Party thereof without undue delay. At the same time, the Party affected so must provide details of the Vis Maior event, including evidence of its effects on the obligations of the Party affected, and draw attention to any action that could mitigate the effects of the Vis Maior event.
- 14.3. Without undue delay after giving notice under the preceding paragraph, the Parties shall discuss all reasonable measures and conditions to mitigate the effects of the Vis Maior event and to facilitate the continuation of performance under this Contract.
- 14.4. If the Parties fail to reach an agreement pursuant to the preceding paragraph even within six (6) months of the commencement of Vis Maior event, and the Vis Maior event is still ongoing or its consequences have not been remedied and as a result the affected Party cannot perform its obligations under this Contract, either Party may terminate this Contract by withdrawal pursuant to Article 13.8 of this Contract.

14.5. The Parties shall exercise all reasonable efforts to avert or mitigate the consequences of the Vis Maior event throughout the period from the occurrence of the Vis Maior event. The Seller shall act with professional care and take steps in accordance with established professional practise to avoid or minimise the consequences of the Vis Maior event for as long as the Vis Maior persists. A Party shall inform the other Party of any proposals, including alternative means of performance, but shall not proceed with such alternative performance without the consent of the other Party.

**15. Representatives of the Parties, notifications**

15.1. The Buyer has appointed the following authorised representatives for communication with the Seller in relation to the object of purchase under this Contract:

In technical matters:

[REDACTED]  
[REDACTED]  
[REDACTED]

In contractual matters:

[REDACTED]  
[REDACTED]  
[REDACTED]

All e-mail communication must be copied to: [REDACTED]

15.2. The Seller has appointed the following authorised representatives for communication with the Buyer in relation to the object of purchase under this Contract:

In technical matters:

[REDACTED]  
[REDACTED]  
[REDACTED]

In contractual matters:

[REDACTED]  
[REDACTED]  
[REDACTED]

15.3. Notification to the other Party by email shall be sufficient for a change of Authorised Persons, provided that it is accompanied by a request for confirmation of delivery (unless the Parties agree otherwise) within three (3) calendar days of such change.

15.4. Except as otherwise provided in this Contract, all notices to be or which may be given between the Parties under this Contract shall be in writing and delivered to the other Party by an authorized postal service, personally (with written acknowledgement of receipt) or by certified mail sent using

a postal service provider; such notice shall be deemed to have been delivered on the third business day after dispatch, or on the fifteenth business day after dispatch if notice is sent to an address in another state. Alternatively, notices may be made by electronic communication with electronic signature or by data mailbox (data mailbox addresses are listed in Article 1 of this Contract). In the event of a warranty claim or claim from defect, written notification may also be sent by e-mail.

- 15.5. For technical matters (including, but not limited to, the application of the warranty), electronic communication is permitted through the above-mentioned representatives.

## **16. Governing law, rules of interpretation and dispute settlement**

- 16.1. This Contract and all legal relations arising from it shall be governed exclusively by the laws of the Czech Republic.

- 16.2. The Parties acknowledge and agree that in areas not expressly covered by this Contract, the provisions of the Civil Code shall apply.

- 16.3. This Contract and all its Annexes form a single whole and the individual rights and obligations shall always be construed in accordance with these documents. In the event of any conflict between the respective documents, the following interpretative priority shall apply: the initial prices set out in Annex 3 - Price Schedule and Deliverables shall prevail over the initial prices set out in Article 5.1 and 5.2 of the Contract, in all other respects the Contract itself shall prevail over its Annexes, the Technical Specification itself shall prevail over the other Annexes. The Timetable takes precedence only if it would be more advantageous to the Buyer.

- 16.4. Any dispute arising from this Contract or from legal relations related thereto shall be resolved by negotiation of the Parties. In case that the dispute cannot be settled by negotiation, it shall be adjudicated by a competent court in the Czech Republic at the proposal of either Party.

## **17. Bank guarantees**

### **17.1. Bank guarantee for the Support Structure delivery**

- 17.1.1. The Seller shall provide to the Buyer on the date of signing of this Contract an original bank guarantee ensuring the proper execution of the delivery of the Support Structure and its Handover and the transfer of ownership thereof to the Buyer in the amount of 5 % of the price under Article 5.2.1 of the Contract. The guarantee shall be valid and effective throughout the entire period of performance of the Support Structure delivery until the ownership of the entire Support Structure passes to the Buyer and the Seller undertakes to maintain the validity of the guarantee during this period even if the period for Handover under this Contract is extended. The Seller declares that the bank guarantee is irrevocable, unconditional and repayable on demand, i.e., the bank guarantee allows for unconditional drawdown without the bank having the right to object within the meaning of Section 2035 of the Civil Code and without the Buyer having to notify the Seller of its obligation to comply

with its obligations in any case where the Seller may default on any of its obligations under the Contract. The Bank Guarantee, which ensures the proper execution of the delivery of the Support Structure and the transfer of ownership thereof to the Buyer, covers the Buyer's financial claims against the Seller (statutory or contractual penalties, including contractual penalties, damages, including damages to the Support Structure and/or property of the Buyer caused by the Seller and/or its subcontractor, costs related to the transfer of ownership, penalties resulting from the delay of any item or task under this Contract, etc.) that may arise as a result of the Seller's breach of its obligation to deliver the Support Structure in the agreed quality and time. This bank guarantee shall also apply to the Seller's obligation to keep the bank guarantee in force and effect for the aforementioned period until the transfer of ownership of the entire Support Structure to the Buyer.

## **17.2. Bank guarantee for the quality warranty**

17.2.1. The Seller shall provide the Buyer with an original bank guarantee securing the Buyer's claims arising from the Seller's warranty for the quality of the Support Structure in the amount of 2,5 % of the price pursuant to Article 5.2.1 of the Contract before signing the Handover Protocol. The guarantee shall be valid and effective for the entire warranty period relating to the Support Structure and the Seller undertakes to maintain the validity and effectiveness of the guarantee for that period even if the warranty period is extended under this Contract. The Seller declares that the bank guarantee shall be irrevocable, unconditional and payable on demand, i.e. the bank guarantee shall allow unconditional drawdown without the bank having the right to object within the meaning of Section 2035 of the Civil Code and without the Buyer having to notify the Seller of its obligation to comply with its obligations, in any case where the Seller may fall into default with its obligation to remedy defects in the Support Structure or any other obligation defined in Article 10 of this Contract. The bank guarantee securing claims arising from the Seller's warranty for quality of the object of purchase shall apply to financial claims by the Buyer against the Seller in respect of the warranty as defined in Article 10 of this Contract (including compensation for costs and loss relating to the remedy of defects by the Buyer or a third party in place of the Seller) which may arise as a result of a breach of the Seller's obligations. The bank guarantee shall also apply to the Seller's aforementioned obligation to maintain the bank guarantee in force and effect throughout the warranty period relating to the object of purchase (including the Support Structure).

## **17.3. Common provisions for the above-mentioned bank guarantees**

17.3.1. The bank guarantees shall be issued by a bank authorised by the Czech National Bank to act as a bank in the Czech Republic under the relevant legislation.

17.3.2. The Seller shall, within 14 (fourteen) calendar days after each drawdown of any bank guarantee by the Buyer (creditor), deliver to the Buyer a new bank guarantee (i.e., guarantee letter) in the amount corresponding to the original bank guarantee before the drawdown, or

increase/adjust the guarantee from which the drawdown was made to the originally agreed amount.

- 17.3.3. Failure by the Seller to comply with the obligation set forth in this Article 17 of the Contract shall be deemed a material breach of this Contract.

## **18. Concluding provisions**

- 18.1. The Parties declare that the mutual performances under this Contract are of equivalent value or at least in the appropriate proportion.
- 18.2. This Contract, including the Annexes, constitutes a complete and comprehensive agreement between the Buyer and the Seller.
- 18.3. The Parties agree that the Seller is not entitled to set off its claim or the claim of its sub-debtor against the Buyer's claim towards the Seller.
- 18.4. The Seller shall not be entitled to assign any claim arising under or in connection with this Contract to a third party. The Seller shall not be entitled to assign this Contract even in part to a third party.
- 18.5. The Seller undertakes to have liability insurance for damage caused in connection with the performance of its business activities for the entire term of this Contract, with a limit of insurance coverage of at least the total purchase price for the subject matter of this Contract according to Article 5.1 of this Contract.
- 18.6. If any provision of this Contract is or is determined to be invalid, ineffective, voidable or unenforceable, such invalidity, ineffectiveness, voidability or unenforceability shall not render the Contract as a whole invalid, ineffective, voidable or unenforceable. In such event, the Parties agree to clarify such defective provision without undue delay within the meaning of Section 553(2) of the Civil Code or to replace it by mutual agreement with a new provision which most closely, to the extent permitted by the laws of the Czech Republic, corresponds to the intent of the Parties at the time of the execution of this Contract.
- 18.7. This Contract shall become valid on the date of its signature by the authorized persons of both Parties and shall become effective upon publication in the Register of Contracts.
- 18.8. This Contract, including its annexes, may be supplemented or modified only by written, numbered amendments indicating time and place of signature and signed by authorized representatives of the Parties. Within the meaning of Section 564 of the Civil Code, the Parties expressly exclude the possibility of making amendments to the Contract in any other form.
- 18.9. If a Party breaches an obligation under this Contract, or if it can and should have knowledge of such breach, it shall without undue delay notify the other Party that may be harmed thereby and

warn it of the possible consequences; in such a case, the harmed Party shall not be entitled to compensation for such harm as it could have avoided after notification.

18.10. The Seller undertakes to:

- (i) duly archive all documents produced in connection with the performance hereunder for a period of 15 calendar years after the calendar year of completion of the Project for which the performance hereunder was provided, but at least until the end of 2041. The Seller further undertakes to allow the Buyer access to these archived documents at any time during that archiving period. The Buyer shall be entitled to take possession of the above documents from the Seller free of charge after the archiving period. The Seller shall contractually bind its potential subcontractors to adhere to the same archiving rules;
- (ii) cooperate in the performance of financial control as a person obliged under the provisions of Section 2(e) of Act No. 320/2001 Coll, on financial control in the public administration, as amended, inter alia, to allow all entities authorised to carry out control of the Project, in particular the Operational Program Managing Body, access to all documents, including those parts of bids, contracts and related documents that are subject to protection under special legal regulations (e.g. trade secrets), provided that the requirements imposed by legal regulations are met; the Seller shall also ensure such an obligation for any subcontractors of the Seller;
- (iii) in connection with its performance under this Contract, enable the Buyer to perform its obligations and comply with the terms and conditions imposed on it by the Project.

18.11. This Contract is originally made in the English language and may be executed in multiple identical counterparts, including either one (1) electronic, or two (2) hard copies, with Buyer and Seller each receiving at least one (1) of those counterparts.

18.12. The following annexes form an integral part of the Contract:

*Annex No. 1: Technical Specification;*

*Annex No. 2: A statement by the Seller that the performance offered by it in the Bid meets all the requirements defined in the Technical Specification and the Contract;*

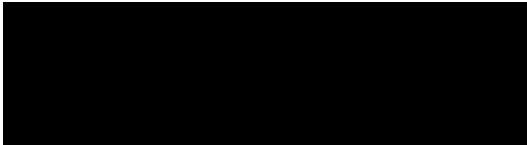
*Annex No. 3: Price Schedule and Deliverables;*

*Annex No. 4: Timetable provided by the Seller in the Bid submitted in the Tender.*

The Parties attach their signatures hereto as evidence of their agreement to its entire contents.

On behalf of the Buyer:

In Prague on 06/12/2023



Name: prof. RNDr. Radomír Pánek, Ph.D.

Function: Director

On behalf of the Seller:

In San Stino di Livenza on 06/12/2023

Firmato digitalmente da:

