

**PROPOSED PROVISIONS OF THE AGREEMENT EZP.271 .....ZP**

Concluded on .....2023 between:

**National Centre for Nuclear Research** based in Otwock (05-400), Andrzeja Sołtana 7, a research institute registered 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 the number KRS 0000171393, NIP: 532-010-01-25, REGON: 001024043, BDO: 000004834 hereinafter referred to as the "Ordering Party", represented by: [...]

and the tenderer - [...] with its registered office in [...], entered into ....., NIP ....., REGON .....hereinafter referred to as the "Contractor", represented by [...]

The Ordering Party and the Contractor, hereinafter referred to collectively as "Parties", and each individually as a "Party", hereinafter referred to as the "Agreement" with the following content:

The Parties unanimously declare that this Agreement has been concluded as a result of a public procurement procedure conducted under the terms of the Act of September 11, 2019. - Public Procurement Law (i.e., Journal of Laws of 2023, point 1605) (hereinafter referred to as the "Act"), by open tender, pursuant to section 132 of the Act.

**§ 1**

**SUBJECT OF THE AGREEMENT**

1. The subject of the Agreement is the **Design, manufacture, delivery with installation of a helium cooling system for the Polish Free Electron Laser - PoFEL to the premises of the National Centre for Nuclear Research in Otwock as well as training for the Ordering Party**, hereinafter referred to as the "Subject of the Agreement".

2. The subject matter of the Agreement includes the delivery, installation and commissioning of a helium cooling system based on the TCF50 helium chiller (manufactured by Linde Kryotechnik AG) owned by the Ordering Party and made available to the Contractor for this purpose, including:

- 1) submission of a detailed project schedule to the Ordering Party;
- 2) development of technical assumptions describing how the TCF50 helium chiller will be used and operated in the helium chilling system in the mode necessary to supply the PoFEL helium distribution system and how the necessary components will be completed for this purpose;
- 3) development of the detailed design and production documentation;
- 4) manufacturing of the components;
- 5) execution of the refreshment of the TCF50 chiller and its adaptation to work within the PoFEL helium cooling system by its inspection, cleaning, adaptation of the connections, updating of the control system and completion of the necessary cooperating components;
- 6) delivery and installation of a refreshed TCF50 cooler with emergency helium recovery system and all cooperating components at the Purchaser's site;
- 7) commissioning and testing of the helium chilling system based on the TCF50 chiller;

- 8) user training of 10 hours for 10 people at a date specified by the Purchaser.
3. Documentation of the technical design, detailed designs and other documents indicated in Appendix No. 1 to the Agreement (documents indicated in VOLUME III of the OPZ - description of the subject the contract Process design of the PolFel accelerator helium cooling systems with elements of the technical design, hereinafter referred to as **Appendix No. 1 to the Agreement**) - must be provided in accordance with the contents of this document - in a manner described in Chapter 16, paragraphs 16.1.3 and 16.2.3.
4. A detailed description of the equipment covered by the Subject of the Agreement and the scope and manner of performance of the Subject of the Agreement are included in **Appendix No. 1 to this Agreement**.
5. The Contractor shall bear full responsibility for non-performance or improper performance of the Subject of the Agreement as a result of the use of improper materials and equipment, in particular, not meeting the requirements, standards, applicable regulations and requirements of the Ordering Party.
6. The Contractor declares that he is/is not a VAT payer in the territory of the Republic of Poland.
7. The Contractor declares that the subject of the Agreement **includes/does not include** the goods and services listed in Appendix No. 15 to the Act of March 11, 2004 on Value Added Tax (hereinafter referred to as the "VAT Act").

## § 2

### TERM AND CONDITIONS OF PERFORMANCE OF THE SUBJECT OF THE CONTRACT

1. The Contractor shall complete the Subject of the Contract within 21 months from the date of conclusion of the Contract taking into account the schedule specified in Annex 1 to the Contract - Chapter 19, in particular Tab. 10.
2. The Contractor shall provide the manufacturer's guarantee cards for the equipment offered for acceptance of the Agreement.
3. All costs associated with the implementation of the Subject of the Agreement, including transportation, packaging and insurance for the time of transportation shall be borne by the Contractor.
4. Persons responsible for the implementation of the Agreement:
  - a) From the Ordering Party: ....., phone number....., e-mail.....
  - b) From the Contractor's side: ....., phone number....., e-mail.....
5. The Contractor shall be fully liable to the Ordering Party for the actions or omissions of the Contractor's employees, persons acting on its behalf or subcontractors, as well as for its own actions.
6. The Contractor is obliged to ensure that all work within the Subject Matter of the Agreement is performed by persons with qualifications and authorizations to perform such work. The Contractor must have appropriate technical equipment to efficiently perform the works covered by the Scope of the Agreement.
7. In the event of any conflict between the content of the documents constituting the content of the proceedings and the implementation of the Subject of the Agreement, priority should be given to the content of the document according to the following hierarchy of documents:

- a) Agreement;
- b) Description of the subject of the order(OPZ) along with the specification of the terms of the order (SWZ);
- (c) Technical and detailed design;
- (d) The Contractor's offer dated:.....

### § 3

#### OBLIGATIONS OF THE PARTIES

1. The Contractor's responsibilities include:

- a) ensuring that the Subject of the Agreement is performed by persons with the necessary licenses and qualifications,
- b) performance of the Subject of the Agreement with due diligence as determined taking into account the professional nature of his business,
- c) performance of other obligations related to the implementation of the Agreement,
- d) concluding appropriate civil liability insurance contracts at your own expense for the duration of the contract and submission to the Ordering Party no later than on the day of signing the Agreement. Applies to civil liability for damages and consequences of accidents concerning employees and third parties arising in connection with the implementation of the contract - the required insurance sum is not less than PLN 6,000,000.00, along with providing the Ordering Party with confirmation of payment of the policy and providing confirmation of its renewal in the event of expiration of the policy during the duration of the contract without an additional request from the Ordering Party.

2. The obligations of the Ordering Party include:

- a) verification of the technical documentation (referred to in § 1 section 2 item 2) and 3) and submission of written comments within 14 days of the date of delivery of the documentation to the Ordering Party,
- b) acceptance of the Subject of the Agreement within 14 days from the date of delivery of the notification of readiness for acceptance to the person indicated in § 2(4)(a) by Contractor in writing. Alternatively, the Ordering Party shall allow the notification of readiness for acceptance of the Subject of the Agreement to be sent to the email of the responsible person specified in § 2(4)(a), except that the deadline for notification of acceptance will then be counted from the moment of confirmation of receipt of the email.
- c) payment of remuneration for the completed and accepted Subject of the Contract.

3. The Ordering Party shall have the right to inspect the design work on an ongoing basis.

**§ 4****THE CONTRACTOR'S POTENTIAL**

(1) The Contractor declares that in order to perform the Subject of the Agreement, the Contractor shall provide adequate technical resources and personnel with the capabilities, experience, knowledge and required licenses to the extent necessary to perform the Subject of the Agreement, in accordance with the tender submitted by the Contractor.

2. The Contractor represents that he has the knowledge and experience required to perform the Subject of the Agreement.

3. The Contractor declares that a third party [...], whose resources in terms of technical or professional capabilities the Contractor relied on when submitting his tender to confirm fulfilment of the conditions for participation in the public procurement procedure, will perform the Subject of the Agreement to the extent of [...], i.e. to the extent that the technical or professional capabilities of the third party have been declared to perform the Subject of the Agreement for the purpose of the public procurement procedure. If the Contractor ceases to perform the Subject of the Agreement in the above scope by [...], for any reason, the Contractor shall be obliged to replace this entity with another entity having resources at least equal to those which formed the basis for demonstrating the Contractor's fulfilment of the conditions of participation in the public procurement procedure with the participation of the third entity, after obtaining the consent of the Ordering Party.

**§ 5****TERMS OF ACCEPTANCE OF THE SUBJECT OF THE AGREEMENT**

1. Acceptance shall be aimed at handing over to the Ordering Party the Subject of the Agreement, constituting the agreed subject of acceptance, after checking the compliance of its performance with the Agreement. Prior to notification of readiness for acceptance, the Contractor undertakes to provide the Ordering Party with all documents necessary to assess the correctness of performance of the Subject of the Agreement in the scope subject to acceptance.

2. The protocol of partial/final acceptance of the Subject of the Agreement is to be written in accordance with the requirements below and signed by the Parties or by the Ordering Party and sent to the Contractor.

3. The acceptance protocol of the Subject of the Agreement should include, in particular:

- a) the Agreement number,
- b) data of the Ordering Party and the Contractor,
- c) Subject of the Agreement and acceptance and the date of its execution,
- d) information on the correctness of execution of the Subject of the Agreement by the Contractor,
- e) information on the provision of manufacturer's warranty cards for the delivered equipment,
- f) in the case of final acceptance, delivery of the Contractor's warranty card for the entire Subject of the Agreement.

4. The Ordering Party shall have the right to submit remarks on the Subject of the Agreement/task submitted for acceptance. They should be provided to the Contractor in writing or by e-mail within 14 days from the date of notification for acceptance. The remarks should include, in particular:

- a) a list of reservations
- b) a request to the Contractor to remove the reservations or irregularities within the time limit set by the Ordering Party.

5. The date of performance of the Agreement/task shall be the date of signing the final/partial acceptance protocol of the Subject of the Agreement by the Ordering Party without reservations, taking into account the deadlines specified in § 2(1) of the Agreement.

6. The Ordering Party authorizes the person indicated in § 2(4)(a) to sign the protocol of acceptance of the Subject of the Agreement on his behalf.

## § 6

### QUALITY GUARANTEE OF THE SUBJECT OF THE AGREEMENT

1. The Contractor shall grant the Ordering Party, for all equipment supplied under the Agreement and for the entire system constituting the subject of the Agreement, a warranty for a period of .....months counting from the date of signing the protocol of final acceptance of the Subject of the Agreement without reservations.

2. The Contractor declares:

a) .... months of limited warranty, understood as the obligation to carry out repair as a result of failure, using the Contractor's infrastructure, the Contractor's human resources and spare parts owned by the Ordering Party. The limitation of the warranty in this case does not include damage caused by latent defects arising from the stages of production, installation and commissioning. (If applicable - subject to the Contractor's declaration in the non-price criteria form);

b) .... months of unlimited warranty, understood as the obligation to carry out repair as a result of the occurrence of failure, using the Contractor's infrastructure, the Contractor's human resources and spare parts owned by the Contractor.

3. The Contractor shall repair defects in the Subject of the Agreement at the place of use. If it is necessary to carry out the repair outside the place of use, the cost of all elements of the defect removal process, in particular transportation, disassembly and reassembly, and insurance for the duration of repair of individual components, shall be borne by the Contractor.

4. Notification of the defect will be made through a dedicated electronic communication channel (user support hotline, email account, telephone number), which does not exclude reporting defects by phone, email as well as in writing. If it is not possible to contact the Contractor in the aforementioned manner, a written notification sent to the last address of the Contractor known to the Ordering Party is acceptable.

5. The Contractor undertakes to take action to remove the defect in accordance with the following conditions:

a) the response time will not exceed 72h. By response for this type of action, the Parties understand remote repair in cooperation with the Ordering Party, using electronic channels of communication - calculated as the time that elapses from the sending of the notification (user support hotline, email account, telephone number) to the receipt of the first response regarding the proposal of how to remove the defect. Replies confirming acceptance of the request or expressing willingness to provide assistance will not be considered as fulfilment of this obligation.

b) Arrival of the service team: the response time will not exceed 7 calendar days. By response for this type of action, the parties understand the time that elapses from the date of receipt of confirmation (Ordering Party's support hotline, email account, telephone number) of the inability to remove the defect using dedicated electronic communication channels, to the date of arrival of the Contractor's representative to remove the defect.



6. The maximum time limit for repairing the defect shall not exceed 30 calendar days from the date of reporting the defect.

7. In the event of occurrence during the warranty or guarantee period of a failure or incompatible with the technical specification operation of the helium cooling system, which is the subject of the Agreement, causing direct or indirect damage to the infrastructure or operation of other installations coexisting with the subject installation, in particular, PoLFEL accelerator systems such as cryomodules, vacuum pumps or electron beam diagnostic systems, regardless of the rights of the Ordering Party under the terms of the warranty and guarantee, the Ordering Party may appoint an expert with appropriate technical expertise in the field of helium cryogenic systems, in order to clearly assess the causes of the failure. The Ordering Party reserves the right to charge the Contractor with the costs of the expert's report if the Contractor is found to be at fault.

8. In the event of the circumstances indicated in paragraph 7, the Ordering Party and the Contractor may also appoint experts on coexisting installations in order to assess the impact of the failure of the helium cooling system on coexisting installations, to assess the extent of the damage, the effects of the damage, valuation of the damage found to have occurred as a result of the failure of the helium cooling system. The assessment will be the basis for claims for the damage caused against the Contractor.

9. By "**coexisting installations**" is understood, in particular, installations directly connected, adjacent, located in the immediate vicinity, in one technical communication path, as well as installations on which the helium cooling system has a direct or indirect impact on their technically correct functioning.

10. The Contractor's liability under the title specified in section 7, 8 and 9 is limited to the total amount of the Remuneration specified in § 7, section 1. However, the above does not deprive the Ordering Party of the right to claim compensation on general principles if the amount indicated in § 7, section 1 will not cover the damage caused.

11. The Subject of the Agreement reported by the Ordering Party for removal of the defect before the expiry of the warranty period is subject to repair according to the principles described in section 1 – 10 above.

12. The warranty period corresponds at least to the period indicated in Art. 568 § 1 of the Civil Code. In the event of granting a quality guarantee for the Subject of the Agreement (based on the offer evaluation criterion), beyond the period specified in Art. 568 § 1 of the Civil Code, the warranty is equal to this period.

## § 7

### PRICE AND PAYMENT TERMS

1. The Parties agree that for the performance of the Subject of the Agreement referred to in § 1, the Contractor is entitled to the total net remuneration in the amount of .....PLN (EUR/USD).
2. The net amount of the remuneration will be increased by the applicable VAT 23% and will amount to a total of PLN..... (EUR/USD) gross, or the VAT due on the amount of remuneration will be paid by the Ordering Party to the account of the appropriate Tax Office in the event that the Ordering Party is obliged to pay tax in accordance with the provisions on VAT (if applicable).

3. The parties agree that partial settlement of the Remuneration is permissible. The breakdown of payments is shown in the table below:

No	Stages	Value [PLN (EUR/USD)]	Confirmation of receipt of the stage
1.	Prepayment as an advance payment of the price, within 7 days from the date of conclusion of the Agreement	up to 20% of the gross remuneration indicated in section 1 letter and	Correctly issued and delivered advance payment invoice
2.	Preliminary technical design	up to 30% of the gross remuneration indicated in section 1 letter a, but not more than the value for a given stage indicated in the price form increased by the applicable VAT	A detailed description of the acceptance conditions of the "Preliminary technical design" stage is described in Annex No. 1 to the Agreement, i.e. OPZ in Chapter 18.3
3.	Technical project	up to 10% of the gross remuneration indicated in section 1 letter a, but not more than the value for a given stage indicated in the price form increased by the applicable VAT	A detailed description of the acceptance conditions for the "Technical Design" stage is described in Annex No. 1 to the Agreement, i.e. OPZ in Chapter 18.4
4.	Executive project	up to 5% of the gross remuneration indicated in section 1 letter a, but not more than the value for a given stage indicated in the price form increased by the applicable VAT	A detailed description of the acceptance conditions for the "Detailed design" stage is described in Annex No. 1 to the Agreement, i.e. OPZ in Chapter 18.5
5.	Production	up to 10% of the gross remuneration indicated in section 1 letter a, but not more than the value for a given stage indicated in the price form increased by the applicable VAT	A detailed description of the acceptance conditions for the "Production" stage is described in Annex No. 1 to the Agreement, i.e. OPZ in Chapter 18.6
6.	Delivery	up to 10% of the gross remuneration indicated in section 1 letter a, but not more than the value for a given stage indicated in the price form increased by the applicable VAT	A detailed description of the acceptance conditions of the "Delivery" stage is described in Annex No. 1 to the Agreement, i.e. OPZ in Section 18.7
7.	Installation	up to 10% of the gross remuneration indicated in section 1 letter a, but not more than the value for a given stage indicated in the price form increased by the applicable VAT	A detailed description of the acceptance conditions of the "Installation" stage is described in Annex No. 1 to the Agreement, i.e. OPZ in Chapter

			18.8
8.	Commissioning and acceptance	the fraction of gross remuneration specified in section 100% is missing. 1 letter and	A detailed description of the acceptance conditions of the "Starting and acceptance" stage is described in Annex No. 1 to the Agreement, i.e. OPZ in Chapter 18.9

4. The remuneration shall include all activities, costs and expenses of the Contractor necessary for comprehensive preparation and timely execution of the Agreement, in particular, but not limited to: the price of the Subject of the Agreement, installation, commissioning, testing, transportation, packaging and insurance costs for the time of transportation, training of the Ordering Party's personnel and performance of obligations under the warranty/guarantee, as well as costs not included and not provided for by the Ordering Party, but necessary for execution of the Subject of the Agreement due to the intended purpose of the agreement.

5. The Ordering Party allows partial invoicing, i.e. after completing the individual stages of the Subject of the Agreement listed above on the basis of partial acceptance reports, payment will be made in accordance with the payment table indicated above.

6. The Ordering Party shall pay the amount due to the Contractor bank account ....., by bank transfer, within 30 days from the date of submission to the Ordering Party of a correctly issued invoice in accordance with the payment table indicated above. The date of payment shall be the date on which the Ordering Party's bank account is debited.

7. The invoice shall be issued on the basis of an unqualified signed by the Ordering Party- the protocol of partial or final acceptance of the Subject of the Agreement, respectively, in accordance with § 5 of the Agreement.

8. In the event that the Contractor is registered as an active taxpayer of tax on goods and services, the Ordering Party reserves the right to pay the remuneration due to the Contractor under the Agreement, under the split payment mechanism (hereinafter referred to as the "Split Payment Mechanism") provided for in the provisions of the Act of March 11, 2004 on tax on goods and services (hereinafter referred to as the "VAT Act").

9. The Contractor represents that the bank account indicated by the Contractor into which payment of the consideration due to the Contractor under the Agreement is to be made (applies to Contractors registered in Poland):

a) is an account allowing payment under the Split Payment Mechanism;

b) is an account included in the list of entities (hereinafter referred to as the "List") maintained by the Head of the National Tax Administration referred to in Article 96b of the VAT Act.

10. In the event that the bank account indicated by the Contractor does not meet the conditions specified in paragraph 9, the Ordering Party's delay in making payment within the period specified in the Agreement, resulting from the Ordering Party's inability to pay using the Split Payment Mechanism or to the account on the List, shall not constitute the basis for any claims by the Contractor, including, in particular, shall not entitle the Contractor to demand from the Ordering Party interest or compensation for late payment.

11. Invoices may be issued in writing and sent to the address ....., or in electronic form and sent to the e-mail address .....



12. The Contractor, in accordance with the Law of November 9, 2018 on electronic invoicing in public procurement, concessions for works or services and public-private partnership, has the option to send structured electronic invoices electronically through the Electronic Invoicing Platform. The Ordering Party has an account on the platform <https://brokerpefexpert.efaktura.gov.pl> PEF No: NIP 532-010-01-25. The Ordering Party does not allow sending and receiving other structured electronic documents via the platform, except for correction invoices.

## **§ 8**

### **COPYRIGHTS**

1. The Documentation constituting the subject of the Agreement shall be subject to the protection provided for in the Law on Copyright and Related Rights.
2. The Contractor declares that it will be entitled to copyright in the project documentation produced under the Agreement, and that the Ordering Party's use of the documentation will not infringe any intellectual property rights of third parties. Otherwise, the Contractor agrees to pay all damages and costs in connection with the pursuit of such claims by third parties against the Ordering Party.
3. The Contractor shall transfer to the Ordering Party, as part of the remuneration referred to in § 7 of the Agreement, without time and territorial limitations, the author's economic rights to the works created as part of the execution of the Agreement, upon signing the final acceptance protocol.
4. As part of the remuneration specified in § 7 of the Agreement, the Contractor shall transfer to the Ordering Party the right to authorize the exercise of derivative copyrights to any works developed.
5. as part of performance of the Agreement, i.e. the right to authorize the disposal and use of such derivative works.
6. The transfer of copyrights and the right to authorize the exercise of derivative rights entitles the Ordering Party to dispose of and use the above-mentioned. works in the following fields of exploitation:
  - a) in the field of preservation and reproduction - production of copies of works using a specific technique, including printing, reprographic, magnetic recording and digital techniques;
  - b) in the scope of trade in the original or copies on which the work was recorded - placing on the market, lending or renting the original or copies;
  - c) in the scope of disseminating works in a manner other than that specified in point b) - public performance, exhibition, display, reproduction, broadcasting and rebroadcasting, as well as making the work publicly available in such a way that everyone can have access to it at a place and time of their choosing ,
  - d) use of works at the stage of the tender procedure for the implementation of works and at the stage of execution of works,
  - e) using works or any parts thereof for presentation, combining fragments with other works,
  - f) entering into computer memory or a multimedia network, including the Internet,
  - g) any processing of works, including adaptations and modifications of documentation.
7. The transfer of copyrights in accordance with this paragraph also includes the right to use, obtain benefits and dispose of any studies of the Subject of the Agreement made by the Ordering Party, at the Ordering Party's request or with the Ordering Party's consent, without the need to obtain the Contractor's consent.

8. In the period from the delivery of the works to the Ordering Party until the Parties sign the final acceptance protocol, the Contractor allows the Ordering Party to use the works in the fields of exploitation indicated in section 5 as part of the remuneration referred to in § 7 of the Agreement.
9. Upon the transfer of the copyrights, the ownership of the copies on which the works are recorded is transferred to the Ordering Party, as part of the remuneration specified in § 7.

## § 9

### PERFORMANCE BOND

1. The Contractor declares that prior to conclusion of the Agreement, he has submitted an unconditional performance bond in the form of [...] in the amount of 2.5% of the total remuneration specified in § 7 para. 1, i.e. in the amount of PLN [.....] (in words: PLN [.....] (EUR/USD)), for the period of completion of the Subject of the Agreement (hereinafter referred to as the **Performance Bond**). The Performance Bond shall be provided in the same currency as the concluded Agreement.
2. The purpose of the Performance Bond shall be to secure and possibly satisfy the Ordering Party's claims for non-performance or improper performance of the Agreement by the Contractor, including the Ordering Party's claims under the guarantee or warranty (in particular, among others, those arising from the need for the Ordering Party to remove defects in the Subject of the Agreement as part of substitute performance) and claims under contractual penalties.
3. The Ordering Party shall be the beneficiary of the Performance Bond.
4. The costs of the Performance Bond shall be borne by the Contractor.
5. The Ordering Party undertakes to return the Performance Bond to the Contractor in the amount of 70%, within 30 days from the date the Ordering Party of final acceptance of the Subject of the Agreement without reservation.
6. The Ordering Party shall leave an amount not exceeding 30% of the Performance Bond for claims under warranty for defects or guarantee.
7. The amount referred to in paragraph 6 above, shall be returned no later than on the 15th day after the expiration of the warranty or guarantee period.
8. During the period of performance of the Agreement, the Contractor may change the form of the Performance Bond to one or more of the forms referred to in the provisions of the Law, provided that the change in the form of the Security shall be made while maintaining the continuity of the Performance Bond and without reducing its amount.
9. The Performance Bond shall remain at the disposal of the Ordering Party and shall remain valid for the period specified in the Agreement.
10. If there is no reason for realization of the Performance Bond in whole or in part, it shall be returned to the Contractor in whole or in part, respectively, within the time limits referred to in paragraphs 5 and 7. The Performance Bond provided in cash shall be returned together with the amount of interest resulting from the agreement of the Ordering Party's bank account in which it was kept, less the costs of account maintenance and bank commission for transferring funds to the Contractor's account.

11. The Ordering Party may seek satisfaction from the Performance Bond if any amount due to the Ordering Party from the Contractor in connection with non-performance or improper performance of the Contract is not paid within 14 days from the date of receipt by the Contractor of a written demand for payment.

12. If the period of validity of the Performance Bond provided in a form other than money is shorter than the required period of its validity, the Contractor shall be obliged to establish a new performance bond no later than 30 days before the expiration of the existing Performance Bond.

13. If the Contractor does not submit a new performance security to the Ordering Party within the period specified in paragraph 12, the Ordering Party shall change the form of performance bond to a performance bond in cash, by withdrawing the amount from the existing Performance Bond.

14. In the event of a change or failure to meet the deadline for performance of the Agreement, the Contractor providing Performance Bond in a form other than money shall be obliged to extend the expiration date of the Performance Bond provided accordingly.

## **§ 10**

### **AMENDMENT TO THE AGREEMENT**

1. Pursuant to Article 455 paragraph 1 point. 1 of the Act, the Ordering Party provides for the possibility of amending the provisions of the Agreement in the following cases and under the following conditions:

a) change in the date of execution of the Subject of the Agreement in the following cases:

- downtime and delays not caused by the Contractor, having a direct impact on the timeliness of delivery; the change consists in extending the deadline by the period of stoppages and delays;
- other interruptions in the execution of the delivery, arising for reasons beyond the Contractor's control; the change consists in extending the deadline by the period of the interruptions that occurred;
- by agreement of the Parties in the case described in paragraph 5 of this section. In particular, on the basis of a request submitted by the Contractor in the case of an increase in the scope of execution of the subject of the Agreement. The request with objective justification shall be submitted by the Requesting Party.

b) change of the date of execution of the Subject of the Agreement - in case of occurrence, case of force majeure, by which, for the purposes of these procedure, the Parties understand an event external to the legal bond connecting the Parties of a nature independent of the Parties, which the Parties could not avoid or prevent with due diligence. Force majeure, conditioning the amendment of the Contract, will be considered in particular: flood, fire and other natural disasters, pandemic, epidemic, riots, strikes, terrorist attacks, acts of war, sudden collapse of weather conditions, sudden interruption of electricity supply, radiation or contamination. The Parties allow, among others: the possibility of amending the Agreement in the event of circumstances that hinder or prevent the implementation of the Agreement in connection with the war in Ukraine or other disruption of the supply chain

2. In the event that the situation referred to in paragraph 1(a) and paragraph 3, (b), (c), (d), of this section arises, the Contractor shall be obliged to notify the Contracting Authority in writing at the email address specified in § 2, section 4(a), of this fact, together with justification of the basis for the change and submission of evidence and costing in respect of paragraph 3, (b), (c), (d).

3. Pursuant to Article 436 para. 4(b) of the Act, the Ordering Party shall introduce the possibility of changing the remuneration in the event of a change in:

a) the rate of value added tax and excise tax,

b) the amount of the minimum wage for labour or the amount of the minimum hourly rate, established on the basis of the Act of October 10, 2002 on the minimum wage for labour,

c) the rules for being subject to social insurance or health insurance, or the amount of the premium rate for social insurance or health insurance,

d) the rules for collecting and the amount of payments to employee capital plans, as referred to in the Act of October 4, 2018 on employee capital plans (Journal of Laws, point 2215, and of 2019, point 1074 and 1572)

- if these changes will affect the Contractor's performance costs.

4. In addition to the changes specified in paragraph 4, the Ordering Party shall allow an additional possibility to amend the Agreement pursuant to Article 455 paragraph 2 of the Act. The request with objective justification shall be submitted by the Requesting Party.

5. The change in remuneration due to the changes described in paragraph 4 of this section shall include supplies and work performed after the effective date of the provisions governing the above changes.

6. Pursuant to Article 439 of the Act - the Parties allow a change in the amount of the Contractor's remuneration, i.e. indexation by the value of the price index for goods and services, published in the Announcement of the President of the Central Statistical Office. The change in the amount of the Contractor's remuneration will come into effect no earlier than from the next calendar month following the month in which the Announcement of the President of the Central Statistical Office was published in 2023. The Party initiating the change should submit a request containing a demand for a change in the amount of the remuneration, except that the change in the amount of the remuneration will take effect from the month in which the aforementioned request was submitted. When submitting the request, the Contractor shall submit documents confirming the reasonableness and direct impact of the occurred changes on the cost of contract execution. None of the Parties to the contract will be entitled to change the amount of the Contractor's remuneration in the event that the price increase index of goods and services does not exceed 7%.

The Ordering Party stipulates that the maximum value of the change in the amount of remuneration that it allows as a result of the application of the provisions on the principles of introducing changes to its amount -is 5% of the amount of the total remuneration referred to in §7 point 1.

## § 11

### CONTRACTUAL PENALTIES

1. The Contractor shall pay contractual penalties to the Ordering Party:

a) for delay in execution of the Subject of the Agreement in the amount of 0.05% of the total net remuneration/remuneration for a given Task, referred to in §7 point 1 of this Agreement, for each commenced day of delay, calculated from the next day after the deadline for execution,

b) for delay in case of performance under warranty or guarantee in the amount of 0.02% of the total net remuneration/remuneration for a given Task referred to in § 7 section 1 of this Agreement, for each commenced day of delay, calculated from the next day after the expiration of the performance deadline specified in § 6 section 6,

c) in the event of exceeding the electronic response time to the failure indicated in § 6.5(a), during the warranty period, in the amount of 0.02% of the total net remuneration for each commenced next 12 hours of delay,

d) in case of exceeding the time of personal response to the failure indicated in § 6.5 letter b, during the warranty period in the amount of 0.02% of the total net remuneration for each started next 6 hours of delay,

e) in the event of exceeding the time limit for removal of objections or irregularities reported by the Ordering Party under § 6 paragraph 5 letter b, in the amount of 0.02% of the total net remuneration referred to in § 7 paragraph 1 of this Agreement, for each started day of delay, calculated from the next day after the deadline set by the Ordering Party,

f) for withdrawal from the Agreement for reasons attributable to the Contractor in the amount of 8% of the total remuneration referred to in § 7 paragraph 1 of this Agreement.

2. The Contractor authorizes the Ordering Party to reduce the remuneration referred to in § 7 paragraph 1 of this Agreement by the amount of the accrued contractual penalties.

3. The sum of contractual penalties shall not exceed 10% of the total net remuneration referred to in § 7 paragraph 1 of this Agreement.

4. Payment of contractual penalty by the Contractor shall not deprive the Ordering Party of the right to seek compensation on general terms, if the contractual penalty does not cover the damage caused.

## § 12

### WITHDRAWAL FROM THE AGREEMENT

1. The Ordering Party shall be entitled to withdraw from the Agreement if the Contractor:

a) for reasons attributable to the Contractor, fails to perform the Agreement or performs it improperly and, despite a written or e-mail request to the Contractor by the Ordering Party to resume performance or proper performance of the Agreement within the designated period of time, fails to comply with the Ordering Party's request,

b) without justifiable cause, has interrupted the performance of the Agreement for a period of more than 5 working days and, despite a written or email request to the Contractor by the Ordering Party, has not resumed performance of the Agreement within 5 working days from the date of delivery of the request,

c) for reasons attributable to the Contractor, has not commenced performance of the Agreement, or remains in delay with the performance of the Agreement to such an extent that compliance with the deadline specified in § 2 is doubtful,

d) has entrusted the performance of part of the work under the Agreement to subcontractors, in accordance with the procedure, reserved as key tasks with the obligation of personal performance by the Contractor.

e) has assigned the Agreement or a part of it without the consent of the Ordering Party.

2. In the event of a material change of circumstances resulting in the performance of the Agreement not being in the public interest, which could not have been foreseen at the time of entering into the Agreement, or further performance of the Agreement may jeopardize the vital interest of state security or public safety, the Ordering Party may withdraw from the Agreement within 30 days of becoming aware of these circumstances. In the case referred to in the preceding sentence, the Contractor may claim only a portion of the Remuneration due to him for the performance of a part of the Subject of the Agreement.

3. The declaration of the authorized Party on withdrawal from the Agreement shall be in writing reserved under pain of nullity. The declaration should indicate the circumstances justifying the withdrawal from the Agreement. The declaration should be sent to the other Party by registered mail. The authorized Party may exercise its right of withdrawal under this paragraph within 20 days from the date of becoming aware of the circumstances justifying withdrawal from the Agreement.

4. Within 3 days from the date of withdrawal from the Agreement, the Parties shall draw up a protocol of inventory of work in progress as of the date of withdrawal. In the event that the Contractor is absent,



the Ordering Party shall be entitled to make the inventory unilaterally, without setting an additional deadline.

5. The Ordering Party shall pay the Contractor the remuneration due for the performance of a part of the Subject of the Agreement, according to the prices as of the date of withdrawal, less the contractual penalties charged by the Ordering Party. The protocol of inventory of work in progress referred to in paragraph 4 shall be the basis for the Contractor to issue an invoice for the portion of the Remuneration due to the Contractor for the performance of a part of the Subject of the Agreement.

### § 13

#### FINAL PROVISIONS

1. The Contractor may not, without the prior written consent of the Ordering Party, under pain of nullity, transfer the rights and obligations under the Agreement to a third party, in particular: transfer of receivables, assignment, transfer, sale and pledge of receivables under this Agreement to a third party.

a) If a Consortium is acting as the Contractor, a request to the Ordering Party for consent to the above must be submitted by all members of the Consortium.

2. In implementation of the provision of Article 4c of the Law of March 8, 2013 on Prevention of Excessive Delays in Commercial Transactions, the Ordering Party declares that it has the status of a large entrepreneur within the meaning of Article 4(6) of this Act.

3. The Parties declare that the personal data indicated in the Agreement will be processed with due diligence on the basis of the Regulation of the European Parliament and of the Council (EU) 2016/679 of April 27, 2016 on the protection of natural persons in relation to the processing of personal data and on the free flow of such data and the repeal of Directive 95/46/EC, and the processing of personal data indicated above, is necessary for the purposes arising from the legitimate interests pursued by the Parties.

4. In matters not covered by the Agreement, the provisions of the above-mentioned laws shall apply: Public Procurement Law and the Civil Code.

5. Any changes to the Agreement shall be in writing (in the form of an Appendix) reserved under pain of nullity, with the proviso that the change of data indicated in § 2 paragraph 3 does not require an Appendix.

6. The Contractor shall bear full responsibility for non-performance or improper performance of the Subject of the Agreement.

8. Disputes that may arise in connection with the implementation of the Agreement, the Parties undertake to resolve amicably through negotiations. In the absence of an agreement - disputes will be settled by the court having jurisdiction over the Ordering Party's seat.

9. Any correspondence relating to the Agreement shall be conducted in the Polish language, or in English.

10. The Agreement has been drawn up in four identical copies, two copies for each Party, in Polish and English. In case of conflict Polish version shall prevail. ~~The Agreement has been drawn up in two identical copies.~~

11. The Contractor's Tender and the Appendix to the Agreement shall constitute an integral part thereof.

### § 14

1. Integral part of the Agreement are the following :

- Appendix No. 1: Detailed description of the subject of the Agreement, constituting VOLUME III of the IDW SWZ - (Process Design of the Helium Cooling System of the PoLFEL accelerator with elements of technical design);
- Appendix no. 2: Contractor's offer
- Appendix no. 3: GDPR clause

**ORDERING PARTY**

**CONTRACTOR**