

**PROPOSED PROVISIONS OF THE AGREEMENT EZP.271[...]2022.ZP**

**concerns part no. ....**

Concluded on ..... 2022 between:

Narodowe Centrum Badań Jądrowych [*National Centre for Nuclear Research*] with its registered office in Otwock (05-400), ul. Andrzeja Sołtana 7, Poland, a research institute entered in the Register of Entrepreneurs of the National Court Register kept by the District Court for the Capital City of Warsaw in Warsaw, XIV Commercial Division of the National Court Register, under KRS No. 0000171393, NIP: 532-010-01-25, REGON: 001024043, BDO: 000004834 hereinafter referred to as the "Awarding Entity", represented by:

.....

and the tenderer selected as a result of the award of a public procurement contract under the basic procedure with the possibility of negotiations, pursuant to Article 275 item 2 of the Act of 11 September 2019. - Public Procurement Law (Journal of Laws of 2022, item 1710) (hereinafter referred to as the "Act")- [...], hereinafter referred to as the "Economic Operator", represented by:

.....

The Awarding Entity and the Economic Operator are hereinafter collectively referred to as the "Parties" and each individually as a "Party",  
hereinafter referred to as the "Agreement" with the following content:

**§ 1**

**SUBJECT OF THE AGREEMENT**

1. The subject of the Agreement is the delivery of current transformers together with accessories to the premises of the National Centre for Nuclear Research in Otwock - Świerk (hereinafter, depending on the context, "Subject of the Agreement" or "Equipment").
2. A detailed specification of the Subject of the Agreement is set out in Appendix 1 to the Agreement.
3. The delivered equipment must be brand new, i.e. unused before the date of delivery and free of any defects and approved for use in the Republic of Poland.
4. The Economic Operator declares that it is entitled to offer and sell each Equipment and to make available the documentation delivered with each Equipment without being restricted in this respect by the rights of third parties and that it is entitled to conclude and perform this Agreement.
5. The Economic Operator declares that the subject of the Agreement includes/does not include the goods and services listed in Appendix No. 15 to the Act of 11 March 2004 on Value Added Tax (hereinafter referred to as the "VAT Act") (if applicable).

**§ 2**

**CONDITIONS FOR PERFORMANCE OF THE SUBJECT OF THE AGREEMENT**

1. The Economic Operator shall complete the Subject of the Agreement within 12 months from the date of conclusion of the Agreement.
2. All costs associated with the performance of the Subject of the Agreement shall be borne by the Awarding Entity.
3. The Economic Operator undertakes to perform the Equipment on the basis of the state of the art and technical capabilities and with due diligence as determined taking into account the professional nature of its business.
4. The Awarding Entity undertakes to co-operate with the Economic Operator to the extent necessary to enable the Economic Operator to fully and correctly perform each Equipment. In particular, the Awarding Entity undertakes to give the Economic Operator all instructions and to remain in constant communication with him.
5. The Economic Operator undertakes to provide remote assistance for any problems with the integration of the

Equipment.

6. Persons responsible for the implementation of the Agreement:
  - a) On the Part of the Awarding Authority .....tel....., e-mail.....
  - b) On the part of Economic Operator: ....., tel....., e-mail.....
7. The Economic Operator shall be fully liable to the Awarding Entity for the acts or omissions of the Economic Operator's employees, persons acting on behalf of the Economic Operator or subcontractors as if they were its own acts.

### **§ 3**

#### **CONDITIONS FOR ACCEPTANCE OF THE SUBJECT OF THE AGREEMENT**

1. An acceptance report of the subject of the Agreement is to be drawn up in accordance with the requirements set out below and signed by the Parties or by the Awarding Entity and sent to the Economic Operator. The Parties shall allow partial acceptance of the Equipment.
2. The report for the final/partial acceptance of the Subject of the Agreement should include, in particular:
  - a) Agreement number,
  - b) data of the Awarding Entity and the Economic Operator,
  - c) The subject of the acceptance and the date on which it was carried out,
  - d) information on the inspection of the Subject of the Agreement by the Awarding Entity,
  - e) information on the provision of the required documents for the Equipment delivered.
3. The date of execution of the Agreement shall be deemed to be the date on which the final acceptance report for the subject of the Agreement is signed without reservations.
4. The Awarding Entity authorises the person indicated in § 2.7(a) to sign the acceptance reports for the Subject of the Agreement on his behalf.

### **§ 4**

#### **PERFORMANCE BOND**

1. The Economic Operator shall provide the Awarding Entity with a warranty for all Equipment delivered under the Agreement for a period of ..... months, counting from the date of signing the acceptance report referred to in § 3 item 1, for each piece of Equipment (the warranty period runs separately for each piece of Equipment).
2. In the event that repairs have to be carried out off-site, transport costs will be borne by the Economic Operator.
3. Notification of defects will be made by telephone, in writing or by e-mail.
4. The Economic Operator's response time to the Awarding Entity's notification shall not exceed 7 days. By the Economic Operator's response, the Parties shall understand the identification of the reported defect and the determination of the period necessary for its removal, not exceeding 28 days.

### **§ 5**

#### **PRICE AND PAYMENT TERMS**

1. The Parties agree that for performing the Subject of the Agreement referred to in § 1, the Economic Operator is entitled to the total net remuneration of..... PLN/EUR/USD, plus 23% VAT (if applicable; payable according to generally applicable regulations), i.e. the total gross amount of .....PLN/EUR/USD (in words: ..... PLN/EUR/USD).The remuneration shall include all costs and expenses necessary for the performance of the Agreement, including the price of the Equipment.
2. Payment will be made by bank transfer on the basis of a correctly issued invoice for the performance of the Subject of the Agreement within 14 days, to the Economic Operator's bank account number: .....
3. The Parties shall allow partial payments upon acceptance of each Equipment. The prices of individual pieces of

Equipment, which form the basis for partial payments, are set out in Appendix 2 to the Agreement (Price Form).

4. The Awarding Entity reserves the right to pay the remuneration due to the Economic Operator under the Agreement under the split payment mechanism (hereinafter referred to as the "Split Payment Mechanism") provided for in the VAT Act (if applicable).

5. The Economic Operator declares that the bank account indicated by the Economic Operator in paragraph 2 into which payment of the remuneration due to the Economic Operator under the Agreement is to be made:

- is an account enabling payment under the Split Payment Mechanism (if applicable);
- is an account included in the list of entities (hereinafter referred to as the "List") maintained by the Head of the National Fiscal Administration referred to in Article 96b of the VAT Act (if applicable)

6. In the event that the bank account indicated by the Economic Operator does not meet the conditions specified in paragraph 5, the delay of the Awarding Entity in making the payment within the time limit specified in the Agreement, arising as a result of the Awarding Entity's inability to pay using the Split Payment Mechanism or to the account in the List, shall not constitute the basis for any claims by the Economic Operator, including in particular the Economic Operator's entitlement to claim from the Awarding Entity interest or damages for late payment (if applicable).

7. The Economic Operator, in accordance with the Act of 9 November 2018 on electronic invoicing in public procurement, concessions for works or services and public-private partnership, has the possibility to send structured electronic invoices electronically via the Electronic Invoicing Platform. The Awarding Entity has an account on the platform <https://brokerpefexpert.efaktura.gov.pl> PEF No: NIP 532-010-01-25. The Awarding Entity does not allow the sending and receiving of other structured electronic documents via the platform, with the exception of correction invoices.

8. The original invoice should be sent electronically to ..... and in the case of a paper invoice, delivered to the registered office of the Narodowe Centrum Badań Jądrowych ul. Andrzeja Sołtana 7, 05-400 Otwock (office).

## **§ 6**

### **AMENDMENTS TO THE AGREEMENT**

1. Pursuant to Article 455 para. 1 item. 1 of the Act, the Awarding Entity provides for the possibility of amending the provisions of the Agreement in the following cases and under the following conditions:
  - a) a change in applicable legislation affecting the performance of this Agreement, including a change in the amount of remuneration resulting from a change in the VAT rate,
  - b) a change in the deadline for completion of the subject of the Agreement in the following cases
    - stoppages and delays not attributable to the Economic Operator, which have a direct impact on the punctuality of the performance of the Subject of the Agreement; the amendment shall consist in extending the deadline by the period of stoppages and delays;
    - other interruptions in the performance of the Subject of the Agreement arising for reasons beyond the Economic Operator's control; the amendment shall consist in extending the deadline by the period of the interruptions that have occurred;
  - c) a change of the date for completion of the subject of the Agreement - in the event of the occurrence of a force majeure event, which, for the purposes of these proceedings, is understood by the Parties as an event external to the legal relationship between the Parties and of a nature beyond the control of the Parties, which the Parties could not avoid or prevent with due diligence. Force majeure, conditioning the amendment to the Agreement, shall be considered in particular: flood, fire and other natural disasters, pandemic, epidemic, riots, strikes, terrorist attacks, acts of war, sudden breakdown of weather conditions, sudden power cuts, radiation or contamination; the Parties allow, inter alia, the possibility of amending the Agreement in the event of circumstances hindering or preventing the execution of the Agreement in connection with the occurrence of Covid -19 or the war in Ukraine.
2. The above provisions of paragraph 1(b) and (c) constitute a catalogue of amendments to which the Awarding Entity may

give its consent, without constituting an obligation on the part of the Awarding Entity to give such consent.

## **§ 7**

### **CONTRACTUAL PENALTIES**

1. The Economic Operator shall pay liquidated damages to the Awarding Entity:
  - a) for a delay in the delivery of the subject of the Agreement or a given batch thereof in the amount of 0.5% of the gross price for the Equipment not delivered on time, for each commenced day of delay, counting from the day following the expiry of the deadline for delivery,
  - b) for a delay in performance under the guarantee or warranty in the amount of 0.5% of the price of the Equipment to which the delay relates, for each day of delay commenced, calculated from the day following the expiry of the performance deadline,
  - c) for withdrawal from the Agreement for reasons attributable to the Economic Operator in the amount of 10% of the total gross remuneration specified in § 5(1) of this Agreement.
2. The Economic Operator authorises the Awarding Entity to deduct from the remuneration referred to in § 5 of the Agreement the amount of the accrued contractual penalties.
3. The sum of the contractual penalties may not exceed 15% of the total gross remuneration referred to in § 5(1) of the Agreement.
4. Payment of the contractual penalty by the Economic Operator shall not deprive the Awarding Entity of the right to claim compensation on general terms if the contractual penalty does not cover the damage caused.
5. The Awarding Entity shall pay statutory interest for late payment of remuneration.

## **§ 8**

### **FINAL PROVISIONS**

1. The Economic Operator may not, without the prior written consent of the Awarding Entity, under pain of nullity, transfer the rights and obligations arising from the Agreement to a third party, in particular: assign, transfer, dispose of and pledge the receivables arising from this Agreement to a third party.
2. The Parties declare that the personal data indicated in the Agreement will be processed with due care on the basis of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons in relation to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC, and that the processing of the personal data indicated above, is necessary for the purposes arising from the legitimate interests pursued by the Parties.
3. In matters not covered by the Agreement, the provisions of the Public Procurement Law and the Civil Code shall apply.
4. Any changes to the Agreement must be made in writing (in the form of an annex) on pain of nullity, with the proviso that a change to the data indicated in § 2.7 does not require an Appendix.
5. The Parties undertake to resolve any disputes that may arise in connection with the performance of the Agreement amicably through negotiations. If no agreement is reached, disputes shall be settled by the court having jurisdiction over the Awarding Entity's registered office.
6. The Agreement is drawn up in four identical copies, two copies for each Party, in Polish and English. In case of conflict Polish version shall prevail.

**ECONOMIC OPERATOR**

**AWARDING ENTITY**