**SECTION IV**

**DRAFT CONTRACT**

**for the procurement of the following products:**

**“Spare parts supply for REH TA4 in CTE Progresu”**

The contents of the contractual clauses included in the following chapters is mandatory:

CHAPTER 2. MAIN OBJECT OF THE CONTRACT

CHAPTER 3. CONTRACT VALUE

CHAPTER 4. DELIVERY PERIOD

CHAPTER 11. FINAL TERMS

LEGAL and PROCUREMENT MANAGER,

Flavius CLADOVEANU

LEGAL DEPT. PROCUREMENT DEPT.

Mihai VOLF Ioana UNTILA

CONTRACTS OFFICE DRAWN-UP BY:

Roxana Kedei Liliana Padureanu

IN CHARGE WITH CONTRACT DEVELOPMENT

Valentin Petrescu

**PRODUCT SUPPLY CONTRACT**

no.\_\_\_\_\_\_\_\_\_\_/2017

1. **Contracting parties:**

**ELECTROCENTRALE BUCURESTI SA,** a company in insolvency, en procedure collective, headquartered in Bucharest, 227 Splaiul Independentei, sector 6, registered with the Trade Registry under no. J40/1696/2003, fiscal code RO 15189596, postal code 060041, phone 021 275 1103, fax 021 275 1405, IBAN code no. RO25 RNCB 0082 0441 7274 0422 opened with BCR – Unirii Branch, duly represented by Mrs. Manuela-Petronela Olteanu – Special Administrator, as **BENEFICIARY (BUYER)** and

The company\_\_\_\_\_\_\_\_\_\_\_\_ headquartered in\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, county/sector\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_street, no.\_\_\_\_\_\_\_\_\_\_, postal code\_\_\_\_\_\_\_\_\_\_\_\_\_, phone\_\_\_\_\_, fax\_\_\_\_\_\_\_\_\_, IBAN code no.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ opened with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Bank, registered with the Trade Registry under no.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, sole registration code\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, represented by\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ - Manager and\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ - Economic Manager, as **SUPPLIER (SELLER)**,

**Mandatory Clauses**

1. **Contract Main Object** 
   1. The object of the contract is **“Spare parts supply for REH TA4 in CTE Progresu**”, as stipulated in Annex no. 1. The supplier undertakes to deliver the products, respectively to sell, to deliver in DDP conditions at CTE Progresu, under the conditions agreed herein.

The supplier undertakes to ensure the technical conditions set by the producer during the products’ transportation, handling, storage and taking over.

* 1. The quantitative and qualitative taking-over is performed at the Buyer, within 3 calendar days since the products taking-over, the supplier being summoned within such deadline in case of any quantitative or qualitative non-conformities.
  2. The Beneficiary undertakes to take over the products based on the following documents:

- the invoice issued by the supplier with acknowledgement of receipt and registration number at the beneficiary;

- goods receipt note drawn up by the buyer based on the following documents:

* delivery order – delivery note ;
* acceptance certificate ;
* quality certificate from the producer and guarantee certificate;
* trial reports, inspection note etc. which will be drawn up in accordance with the stipulations comprised in the execution documentation (if the case may be);
* CE-type declaration of conformity (if the case may be)
* technical and quality documentation, preserving, storage, handling instructions issued by the supplier, in Romanian, that the buyer must observe in order not to prejudice the delivered products as a result of not knowing them;
* any other document in accordance with the law in force regarding the transportation.

The risk for the potential product losses or damage during transportation is undertaken by the supplier, which, in special circumstances, will take action and claim damages from the transporter.

1. **CONTRACT VALUE**
   1. The contract value in DDP conditions, respectively the value of the contracted products and services related to the delivery, is of\_\_\_\_\_\_\_in figures, RON (\_\_\_\_\_\_\_\_\_\_in letters), VAT excluded. The Beneficiary will only pay for the products effectively delivered and received in accordance with the contractual provisions.
   2. The VAT quota valid at the invoicing date shall apply upon the tax base.
   3. The unit prices mentioned in annex 1 are firm and cannot be increased at the contract conclusion or subsequently, during the execution of the contract.
2. **DELIVER PERIOD** 
   1. The delivery period is of\_\_\_\_\_\_\_\_\_\_\_\_\_ calendar days since the contract conclusion. The delivery of the contracted products shall be performed in one single tranche at the following address: CTE Progresu, 2 Pogoanelor Street, sector 4.

The products delivery shall be deemed completed when the stipulations of the clauses related to the products taking-over are met.

* 1. This contract becomes null and void after the expiry of the products technical guarantee period.
  2. The contract shall be deemed concluded on its signing date without any objection from both parties, respectively the disbursement registration date at the buyer.

1. **Contract Documents** 
   1. The contract documents are:
2. The supplier’s technical and financial proposal;
3. The tender book related to the procurement procedure;
4. Any addenda to the contract, if the parties will agree to sign such documents;
5. Any other annexes mentioned in the contract and in the addenda;
   1. If, during the contract’s execution, it is found that certain elements of the technical proposal are inferior to the requirements provided in the tender book, the provisions of the tender book will prevail.

**Specific Clauses**

1. **Payment conditions**
   1. The Beneficiary undertakes to pay the products price to the supplier within 60 calendar days after the products taking-over and the invoice registration at the buyer.
   2. The payment of the products being the object of this contract shall be made by payment order in LEI( RON), based on the documents mentioned at art. 2.3.
2. **Sanctions for culpable failure to comply with the undertaken obligations** 
   1. If, due to its exclusive fault, the supplier fails to comply with the undertaken obligations, the buyer is entitled to claim damages equal to the legal default interest, relative to the value of the products delivered in delay or with other non-conformities, for each day of delay. The penalties shall limit to the value of the non-conforming products.
   2. Should the beneficiary not pay the invoices within the due deadline stipulated at art. 6.1. of the contract, then it is in delay ipso jure and shall pay penalties equal to the legal default interest, relative to the non-paid value of the invoice without VAT. The respective penalties cannot exceed the non-paid value of the invoice.
   3. The supplier shall be deemed in default ipso jure by the expiry of the contractual deadline, without any notification or any other prior procedure.
   4. The culpable failure to comply with the undertaken obligations by any of the parties, entitles the non-defaulting party to deem the contract null and void with prior notification and to claim damages.
   5. If the value of the penalties does not cover the damages produced to the contracting parties as a result of failure to comply with the clauses leading to the payment of such penalties, the contracting parties may claim damages to the contract partner, in accordance with the legal stipulations in force, until recovery of the produced damage, at values proven with documents.

1. **The technical guarantee period for the products** 
   1. The supplier undertakes that the products delivered by this contract are new, not used and in compliance with the technical and quality specifications.
   2. (1) The products technical guarantee period is the one mentioned in the technical proposal.

(2) The technical guarantee period is of\_\_\_\_\_\_\_\_\_\_\_\_\_months since the products delivery to the buyer.

(3) The technical guarantee period shall be extended by the duration of the remedial within the guarantee period, if the fault falls under the supplier.

* 1. The buyer is entitled to notify in written the product non-conformities within the technical guarantee period, within 3 days from finding the lack of conformity.
  2. Upon receipt of such notification, the supplier must remedy the technical fault or to replace the product within the agreed period, with no additional costs for the buyer. Within 10 days from the notification, the supplier must render the products in good condition or replaced.
  3. If, the supplier, after being notified, fails to take the remedial measures within the agreed period, the buyer is entitled to take remedial measures on the supplier’s risk and expense and without any prejudice to any other rights that the buyer may have towards the supplier by contract.
  4. The supplier must remedy the potential deficiencies or replace the non-compliant product on its own expense if such deficiencies are found throughout the technical guarantee period.

1. **Amendments**
   1. The supplier’s rights and obligations derived from this contract may be taken-over, as a result of an universal succession or with universal title within a reorganization process, including by merger or division, by another economic operator complying with the initially set qualification and selection criteria.
   2. In addition to the situation stipulated at art. 9.1., the contracting parties are entitled, throughout the contract’s execution, to agree upon modifying the contract clauses, in case of occurrence of any circumstances that prejudice their legitimate commercial interests and that couldn’t have been foreseen at the contract’s conclusion.
   3. The contract is terminated ipso jure, without any deeming in default or other prior procedure, by the buyer, within 30 days at the most since the occurrence of any circumstances that could not have been foreseen at the contract’s conclusion date and that lead to the amendment of the contractual clauses in such measure that the execution of the contract would be contrary to the public interest; in such case, the supplier is entitled to claim only the payment related to the contract part fulfilled until the contract’s ipso jure termination date.
   4. The Contract shall be terminated for the force majeure cases stipulated at chapter 10.
   5. The Contract may be terminated by common agreement, without any compensation, only based on the conclusion of an addendum to the contract.
   6. The buyer is entitled to unilaterally terminate the contract in case of failure to comply with the provisions of art. 243, par (1) of Law no. 99/2016 on the sectorial procurements.
   7. The buyer is entitled to unilaterally terminate the contract during its validity period, in one of the following situations:
2. the contractor finds itself, at the moment of the contract award, in one of the situations that would have determined its exclusion from the award procedure in accordance with art. 177 of Law no. 99/2016 on the sectorial procurements
3. the contract should not have been awarded to the respective contractor, taking into account a serious default in complying with the obligations deriving from the relevant European legislation and that was declared by a decision of the European Union Court of Justice.

1. **Force Majeure** 
   1. The force majeure is declared by a competent authority.
   2. The force majeure exonerates the contracting parties from the performance of the obligations undertaken by this contract, throughout the entire period of the force majeure case.
   3. The contract fulfillment shall be suspended during the force majeure situation, but without any prejudice on the rights of the parties until the occurrence of the force majeure case.
   4. The contracting party invoking the force majeure case must notify the other party, immediately and completely, on its occurrence and to take any possible measures to limit its consequences.
   5. If the force majeure lasts or is estimated to last for a period exceeding 6 months, each party shall be entitled to notify the other party on the termination as of right of this contract, without any party claiming damages to the other party.

1. **Final conditions** 
   1. The courts of justice habilitated to judge/settle the litigations occurred between the contracting parties in relation to this contract, are the competent courts from the beneficiary’s place of residence, in compliance with the Romanian right.
   2. The contract shall be interpreted in accordance with the laws of Romania.
   3. (1) Any communication between the parties, relative to the fulfilment of this contract, must be sent in written.

(2) Any written document must be registered both on sending and receiving.

* 1. This contract has been awarded on\_\_\_\_\_\_\_\_\_\_\_\_based on direct procurement procedure.
  2. The financial-banking operations between the supplier and the buyer shall be carried out through the banks and accounts mentioned at chapter 1.

This Contract has been concluded in two copies, one copy for each party.

**BENEFICIARY, SUPPLIER,**

Electrocentrale Bucuresti SA

in insolvency, en procedure collective

Special Administrator, Manager,

Manuela-Petronela OLTEANU

ENDORSED

JUDICIAL ADMINISTRATOR Economic Manager,

KPMG Restructuring SPRL

Speranta MUNTEANU

General Manager,

Marcel\_Octavian NICOLAESCU

Deputy General Manager,

Laurentiu-Dan TUDOR

Financial-Commercial Manager,

Marcel VILCA

CFP Endorsed,

Technical Manager,

Constantin DOBRE

Legal and Procurement Manager,

Flavius CLADOVEANU

Legal Dept.

Mihai VOLF

Procurement Dept.

Ioana UNTILA

Contracts Office,

Roxana KEDEI

Annex no. 1 to contract no.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Contracted products quantities list**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **ITEM**  **NO.** | **PRODUCT NAME,**  **CHARACTERISTICS** | **U/M** | **Quantity** | **PRICE IN LEI (VAT excluded)** | | **Producer** | **Delivery Period** |
| **UNIT** | **TOTAL** |
| **0** | **1** | **2** | **3** | **4** | **5** | **6** | **7** |
| **1** | **UMFPR 60HF-type processor card;**  **part. no. 50-61-387 (producer MAUELL GmbH Germany)** | **pieces** | **2** |  |  |  |  |
| **TOTAL LEI (VAT excluded)** | | | | |  | **-** | **-** |

**BENEFICIARY, SUPPLIER,**

**Technical Manager**

**Constantin DOBRE**

**TECHNICAL AND MAINTENANCE DEPT.**

**Adrian OLTEANU**

**BDUR**

**Ion Vasile**

**In charge of contract, In charge of procurement**

**Valentin Petrescu Aurelian Cristea**