



General Conditions  
for Purchase of Sub-deliveries  
of SES a.s.

Valid from 1<sup>st</sup> November 2014

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## 1 DEFINITIONS, INTERPRETATIONS AND PRIORITY OF DOCUMENTS

- 1.1 Definitions. Unless the Contract expressly provides for otherwise, capitalized terms in the Contract have the following meaning:

**Acceptance Tests** means tests of the Project, the purpose of which is to demonstrate (i) the fulfillment of guaranteed parameters of the Project through guarantee measurements

and (ii) reliability, functionality, operationability and safety of the Project from the aspect of its commercial utilization and operation through tests of sustained operation of the Project and trial run.

**Advance Payment** means, if agreed in the Basic Provisions, a payment of SES to the Contractor designated as "Advance Payment" in the Basic Provisions and payable upon the fulfillment of conditions stated in the Basic Provisions.

**Applicable Laws** means any current or future demand, directive, order, permission, approval, authorisation, direction, rule, ordinance, law or other act published by a Competent Authority which (i) directly or indirectly relate to the Subject of Performance, (ii) are or shall become legally binding and/or should be observed by the relevant Party if acting with due care, considering the extent of obligations of the relevant Party in the fulfilment of the Subject of Performance.

**Amendment** has the meaning stated in Section 31.4.

**Annex** means a document designated so in the Basic Provisions regardless of (i) its form, whether written or electronic, and (ii) the fact whether attached to the Basic Provisions physically.

**Authorized Person** means a supervising worker of the Contractor on the Site, which is authorized in full to act on his behalf.

**Basic Provisions** mean a document designated as a "Purchase Contract", "Contract for Work" or as other "Contract" or "Agreement", which in particular (i) provides for the Purpose of Contract, (ii) specified an extent of the Subject of Performance, specifically the Times for Performance, obligations of SES, the Contract Price and the Partial Payments, and Annexes, (iii) refers to these GC as its part and (iv) is signed by the Parties.

**Commissioning** means a stage of the Project containing the total of all works, tests and measurements made in a period from the completion of a mechanical and electrical installation of the Project up to a successful performance of the Acceptance Tests and shall include also revival of the relevant software necessary for operation of the Project and training, which can be proven, of workers of SES or the Customer/Owner for the use thereof.

**Competent Authority** means a government, state, local, national, international or supranational institution, organization, association, office, inspectorate, courts, ministry or other public or self-governing body with jurisdiction over the territory where (i) the Site is located, (ii) the Subject of Performance being fulfilled, is to be fulfilled or is to be used and/or (iii) the Parties have a registered seat, actual performance of business and/or operate in other manner.

**Contract** means a contractual relationship between SES and the Contractor, the contents of which are made of the Contract Documents and other facts, if any, which shall become part of the Contract upon the conclusion thereof.

**Contract Documents** mean the following documents which jointly stipulate contents of the legal relationship between the Parties in connection with the Subject of Performance: (i) the Basic Provisions, (ii) the SC, (iii) the GC

and (iv) Annexes. For the avoidance of doubts, the Offer forms part of the Contract only if it forms part of the Contract as an Annex.

**Contractor** means a person designated so in the Basic Provisions (as well as his authorized legal successors), which in the Contract acts in the position of a provider of the Subject of Performance, i.e., as a seller, manufacturer or in other similar position as stated in the Basic Provisions.

If the Contractor is a joint venture, consortium, association or other group of person without its own legal personality, then applies that:

- (a) persons associated in such a group are jointly and severally liable towards SES to perform each obligation under the Contract; and
- (b) on behalf of all such persons only 1 (one) of them shall act towards SES, designated as representative/leader in the Basic Provisions, otherwise 1 (one) of them notified jointly to SES promptly upon the conclusion of the Contract. If they fail to do so, SES shall be entitled to act with any member of the joint venture, consortium, association or other group of person without its own legal personality, until delivery of a joint notice from such persons to SES, designating their representative/leader.

**Contract Price** has the meaning stated in Section 7.1.

**Control and Inspection Plan** means a quality assurance plan of the Subject of Performance, which contains in particular (i) steps to ensure quality of the Subject of Performance and certification of the Contractor and/or Sub-contractor and their Personnel and (ii) a plan of control tests, controls and/or inspections during performance of the Subject of Performance on the Site and/or with the Contractor and/or Sub-contractor.

**Construction Site** means a site which is during performance of the Project determined to (i) carry out construction works on the Project, (ii) store construction, transport and other equipment or construction material/stock necessary to perform the Project and (iii) place the Construction Site Equipment. The Construction Site shall include a construction parcel of land, or also other parcels of land or the parts thereof.

**Construction Site Equipment** means construction objects and equipment which during performance of the Project temporarily serve for operational, production, storing and social purposes.

**Cooperation** has the meaning stated in Section 3.5.

**Customer** means a person designated so in the Basic Provisions (as well as its legal successors), which concluded the Main Contract with SES.

**Customer's Claim** means any customer's claim and/or the Owner's claim towards SES in connection with the Subject of Performance, (e.g., warranty claim of the Defect, warranty claim of a delay, application of a contractual penalty, submitting a claim for the compensation of damage, etc.).

**Defect** means any deviation from the actually delivered Subject of Performance or its part from the Subject of Performance or its part presumed by the Contract. As the Defect shall be deemed in particular (i) lack of the Subject of

Performance consisting of other quantity, quality or performance and/or other properties than specified in the Contract and/or in such packing or equipment for transport which is in discrepancy with the manner stated in the Contract, (ii) delivery of other Subject of Performance than provided in the Contract and/or (iii) the Legal Defect.

**Delivery Term** means the respective delivery term (condition) INCOTERMS® 2010 or other similar term (condition) agreed in the Contract.

**Documentation** means a basic design, detailed design, other designs, compliance certificates, designs, drawings, layouts, technical specification, technical reports, accompanying technical documentation, certificates, manuals, including manuals for the Installation, the Commissioning, operation, repair, adjustment, dismantling or maintenance and, safety regulations, testing protocols or any technical and other similar documentation, which SES may reasonably demand from the Contractor in connection with the Goods and the Services.

**Equipment** means the equipment being delivered, made, assembled, reconstructed, repaired, modified etc. by SES (e.g., a boiler), which represents the entire Project or its part as provided for in the Basic Provisions.

**FAC (Final Acceptance Certificate)** means a certificate, confirmation, protocol or other document issued and signed by SES, confirming that the Final Acceptance has occurred.

**Final Acceptance** means such acceptance of the Subject of Performance by SES, which follows after the final acceptance of the Equipment by the Customer/Owner pursuant to the Main Contract.

**Force Majeure** means an extraordinary event and/or circumstance,

- (a) which has occurred upon the conclusion of the Contract independently upon a will and/or control of a Party;
- (b) which prevents such Party to perform obligations under the Contract;
- (c) about which it cannot be reasonably presumed that such Party could such event/circumstance in exerting due care (i) foreseen at the time of the conclusion of the Contract, and/or (ii) mitigate, revert and/or overcome consequences of such event/circumstance; and
- (d) which is not contributable to the other Party, the Customer and/or Owner.

As the Force Majeure shall be deemed in particular the following events/circumstances provided that the above criterions have been met:

- (a) war, a state of war, invasion of enemy troops, mobilization, terrorist attack;
- (b) civil war, uprising, riot, civil disorders, general strike; and/or
- (c) natural disasters e.g., earthquake, hurricane, typhoon, volcanic activity, flood, calamity.

As the Force Majeure shall never be deemed deterioration of the economic situation of a Party, unless such deterioration is a direct, main and immediate consequence of an event or circumstance meeting criterions of the Force Majeure.

As the Force Majeure on the side of the Contractor shall neither, except for the foregoing Section, be deemed (i) lack of labor power, material, stock, energy, production/transport

capacity/means, and/or raw material, idle time, accidents of means of transport, industrial accidents or breakdown of the Contractor and/or Sub-contractor, unless such situation is a direct, main and immediate consequence of an event or circumstance meeting criteria of the Force Majeure, nor (ii) a situation in which the Contractor could also only partially fulfil its obligation through the Sub-contractor, including the hire of another Sub-contractor for part of the Subject of Performance, for the performance of which he has already hired the Sub-contractor, regardless of additional costs related therewith.

**GC** means these General Conditions for Purchase of Sub-deliveries of SES a.s.

**Goods** means any movable asset to be supplied by the Contractor to SES under the Contract, including all components, parts, raw material and other movable assets, from which such movable asset is to be created, and the appurtenances thereof. Upon incorporating the Goods into the Project, as the Goods shall be deemed the relevant part of the Project, also in case if the Goods upon such incorporation form no longer a separate thing in the legal meaning of the word.

**Guarantee** has the meaning stated in Section 18.3.

**Guarantee Period** has the meaning stated in Section 18.3.

**Information about Conditions** means all technical, economical, legal and other documents, information and facts necessary for duly and on time fulfillment of the Subject of Performance, mainly those which directly or indirectly relate to the Subject of Performance and follow from:

- (a) the Project;
- (b) the Main Contract;
- (c) the Purpose of Contract;
- (d) the Place of Performance and the Place of Determination;
- (e) the time of performance, including a period of the year in which the Subject of Performance is to be carried out;
- (f) conditions on the Site, including (i) geological, natural, environmental, weather, social, health and political conditions, (ii) options of the purchase of material and raw material, (iii) access roads to the Site, (iv) options of transit and transport, (v) distance of the Site from inhabited places, (vi) the availability and price of utilities, (vii) availability of transport means, (viii) availability and actual prices of local personnel, regardless of official rates, (ix) factories, power stations and other industrial constructions in the vicinity of the Site; and
- (g) Applicable Regulations.

**Installation** means mechanical and electrical installation of the Goods.

**Instruction** means direction, instruction, directive or regulation in respect to the Subject of Performance (in particular with respect to the change, extension or limitation, manner and time of the performance thereof, etc.), regardless of the form and designation, from (i) SES addressed to the Contractor, or (ii) the Customer/Owner addressed to the Contractor, which SES shall confirm to the Contractor as its own.

**Known Information about Conditions** means the Information about Conditions, (i) known to the Contractor

prior to the conclusion of the Contract or which he could have known if he had acted with due care, whether upon initiative of SES, Customer, Owner, of any third person or upon its own initiative, and/or (ii) which at the time of the conclusion of the Contract he foresaw or could have foreseen, if he had acted with due care.

**Legal Defect** means any third person's right encumbering any part of the Subject of Performance, unless SES agrees expressly in writing to such right. If a third person's right by which the Subject of Performance is encumbered follows from the rights under Section 28.1.1, the Subject of Performance has the Legal Defects, if such right is subject to legal protection under the laws of (i) a country on the territory of which the Contractor, the Customer, the Owner and/or SES has a seat or a place of business, or residency or (ii) a country to which the Subject of Performance is to be further sold/provided or where it is to be used or where it has the Place of Determination.

**Logbook** a construction and/or installation logbook on works of the Contractor on the Site under the Contract.

**Main Contract** means the contract concluded between SES and Customer/Owner for delivery of the Equipment/Project or its part.

**New Information about Conditions** means the Information about Conditions, which does not meet criteria of the Known Information about Conditions.

**Offer** means an offer from the Contractor to provide the Subject of Performance addressed to SES prior to the conclusion of the Contract, as amended, if any.

**Option** means the Contractor's obligation to deliver to SES and upon her request goods, documentation and/or services to the extent and under conditions agreed in the Basic Provisions.

**Owner** means a person, if any, designated so in the Basic Provisions (as well as its legal successors), which concluded the Main Contract with SES or a contract with the Customer for delivery of the Project or its part.

**PAC (Provisional Acceptance Certificate)** means a certificate, confirmation, protocol or other document issued and signed by SES, confirming that the Provisional Acceptance has occurred.

**Partial Payment** means part of the Contract Price related to the fulfillment of the Partial Performance or to the fulfillment of other conditions specified in the Basic Provisions.

**Partial Performance** means single specification of part of the Subject of Performance by its subject and part of the Contract Price.

**Partial Protocol** means any certificate, confirmation, protocol or other document confirming that SES has accepted the Partial Performance.

**Parties** mean SES and the Contractor.

**Personnel** means, except for the Authorized Person (i) all workers, employees and other persons operating on the Site at a will of the Contractor in connection with fulfillment of the Subject of Performance and (ii) all Sub-contractors and their workers, employees and other persons operating on the Site

at a will of the Sub-contractor in connection with the Subject of Performance.

**Place of Determination** means a place where the Subject of Performance is determined as provided for in the Contract.

**Place of Performance** means (i) a place of delivery of the Goods, if the Subject of Performance or of its part are Goods, (ii) a place of submission of the Documentation, if the Subject of Performance or of its part is the Documentation and (iii) a place of provision of the Service, if the Subject of Performance is the Service.

**Progress Report** has the meaning stated in Section 5.3.

**Project** means the Equipment, power station, heat station or other object which is to be constructed, renewed, repaired, reconstructed, adjusted or extended on the Site, or as part of which the Subject of Performance is to be made or use otherwise, as provided in the Basic Provisions.

**Provisional Acceptance** means such acceptance of the Subject of Performance by SES, which follows after acceptance of the Equipment by the Customer/Owner under the Main Contract for the due use and commercial operation. Notwithstanding the foregoing sentence, the Provisional Acceptance shall never occur prior to the successful performance of the Acceptance Tests.

**Purpose of Contract** means a basic core of the Contract and the reason and target pursued by SES in the conclusion of the Contract, as provided for in the Basic Provisions.

**Retention for Guarantee Period** has the meaning stated in Section 8.11.

**Retention for VAT** has the meaning stated in Section 8.12.

**SC** means special conditions for purchase, if any, and which provide for, amend and/or supplement GC.

**Services** mean all obligations of the Contractor under the Contract having the nature of activities or works. As the Service shall be deemed in particular the Contractor's obligation to (i) carry out works and activities related to delivery of the Goods and Documentation, in particular the activities and works specified in Article 11, (ii) carry out the Installation and/or Commissioning, if such obligation is stated in the Basic Provisions and/or the SC, (iii) provide the Supervision to SES, if such obligation is stated in the Basic Provisions, (iv) provide to SES other technical cooperation, support, assistance, supervision, control and other service, if SES may demand it reasonably from the Contractor.

**SES** means SLOVENSKÉ ENERGETICKÉ STROJÁRNE a.s., with her seat at Továrnská 210, 935 28 Tlmače, BIN: 31 411 690 (as well as her legal successors), which in the Contract is in the position of the customer of the Subject of Performance, i.e., as a purchaser, customer or in other similar position as stipulated in the Basic Provisions.

**Site** means geographic and/or other determination of the Project, as it is stated in the Basic Provisions.

**Situation Report** has the meaning stated in Section 5.3.

**Sub-contractor** means any person (as well as its legal successors), with which the Contractor intends to conclude and/or will conclude a contract on supply, performance and/or making certain part of the Subject of Performance, as well as sub-contractors of such a person.

**Subject of Performance** means the Goods, Documentation and Services, or the combination thereof forming a whole (a work), in particular if the Basic Provisions are designated as the Contract for Work to be delivered, submitted and provided by the Contractor regarding the Project under the Contract and/or according to what may be reasonably interpreted from the Contract and includes all necessary to perform the Purpose of Contract (including the rights under Section 28.1.1), save for those provisions which are expressly stipulated in the Article "Obligations of SES" of the Basic Provisions. The Subject of Performance shall also include a delivery of special tools necessary for the due use and operation and/or regular maintenance of the Subject of Performance.

**Supervision** means professional supervision, control and/or technical cooperation over the due and on-time activity on the Site, in particular over correctness of the Installation and the Commissioning, and shall also include revival of the relevant software necessary for operation of the Project and training, which can be proven, of workers of SES or the Customer/Owner for the use thereof.

**Third Countries** means countries outside of the European Union.

**Time for Performance** means determination of time in the Basic Provisions, in which the Contractor shall be obliged to fulfill the Partial Performances, other parts of the Subject of Performance, or the Subject of Performance as a whole, in particular through (i) precise date, (ii) a period counted from a certain date or other fact or (iii) a time period in which the Contractor is to fulfill the Partial Performance, other part of the Subject of Performance, or the Subject of Performance as a whole.

**Time Schedule** has the meaning stated in Section 5.2.

**VAT** means a value added tax and/or any similar tax which replaces it or is collected instead of it. For the avoidance of doubts, other taxes to which delivery of the Subject of Performance or its part is subject, in particular the sales tax, shall not be deemed VAT.

**Workplace** means a place on the Site which is designated during performance of the Project to (i) perform works other than construction works on the Project and (ii) store other than construction and transport facilities or construction material/stock necessary to perform the Project.

1.2 **Interpretation.** In the interpretation of the Contract, unless the Contract expressly provides for otherwise, or unless the context of the Contract unambiguously provides for otherwise, the following provisions shall apply:

1.2.1 Relationship to the governing law, Applicable Laws and other legal regulations.

- (a) If a certain situation cannot be solved under a specific provision of the Contract, such provision of the Contract shall apply which provides for the situation the most similar from the aspect of its contents and purpose.
- (b) If a certain situation cannot be solved under Section 1.2.1 (a), business practice shall apply, used in the international construction practice in the energy sector, otherwise in the general international construction practice.



- (c) If a certain situation cannot be solved under Section 1.2.1 (a) and Section 1.2.1 (b), business practice shall apply used in the general international practice.
- (d) Contract provisions shall be interpreted at each time to the widest possible extent in such a manner so as not to contradict to provisions of the governing law, from which the Parties may not derogate by agreement.
- (e) Provisions of the governing law, Applicable Laws and other legal regulations cannot apply to circumvent and/or exclude provisions of the Contract.

#### 1.2.2 Mutual connection of Contract provisions.

- (a) The interpretation of each Contract provision must be rational and reasonable and the consequences following from interpretation of the Contract must correspond to what both Parties could reasonably forecast, if they acted with due care.
- (b) Each Contract provision shall be interpreted in good faith and in accordance with fair dealings in such a manner that the meaning and purpose of the relevant provision be preserved.
- (c) References to Articles and Sections in the Basic Provisions are references to Articles and Sections in the Basic Provisions. References to Articles and Sections in the SC are references to Articles and Sections in the SC. References to Articles and Sections in the GC are references to Articles and Sections in the GC. If Articles and Sections are internally separated into further Sections, letters and paragraphs (e.g., Section 2.1 to Sections 2.1.1 through 2.1.5), a reference to Article or Section shall also mean a reference to all further Sections, letters and paragraphs into which it is internally divided.
- (d) The headings and the table of contents are inserted for reference only and shall not affect interpretation of the Contract.
- (e) In interpreting the Contract also the Main Contract shall always be considered so that the Purpose of Contract would be preserved, if not quite unfair for the Contractor.

#### 1.2.3 Practice between the Parties.

- (a) Good practice between the Parties, whether prior to or after the conclusion of the Contract, shall be considered only to the extent in which the same does not contradict to a wording of the Contract.
- (b) Representations of the Parties upon conclusion of the Contract shall be interpreted with respect to circumstances under which they have been made.
- (c) No consequence may be acknowledged to a disputable representation of a Party upon conclusion of the Contract, which consequence a prudent entrepreneur would not wish to

achieve by the representation (i) being in a similar position as a Party making the representation and (ii) acting in a good faith.

#### 1.2.4 Exercise of rights and performance of obligations.

- (a) Unless the Contract provides for otherwise, nobody may take benefits from a violation of its obligation.
- (b) The terms "**right**" and "**claim**" are mutually interchangeable. The right of one Party shall be simultaneously interpreted as a corresponding obligation of the other Party.
- (c) The terms "**obligation**" and "**duty**" are mutually interchangeable. The obligation of one Party shall be simultaneously interpreted as a corresponding right of the other Party.
- (d) In respect to the phrase "**submission of a claim**" shall apply that:
  - (i) As the due submission of a claim shall be deemed a moment of delivery of such claim of a Party to the other Party, if made in accordance with the Contract. No other than the due submission of a claim shall be considered. Contract provisions stipulating consequences of deficiencies in the submission of a claim remain unaffected;
  - (ii) If a statute of limitation under the governing law starts running sooner than a duly submitted claim was delivered to the other Party, a period for the submission of an submitted claim to the relevant court (statute of limitation) to start running upon the due submission of a claim,
  - (iii) If the governing law disallows the agreement under Section 1.2.4 (d) point (ii) and the statute of limitation under the governing law to start running from an earlier event (e.g., occurrence of damage), for such cases shall apply that on a day of the due submission of a claim there has been an event, to which the governing law connects the beginning of the statute of limitation; and
  - (iv) If (a) the governing law disallows the agreement under Section 1.2.4 (d) point (ii) and Section 1.2.4 (d) points (iii), and (b) the statute of limitation under the governing law to start running sooner than a duly submitted claim was delivered to the other Party, it is presumed that an objection towards the lapse of time in a court or arbitration proceeding raised by the obliged Party within a decisive period is in discrepancy with good morals, fair dealings and/or a good faith principle, unless a Party making such objection in such a proceeding proves otherwise. As the decisive period under the foregoing sentence shall be deemed a period which corresponds to a length of the statute of

limitation under the governing law counted from the due submission of a claim.

- (e) The phrase "**in its sole discretion**" of a person means that such person is entitled to take or not to take an action, to which such phrase refers, which such person deems fit and without any obligation to justify its decision or specify any reasons or incentives for such a decision.
- (f) The phrase "**due care**" of a person means prudent conduct corresponding to the highest standards of professionalism and reflecting long-term and extensive experience of the given person in the area of its specialization. For the avoidance of doubts, a person shall ever act with due care if it violates any obligation under the Contract.
- (g) The phrase "**material violation**" means such violation about which a breaching Party at the conclusion of the Contract knew or could have reasonably presumed, if acting with due care, that considering the Purpose of Contract and circumstances of the conclusion of the Contract the other Party shall not be interested in the performance of obligations of a breaching Party in case of such violation. It is presumed in doubts that a violation is not material.
- (h) The terms "**fulfill**", "**perform**", "**carry out**", "**supply**", "**deliver**", "**submit**" and "**provide**" are mutually interchangeable, depending upon the nature of an obligation and demand the due and on-time fulfillment of such obligation, not only its performance. If the Contract demands that a Party fulfill its obligation duly, it means also on-time and vice-versa. As an on-time fulfillment of an obligation shall be deemed the fulfillment of an obligation within a period expressly stipulated in the Contract. If the Contract does not expressly provide for such period, the obliged Party shall be obliged to perform its obligation in a reasonable period from the event decisive for the beginning of running of the period, having regard to circumstances of the case and the nature of obligations. If the Contract specifies 2 (two) or more events decisive for the beginning of running of the period, then it shall apply that a period begins to run from the event which occurred earlier, if to the benefit of a person, the benefit of which is supported by the relevant provision. The provision of the foregoing sentence applies equally also in other situations, in which one event occurs earlier than the other one.
- (i) The terms "**day**", "**week**", "**months**" or "**year**", has a meaning according to the Gregorian calendar and "day" means 1 (one) calendar day, "week" means 1 (one) calendar week, "months" means 1 (one) calendar month and "year" means 1 (one) calendar year. A period determined under hours begins running

immediately. If such moment cannot be determined, it shall apply that a period of 24 hours and shorter shall mean a period of 1 (one) day, and reasonably shall be applied also in case of longer periods determined under hours. A period determined under days begins on a day which follows an event decisive for its beginning. The end of a period determined under weeks, months and years falls on a day, which by name or number corresponds to a day on which falls an event decisive for its beginning. If such a day in a month does not exist, the end of a period shall fall on the last day of the relevant calendar month.

- (j) In respect to the phrase "**claim for the compensation of costs**" shall apply that:
  - (i) If a claim for the compensation of costs under the governing law is part of a claim for the compensation of damage, in cases in which a Party is entitled to the compensation of costs, it shall apply that (i) a Party's claim for the compensation of damage shall correspond only to a Party's claim for the compensation of costs to the extent of the Contract and in the remaining part of the claim for the compensation of damage (e.g., lost profit) a Party's claim for the compensation of damage shall be excluded, (ii) for purposes of Section 23.1 a Party's claim for the compensation of costs shall be deemed other pecuniary claim of a Party under the Contract and (iii) a claim for the compensation of costs in case of the Contractor may never exceed the total Contract Price, unless the relevant exemption under Section 23.2 is fulfilled.
  - (ii) If the Contractor is entitled to the compensation of costs, as such costs shall be deemed exclusively costs in connection with the fact establishing such claim, which (i) the Contractor has reasonably and purposefully expended, and the expenditure of which he shall demonstrate by the relevant written documents, and (ii) shall not include any profit (not even lost) of the Contractor.
  - (iii) If SES is entitled to the compensation of costs, as such costs shall be deemed costs which SES has reasonably and purposefully expended in connection with the fact establishing such claim, and the expenditure of which she shall demonstrate by the relevant written documents.
- (k) The term "**damage**" means an amount corresponding to a loss incurred by the other Party as a result of violation of a legal obligation by a breaching Party, and which a breaching Party at the conclusion of the Contract for the case of violation of its legal obligation forecasted or could have forecasted, if it had acted with due care.

Notwithstanding the foregoing sentence, it applies that as damage shall be deemed in particular (i) costs of a damaged Party purposefully expended to ensure the status which would occur if a breaching Party would not violate its legal obligation, (ii) a profit which a damaged Party failed to make as a result of violation of a legal obligation by a breaching Party (lost profit), (iii) additional costs which a damaged Party reasonably and purposefully expended as a result of violation of a legal obligation by a breaching Party in preventing from the occurrence of another damage or in mitigation of the consequences of damage, (iv) costs related to the submission of claims under the Contract, whether before the relevant court or not, and (v) a loss of a damaged Party incurred in connection with the submission of claims by third parties (including Customer, Owner and/or Sub-contractor) as a result of violation of an obligation by a breaching Party.

Notwithstanding the specification of damage pursuant to the foregoing sections, (i) a damaged Party need not enumerate a loss with mathematical correctness, (ii) the compensation of damage cannot get a damaged Party to a better situation than it would be in if a breaching Party would not violate its legal obligation and (iii) the compensation of damage is not to fulfil a punitive title.

- (l) The term "**detriment**" means damage and any immaterial detriment incurred by a damaged Party which can be expressed in money, in particular a detriment as a result of damaging the reputation of a Party.
- (m) If a Party does not have towards the other Party "**any claim**", means that that Party shall not have any claim whether under the Contract, governing law, Applicable Laws and/or other legal regulation.
- (n) The terms "**containing**", "**including**" and/or "**in particular**" are mutually interchangeable and shall be construed as if the words "without limitation" and/or "inter alia" follow after them.
- (o) The term "**in writing**" or "**writing**" means a document (i) written by hand or machine, printed or otherwise existing in the form of a permanent record, (ii) signed by an acting person and (iii) allowing recording its contents and the determination of an acting person. Unless the Contract expressly provides for otherwise, as a written document shall not be deemed a document in an electronic form.

#### 1.2.5 Technical terms.

- (a) Technical terms not defined in the Contract shall be construed as usual in international practice with regard to projects comparable to and/or similar with the Project.

- (b) Unless the Contract provides for otherwise, all weights, quantity and sizes stated in the Contract are expressed in the metric system.

#### 1.2.6 Other interpreting rules.

- (a) The terms and phrases stated in Sections 1.1, 1.2.1 and 1.2.4 shall be interpreted equally also in the relevant grammar forms, as well as in case that a specific provision of the Contract derogates from the exact wording of a term /phrase in a manner not raising doubts in a bona fide interpretation.
- (b) The terms in singular include also plural and vice versa, and the terms in masculine gender include feminine gender and vice versa.
- (c) Any reference to any contract or other document shall be construed as a reference to such contract or other document as amended and supplemented, including novation of such contract or other document.
- (d) Any reference to any decision, permit, consent or other action of a public authority shall be construed as a reference to such decision, permit, consent or other action, which is valid and effective.

#### 1.3 Priority of the Contract Documents.

- 1.3.1 Unless the Basic Provisions or the SC expressly provide for otherwise, in case of any discrepancy between individual Contract Documents, the following order shall apply determining the legal power thereof:
  - (a) Basic Provisions;
  - (b) the SC;
  - (c) the GC; and
  - (d) Annexes, under the numbering thereof specified in the Basic Provisions and/or SC.
- 1.3.2 In case of any discrepancy between individual provisions of the GC, the following provisions of the GC has the supreme legal power: Sections 3.1 through 3.3, 4.6, 5.5, 7.1, 21.11, Articles 23 and 24 and Section 31.4. The applicability of such provisions may only be excluded/restricted by the provisions of the Basic Provisions or the SC, which do so expressly in the form of derogations (e.g., "the provision of Section 4.6 shall not apply", "the provision of Section 4.6 shall not apply to the extent", the provision of Section 4.6 shall be replaced as follows:", etc.).
- 1.3.3 In case of any discrepancy between data stated in number and in words as part of the same Contract Document, the data in words shall prevail.
- 1.3.4 In case of any discrepancy between graphic and text data as part of the same Contract Document the text data shall prevail.
- 1.3.5 If a discrepancy is not removed even with the application of the rules under Sections 1.3.1 through 1.3.4, SES shall determine which provision from



among mutually contesting provisions shall prevail. If such determination objectively represents the New Information about Conditions with material impact on the contents of rights and obligations under the Contract, the Parties shall proceed under Section 4.7. It shall apply in other cases that such determination does not constitute to the Contractor towards SES any claim and shall not discharge the Contractor from the obligation to fulfill its obligations duly and on time.

As discrepancy under this Section 1.3 shall be deemed only express discrepancy, as a result of which one from among provisions of the Contract Document or its part cannot be considered.

## 2 REPRESENTATIONS OF PARTIES

### 2.1 Representations of the Contractor. The Contractor represents that

- 2.1.1 he is a duly established and existing company under the laws of a venue of its registration;
- 2.1.2 the Contract towards him corresponds to a valid, effective, binding and enforceable obligation;
- 2.1.3 as a person acting with due care disposes of necessary permits, capacity, knowledge and experience necessary for the due and on-time performance of all its obligations under the Contract;
- 2.1.4 prior to concluding the Contract he has acquainted with due care in detail with all Known Information about Conditions, understood the contents thereof, thoroughly reviewed the same and has no objections, comments or reservations thereto; and
- 2.1.5 prior to concluding the Contract he has considered with due care all technical, commercial, legal and other aspects and risks related to its obligations and liability under the Contract.

### 2.2 Representations of SES. SES represents that

- 2.2.1 she is a duly established and existing company under the laws of the Slovak Republic; and
- 2.2.2 the Contract towards her corresponds to a valid, effective, binding and enforceable obligation.

### 2.3 Liability for representations. Each Party shall be liable in full for any detriment to the rights of the other Party, if any from among the representations of a liable Party under Sections 2.1 and 2.2 shows to be even partially incorrect, incomplete and/or untrue. The claim for the compensation of detriment under the first sentence of this Section cannot be restricted or excluded. Other claims under the Contract remain unaffected. The provisions of this Section shall also apply to similar representations of the Parties upon the conclusion of the Contract.

## 3 SUBJECT OF PERFORMANCE

### 3.1 Subject of Performance. The Contractor agrees to deliver to SES the Subject of Performance to the extent, in the manner and under conditions stated in the Contract. The Subject of Performance must be in accordance with the Contract, the Main Contract and the Applicable Laws in such a manner as it is necessary to achieve due completeness, operationability, functionality, requested parameters and to ensure sustained, reliable and safe operation of the Project, regardless of the fact whether it is completely specified in the Contract or not.

### 3.2 Due care. The Contractor agrees to act with due care in the performance of its any obligation and the exercise of any right under the Contract. The fact that the Contract in certain provisions specially underlines the Contractor's obligation to act with due care shall not be construed in such a manner that he shall not have such obligation in other cases.

### 3.3 Quality of the Subject of Performance. The Subject of Performance shall be new, of best quality taking into consideration state-of-the-art of their technical solution, free from any Defects and in compliance with all requirements of the Contract and the Applicable Laws, whether express or implied. In case that the Contract refers to any other document, standard, norm etc., any and all such documents, standards, norms etc. shall be binding on the Contractor. However; regardless of the foregoing sentence, if the Contract refers to commercial terms and conditions of the Contractor or other commercial terms and conditions other than the GC or the SC, such reference shall not be considered. If the Subject of Performance is made of several same Goods, such must be fully interchangeable.

### 3.4 Documentation. The Contractor agrees to provide to SES all Documentation in the number, languages, place and time under the Contract. Unless agreed for the Documentation in the Basic Provisions, the SC or by the Parties otherwise in respect to

- (a) a number of counterparts, the Contractor shall submit to SES the Documentation in a sufficient number to achieve the intended Purpose of Contract; however, not less than 2 counterparts;
- (b) a language, the Contractor shall submit to SES the Documentation in the Slovak language and the language used or requested for the Project by the Customer/Owner,
- (c) a format, the Contractor shall submit to SES the Documentation in a usually used format so that the Documentation be well-arranged, easy to read, editable and suitable for adjustment, copying and scanning. The Contractor shall deliver the Documentation also in an electronic form in the format \*.pdf on a CD carrier or other similar carrier. Unless the Contract expressly provides for a form of the Documentation, the Contractor shall submit the Documentation in a written and also an electronic form. Unless the Contract provides that also a copy of the Documentation is sufficient, the Contractor shall be obliged to submit the original to SES.

If the Contractor is to deliver the Goods pursuant to European legislation on conformity assessment, the Contractor shall be obliged to submit to SES document

"Conformity Declaration" and designate the Goods with the mark "CE" in accordance with European legislation on conformity assessment. In other cases the Contractor shall be obliged to submit to SES a document declaring the quality and completeness of the Goods and designate the Goods with a mark pursuant to the Applicable Laws of a country of registration of the Contractor.

3.5 Cooperation. The Contractor shall be obliged to provide, with due care and in light of its representations under Section 2.1, upon request, to SES duly and on-time any cooperation and support in connection with the solution of any Customer's Claims, necessary for purposeful and efficient protection of the rights of SES towards the Customer/Owner (the "Cooperation"). The obligation of the Cooperation shall include in particular the following obligations of the Contractor towards SES:

- 3.5.1 provide duly and on-time all necessary information, documents, reports and explanations related to the Subject of Performance in accordance with requirements of SES;
- 3.5.2 participate through its authorized and qualified workers, or authorized and qualified workers of the Sub-contractors, in meetings and negotiations with SES, Customer and/or Owner;
- 3.5.3 be engaged in a process of technical assessment of the Customer's Claim and provide full cooperation to technical advisors, experts and other persons engaged in a solution of the Customer's Claim;
- 3.5.4 in case of the beginning or a risk of the beginning of any litigation or arbitration proceeding between SES on one side and the Customer and/or Owner on the other side, provide to SES full support, cooperation and aid in any stage of such a proceeding, including (i) full support and aid in proposing, obtaining, making, reviewing and interpreting evidence and (ii) participation in hearings through the workers under Section 3.5.2 as a witness.

The provisions of this Section shall apply also upon termination of the Contract. The Contractor's obligation to provide the Cooperation is not part of the Subject of Performance; however, any remuneration therefor, including any costs of the Contractor, shall be deemed reflected in the Contract Price.

#### 4 CHANGES IN THE SUBJECT OF PERFORMANCE

4.1 Instructions. The Contractor agrees to fulfil the Subject of Performance in accordance with the Instructions. Any other order, instruction, guidance or regulation, regardless of its form, designation or author, shall not affect the rights and obligations of the Parties under the Contract.

4.2 Assessment of Instructions. The Contractor shall be obliged to promptly assess each Instruction. The Contractor shall be obliged to notify SES, without undue delay; however, not later than 10 (ten) days of receiving the Instruction, of

- 4.2.1 possible Defects, which performance of the Instruction may cause and submit to SES a written

report explaining technical, economical, legal and other relevant aspects of the Instruction in respect to possible Defects;

4.2.2 a possible impact of the Instruction on the performance of the Contractor's obligation to fulfil the Subject of Performance on time, submit to SES a written report explaining technical, economical, legal and other relevant aspects of the Instruction in respect to the Times for Performance and propose adjustment of the Times for Performance; and/or

4.2.3 a possible impact of the Instruction on the Contract Price (a decrease by saved costs and a profit or an increase by additional costs, which the Instruction may cause on the side of the Contractor), submit to SES a written report explaining technical, economical, legal and other relevant aspects of the Instruction in respect to the Contract Price and propose adjustment of the Contract Price.

The Contractor shall not be obliged to proceed under the second sentence of this Section 4.2 (including Sections 4.2.1 through 4.2.3) only if the Instruction objectively cannot cause the Defects or does not affect the Times for Performance and/or the Contract Price.

#### 4.3 Confirmation of the Instruction.

4.3.1 If SES notifies the Contractor in writing that despite the notification and written report under Section 4.2.1 she insists of the Instruction, the Contractor shall not be held liable for the Defects which have been (i) directly caused by such Instruction and (ii) stated in the notification and written report under Section 4.2.1. The written notification of SES under the foregoing sentence represents a confirmation of the Instruction and at the same time it becomes part of the contents of the Contract. The provisions of Section 4.3.2 remain unaffected.

4.3.2 In the cases under Sections 4.2.2 and 4.2.3, SES shall notify the Contractor in writing that she agrees to the adjustment of the Times for Performance and/or of the Contract Price or shall specify its reservations. If SES to the proposed adjustment of the Times for Performance and/or the Contract Price

- (a) agrees, then such consent, even though written, shall not affect the rights and obligations of the Parties until the moment, when the Parties confirm an agreement on the Instruction and adjustment of the Times for Performance and of the Contract Price in writing in the form of an Amendment. The conclusion of such Amendment shall simultaneously correspond to confirmation of the Instruction. The confirmation of the Instruction from the side of SES pursuant to the foregoing sentence shall not discharge the Contractor from any liability under the Contract;
- (b) disagrees; however, she insists on exercise of the Instruction, the Contractor shall submit to

SES in good faith a revised proposal of adjustment of the Times for Performance and/or of the Contract Price with regard to the reservations of SES. If SES agrees to the revised proposal, the Parties shall proceed under Section 4.3.2 (a). If SES disagrees to such revised proposal; however, still insists on exercise of the Instruction, such written notice of SES shall be deemed confirmation of the Instruction with the understanding that the contents of the Contract shall change to the extent of the Instruction, and the Parties shall reserve the issue of impact of the Instruction on the Times for Performance and the Contract Price as open;

- (c) disagrees and fails to insist on exercise of the Instruction, the Contractor shall carry on in the fulfillment of the Subject of Performance without changes and shall not have towards SES any claim in connection with the Instruction.

4.4 Exercise of the Instruction. The Contractor shall at each time be liable for the due and on-time exercise of the Instruction and it shall further apply that:

- 4.4.1 If Contractor is not obliged to proceed under the second sentence of Section 4.2 (including Sections 4.2.1 through 4.2.3), such Instruction shall become without further action part of the Contract, without any necessity of the confirmation thereof, and the Contractor shall begin to exercise it promptly without any claim towards SES, and the Contractor may not discharge from liability for the due and on-time fulfillment of his obligations under the Contract with a reference to such Instruction.
- 4.4.2 If the Contractor is obliged to proceed under the second sentence of Section 4.2 (including certain from Sections 4.2.1 through 4.2.3); however, fails to fulfill such obligation, it shall apply that to the extent of a non-fulfilled obligation the Contractor shall not have towards SES any claim and cannot be discharged from the liability for the due and on-time fulfillment of his obligations under the Contract with a reference to such Instruction.
- 4.4.3 If the Contractor is obliged to proceed under Section 4.2.1 (regardless of the fact whether he is simultaneously obliged to proceed also under Sections 4.2.2 and/or 4.2.3), the Contractor shall begin to exercise the Instruction promptly upon there is the confirmation of the Instruction under Section 4.3.1.
- 4.4.4 If the Contractor is obliged to proceed only under Sections 4.2.2 and/or 4.2.3 (however; not under Section 4.2.1), the Contractor shall begin to exercise the Instruction promptly also if the Instruction contains an express request of SES that the Contractor exercise the Instruction promptly, regardless of its impact on the Times for Performance and/or the Contract Price. The obligations of the Contractor to proceed under

Sections 4.2.2 and 4.2.3 thereby shall remain unaffected. However; if the Contractor is simultaneously obliged to proceed also under Section 4.2.1, the Contractor shall not begin to exercise the Instruction sooner than there is the confirmation of the Instruction under Section 4.3.1.

4.5 Termination of exercise of the Instruction.

- 4.5.1 The termination of exercise of the Instruction under Sections 4.4.1 and 4.4.2 need not be formally confirmed, unless SES determines otherwise.
- 4.5.2 If the Parties agree on adjustment of the Contract Price and/or Times for Performance in the form of an Amendment yet prior to beginning of the exercise of the Instruction, the Parties shall confirm termination of the exercise of the Instruction by signing a protocol which the Contractor shall submit to SES without undue delay upon termination of the exercise of the Instruction. The signing of such protocol from the side of SES is a document entitling the Contractor to issue an invoice for adjustment of the Contract Price, unless the Parties agree in such Amendment otherwise. The signing of such protocol from the side of SES shall not affect any other rights and obligations of the Parties, unless the Contract expressly provides for otherwise, in particular, is not evidence that the Contractor has exercised the Instruction duly and on-time, regardless of the contents of such protocol.
- 4.5.3 If the Parties reserve the issue of impact of the Instruction on the Times for Performance and/or the Contract Price as open, the following provisions shall apply:
  - (a) If the exercise of the Instruction lasts longer than 15 (fifteen) days, the Contractor shall be obliged to notify SES from time to time of incurred costs and propose adjustment of the Times for Performance at each time by 5 (five) days upon expiry of the relevant 15-day period. Such notices shall be subject to the provisions of Sections 4.2.2 and 4.2.3 accordingly. If the Contractor fails to fulfill the obligation pursuant to the foregoing sentence, he shall not have towards SES any claim for a 15-day period of the exercise of the Instruction, for which he failed to fulfill such obligation.
  - (b) If the Contractor believes that he has duly exercised the Instruction; however, not later than 15 (fifteen) days from the day on which it becomes obvious that the Contractor exercised the Instruction, the Contractor shall (i) notify SES in writing of such fact, (ii) submit to SES documents proving the due exercise of the Instruction and a protocol signed by the Contractor, (iii) submit to SES a detailed settlement of its additional costs, the reimbursement of which the Contractor demands and a proposal to adjust the Contract Price and/or Times for Performance, including comparison with the proposals under Sections 4.2 and 4.3 and (iv) request SES to sign such

protocol and approve in writing adjustment of the Contract Price and/or Times for Performance.

- (c) SES shall be obliged within 60 (sixty) days upon fulfillment of the Contractor's obligation under Section 4.5.3 (b) to sign such protocol and deliver the same to the Contractor or (ii) reject the Contractor's request to sign the protocol under Section 4.5.3 (b) with specification of reasonable grounds. A reasonable ground shall be at each time deemed if the Contractor failed to exercise the Instruction free from the Defects, regardless of the extent and nature thereof. If this relates to the Instruction upon initiative of the Customer and/or Owner, the period under the first sentence of this letter (c) shall begin running upon delivery of a response from the Customer and/or Owner to SES at the request of the Contractor under Section 4.5.3 (b). For the avoidance of doubts, SES shall not be obliged to respond to the Contractor's request to approve adjustment of the Contract Price and/or Times for Performance.
- (d) SES is in her own discretion entitled to sign the protocol under Section 4.5.3 (b) also despite any Defect and/or despite disagreement to the proposed adjustment of the Contract Price and/or Times for Performance. If SES signs such protocol despite Defects, the Contractor shall be obliged to remove Defect of the exercised Instruction by the date agreed or set by SES. A list of Defects, dates for the removal thereof as well as the manner of the removal thereof shall be specified in an annex to the protocol under Section 4.5.3 (b), confirmed by both Parties. For the avoidance of doubts, the signing of such a protocol shall not be deemed consent of SES to adjustment of the Contract Price and/or Times for Performance.
- (e) If SES fails to fulfill its obligation under Section 4.5.3 (c), the protocol under Section 4.5.3 (b) shall be deemed concluded from the side of SES on a day following the period under Section 4.5.3 (c). No other conduct/omission of SES, Customer and/or Owner has effects pursuant to the foregoing sentence. If the Contract refers to the signing of the protocol under Section 4.5.3 (b), it shall mean the signing of such protocol from the side of SES, as well as a fiction of the signing under this letter (e).
- (f) The protocol signed by the Parties under Section 4.5.3 (b) is a document proving termination of the exercise of the Instruction. If SES approves simultaneously, in addition to signing of such protocol, in writing a proposal to adjust the Contract Price and/or Times for Performance, the protocol concluded by the Parties is also a document authorizing the Contractor to issue an invoice to adjust the Contract Price and/or proceed under adjusted Times for Performance. If SES fails to approve

in writing adjustment of the Contract Price and/or Times for Performance (regardless of signing, if any, of the protocol under Section 4.5.3 (b)), it shall apply to the non-approved extent that the contents of the Contract has not changed in part of the Contract Price and/or Times for Performance, and the Contractor shall be obliged for the submission of such claims to proceed under Section 26.2. The signing of the protocol under Section 4.5.3 (b) from the side of SES shall not affect any other rights and obligations of the Parties, unless the Contract expressly provides for otherwise, in particular, it does not represent proof that the Contractor exercised the Instruction duly and on-time, regardless of the contents of such protocol.

- 4.6 Exclusion of Contractor's claims from the Instruction. Regardless of any other provision of Article 4, no Instruction authorizes the Contractor to submit towards SES any claim, or be discharged from liability for the due and on-time performance of its obligations under the Contract, if the Instruction has been evoked or caused by an event for which the Contractor is liable.
- 4.7 Changes upon initiative of the Contractor. If the Contractor learns or could have learned upon conclusion of the Contract, if he had acted with due care, about the New Information about Conditions, which from the aspect of the Contractor or from the aspect of other contractor acting with due care, have or could have impact on the due and on-time performance of obligations of the Contractor under the Contract, the Contractor shall be obliged, without undue delay; however, not later than within a period of 10 (ten) days from the day on which he has learned or could have learned about the New Information about Conditions, if he had acted with due care, to proceed under Section 4.2. For such purposes shall apply that the New Information about Conditions shall be deemed the Instruction and Sections 4.2 through 4.6 shall apply. If the Contractor fails to fulfill the obligation under the first sentence of this Section, (i) the Contractor shall not have towards SES any claim, (ii) the Contractor cannot discharge itself from liability for the due and on-time fulfillment of its obligations under the Contract with a reference to such New Information about Conditions and (iii) such New Information about Conditions shall be deemed the Known Information about Conditions.
- 4.8 No change of the Subject of Performance. Unless the Contract expressly provides for otherwise, the Contractor shall not be entitled to make any changes of the Subject of Performance without prior written consent of SES.

## 5 TIME OF PERFORMANCE

- 5.1 Times for Performance. The Contractor agrees to fulfil the Subject of Performance in accordance with Times for Performance. If in the Basic Provisions or the SC no Time for Performance is agreed for
  - 5.1.1 the Goods, the Contractor shall deliver to SES the Goods within (i) a period which SES in writing shall notify to the Contractor upon conclusion of the



Contract or (ii) a reasonable period upon conclusion of the Contract, considering the Known Information about Conditions in such a manner so that SES could duly and on-time fulfil its obligations towards Customer/Owner, if SES fails to notify the Contractor of a period for delivery of the Goods. If the Contractor has any doubts as to whether the period under Section (ii) is reasonable or not, he shall be obliged to demand, not later than 30 (thirty) days upon conclusion of the Contract, SES for determination of a period for delivery of the Goods. If the Contractor fails to do so, SES shall be entitled to fix the Time for Performance for delivery of the Goods in its own discretion and the Contractor cannot discharge from its liability for due and on-time delivery of the Goods.

- 5.1.2 the Documentation, the Contractor shall submit to SES Documentation within a period which SES notifies in writing to the Contractor upon conclusion of the Contract or, if this relates to
- (a) Documentation needed to accept and use the Goods (delivery note, certificate of quality and completeness of goods, document on the origin of goods, conformity declaration), not later than in such a manner that SES could freely dispose of the Goods or accept the Goods being transported at the time of the arrival thereof to the Place of Determination and have the Goods cleared and/or ensure other customs formalities without undue delay;
  - (b) Documentation for the Installation (in particular a list of special tools, clear procedure of the Installation, including retention points in Supervision), not later than 30 (thirty) days upon conclusion of the Contract; and
  - (c) Documentation necessary for the Commissioning and trial run in respect to the Subject of Performance (in particular permits, protocols, certificates, confirmations, declarations and auditor reports and other documents necessary for official approval and proving compliance of the Subject of Performance with instructions and standards applicable in a country of the Site), not later than 30 (thirty) days prior to beginning of the Commissioning.
- 5.1.3 the Service, the Contractor shall provide the Service to SES at (i) the time notified by SES in writing to the Contractor upon conclusion of the Contract or (ii) the reasonable time upon conclusion of the Contract, considering the Known Information about Conditions and a nature of the Service in such a manner so that SES could duly and on-time fulfil its obligations towards Customer/Owner, if SES fails to notify the Contractor of the time for provision of the Service. If the Contractor has any doubts as to whether the time under point (ii) is reasonable, he shall be obliged, not later than 30 (thirty) days upon conclusion of the Contract, to request SES for determination of the time of provision of the Service. If the Contractor fails to do so, SES shall be

entitled to fix the Time for Performance for provision of the Service in its own discretion and the Contractor cannot discharge from its liability for due and on-time provision of the Service.

- 5.2 Time Schedule. If a detailed time schedule of fulfillment of the Subject of Performance (the "**Time Schedule**") does not form part of the Contract, the Contractor shall, not later than 15 (fifteen) days upon conclusion of the Contract, submit to SES the Time Schedule for approval. Any changes to the Time Schedule approved by SES are subject to written approval by SES. Unless the Basic Provisions or the SC provide for otherwise, the Time Schedule must contain at a minimum:
- 5.2.1 a clear and a detailed list of individual Times for Performance, and individual Times for Performance shall be further described to contain a detailed description of (i) project activities, (ii) extent of supplies of the Goods, (iii) production activities and Installation, (iv) delivery of Documentation and (v) other Services. Each of such items shall contain an order number, name of activity, date of commencement, date of completion, duration in days, a percentage of costs from the total Subject of Performance and the extent of necessary human resources;
  - 5.2.2 underlined activities "on a critical road", i.e., key activities, in particular those, the non-performance or delay of which would affect other activities and fulfillment of the Subject of Performance and/or Project;
  - 5.2.3 separation in particular into the following activities and data:
    - (a) engineering/project activity, in particular engineering, project Documentation, construction processing, production Documentation, quality Documentation, Control and Inspection Plan, Documentation for Installation, Documentation for Commissioning and Documentation for operation and maintenance;
    - (b) purchasing activity, in particular ordering and delivery of the Goods, including ordering and delivery of raw material necessary for the production thereof, as well as ordering and provision of the Services;
    - (c) production, in particular import and preparation of the Goods, production including inspections, requests for inspections, construction and pressure tests, finishing, delivery and acceptance;
    - (d) shipment, in particular loading, shipment and transport of the Goods;
    - (e) Installation, in particular Construction Site preparation and start and end of Installation; and
    - (f) Commissioning (including a trial run), Provisional Acceptance, Guarantee Period and Final Acceptance.



5.3 **Progress Report.** The Contractor agrees to submit to SES by the 3<sup>rd</sup> (third) day of each month upon conclusion of the Contract and by the 3<sup>rd</sup> (third) day upon a change in the Time for Performance, a written report on the status of fulfillment of the Subject of Performance pursuant to the Time Schedule approved by SES and in the form required by SES (the "**Progress Report**"), part of which shall be (i) a text part in the format Microsoft Word, attached to which shall be the relevant photo documentation (the "**Situation Report**") and (ii) updated Time Schedule in the format Microsoft Excel or Microsoft Project. The Contractor shall be liable in full for all information stated in the Progress Report or in connection therewith, in particular for the update, completeness, accuracy and veracity thereof. Unless the Basic Provisions or the SC provide for otherwise:

- 5.3.1 Contractor shall submit the Progress Report to SES also in an electronic form, and Sections 3.4 and 5.2 shall apply accordingly;
- 5.3.2 Progress Report shall be prepared in the breakdown under Section 5.2.3, and in respect to the purchasing activity the Progress Report must contain in particular an updated list of concluded and/or scheduled contracts/orders, containing in particular the subject of performance (description of supplies/services), designation of the Sub-contractor and the date of scheduled/actual conclusion of the relevant contract/order;
- 5.3.3 Situation Report shall contain in particular (i) in each activity all possible terms, costs and quality risks known to the Contractor or which should be known to him, if he had acted with due care, (ii) to date and/or threatening additional costs of the Contractor and any delay with Times for Performance, information about the reasons thereof, as well as about scheduled and/or taken measures for the prevention and/or mitigation thereof and (iii) a work schedule at least for the following month; and
- 5.3.4 Updated Time Schedule shall contain in particular in each activity all data under Section 5.2, status of fulfillment in % (percentage), a number of days by the actual end of activity, date of the actual beginning of activity and a date of the actual end of activity. Updated Time Schedule must be without any doubts comparable to the original Time Schedule under Section 5.2, as well as to the updated Time Schedules submitted from the Contractor by the given moment to SES.

#### 5.4 Acceleration of works.

- 5.4.1 In case of any delay or a risk of delay with the Subject of Performance and/or Project, the Contractor shall be obliged to utilize all its capabilities and options and shall take all necessary measures to remove or shorten such delay. If the Contractor believes that SES is liable for such delay according to Section 5.5, he shall be obliged, without undue delay; however, not later than in a period of 10 (ten) days from the day on which he learned of the delay or the risk thereof, or could

have learned, if he had acted with due care, to proceed under the second sentence of Section 4.2 (including Sections 4.2.1 through 4.2.3). If the Contractor fails to fulfill the obligation pursuant to the foregoing sentence, its obligation under the first sentence of this Section remains unaffected; however, (i) shall not have towards SES any claim and (ii) cannot discharge from liability for due and on-time performance of its obligations under the Contract, even if SES would be otherwise liable for such delay.

- 5.4.2 In case of any delay or a risk of delay with the Subject of Performance and/or Project, SES shall be authorized to instruct the Contractor to promptly take such steps which are necessary to remedy the incurred situation. The Contractor shall be obliged to proceed under Section 4.2.1 and if he believes that SES is liable for the delay under Section 5.5, then also under Sections 4.2.2 and/or 4.2.3. If the Contractor fails to proceed in accordance with the second sentence of Section 4.2 (including Sections 4.2.1 through 4.2.3), he has no claim towards SES and cannot discharge from liability for the due and on-time fulfillment of his obligations under the Contract. However; if the Contractor fulfils duly and on-time his obligations under the second sentence of Section 4.2 (including Sections 4.2.1 through 4.2.3) and SES insists in writing on taking the steps under the first sentence of this Section, such written notice of SES shall be deemed confirmation of the instruction under the first sentence of this Section and the contents of the Contract shall amend to the extent of such instruction, and the Parties shall reserve the issue of the impact thereof on Times for Performance and Contract Price as open and shall proceed under Section 4.5.3. Otherwise the Parties shall proceed under Sections 4.3, 4.4, 4.5.1 and 4.5.2.

- 5.4.3 If the Contractor fails to take the steps under Section 5.4.2 duly and on-time, or if the same is insufficient as per opinion of SES, then SES shall be in its own discretion entitled to (i) take such steps herself or through a third person at the costs of the Contractor and/or (ii) reject the Subject of Performance or its part and carry on in the fulfillment herself or through a third person at the costs of the Contractor. The exercise of rights pursuant to the foregoing sentence shall not exclude other rights of SES under the Contract. Contractor's liability for Defects is in such a case excluded, only if (i) SES or a third party entrusted by her fails to take actions with respect to the Subject of Performance or its part under this Section with due care and (ii) the Contractor notified SES in writing of an option of the occurrence of Defect as a result of such action under Section 4.2.1 accordingly. The exclusion of liability of the Contractor pursuant to the foregoing sentence shall apply only to further Defects directly caused by the action pursuant to the foregoing sentence.

5.5 Concurrence of delays. If SES is in delay with the fulfillment of any obligation under the Contract, the Contractor shall be entitled towards SES to a reasonable extension of the Times for Performance; however, not more than to the extent of duration of the delay of SES, and/or a claim to the compensation of costs, only if simultaneously are fulfilled all following conditions and only for the duration of the simultaneous fulfillment of all following conditions:

5.5.1 delay of SES with the fulfillment of obligations under the Contract shall (i) be the exclusive reason for a delay of the Contractor with the fulfillment of the Subject of Performance and (ii) have a material, proven and immediate impact on the due and on-time performance of the Contractor under the Contract; and

5.5.2 Contractor (i) notified SES in writing of such violation not later than 10 (ten) days from the day on which he learned about such delay of SES, or could have learned, if he had acted with due care and (ii) proceeded under Sections 4.2.2 and/or 4.2.3, 4.3.2 and 4.4, and it shall apply to such purposes that the information about the delay of SES under Section 5.5 shall be deemed the Instruction.

For the avoidance of doubts, if the conditions under Sections 5.5.1 and 5.5.2 are not fulfilled, (i) the Contractor shall not have towards SES any claim in case of delay of SES with the performance of any obligation under the Contract and (ii) liability of the Contractor for the due and on-time fulfillment of the Subject of Performance remains preserved, unless such liability is expressly excluded by other Contract provision.

5.6 Performance ahead of schedule. Unless the Contract expressly provides for otherwise, the Contractor shall not be entitled to perform the Subject of Performance ahead of schedule.

## 6 PLACE OF PERFORMANCE

6.1 Goods and Documentation. Unless the Basic Provisions or the SC provide for otherwise, the Place of Performance for Goods and Documentation is determined by the Delivery Term. If the Parties fail to reach agreement on the Delivery Term, the Place of Performance for Goods and Documentation is the seat of SES.

6.2 Services. Unless the Basic Provisions or the SC provide for otherwise, the Place of Performance for Services is the Site or the seat of SES, if SES requests the Contractor so. Unless the Basic Provisions specify the Site, the Place of Performance for Services is the seat of SES.

## 7 CONTRACT PRICE

7.1 Contract Price. SES agrees to pay to the Contractor for the Subject of Performance the price specified in the Basic Provisions (the "Contract Price") and under the conditions stated in the Contract. The Contract Price shall include all Contractor's costs related to the performance of its obligations under the Contract. The Contract Price is fixed,

final and is not subject, for the entire term of the Contract, to any changes, unless the Contract expressly provides for otherwise. Division of the Contract Price into Partial Payments is stated in the Basic Provisions. If part of the Subject of Performance is not in is such a division expressly stated, such fact shall not establish any claim of the Contractor towards SES and shall not affect the fixed and final nature of the Contract Price, unless the Contract expressly provides for otherwise. For the avoidance of doubts, if the Contract refers to any document, which is not part of the Contract, e.g., a price list of the Contractor, such reference shall not be considered.

7.2 Contract Price determined by unit price. If the Contract Price or its part for the Goods is determined in unit prices (per piece, kg, tone, meter and so forth.), the provisions of Section 7.1 on the ultimate nature of the Contract Prices shall apply to unit prices and the following provisions shall apply:

7.2.1 If the quantity of Goods necessary to duly perform obligations of the Contractor under the Contract stated in the Contract only approximately, the Contractor shall be obliged to deliver all Goods necessary for the due and on-time fulfillment of the Subject of Performance and SES shall be obliged to pay to the Contractor the Contract Price or its part falling to such Goods for quantity of the actually supplied Goods. However; if quantity of the actually supplied Goods exceeds the quantity of the Goods stated in the Contract by 1% (one percent), SES shall not be obliged to pay to the Contractor the Contract Price to the extent exceeding 1% (one percent) of the quantity of the Goods stated in the Contract.

7.2.2 If quantity of the Goods necessary for the due performance of obligations of the Contractor under the Contract is not specified in the Contract even approximately, the Parties shall proceed equally as in Section 7.2.1 and as the quantity stated in the Contract shall be deemed quantity, which would be determined by other contractor acting with due care in an effort to (i) achieve the compensation of costs and fair profit and (ii) avoid the unfair enrichment at the costs of SES, in international course of business.

7.2.3 In cases under Sections 7.2.1 and 7.2.2 shall further apply that:

- (a) the Contractor shall be obliged, without undue delay upon the performance of the obligation to supply Goods, to submit to SES a detailed report on actually supplied quantity of the Goods which shall contain also a comparison with the quantity of the Goods stated in the Contract. Such report shall be binding on SES, only if approved in writing by her;
- (b) if the Contractor as per opinion of SES supplies greater quantity of the Goods than necessary to duly perform its obligations under the Contract, SES shall be authorized to reject such surplus without being liable to the Contractor in any manner; and

- (c) if the Contractor as per opinion of SES supplies lesser quantity of the Goods than necessary to duly perform its obligations under the Contract; however, SES accepts such Goods, (i) this shall not be deemed performance of the obligation of the Contractor to supply the Goods, (ii) this shall not affect other rights of SES under the Contract and (iii) the Contractor shall be obliged to supplement the Goods without undue delay.

7.3 Decrease in the Contract Price. If there is a decrease in the Contract Price under the Contract, in particular under Section 18.10, such decrease shall not be considered for purposes of the calculation of contractual penalties and/or the amount of bank guarantees of the Contractor, unless the Parties agree in writing otherwise. After the agreed decrease in the Contract Price under the Contract upon the occurrence of tax liability to VAT in accordance with the relevant Applicable Law, the Contractor shall at each time prepare a document on the adjustment of a tax basis in accordance with the relevant Applicable Law, which shall contain a number of the original invoice to which the agreed decrease in the Contract Price applies and the data being amended.

7.4 VAT. Unless the Basic Provisions expressly provide for otherwise, the Contract Price is fixed as an amount exclusive of VAT.

## 8 PAYMENT TERMS

8.1 Occurrence of a claim to payment and invoice. Notwithstanding other provisions of the Contract providing for conditions of the occurrence of a Party's claim to any payment under the Contract, such Party shall be entitled to demand from the other Party any payment under the Contract only upon the fulfillment of conditions for the occurrence of a claim to such payment and subsequently issued due tax document (invoice).

8.2 Prerequisites of invoices.

8.2.1 The Contractor shall be held liable in full to SES for compliance of its invoices with Applicable Laws. The Contractor cannot be discharged from this liability. Contractor shall be obliged to compensate SES for any detriment incurred due to an incorrectly issued invoice together with interest of 0.03 % (three hundredths of one percent) from the detriment incurred by SES for each day from the payment of an invoice to the Contractor until the compensation to SES for detriment. Other claims of SES under the Contract remain unaffected.

8.2.2 Contractor's invoices must at each time contain at least the following:

- (a) name and address of the seat, place of business, or operation unit of the Contractor and its identification number, identification number for income tax and VAT, under which the Subject of Performance was delivered;
- (b) name and address of the seat, or operation unit of SES and its identification number, identification number for income tax and VAT,

under which the Subject of Performance was ordered;

- (c) bank connection in the structure, IBAN, BIC (SWIFT);
- (d) invoice order number;
- (e) Contract number;
- (f) subject of billing;
- (g) date on which the subject of billing was delivered or provided, or date on which payment for the subject of billing was accepted prior to delivery or provision, if such date can be specified and if different than the date of preparation of the invoice;
- (h) an invoiced amount separated into a VAT basis and a unit price exclusive of VAT, discounts and rebate, unless contained in the unit price;
- (i) VAT rate or data on VAT exemption;
- (j) VAT amount in total, if to be paid;
- (k) word information "transfer of a tax duty", if a person obliged to pay the tax is SES as beneficiary;
- (l) date of invoice preparation;
- (m) signature of the issuer and stamp of the Contractor.

8.2.3 If this relates to an invoice to the Advance Payment, such invoice must, in addition to the prerequisites under Section 8.2.2, contain designation "Advance Invoice".

8.2.4 If this relates to an invoice for Partial Payment, such invoice must, in addition to the prerequisites under Section 8.2.2 contain the following;

- (a) the quantity and type of the supplied Subject of Performance;
- (b) date of delivery of the Subject of Performance or date on which Partial Payment was accepted prior to delivery of the Subject of Performance, if such date can be specified and if different than the date of preparation of the invoice;
- (c) designation of Partial Performance or of other fact with which the Contract connects the occurrence of the Contractor's claim to the payment of the Partial Payment.

8.2.5 Attached to each invoice of the Contractor shall be a document on the occurrence of a claim to such payment under the Contract, in particular Partial Protocol signed by both Parties, or a document on the fulfillment of other fact with which the Contract connects the occurrence of the Contractor's claim to payment of the Partial Performance, signed by both Parties. If the Contractor is billing the Subject of Performance which is subject to VAT, attached to such invoice shall be also a current document on the registration for VAT and declaration of the Contractor that (i) he is authorized to specify VAT on the invoice at issue or is authorized to invoice the Subject of Performance exempted from VAT, or is authorized to invoice the Subject of Performance in a regime of the transfer of a tax duty and (ii) shall be held liable towards SES for any detriment, if such declaration is not, even partially, true, complete and

correct, regardless of a fault of the Contractor and a failure, if any, of SES' obligation to avoid damage. Other claims of SES under the Contract remain unaffected.

- 8.3 Deduction of Advance Payments and Retention for Guarantee Period. The Contractor shall be obliged to deduct from each invoice for Partial Payment (i) an amount corresponding to a proportion of Advance Payments to the total Contract Price, regardless of the fact whether SES reimbursed the same, and (ii) an amount corresponding to a proportion of the Retention for Guarantee Period and the total Contract Price.
- 8.4 Period for invoice submission. The Contractor shall submit the relevant invoice to SES not later than 15 (fifteen) days upon the occurrence of a claim to the payment which is the subject of an invoice.
- 8.5 Addresses for delivery of invoices. Unless the Basic Provisions or the SC expressly provide for otherwise, SES shall deliver invoices to the address of a registered seat of the Contractor and the Contractor shall deliver invoices to the following address:  
  
Slovenské energetické strojárne, a.s.  
Továrenská 210, 935 28 Tlmáče, Slovak Republic
- 8.6 Maturity of invoices. The maturity of invoices is 60 (sixty) days upon delivery to the addressee. The maturity period of any invoice begins running upon delivery of an eligible and formally and, in terms of contents correct, complete invoice.
- 8.7 Return of invoice. A Party shall be entitled to return an invoice also without payment and specify thereon a reason of the return, if the invoice was issued in discrepancy with the Contract. In case of an invoice issued in discrepancy with the Contract, an issuing Party shall correct it or shall revoke the same and issue a new one. The maturity of a new invoice shall be governed by Section 8.6. If a Party returns the invoice under this Section legitimately, it shall not be in delay with an invoiced payment. For the avoidance of doubts, if a Party does not return an invoice issued in discrepancy with the Contract within the period under the first sentence of this Section, this shall not result in the acknowledgement of legitimacy of the invoice.
- 8.8 Day and order of payment. As the day of payment of a financial obligation shall be deemed a day of debiting the relevant amount from a bank account of the relevant Party. In the performance of a pecuniary obligation first shall be set off the payment of principal and then appurtenances, unless the Parties agree otherwise.
- 8.9 Interest for delay.
- 8.9.1 If SES is in delay with payment of its financial obligations under the Contract, the Contractor shall be entitled to demand payment of an interest for delay amounting to 0.02 % (two hundredths of one percent) from an outstanding amount for each commenced day of delay. The total amount of billed interest for delay under the Contract may not exceed 15% (fifteen percent) of the Contract Price.

8.9.2 Unless the Basic Provisions/SC expressly provide for otherwise, the provisions of Section 8.9.1 shall apply also to any delay of the Contractor with performance of any financial obligation towards SES under the Contract.

- 8.10 Set off and other forms of satisfaction of financial claims. SES shall be in its own discretion entitled to satisfy its any pecuniary receivable towards the Contractor under the Contract by a set off, retention of a reasonable pecuniary amount payable to the Contractor in addition to the Retention for Guarantee Period and Retention for VAT, by exercise of the right for performance from a bank guarantee, letter of credit or promissory note or other form of security and/or means of payment, also in case that a receivable of SES is disputable. The exercise, if any, of the right pursuant to the foregoing sentence shall not establish for the Contractor any claims and not release him from the obligation to duly and on-time perform its obligations under the Contract. The Contractor shall not be entitled to set off its any receivable towards SES against receivables of SES towards the Contractor, or to satisfy the same in other form of security, unless the Basic Provisions/SC expressly provide for otherwise.
- 8.11 Retention for Guarantee Period. SES shall be entitled to retain 10% (ten percent) from the total Contract Price (the "Retention for Guarantee Period") to secure the due and on-time performance of Contractor's obligations under the Contract. SES shall be obliged to return to the Contractor the Retention for Guarantee Period within 60 (sixty) days upon delivery of an eligible request of the Contractor in writing. The Contractor becomes entitled to demand return of the Retention for Guarantee Period on a day following the day of the signing of FAC under Section 16.3.3. If the Basic Provisions and/or SC impose on the Contractor a duty to submit the bank guarantee under Section 9.4, the Contractor becomes entitled to demand return of the Retention for Guarantee Period on a day following the day (i) of the signing of FAC and removal of Defects stated in an annex to FAC under Section 16.3.3 or (ii) of issuance and signing of PAC, removal of Defects stated in PAC under Section 16.2.4 and delivery of the bank guarantee under Section 9.4 from the side of SES, whichever from the days under (i) and (ii) of the foregoing sentence is earlier. For the avoidance of doubts, retaining of the Retention for Guarantee Period from the side of SES pursuant to the relevant invoice for Partial Payment represents a payment in the amount of the Retention for Guarantee Period to the entire Partial Payment at the moment of maturity of the relevant invoice and subsequent retaining of the Retention for Guarantee Period. Other claims of SES under the Contract remain unaffected.
- 8.12 Retention for VAT. If Contractor is included at any time for the term of the Contract into a list of persons, in respect of which there are reasons for the revocation of registration for VAT under Section 81 (4)(b) of the second point of Act No. 222/2004 Coll. on Value Added Tax, as amended, published by the Financial Headquarters of the SR on the web site of the Financial Administration of the SR, he agrees to notify SES promptly and in writing of such fact. Regardless of the fact from which source SES learns about it, from the day of registration of the Contractor into the list under the first



sentence of this Section, SES shall be entitled to retain from invoices being issued by the Contractor amounts corresponding to an amount of the billed VAT ("**Retention for VAT**"), regardless of legal title of the total billed amount. SES shall be obliged to release to the Contractor the Retention for VAT; however, decreased by amounts which the relevant tax administrator submitted towards SES by title of the statutory guarantee of SES under Section 69b of Act No. 222/2004 Coll. on Value Added Tax, as amended, only if the Contractor is deleted from the list under the first sentence of this Section and submitted a confirmation to SES from the relevant tax administrator on the non-existence of outstanding payments of the Contractor for VAT, not older than 5 (five) days. If SES withdraws from the Contract under Section 21.1 (f), she shall be entitled to retain the Retention for VAT until the moment, when the Contractor fulfills the condition for the release thereof under this Section. For the avoidance of doubts, retaining of the Retention for VAT from the side of SES corresponds to a payment in an amount of the Retention for VAT for payment of SES to the Contractor at the moment of maturity of the relevant invoice and subsequent retention of the Retention for VAT. Other claims of SES under the Contract remain unaffected. The provisions of this Section shall apply also in other similar cases accordingly, when under other Applicable Law SES shall be liable and/or provide guarantee for Contractor's obligations towards Competent Authorities and/or third parties.

## 9 BANK GUARANTEES

9.1 **Bank guarantees.** If a form of the relevant bank guarantee is not part of the Contract as Annex, any bank guarantee, which the Contractor under the Contract agreed to submit, must, inter alia:

- (a) be (i) independent from the Contract, (ii) irrevocable, (iii) payable at first demand of SES, in which she shall specify that the Contractor failed to fulfill his obligation under the Contract, without a necessity of any specification of such violation and submission of any other document except for a demand of SES, (iv) payable free from any objections and (v) issued by a reputable bank in advance in writing, approved by SES;
- (b) be expressed in the same currency as the Contract Price; and
- (c) be subject to the Uniform Rules for Demand Guarantees payable upon request, publication of the International Chamber of Commerce, number 758.
- (d) be governed by Slovak law and fall within the jurisdiction of Slovak courts.

9.2 **Bank Guarantee to Advance Payment.** A condition to make any Advance Payment from the side of SES is that the Contractor procure and submit to SES a bank guarantee at least in an amount of the requested Advance Payment. The bank guarantee under this Section shall apply to secure the due on on-time fulfillment of Contractor's obligations under the Contract. The issuance of such bank guarantee and its delivery to SES shall be ensured by the Contractor within 20 (twenty) days upon conclusion of the Contract; however, not later than together with an invoice for the relevant Advance Payment. Validity of such bank guarantee shall not expire sooner than 30 (thirty) days from a presumed day of the occurrence of a Contractor's claim to the last Partial

Payment. If the Basic Provisions and/or SC fail to provide for a presumed day of the occurrence of a Contractor's claim to the last Partial Payment, or fail to specify it as a precise date, the Contractor shall promptly upon conclusion of the Contract request SES to determine a presumed day of the occurrence of a Contractor's claim to the last Partial Payment. For the avoidance of doubts, such determination of SES shall not establish for SES any obligation and shall not have any meaning for interpretation of the Contract.

9.3 **Bank Guarantee for performance part of the Subject of Performance.** The Contractor shall be obliged to ensure and submit to SES a bank guarantee for performance part of the Subject of Performance in an amount of the percentage portion of the Contract Price stated in the Basic Provisions or the SC. If such amount is not specified in the Basic Provisions and/or SC, the amount of such bank guarantee shall be at least 10% (ten percent) of the Contract Price. The bank guarantee under this Section shall apply to secure the due and on-time fulfillment of Contractor's obligations pursuant to the Contract. The Contractor shall ensure the issuance of such bank guarantee and delivery thereof to SES within 20 (twenty) days upon conclusion of the Contract; however, not later than together with the first invoice for Partial Payment, unless the Basic Provisions and/or SC provide for otherwise. Unless the Basic Provisions and/or SC provide for otherwise, the validity of such bank guarantee shall not expire sooner than 60 (sixty) days from a presumed day of the signing of PAC stated in the Basic Provisions and/or SC. If the Basic Provisions and/or SC fail to provide for a presumed day of the signing of PAC, the Contractor shall promptly upon conclusion of the Contract request SES to determine a presumed day of the signing of PAC. For the avoidance of doubts, such determination of SES shall not establish for SES any obligation and shall not have any meaning for interpretation of the Contract. The issuance of the bank guarantee under this Section is a condition to make any Partial Payment.

9.4 **Bank Guarantee for Guarantee Period.** If pursuant to the Basic Provisions and/or SC the Bank Guarantee for the Guarantee Period is required, the Contractor shall be obliged to ensure and submit to SES a bank guarantee for the Guarantee Period in an amount of the percentage portion of the Contract Price stated in the Basic Provisions or the SC. If such amount is not specified in the Basic Provisions and/or SC, the amount of such bank guarantee shall be at least 10% (ten percent) of the Contract Price. The bank guarantee under this Section shall apply to ensure the fulfillment of Contractor's obligations pursuant to the Contract. The Contractor shall ensure the issuance of such bank guarantee and delivery thereof to SES within the term stated in the Basic Provisions or the SC; however, not later than on the day of beginning of the Guarantee Period. Unless the Basic Provisions and/or SC provide for otherwise, the validity of such bank guarantee shall not expire sooner than 60 (sixty) days after a presumed day of the signing of FAC stated in the Basic Provisions and/or SC. If the Basic Provisions and/or SC fail to provide for a presumed day of the signing of FAC, the Contractor shall demand, not later than 30 (thirty) days prior to beginning of the Guarantee Period for the construction part of the Subject of Performance (18.4.1 point (ii)) SES to determine a presumed



day of the signing of FAC. For the avoidance of doubts, such determination of SES shall not establish for SES any obligation and shall not have any meaning for interpretation of the Contract.

9.5 Provision for bank guarantee. If there is a change during the fulfillment of the Subject of Performance in the Contract and/or other event occurs, and such change/event affects the bank guarantees under Sections 9.2 through 9.4, the Contractor shall be obliged, within 10 (ten) days from the relevant change/event, to submit to SES a proposal for adjustment of the relevant bank guarantee. However; if this relates to such change/event, which favorably affects the rights of SES from the relevant bank guarantee, in particular an increase in amount of the bank guarantee as a result of an increase in the Contract Price and/or the extension of validity of the bank guarantee as a result of the extension of a presumed day of the signing of PAC and/or FAC, the Contractor shall be obliged, within 30 (thirty) days upon change/event, to ensure corresponding changes in the relevant bank guarantees and submit the same within such period to SES. If the Contractor fails to fulfill any obligation under this Section, SES shall be, in its own discretion, entitled to exercise the right for the payment of a full amount from the relevant bank guarantee. Other claims of SES under the Contract remain unaffected. In other cases the adjustment of bank guarantees submitted to SES is subject to prior written approval by SES.

9.6 Costs. All costs related to the establishment, keeping and change of bank guarantees shall be borne by the Contractor.

9.7 Non-exercise of rights from bank guarantee. Without prejudice to the provisions of Section 25.4, if SES does not exercise its right for performance from a bank guarantee, it shall not be deemed a waiver of the claim, the satisfaction of which SES could achieve by the performance from a bank guarantee.

## 10 TAXES AND FEES

10.1 General clause. Unless the Contract expressly provides for otherwise, the Contractor shall be liable for the payment of all import/customs duties and other taxes and fees related to the Subject of Performance, and all such taxes and fees (including a personal tax of employees such as an income tax, social payments, health-care payments, contributions and statutory insurance of employees) are included in the Contract Price.

10.2 Compensation of taxes and fees. If SES is obliged to pay taxes and/or fees either instead of the Contractor, Sub-contractors or their employees, the Contractor shall pay to SES within 30 days upon receipt a request from SES (i) such paid amount and (ii) any further costs or expenses incurred by SES (e.g., if SES pays VAT instead of the Contractor to a tax administrator). The same shall apply if SES pays taxes and fees instead of such persons in connection with any violation of their obligations (in particular, penalties, sanctions, interest etc.). The Contractor shall be obliged to submit promptly all necessary information and documents demanded by SES to make such payments. Other claims of SES under the Contract remain unaffected.

## 10.3 Withholding and retained taxes.

10.3.1 If SES is obliged to pay pursuant to the Applicable Laws from a payment towards the Contractor any withholding or retained tax, any payment towards the Contractor shall be decreased by such tax. SES shall pay such retained tax on behalf of the Contractor to the relevant tax administrator. SES shall request the tax administrator, upon request of the Contractor, to issue a confirmation on such paid tax or fee.

10.3.2 If payments of SES to the Contractor are subject to withholding or retained taxes; however, the Contractor is entitled pursuant to the Applicable Laws to be exempted from such tax, the Contractor shall be obliged to notify promptly SES of such fact and demand a confirmation from the relevant tax administrator on exemption prior to the issuance of a first invoice. The Contractor shall be obliged to attach a confirmation on exemption to each invoice issued by it.

10.4 Documents for income tax. If the payments of SES towards the Contractor are governed by the relevant international double taxation avoidance treaties, the Contractor shall be obliged to submit, within 10 (ten) days upon conclusion of the Contract, as well as at any time during the term of the Contract, upon request of SES, to SES a document on its tax residency, a document on the existence of a permanent establishment, as well as any other document, which SES in its own discretion may demand from the Contractor to review the status of the Contractor from the aspect of income tax in connection with the Subject of Performance. The Contractor shall be liable towards SES for any incorrectness, incompleteness, out-of-date or inaccuracy of data stated in the documents pursuant to the foregoing sentence and shall be obliged to compensate SES for any incurred detriment. Other claims of SES under the Contract remain unaffected.

10.5 Documents for VAT. The Contractor shall be obliged to submit, within 10 (ten) days upon conclusion of the Contract, as well as at any time during the term of the Contract, upon request of SES, to SES a document of the Contractor on its registration of a VAT payer in a country, in which he makes a taxable payment, a document on the existence of VAT establishment in such a country, as well as any other document, which SES may in its own discretion demand from the Contractor to review the status of the Contractor from the aspect of VAT in connection with the Subject of Performance. The Contractor shall be liable towards SES for any incorrectness, incompleteness, out-of-date or inaccuracy of data stated in the documents pursuant to the foregoing sentence and shall be obliged to compensate SES for any incurred detriment. Other claims of SES under the Contract remain unaffected. If the Contractor ceases to be a VAT payer during the term of the Contract, he shall be obliged to notify SES of such fact in writing within 3 (three) days from the occurrence of such fact.

## 11 MARKING, PACKING, SHIPMENT AND TRANSPORTATION

11.1 Delivery term. Unless the Contract provides for otherwise, delivery of the Goods shall be governed by the Delivery Term. In case of discrepancy between Contract provisions and the contents of the Delivery Term, Contract provisions shall prevail.

11.2 Manner of marking, packing and furnishing for transportation. The Contractor shall mark, pack and furnish the Goods for transportation in a manner stated in the Basic Provisions or the SC. If the Basic Provisions or the SC fail to provide how the Contractor should mark, pack and/or furnish the Goods for transportation, the Contractor shall be obliged to mark, pack and furnish the Goods for transportation in a manner which (i) is standard for Goods in international course of business or (ii) if such manner cannot be determined, then in a manner necessary to preserve and protect the Goods. Packing must be such that for the term of handling, transportation and storing no physical damage or other devaluation of Goods could occur. Packing, dimensions and weight of individual shipments shall be adjusted to specific circumstances and options of the use of manipulation or transport equipment and must comply with all conditions for the due transportation thereof to the Place of Performance and/or Place of Determination. If the nature of Goods permit so, the Contractor shall prepare packing stackable and not exceeding loading capacity of a means of transportation, in case of a maritime transport not exceeding loading capacity of a standard container. In case of Goods intended for ship transportation, particularly outside Europe, their packing shall be stackable so as to ensure the best possible efficiency of transportation area of a ship. In case of the usage of wooden packing, the Contractor shall be obliged to ensure the issuance and submitting of a relevant phytosanitary certificate.

11.3 Marking, transportation documents and transportation. The Contractor shall be liable for proper marking of the Goods, for proper use of transportation evidences and if obliged under the Contract to ensure also transportation of Goods, then also for the conclusion of contracts necessary for transportation of Goods to the Place of Performance and/or Place of Determination by suitable selected means of transportation.

11.4 Dispatching information. If dispatching information is not known or complete on conclusion of the Contract, SES shall be obliged to deliver it to the Contractor upon request within a reasonable period prior to shipment of Goods.

11.5 Notification of Contractor prior to shipment.

11.5.1 The Contractor shall submit in writing by the term agreed in the Basic Provisions or the SC, and if the term is not agreed, then within 30 (thirty) days prior to planned shipment of Goods, a breakdown of his deliveries into delivery lots showing preliminary weights and preliminary measurements (length, height, width) of individual delivery lots, the planned dates of their shipment and delivery, as well as the place of their shipment. The Contractor shall also specify general and special requirements for manipulation including points for fixation and lifting,

data on gravity center, turnability and requirements for storing.

11.5.2 The Contractor shall notify SES in writing not less than 10 (ten) days prior to planned shipment of Goods that he is prepared to ship Goods and shall request for permit for shipment. SES shall send the permit together with Instructions to the Contractor within 5 (five) days upon receipt of such request.

11.6 Postponement of shipment. If SES orders to the Contractor a postponement of shipment of Goods, Article 4 shall apply and the Contractor shall (i) store Goods with due care and protect the same against damage, devaluation or loss and (ii) have towards SES a claim for the compensation of costs only for the time of performance of such obligation, which exceeds 3 (three) months upon beginning of storing.

11.7 Special nature of a supply of Goods in respect to Third Countries.

11.7.1 If (i) the Subject of Performance is a supply of Goods which are determined for export to Third Countries or it relates to export from Third Countries and (ii) the Contractor shall be obliged to ensure under the Contract export customs clearing, the Contractor shall submit to SES as part of the Subject of Performance, all Documentation necessary to demonstrate export of Goods according to the relevant regulations in the Slovak Republic, specifically:

- (a) in export of goods to Third Countries an accompanying document in export (EX) and a customs declaration in which a customs authority confirms the exit of Goods from the territory of the European Union (electronic document received from the customs administration – export confirmation); and
- (b) in case that a transport of Goods or its part is part of the Subject of Performance, the Documentation of shipment and transport of Goods (e.g. CMR, bill of lading, air way bill, carnet TIR etc.).

11.7.2 The Contractor shall submit to SES Documentation proving the export of Goods to Third Countries not later than:

- (a) within 15 (fifteen) days from export confirmation by a customs authority; an accompanying document in export (EX) within 5 days from a release of the customs regime;
- (b) bill of lading and air way bill immediately after its issue, not later than within 5 (five) days;
- (c) CMR, CIM within 15 (fifteen) days upon confirmation by recipient; and/or
- (d) carnet TIR within 15 (fifteen) days after confirmation by the customs in the Place of Determination.

## 12 SUB-CONTRACTORS

12.1 Approval of Sub-contractor. The Contractor shall not enter into contract/order for a delivery of any part of the Subject of Performance with Sub-contractor without prior written

consent of SES. Provisions of the foregoing sentence shall not apply if this relates to (i) Sub-contractor expressly stated in Annex containing a list of approved Sub-contractors and (ii) sub-delivery for such part of the Subject of Performance, which does not have material impact on the performance of the Contractor under the Contract, in particular in a purchase of standard raw material in the ordinary course of business. The Contractor shall submit to SES for approval, and conclude contracts only with reliable Sub-contractors with necessary workmanship, experience and qualification under the Contract, including compliance with quality standards, which are in a good financial condition for a long-time, and with which the Contractor, SES, Customer and/or Owner did not have previous negative experience (in particular defective performance, delay with performance, delay with payment, failure to fulfill warranty claims and so forth). For the avoidance of doubts, provisions of the foregoing sentence shall also apply if a sub-delivery is not subject to prior written approval from SES.

12.2 Information duty. The Contractor shall provide to SES at any time all details about Sub-contractor which is engaged or shall be engaged in a delivery of the relevant part of the Subject of Performance.

12.3 Liability for Sub-contractors. The Contractor shall be liable for Sub-contractors in full as if he performed the subject of delivery of the Sub-contractor himself. Such liability may not be discharged, unless the Contract expressly provides for otherwise. The fact that the Contract in certain provisions specially highlights liability of the Contractor also for Sub-contractors shall not be construed in such a manner that the Contractor is not liable for Sub-contractors in other events.

12.4 Acceptance of sub-contractor contracts. The Contractor shall ensure that each contract between the Contractor and Sub-contractor allow SES at any time from the signing of FAC to assume rights and obligations of the Contractor towards Sub-contractor, in case of the occurrence of any from the facts stated in Section 21.1, upon a request in writing from SES delivered to the Contractor and Sub-contractor. If SES exercises its right pursuant to the foregoing sentence, corresponding rights and obligations of the Parties shall extinguish to the extent of assumed rights and obligations of the Contractor towards Sub-contractor from the side of SES, except for claims of SES from Defects for already fulfilled part of the Subject of Performance and for claims of SES to contractual penalties, compensation of damage and interest for delay. Upon request of SES, the Contractor shall prove performance of the obligation under the first sentence of this Section.

### 13 QUALITY ASSURANCE

#### 13.1 Standards of quality.

13.1.1 The Subject of Performance must comply with the requirements of standards and regulations stated in the Contract and standards and regulations related to the Subject of Performance pursuant to the Applicable Laws. If the Contract does not state specific standards and regulations, then the Applicable Laws shall apply.

13.1.2 The Contractor agrees to comply in performance of the Subject of Performance with requirements for management system of quality and environment under ISO 9001:2008 and ISO 14001:2004.

13.2 Audit of quality control system. The Contractor shall at any time allow SES or Customer/Owner or a person entrusted by them to carry out, to necessary extent, an audit of the quality control system with the Contractor and Sub-contractors, not later than 7 (seven) days upon prior written notice of SES.

13.3 Quality control. SES, Customer and/or Owner shall be entitled, either herself or through third persons, at any time during performance of the Contract, to:

- (a) check the Subject of Performance or its parts to persuade itself about the fulfillment of requirements agreed in the Contract (in particular in terms of quality and dates);
- (b) participate in tests, controls and inspections during and after completion of the production process related to the Subject of Performance;
- (c) request and receive at any time from the Contractor information about the status of performance of the Subject of Performance; and
- (d) review all plans and documents necessary to assess the quality and manners for ensuring quality.

13.4 Control and Inspection Plan. The Contractor shall prepare and submit to SES, prior to the beginning of performance of the Subject of Performance, the Control and Inspection Plan for the supplementation of its control points in individual production or installation steps. SES shall be entitled to make comments, approve and demand supplements to the Control and Inspection Plan so that the form and contents of the Control and Inspection Plan comply with requirements of SES. The Contractor shall be obliged to incorporate comments of SES without undue delay. The Contractor shall not be entitled to begin, without the approved Control and Inspection Plan, production and thereby caused delay with fulfillment of the Subject of Performance shall be at each time deemed a delay for reasons on the side of the Contractor.

#### 13.5 Performance of tests, controls and inspections.

13.5.1 Notice of term. The Contractor shall notify SES not less than 14 (fourteen) days prior to a term of tests, controls or inspections under the Control and Inspection Plan, of the date and venue thereof and shall provide to SES all documents in a sufficient number and reasonably in advance; however, not less than 5 (five) days prior to a term of the relevant test, control and/or inspection.

13.5.2 Participation of SES. If SES fails to participate in the test, control or inspection under Section 13.5.1 designated in the Control and Inspection Plan by hold point "W" (so-called witness point), which the Contractor duly and on-time notified to her, the Contractor shall be obliged to wait 24 (twenty-four) hours. If SES fails to participate even within such additional period, the Contractor shall be entitled to carry out such test, control or inspection without the

presence of SES. However; if such test, control or inspection is designated in the Control and Inspection Plan as hold point "H" (so-called hold point), the Contractor shall be entitled to proceed pursuant to the foregoing sentence only if SES notifies the Contractor in writing that she shall not participate in the stated test, control or inspection.

13.5.3 Participation of Contractor. In each test, control or inspection under Section 13.5.1 with (i) Contractor, there must be a representative of the Contractor present, authorized to act on his behalf and (ii) Sub-contractor, there must be also a representative of the Contractor present, authorized to act towards Sub-contractor.

13.5.4 Costs. The Contractor shall bear all costs and expenses (including costs for the preparation of required accompanying technical documentation), that he expends for a suitable result of tests, controls or inspections under Section 13.5.1, including (i) tests prior to and during production process, (ii) tests of material, (iii) final inspections and (iv) functional tests required under the Contract, Applicable Laws or other regulations. If a certain test, control or inspection must be repeated for a reason on the side of the Contractor, the Contractor shall bear all costs and expenses related to a repeating of such tests, controls or inspections, including costs of SES, Customer, Owner, experts or inspectors, the presence of which in repeated tests will be deemed by SES as necessary. Other claims of SES under the Contract remain unaffected.

13.5.5 Results. The Contractor shall submit, within a term agreed by the Parties, otherwise without undue delay after the performance of a test, control or and/or inspection, to SES accompanying technical documentation containing results of the test, control or and/or inspection made as of the date of control. If the term is not agreed and such documents are necessary to commence Installation, the Contractor shall provide the same to SES not later than 21 (twenty-one) days prior to commencing Installation.

13.6 Covering of the Subject of Performance. The Contractor undertakes to notify SES in writing not less than 10 (ten) days in advance of its intention to cover the Subject of Performance or its part. If the Contractor fails to fulfill the obligation pursuant to the foregoing sentence, or if SES, Customer and/or Owner has a justified suspicion that the Subject of Performance or any of its already covered part shows Defects, SES shall be entitled to order to uncover the Subject of Performance or its part. If Defect is not proved, such order shall be deemed as Instruction and Section 4.5.3 shall apply. If the Subject of Performance or the parts thereof are to be the subject of control tests, control and/or inspections under Section 13.5.1, the Parties shall proceed under Section 13.5.

13.7 Exercise of rights towards Sub-contractors. The Contractor agrees to ensure that SES be entitled to exercise the rights according to Article 13 also towards Sub-contractors.

## 14 SITE, CONSTRUCTION SITE AND WORKPLACE

14.1 Applicability of provisions. The provisions of Article 14 are binding on the Contractor only if the Subject of Performance includes activity of the Contractor on the Site, in particular Installation and Commissioning. If the Contractor performs Supervision on the Site, other technical supervision, control and/or technical cooperation, provisions of this Article shall be binding on the Contractor accordingly in respect to the nature of such activities carried out by the Contractor.

14.2 Authorized person.

14.2.1 The Contractor shall be obliged, not later than 1 (one) month prior to beginning of its activity on the Site, to notify SES in writing of a name of the Authorized Person.

14.2.2 The Authorized Person must be reliable and must have necessary qualification and experience to ensure the due performance of activities of the Contractor and Sub-contractors on the Site. Sections 14.15.2 through 14.15.6 shall apply to Authorized Person equally.

14.2.3 If SES, Customer and/or Owner requests so, the Contractor shall be obliged to demonstrate, at any time during the term of the Contract, qualification, experience and abilities of the Authorized Person.

14.2.4 In any change in the Authorized Person, whether upon request of SES in writing under Section 14.15.4 or upon own initiative of the Contractor, the Contractor shall be obliged to notify SES in writing of a new Authorized Person not less than 5 (five) days in advance. Any exchange of the Authorized Person shall not (i) establish to the Contractor any claim towards SES and (ii) discharge the Contractor from liability for the due and on-time fulfillment of its obligations under the Contract.

14.3 Visit of the Site. Without prejudice to the representations of the Contractor under Sections 2.1.4 and 2.1.5, the Contractor shall visit the Site not later than 1 (one) month prior to the commencement of its activity on the Site to agree, after discussions with persons entrusted and responsible for management of the Site, storage and installation areas and placement of the Construction Site Equipment and other details of its activity on the Site. If the Contractor learns during a visit of the Site or could have learned about the New Information about Conditions, if he had acted with due care, Section 4.7 shall apply.

14.4 Takeover of the Construction Site and Workplace. Contractor shall be obliged to take, upon request of SES, over the Construction Site and Workplace. The Parties shall prepare a written protocol on takeover of the Construction Site and Workplace. Part of such protocol shall also be records on instructing the Authorized Person about the relevant rules of SES, Customer and/or Owner to ensure the safety and protection of health at work, protection against fire and environmental protection.

14.5 Protection against fire.



- 14.5.1 SES shall notify the Contractor of a manner of reporting any occurrence of fire or other extraordinary event, in particular she shall provide to the Contractor contact data including the phone numbers of important departments and organizations providing aid in such cases, or operation of the joint fire reporting office, if established.
- 14.5.2 The Contractor shall be liable in full for fire protection upon takeover of the Construction Site and Workplace under Section 14.4 in the form of a protocol. To that extent, the Contractor shall furnish the Construction Site, Workplace and Construction Site Equipment with necessary fire extinguishment equipment. The Contractor shall ensure in accepted premises 1x per each 3 (three) months the performance of a preventive fire inspection by a qualified person, and a result of the inspection shall be recorded in the Logbook.
- 14.6 Safety and protection of health and environmental protection. The Contractor shall be liable in full for safety and protection of health at work and environmental protection upon takeover of the Construction Site and Workplace under Section 14.4 in the form of a protocol.
- 14.7 Assurance of the Construction Site and Workplace. The Contractor shall be obliged to suitably ensure the Construction Site and Workplace. The Contractor shall be obliged to use for the performance of work only those vehicles, equipment and working tools, which by its technical condition do not put the environment or work place at risk (e.g., leaking fuel and lubricants etc.). The Contractor shall be obliged to ensure the Construction Site and Workplace in such a manner so as not to endanger safety at other workplaces.
- 14.8 Maintenance of the Construction Site and Workplace. The Contractor shall be obliged at its own costs to (i) keep the Construction Site and Workplace and accepted utility lines clean and tidy, (ii) recycle and dispose of waste material by an authorized organization, (iii) remove any dirt originating from its works and (iv) clean vehicles entering the road. Upon request, the Contractor shall be obliged at its own costs to submit to SES documents proving the fulfillment of the above obligations including a contract on waste disposal by an authorized organization. The Contractor shall be obliged to keep such documents for a term not less than the signing of FAC.
- 14.9 Rules of the Site. The Contractor shall comply with rules of the performance of work, conduct and behavior of persons at the place of the Site issued by SES, Customer and/or Owner, and the Applicable Laws, and shall ensure that Personnel shall comply with such duty. The Contractor shall bear all consequences arising out of a failure to fulfill the above obligations.
- 14.10 Coordination of works. The Contractor acknowledges that during fulfillment of the Subject of Performance on the Site also other persons shall be present on the Site and therefore it is needed that the Site management coordinate activities on the Site from the aspect of (i) material performance of the Subject of Performance and (ii) compliance with regulations to ensure the safety and protection of health at work, fire protection and environmental protection. If such restrictions correspond to the New Information about Conditions, Section 4.7 shall apply. In other cases shall apply that such restriction does not establish to the Contractor towards SES any claim and shall not discharge the Contractor from liability to fulfill its obligations duly and on-time. Provisions of the second and third sentence of this Section shall apply regardless of the fact whether such restrictions follow from the coordination of works under the first sentence of this Section or not.
- 14.11 Cooperation on the Site. The Contractor agrees to cooperate within a reasonable scope with and allow the performance of works and activities to (i) personnel of SES, Customer, Owner and other contractors of SES, Customer and/or Owner and (ii) representatives of the Competent Authorities.
- 14.12 Entry to Contractor's premises. The Contractor shall allow SES, Customer, Owner, and all other persons engaged by the above persons into performance of the Project, reasonable entry to (i) those places on the Site, which he accepted under Section 14.4, and on which any work or preparation is made related to the Subject of Performance, and/or (ii) storage places of Goods by the Contractor or for him.
- 14.13 Access to Goods. The Contractor shall ensure that parts of the Goods, which must be replaced under standard operational conditions, shall (i) at each time be easily accessible and (i) at each time be able to be dismantled as soon as possible and repeatedly assembled/installed without a necessity of any construction or mechanical adjustments of other parts of the Subject of Performance.
- 14.14 Use of the property of another. The Contractor shall exert due care in the use of any property belonging to a third party (including public or private roads, plots of land, supply and waste networks, service connections). The Contractor shall be liable for loss or damage to the property and shall indemnify, defend and hold SES harmless against any claims of a third party for such title. Other claims of SES under the Contract remain unaffected.
- 14.15 Personnel.
- 14.15.1 The Contractor shall ensure that the Subject of Performance be fulfilled only by reliable, qualified and experienced Personnel.
- 14.15.2 The Contractor agrees to ensure for Personnel all necessary permits, certifications, insurances and certificates for the purpose to perform the Subject of Performance and submit the same at its own costs to SES upon request.
- 14.15.3 The Contractor shall bear all costs related to the performance of works of Personnel in the fulfillment of the Subject of Performance, including travel costs, daily allowances, boarding, accommodation and insurance. The Contractor, upon request of SES, shall prove the compliance with all obligations arising out of labor, social and other related Applicable Laws. To that extent all necessary documents shall always be available and the



Contractor shall submit the same upon request to SES. If the Contractor fails to fulfill such its obligations, SES shall be entitled to retain due payments until remedy is made. Other claims of SES under the Contract remain unaffected.

14.15.4 Upon request of SES in writing, the Contractor shall be obliged to recall any member of Personnel, effective as of a day determined by SES. Such request of SES need not be justified. The Contractor shall subsequently post other Personnel member to the Site, who meets the criterion under Section 14.15.1. Any exchange of Personnel member, including Authorized Person, shall not (i) establish to the Contractor any claim towards SES and (ii) discharge the Contractor from liability for the due and on-time fulfilment of its obligations under the Contract.

14.15.5 The Contractor shall indemnify, defend and hold SES harmless against any claims occurred as a result of injury or death of a Personnel member, if such injury or death were not caused intentionally from the side of SES.

14.15.6 If any photo documentation, audio records or audio video records is made under the Main Contract in the performance of the Subject of Performance/carrying out construction or other works on the Equipment, and pursuant to the governing law and/or the Applicable Law a consent from the affected Personnel member is required, or the fulfillment of other obligations, the Contractor shall be obliged to promptly ensure such consent or the fulfillment of other obligations.

#### 14.16 Logbook.

14.16.1 The Contractor shall be obliged to keep a Logbook from the acceptance of the Construction Site and Workplace. All facts decisive for fulfillment of the Subject of Performance shall be registered in Logbook, in particular data on the time progress of works and the quality thereof, justification of deviations of performed works from project Documentation, data important to assess economy of works and data necessary to assess works by Competent Authority. Any training of Personnel in respect to regulations on safety and protection of health at work, fire protection and environmental protection related to the works being performed shall be recorded in the Logbook. Logbook must be during working hours permanently available on the Site. Duty to keep Logbook shall terminate upon return of the Construction Site and Workplace under Section 14.17.

14.16.2 Daily records in Logbook shall be made and signed legibly by Authorized Person on that day when the works have been made or when circumstances which are recorded occurred. No empty spaces may be left in the daily records. In addition to Authorized Person, a person entitled to make records in Logbook shall also be representative of SES, Customer, Owner and/or Competent Authority.

14.16.3 If any of the persons authorized to make records in Logbook under Section 14.16.2 disagrees to the made records of other such person, such person shall be obliged to attach to the records its statement within 5 (five) days upon making the records, otherwise it is presumed that it agrees to the contents of the records.

14.16.4 If a representative of SES is on the Site, Authorized Person shall be obliged to submit to such representative daily records not later than on the following business day and deliver the first transcript to him. If a representative of SES disagrees to the contents of the records, he shall write that fact in the Logbook within 3 (three) days, with specification of the reasons, otherwise it is presumed that he agree to the contents of the records.

14.17 Return of Construction Site and Workplace. The Contractor shall return Construction Site and Workplace to SES not later than 30 (thirty) days after completion of its work on the Site. The Contractor shall be obliged, prior to the return of Construction Site and Workplace, to clean and clear Construction Site and Workplace in full and remove redundant material, waste etc. The Parties shall prepare and sign a written protocol on the return of Construction Site and Workplace.

14.18 Impact on operation of Customer/Owner. If SES is obliged to carry out the Project or its part in such a manner so that the operation of Customer/Owner on Equipment/Project (e.g., other boiler or other part of Equipment being operated further) not be interrupted or otherwise restricted to a certain extent and under certain conditions, the Contractor shall be obliged to fulfill the Subject of Performance in such a manner so that the operation of Customer/Owner not be interrupted, materially impaired, postponed or otherwise restricted.

## 15 COMMISSIONING

15.1 Applicability of provisions. The provisions of Article 15 shall be binding on the Contractor only if the Subject of Performance includes Commissioning. If the Contractor carries out Supervision over the Commissioning, other technical supervision, control and/or technical cooperation, the provisions of this Article shall be binding on the Contractor accordingly in respect to the nature of such activities carried out by the Contractor.

15.2 Program. The Contractor shall submit to SES for approval a program of the Commissioning, including its detailed time schedule, not later than 6 (six) months prior to presumed beginning of the Commissioning. If the Basic Provisions/SC do not provide for a presumed day of the beginning of the Commissioning, the Contractor shall request SES, sufficiently in advance, in considering the Known Information about Conditions and the New Information about Conditions, to report a presumed day of the beginning of the Commissioning. If such reported day of the beginning of the Commissioning changes, SES shall be obliged to notify the Contractor of such fact, unless the Contractor knows this fact or could know it, if he had acted with due care.

- 15.3 Preparedness notice. The Contractor undertakes to notify SES of its preparedness for Commissioning not later than 30 (thirty) days prior to start of the Commissioning according to the program under Section 15.2.
- 15.4 Performance. The Contractor shall perform Commissioning under his supervision and liability. SES, Owner, Customer or any person authorized by them shall be entitled to participate in the Commissioning.
- 15.5 Acceptance Tests. The Contractor shall perform Acceptance Tests prescribed in the Contract. If no Acceptance Tests are agreed in a plant or facility of the Contractor, the Acceptance Tests in respect to Goods shall commence after end of individual and functional tests of the Project and of the setting and tuning of management and control of Project, including preparedness for Acceptance Tests. SES, Customer, Owner and any person authorized by them may participate in any Acceptance Tests. Participation in Acceptance Tests shall be under supervision and liability of the Contractor. Upon completion of each Acceptance Test the Parties shall prepare and sign a protocol on its course and results.
- 15.6 Extension, interruption or repetition. If Commissioning must be extended, interrupted or repeated, all costs and expenses related therewith shall be borne by the Contractor, unless the conditions under Section 5.5 are met. Other claims of SES under the Contract remain unaffected.
- 15.7 Completion. Successful completion of the Commissioning shall be confirmed by a protocol on Completion of the Commissioning issued by the Contractor in the form and contents approved by SES and signed by both Parties.

## 16 ACCEPTANCE OF PARTIAL PERFORMANCES AND OF THE SUBJECT OF PERFORMANCE

- 16.1 Acceptance of Partial Performances.
- 16.1.1 Use of Partial Performances prior to acceptance. In justified cases SES, Customer and/or Owner shall be entitled to an inevitable extent and in accordance with a manual for operation and maintenance of the Contractor to use Partial Performance also prior to the signing of Partial Protocol from the side of SES.
- 16.1.2 Contractor's request. If the Contractor believes that he has fulfilled Partial Performance, including the relevant tests, the Contractor shall (i) notify SES in writing of such fact, (ii) submit to SES documents proving the due fulfillment of the Partial Performance and Partial Protocol signed by the Contractor and (iii) request SES for the signing of such Partial Protocol.
- 16.1.3 Response from SES. SES shall be obliged, not later than 60 (sixty) days upon fulfillment of the Contractor's obligation under Section 16.1.2, to (i) sign Partial Protocol and deliver it to the Contractor or (ii) reject Contractor's request with specification of reasonable grounds. As a reasonable ground shall at each time be considered the fact that Partial Performance has Defects, regardless of the extent and nature thereof or SES has justified suspicion

that such Defects exist and shall demand Contractor to carry out the relevant test. The Contractor shall be obliged to carry out the tests demanded by SES at its own costs. If Defect is not proven, the Contractor has towards SES a claim for the compensation of costs of such test.

- 16.1.4 Signing of Partial Protocol despite Defects. SES is in its own discretion entitled to sign Partial Protocol also despite any Defect of the Partial Performance. The Contractor shall be in such a case obliged to remove Defects of the Partial Performance by a term agreed or fixed by SES in writing. A list of Defects, terms for the removal thereof as well as a manner of the removal thereof shall be stated in an annex to Partial Protocol, confirmed by both Parties.
- 16.1.5 Fiction of the signing of Partial Protocol. If SES fails to fulfill any of its obligations under Section 16.1.3, Partial Protocol shall be deemed signed from the side of SES on a day after the period under Section 16.1.3. No other conduct/omission of SES, Customer and/or Owner shall result in a fiction of the signing of Partial Protocol from the side of SES. If the Contract refers to the signing of Partial Protocol, it shall mean the signing of Partial Protocol from the side of SES, as well as a fiction of the signing under this Section.
- 16.1.6 Effects of Partial Protocol. Partial Protocol signed by the Parties is a document entitling (i) the Contractor to issue an invoice for the relevant Partial Payment, (ii) SES, Customer and/or Owner to begin use of Partial Performance in full. The signing of Partial Protocol shall not affect other rights and obligations of the Parties, unless the Contract expressly provides for otherwise, in particular it is not a proof that Partial Performance was at the time of the signing of Partial Protocol from the side of SES, regardless of its contents, free from Defects.

The provisions of Sections 16.1.2 through 16.1.6 shall apply accordingly also to a procedure of the Parties in the fulfillment of other condition, with which the Contract connects the occurrence of a Contractor's claim to the payment of Partial Payment, unless such procedure is specifically provided for in the Contract.

## 16.2 Provisional Acceptance.

- 16.2.1 Use of the Subject of Performance as a whole prior to Provisional Acceptance. In justified cases SES, Customer and/or Owner shall be entitled to an inevitable extent and in accordance with a manual for operation and maintenance of the Contractor, to use the Subject of Performance as a whole also prior to the issuance and signing of PAC from the side of SES.
- 16.2.2 Contractor's request. If the Contractor believes that Provisional Acceptance has occurred, the Contractor shall (i) notify SES in writing of such fact, (ii) submit to SES documents proving Provisional Acceptance, which may be from him fairly demanded and (iii) request SES for the issuance and signing of

PAC. The Contractor shall be entitled to proceed pursuant to the foregoing sentence not sooner than on a day following the forecasted day of the signing of PAC stated in the Contract or after SES signs the last Partial Protocol, whichever occurs later. If the Contract does not specify the forecasted day of the signing of PAC or if the Contractor upon conclusion of the Contract learns, or could have learned, if he had acted with due care, that the forecasted day of the signing of PAC stated in the Contract was shifted, the Contractor shall request, promptly after SES concluded the last Partial Protocol, SES to determine the forecasted day of the signing of PAC. In such cases the Contractor shall be entitled to proceed under the first sentence of this Section only upon the determination of SES pursuant to the foregoing sentence.

- 16.2.3 Response of SES. SES shall be obliged, not later than 60 (sixty) days upon delivery of the Contractor's request under the first sentence of Section 16.2.2 delivered in accordance with Section 16.2.2 (i) to issue, sign and deliver PAC to the Contractor or (ii) reject the Contractor's request with specification of reasonable grounds. As a reasonable ground shall at each time be considered that no Provisional Acceptance has occurred, Subject of Performance has Defects, regardless of the extent and nature thereof and/or SES has a reasonable suspicion that such Defects exists and shall demand the Contractor to carry out the relevant test. Third and fourth sentence of Section 16.1.3 shall apply equally.
- 16.2.4 Issuance and signing of PAC despite Defects. Section 16.1.4 shall apply accordingly also in respect to PAC.
- 16.2.5 Fiction of PAC. If SES fails to fulfill any of its obligations under Section 16.2.3, PAC shall be deemed issued and signed on a day after the period under Section 16.2.3. PAC shall be deemed issued and signed from the side of SES also if SES refuses to issue PAC also upon expiration of 3 (three) months from a forecasted day of the signing of PAC stated in the Contract, or determined by SES under Section 16.2.2, for the reason that not all conditions of Provisional Acceptance have been fulfilled, even though SES is liable for such delay with Provisional Acceptance under Section 5.5. Fiction of the issuance and signing of PAC pursuant to the foregoing sentence shall occur on a day following the three-month period pursuant to the foregoing sentence. No other conduct/omission of SES, Customer and/or Owner shall result in a fiction of the issuance and signing of PAC from the side of SES. If the Contract refers to the issuance or signing of PAC, it shall mean the issuance and signing of PAC from the side of SES, as well as a fiction of the issuance and signing under this Section.
- 16.2.6 Effects of PAC. PAC issued and signed by SES is a document entitling (i) the Contractor to issue an invoice for the relevant Partial Payment and (ii) SES,

Customer and/or Owner to begin using the Subject of Performance as a whole. PAC shall equally have the meaning "delivery of Goods", "submission of Documentation", "provision of Service", or "performance the works" or other similar term under the governing law. Regardless of the foregoing sentence, the issuance and signing of PAC shall not affect the rights and obligations of the Parties, unless the Contract expressly provides for otherwise. For the avoidance of doubts, the issuance and signing of PAC is not proof that (i) Subject of Performance was at the time of issuance and signing of PAC from the side of SES, regardless of its contents, free from Defects and (ii) the Contractor has duly and on-time fulfilled all its obligations under the Contract.

#### 16.3 Final Acceptance.

- 16.3.1 Contractor's request. If the Contractor believes that Final Acceptance has occurred, the Contractor shall (i) notify SES in writing of such fact, (ii) submit to SES documents proving Final Acceptance, which may be fairly demanded from him and (iii) request SES for the issuance and signing of FAC. The Contractor shall be entitled to proceed pursuant to the foregoing sentence not sooner than on a day following the expiry of the Guarantee Period for construction part of the Subject of Performance (18.4.1 Section (ii)) and fulfillment of all its obligations from the Contract, including obligations arising out of the Guarantee.
- 16.3.2 Response of SES. SES shall be obliged not later than 90 (ninety) days upon delivery of the Contractor's request under the first sentence of Section 16.3.1 delivered in accordance with Section 16.3.1 (i) to issue, sign and deliver FAC to the Contractor or (ii) to reject the Contractor's request with specification of reasonable grounds. As a reasonable ground shall at each time be considered that no Final Acceptance has occurred, Subject of Performance has Defects, regardless of the extent and nature thereof and/or SES has a reasonable suspicion that such Defects exist and shall demand Contractor to carry out the relevant test. Third and fourth sentence of Section 16.1.3 shall apply equally.
- 16.3.3 Final Acceptance despite Defects. Section 16.1.4 shall apply accordingly also in respect to FAC.
- 16.3.4 Fiction of FAC. If SES fails to fulfill any of its obligations under Section 16.3.2, FAC shall be deemed issued and signed on a day after the period under Section 16.3.2. FAC shall be deemed issued and signed from the side of SES also if SES refuses to issue FAC also upon expiration of 3 (three) months from a forecasted day of the expiration of the Guarantee Period for construction part of the Subject of Performance (18.4.1 point (ii)), for the reason that not all conditions of Final Acceptance have been fulfilled, even though SES is liable for such delay with Final Acceptance under Section 5.5. Fiction of the issuance and signing of FAC pursuant

to the foregoing sentence shall occur on a day following the three-month period pursuant to the foregoing sentence. No other conduct/omission of SES, Customer and/or Owner shall result in a fiction of the issuance and signing of FAC from the side of SES. If the Contract refers to the issuance or signing of FAC from the side of SES, it shall mean also the fiction of the issuance and signing under this Section.

- 16.3.5 Effects of FAC. FAC issued and signed by SES is a document proving (i) expiration of the Guarantee Period for technological and construction part of the Subject of Performance (18.4.1 points (i) and (ii)) and (ii) fulfillment of all obligations of the Contractor under the Contract, except for obligations to remove Defects stated in an annex to FAC under Section 16.3.3 and other obligations which are to survive also after the signing of FAC and/or termination of the Contract.

## 17 TRANSFER OF OWNERSHIP RIGHT AND OTHER SIMILAR RIGHTS AND TRANSFER OF RISK OF DAMAGE

- 17.1 Contractor's risk. The Contractor shall bear during fulfillment of the Subject of Performance a risk of damage to the Subject of Performance and shall be owner of the Goods, except for the following cases:

- (a) ownership of things procured by SES for fulfillment of the Subject of Performance shall not be transferred to the Contractor; however, the Contractor shall bear a risk of damage to such things upon the acceptance thereof from SES; and
- (b) ownership of a thing which is being maintained, repaired or adjusted shall not be transferred to the Contractor; however, the Contractor shall bear a risk of damage to such thing upon the acceptance thereof.

The provisions of Section 17.2 and 17.3 shall not amend anything provided for in this Section 17.1.

- 17.2 Transfer of ownership and other similar rights to SES.

- 17.2.1 SES shall acquire ownership right to individual Goods in one of the following moments, whichever occurs earlier:

- (a) upon the transfer of a risk of damage to Goods under Section 17.3;
- (b) by delivery to the Place of Performance;
- (c) by payment of the relevant Partial Payment;
- (d) by a moment immediately preceding to the moment in which Customer/Owner is to acquire ownership right to such Goods under the Main Contract; or
- (e) upon incorporation, processing, mixing or similar connection with the Project, in which Applicable Laws on the place of the Site connect a transfer of ownership right to Goods due to the fact that Goods are no longer a individual thing in a legal sense of the word.

- 17.2.2 The provisions of Section 17.2.1 shall apply accordingly also to a transfer of the right to dispose

of the Documentation as its own to the extent of the Contract, as well as the right to enjoy results of the Service to the extent of the Contract.

- 17.2.3 The Contractor agrees to ensure in respect to Sub-contractors that a transfer of the rights under Sections 17.2.1 and 17.2.2 to SES shall not be in conflict with the contract between the Contractor and Sub-contractor.

- 17.3 Transfer of a risk of damage. A risk of damage to the Subject of Performance shall be transferred to SES as follows:

- 17.3.1 If the Subject of Performance includes also activity of the Contractor on the Site, then on the signing day of PAC.

- 17.3.2 If the Subject of Performance does not include activity of the Contractor on the Site, then on a day of the signing of the last Partial Protocol.

## 18 LIABILITY FOR DEFECTS

- 18.1 Extent of liability. If the Contract does not expressly exclude Contractor's liability for Defects, the Contractor shall be liable for any and all Defects to the extent and under conditions stated in the Contract.

- 18.2 Defects ascertained prior to Guarantee Period. If SES ascertains at any time prior to beginning of the Guarantee Period that the Subject of Performance or its part contains Defects or a risk of such Defects exists, SES shall be entitled, in its own discretion, to (i) demand that the Contractor remove such Defects not later than 24 (twenty four) hours upon notification to the Contractor of such Defects, (ii) remove Defects by herself or through a third person at the Contractor's costs, (iii) reject the Subject of Performance or its part and carry on in performance by herself or through a third person at the Contractor's costs. The exercise of rights pursuant to the foregoing sentence shall not exclude other rights of SES under the Contract. The Contractor's liability for other Defects is in such a case excluded, only if (i) SES or a third person authorized by her fails to take action in respect to the Subject of Performance or its part under this Section with due care and (ii) the Contractor notified SES in writing of a possibility of the occurrence of Defects as a result of such action under Section 4.2.1 accordingly. The exclusion of Contractor's liability pursuant to the foregoing sentence shall apply only to Defect directly caused by the action pursuant to the foregoing sentence.

- 18.3 Guarantee. Without prejudice to the extent of Contractor's liability under Section 18.1, the Contractor shall be liable also for the fact that the Subject of Performance shall retain and keep, for the term specified in the first sentence of Section 18.4.1 ("Guarantee Period"), the agreed quality and shall also in other aspects correspond to requirements under the Contract ("Guarantee"). Without prejudice to the extent of the Guarantee pursuant to the foregoing sentence, the Contractor shall be liable in particular for the fact that:

- (a) the Subject of Performance corresponds to conditions under the Contract and shall be able to meet, in



continuous commercial operation, properties and performance parameters defined in the Contract;

- (b) the Subject of Performance shall be free from Defects, in particular, that (i) the Subject of Performance is in accordance with the Contract, including the relevant requirements of the Main Contract, (ii) SES/Customer/Owner or any later acquirer of the Project may use the Subject of Performance in accordance with the Contract without any violation of third parties rights;
- (c) Goods were and shall be supplied in accordance with the Contract;
- (d) Documentation was and shall be in accordance with the Contract; and
- (e) Services were and shall be made in accordance with the Contract.

Notwithstanding other provision of this Contract, the Contractor shall not be liable for Defects of Goods incurred during Guarantee Period caused, in a manner which can be proven, (i) by standard wear and tear, (ii) by maintenance and operation in discrepancy with Documentation, (iii) or by use of unsuitable means of operation not procured by the Contractor.

#### 18.4 Guarantee Period.

18.4.1 Duration. Guarantee Period begins running from the signing of PAC, unless PAC provides for earlier date, and ends (i) 24 (twenty four) months from the beginning of its running in case of technological part of the Subject of Performance, (ii) 60 (sixty) months from the beginning of its running in case of construction part of the Subject of Performance and (iii) upon expiry of the actual or expected lifetime of the Project, whichever is longer, in case of project documentation of the Contractor, including design. However, if a longer guarantee period follows from the Applicable Laws or a guarantee of the Sub-contractor towards the Contractor in respect to individual parts of the Subject of Performance, as the Guarantee Period shall be in this part deemed such longer guarantee period. The Contractor shall be obliged to notify SES of all facts related to the guarantee period pursuant to the foregoing sentence and deliver to SES all documents necessary to be submitted in case of the submission of claims from liability for Defects. For the avoidance of doubts, neither the signing of Partial Protocols from the side of SES, nor other conduct/omission of SES, Customer or Owner shall affect the beginning of the Guarantee Period.

18.4.2 Validity and extension. Guarantee Period towards individual parts of the Subject of Performance runs individually. The provisions on the beginning of Guarantee Period under Section 18.4.1 remain thereby unaffected. Guarantee Period towards individual parts of the Subject of Performance is suspended from the beginning of a period for reporting Defect under Section 18.5, if SES notifies the Contractor of such Defect in accordance with Section 18.5, until the moment under Sections 18.8.9, 18.9.4 or 18.10.3.

18.4.3 New guarantee period. For each repaired or exchanged technological part of the Subject of Performance, a new guarantee period of 24 (twenty four) months, or 60 (sixty) months in case of construction part of the Subject of Performance shall begin to run, from the end of such repair or exchange, also repeatedly. This shall also apply in case of repairs or exchanges made by SES or a third party under the Contract, unless the Contract expressly excludes liability of the Contractor for further Defects.

18.5 Notice of Defect. If SES ascertains during Guarantee Period that the Subject of Performance or its part contains Defects, SES shall be obliged to deliver, within 20 (twenty) days from the day of such ascertaining, to the Contractor a notice of such Defect. If the period pursuant to the foregoing sentence expires only upon expiration of the Guarantee Period, a notice from SES of Defect shall be deemed on-time, if SES delivers it to the Contractor not later than the last day of such period. As on-time notice shall be deemed also a notice from SES of Defect delivered to the Contractor within 20 (twenty) days from the day of ascertaining of the Defect that SES ascertained only upon expiration of the Guarantee Period, if this relates to (i) Defect that SES could ascertain only upon first planned shutdown and maintenance of the Project, with the understanding that such shutdown and maintenance was scheduled only upon expiration of the Guarantee Period; (ii) Defect about which the Contractor knew or could have known, if he had acted with due care, not later than the last day of Guarantee Period; however, failed to notify SES of such Defect, and SES did not know about such Defect at that time; or (iii) Defect incurred upon expiration of the Guarantee Period and which is a consequence of the facts about which the Contractor knew or could have known, if he had acted with due care, not later than the last day of Guarantee Period; however, the Contractor failed to notify SES of such facts not later than the last day of Guarantee Period, and SES did not know about such facts at that time. If SES (i) ascertains that the Subject of Performance or its part contains Defects only upon expiration of the Guarantee Period, except for the situations stated in the foregoing sentence, or (ii) fails to deliver a notice of Defect on time, SES shall not have towards the Contractor any claim for Defects under Section 18.7, nor other claim under the Contract in respect to such Defect.

18.6 Statement to Defect. The Contractor shall be obliged to deliver a written statement in respect to the notice under Section 18.5 without undue delay; however, not later than 5 (five) days from the receipt thereof. The Contractor must specify and reasonably explain in the statement pursuant to the foregoing sentence the reason of Defect and measures to restrict any repeated occurrence of Defect, if objectively possible given the nature of Defect. However, if part of the notice from SES under Section 18.5 is also the submission of a claim under:

- (a) Section 18.7 (a), the Contractor shall also specify and reasonably explain in the statement under the first sentence of Section 18.6 a manner of Defect removal, if objectively possible given the nature of Defect.



- (b) Section 18.7 (b) or (c), the Contractor shall also specify and reasonably explain in the statement under the first sentence of Section 18.6 instructions aimed to the fact that such action was made into the Subject of Performance or its part with due care, if objectively possible given the nature of Defect. If the Contractor provides such instructions in accordance with the foregoing sentence, and such instructions show to be suitable and correct, his liability for further Defects directly caused by such action shall be excluded.
- (c) Section 18.7 (d), the Contractor shall also specify and reasonably explain in the statement under the first sentence of Section 18.6 whether he agrees to a discount of the Contract Price or not, if objectively possible given the nature of Defect. If (i) the Contractor does not refer to an objective impossibility of such statement, (ii) does not expressly deny its liability for reported Defect; however, (iii) disagrees to the proposed discount of the Contract Price, he shall be obliged to propose a discount of the Contract Price which he deems in good faith reasonable under Section 18.10.1; and
- (d) Section 18.7 (e), the Contractor shall also specify and reasonably explain in the statement under the first sentence of Section 18.6 also whether he deems a withdrawal from the Contract legitimate, and if not, then for which reason, if objectively possible given the nature of Defect.

If the Contractor fails to perform its any obligation under this Section 18.6, the notice of Defect under Section 18.5 shall be deemed legitimate and Defect, including a claim, if any, of SES submitted in such notice, to be acknowledged by the Contractor. If the Contractor believes that given the nature of Defect it is not objectively possible to give statement even partially to the facts stated in Section 18.6, he shall be obliged to notify SES of such impossibility and reasonably justify it in the period under the first sentence of Section 18.6. If the Contractor fails to perform such obligation, the effects stated in the first sentence of this Section shall apply.

- 18.7 Claims from Defects. In case of the on-time notification of Defect under Section 18.5, SES shall be entitled, in its own discretion, to submit in such notice or at any time afterwards, any of the following claims:
- (a) demand the Contractor to remove Defect depending upon its nature, in particular (i) a repair of the Subject of Performance, if Defect may be repaired, (ii) delivery of alternate Subject of Performance, if Defect cannot be repaired, (iii) delivery of a missing part of the Subject of Performance and/or (iv) removal of Legal Defect;
  - (b) remove Defect herself or through a third person at Contractor's costs;
  - (c) reject the Subject of Performance or its part and continue in performance herself or through a third person at Contractor's costs;
  - (d) demand reasonable discount of the Contract Price; or
  - (e) withdraw from the Contract if Defect represents a material violation of the Contract.

If SES submits such claim later than in the notice under Section 18.5, the Contractor's obligations under Section 18.6 and any other provisions of the Contract referring to

Section 18.6 shall apply equally. Upon the submission of a claim the Parties shall be bound by it. However; SES shall not be bound by a submitted claim, if the Contractor in connection with the submitted claim violates any its obligation. SES is in such a case entitled to submit any other claim under the first sentence of this Section 18.7 and the Parties shall proceed as if it was the first choice of a claim from the side of SES.

- 18.8 Removal of Defect by Contractor. If SES submits the claim under Section 18.7 (a), the following provisions shall apply:

18.8.1 Nature of Contractor's activity. The removal of Defect shall be deemed as Service and unless the Contract provides for otherwise, the Contractor shall be obliged to proceed in the same manner as in case of the performance of other parts of the Subject of Performance.

18.8.2 Manner. The Contractor shall be obliged to remove Defect in a manner agreed with SES. If no such agreement is reached, the Contractor shall be obliged to remove Defect (i) with due care, reflecting the latest status of a technical solution at the time of the removal of Defect, and (ii) in accordance with other conditions of the Contract, including relevant requirements arising out of the Main Contract. The Contractor's obligation under Section 18.6 (a) remains unaffected.

18.8.3 Time. The Contractor shall be obliged to remove Defect in a period agreed with SES. If no such agreement is reached on a period of the removal of Defect, the Contractor shall be obliged to remove Defect within 15 (fifteen) days upon the submission of a claim under Section 18.7 (a). If this relates to Defect preventing from the due and/or safe operation of the Equipment, the Contractor shall be obliged not later than 24 (twenty four) hours upon receipt of the submission of a claim under Section 18.7 (a) to arrive to the Site and to promptly begin Defect removal, unless the Parties agree otherwise. The Contractor's obligation under Section 18.6 (a) remains unaffected by this Section.

18.8.4 Place. The Contractor shall remove Defect on the place where the affected part of the Subject of Performance is located. If the nature of the Defect disallows its removal on such place, then in the nearest service workplace of the Contractor or its service partner. The Contractor shall bear and pay all costs related to a transport of the part of the Subject of Performance affected by Defect from the place where it is located to such service workplace and back regardless of the fact whether the transport is ensured by the Contractor or SES.

18.8.5 Minimizing impacts on operation. The Contractor shall take all necessary measures to avoid or minimize any impact of the interruption of operation of the Subject of Performance/Project related to Defect removal. The Contractor shall bear all costs related to such measures. If the Defect may be better removed with a lesser impact on operation of the Subject of Performance/Project later (e.g.,

during a planned shutdown and maintenance) than at the time of the ascertaining thereof, the Contractor shall make provisional Defect removal upon agreement with SES. The Contractor shall make final Defect removal upon agreement with SES. If the Parties fail to agree pursuant to the foregoing sentence, a term of Defect removal shall be fixed by SES.

18.8.6 Ownership right and risk of damage.

- (a) the Contractor shall bear any risk of damage on the part of the Subject of Performance affected by Defect from the beginning of Defect removal until the signing of the protocol on Defect removal under Section 18.8.9 (a) from the side of SES.
- (b) unless the Parties agree otherwise, ownership right and other rights stated in Section 17.2.2 to a new Subject of Performance or its part in Defect removal by an exchange shall pass to SES under Section 17.2.1 (b) or (e), whichever occurs earlier. A risk of damage on a new Subject of Performance or its part shall pass to SES under Section 17.2.1 (b) or (e), whichever occurs later. Ownership right to exchanged Goods in Defect removal shall pass back to the Contractor simultaneously with the transfer of ownership right to new Goods under the first sentence of this letter (b). For the avoidance of doubts, if this relates to Defect of Documentation or Service, other rights specified in Section 17.2.2 shall not pass back to the Contractor.

18.8.7 Removal of exchanged Goods. The Contractor shall be obliged to promptly remove exchanged Goods upon transfer of ownership right to the exchanged Goods to the Contractor.

18.8.8 Further affected parts and spare parts. If the Contractor adjusts or exchanges part of the Subject of Performance, he shall be obliged, to the extent of such adjustment or exchange, adjust or exchange also further affected parts of the Subject of Performance, including spare parts.

18.8.9 Termination. In connection with the termination of Contractor's activities in the Defect removal the following provisions shall apply:

- (a) If the Contractor believes that he has removed the Defect, he shall (i) notify SES of such fact in writing, (ii) submit to her documents proving Defect removal and a protocol on Defect removal signed by him and (iii) request her to sign such protocol.
- (b) SES shall be obliged, not later than 60 (sixty) days upon the fulfillment of the Contractor's obligation under Section 18.8.9 (a), (i) to sign a protocol on Defect removal and deliver it to the Contractor or (ii) reject Contractor's request with specification of reasonable grounds. As a reasonable ground shall be at each time

deemed if the Contractor failed to remove Defect in accordance with the Contract.

- (c) If SES fails to fulfill its any obligation under Section 18.8.9 (b), a protocol on Defect removal shall be deemed signed from the side of SES on a day after the period under Section 16.1.3. No other conduct/omission of SES, Customer and/or Owner shall result in a fiction of the signing of such protocol from the side of SES. If the Contract refers to the signing of a protocol on Defect removal from the side of SES, it shall also mean a fiction of the signing under this letter (c).

- (d) A protocol on Defect removal signed by the Parties is a document proving (i) termination of the suspension of Guarantee Period under Section 18.4.2 and (ii) the transfer of a risk of damage to the part of the Subject of Performance affected by the Defect back to SES. The signing of such protocol shall not affect further rights and obligations of the Parties, unless the Contract expressly provides for otherwise, in particular is not evidence that the Contractor has duly removed Defect.

18.8.10 Retention of a part of the Contract Price. SES shall not be obliged, by the time of the signing of the protocol on Defect removal under Section 18.8.9, to pay to the Contractor part of the Contract Price, which would correspond to her claim to a discount of the Contract Price under Section 18.10.1, the claim of SES to the compensation of costs under Sections 18.8.11 and 18.9.6 and other claims of SES in connection with the Defect, if the Contractor fails to remove Defect.

18.8.11 Costs and dispute resolution. The Contractor shall be obliged to remove Defect and fulfill all related obligations under Section 18.8 at his own costs and risk. The Contractor shall be obliged to remove Defect regardless of the fact whether he admits his liability for Defect or not. The relevant court shall decide on Contractor's liability for Defect in accordance with Section 26.2. The Contractor has towards SES only a claim to the compensation of costs related to the removal of such Defect and the performance of related obligations, specifically, only if the relevant court decides that the Contractor is not liable for such defect, not even partially. In other cases SES has towards the Contractor a claim to the compensation of costs in connection with Defect removal under Section 18.8.

18.8.12 Impossibility of Contractor to discharge from liability. Any consent, agreement and/or any other action of SES, Customer and/or Owner in connection with Defect removal under Section 18.8 shall neither discharge the Contractor from liability for due and on-time Defect removal, nor from other liability related therewith, unless it is Instruction, in respect of which Contractor's liability is excluded under Section 4.3.1.

- 18.9 Defect removal by SES. If SES submits the claim under Section 18.7 (b) or (c), the following provisions shall apply:
- 18.9.1 Liability for further Defects. If Contractor's liability for further Defects is not excluded under Section 18.6 (b), Contractor's liability for further Defects directly caused by such action is excluded also if (i) given the nature of Defect it is not objectively possible that the Contractor provide to SES instructions under Section 18.6 (b), of which he notified SES in the manner under Section 18.6, and (ii) SES or a third person failed to proceed in such action as the Contractor would be obliged to under the second sentence of Section 18.8.2.
- 18.9.2 Ownership right and a risk of damage in exchange. If an action of SES or of a third person consists of the exchange of Goods, ownership right and a risk of damage on the exchanged Goods shall pass back to the Contractor at the time fixed by SES. For the avoidance of doubts, if this relates to Defect of Documentation or Service, other rights stated in Section 17.2.2 shall not pass back to the Contractor.
- 18.9.3 Removal of exchanged/rejected Goods. Upon request of SES, the Contractor shall be obliged to promptly remove exchanged/rejected Goods.
- 18.9.4 Termination. SES shall be obliged to (i) notify the Contractor of the termination of Defect removal from the side of SES or by a third party not later than 10 (ten) days and (ii) simultaneously submit to the Contractor documents proving the manner and duration of Defect removal. The Document containing a day of the termination of Defect removal is a document proving termination of the suspension of Guarantee Period under Section 18.4.2. If SES fails to fulfill the obligation pursuant to the foregoing sentence, it shall apply that Guarantee Period ceased to be suspended on the first day of the delay of SES with the fulfillment of such obligation.
- 18.9.5 Retention of a part of the Contract Price. SES shall not be obliged, by the time of delivery of the notice from SES under Section 18.9.4, to pay to the Contractor part of the Contract Price, which would correspond to her claim to a discount of the Contract Price under Section 18.10.1, the claim of SES to the compensation of costs under Section 18.9.6 and other claims of SES in connection with Defect, if Defects are not removed.
- 18.9.6 Costs and dispute resolution. The Contractor shall be obliged to fulfill all obligations under Section 18.9 at his own costs and risk, regardless of the fact whether he admits his liability for Defect or not. The relevant court shall decide on Contractor's liability for Defect in accordance with Section 26.2. The Contractor has towards SES only a claim to the compensation of costs related to the fulfillment of obligations under Section 18.9, specifically, only if the relevant court decides that the Contractor is not liable for such defect, not even partially. In other cases SES has towards the Contractor a claim to the compensation of costs in connection with Defect removal under Section 18.9.
- 18.10 Discount of the Contract Price. If SES submits the claim under Section 18.7 (d), the following provisions shall apply:
- 18.10.1 Amount of a discount. A claim to a reasonable discount of the Contract Price corresponds to a difference between the value that the Subject of Performance would have if free from Defect, and the value which had the Subject of Performance delivered with Defect. To determine the values, the time within which the Contractor was supposed to make due performance shall be decisive. In determining the amount of a discount of the Contract Price under this Section the Parties shall also follow from (i) assessment of the costs and time to be expended by SES for activities necessary so that the Subject of Performance be free from Defect, if feasible, (ii) significance of the Subject of Performance for economic and business activities of SES, Customer and Owner and (iii) the amount of damages which the Defect may cause to SES, Customer or Owner.
- 18.10.2 Submission of claim to a discount. If SES as of a day of the submission of a claim under Section 18.7 (d) had not yet paid to the Contractor the Contract Price or its part exceeding the claim under Section 18.7 (d), SES shall be entitled to decrease, by a discount of the Contract Price under Section 18.10.1, the unpaid Contract Price or its part. If unpaid part of the Contract Price is lower than the submitted claim to a discount of the Contract Price, SES shall be entitled to request the Contractor to return corresponding part of the Contract Price together with interest of 0.03 % (three hundreds of one percent) from that part of the Contract Price, which is to be returned, for each day from its payment to the Contractor until the return thereof to SES.
- 18.10.3 Termination of suspension of Guarantee Period. If SES submits the claim under Section 18.7 (d) simultaneously with the notice of Defect under Section 18.5, the Guarantee Period shall continue further regardless of the submission of such claim. However; if SES submits the claim under Section 18.7 (d) later, the Guarantee Period shall be suspended until delivery of the submission of such claim; however, not more than 60 (sixty) days upon delivery of the notice of Defect under Section 18.5.
- 18.11 Repeated Defects. If Defects of the same and/or similar nature arise and/or appear on the same or similar part of the Subject of Performance or SES justifiably believes that such repeated Defects may arise and/or appear, the Contractor shall be obliged, regardless of the extent of its costs related therewith, take proper measures, including adjustment of the Subject of Performance or its affected part, in particular to change design, applied material, etc., so that Defect shall not to occur again. The provisions of this Section apply regardless of the fact whether this relates to Defects ascertained under Section 18.2 and/or 18.5.

18.12 Relation to other claims. The submission of any claim of SES under Article 18 shall not affect the submission of any other claims of SES under the Contract.

18.13 Submission of claims from Defects in earlier beginning of Guarantee Period. If the Parties expressly agreed in the Basic Provisions and/or SC that the Guarantee Period will begin running earlier than on a day of the signing of PAC, the provisions of Section 18.1 through 18.13 shall apply equally, and the reference in the Contract to the signing of PAC in connection with liability for Defects shall be deemed a reference to a day on which the Guarantee Period begins running under the Basic Provisions and/or SC.

18.14 Submission of claims from Defects in exclusion of Guarantee. If the Parties expressly agreed in the Basic Provisions and/or SC to exclude the Guarantee or its part, then to the extent of excluded Guarantee shall apply that:

18.14.1 the provisions of Section 18.2 shall apply equally;

18.14.2 Contractor's liability for Defects shall apply to (i) Defects existing at the time of the signing of PAC and (ii) Defects incurred upon the signing of PAC, and which are results of the facts about which the Contractor at the signing of PAC knew or could have known, if he had acted with due care; however, the Contractor failed to notify SES of such facts prior to the signing of PAC.

18.14.3 Guarantee Period represents a period for the submission of Defects under Section 18.14.2, and the provisions of Section 18.4 shall apply to a period for the submission of such Defects equally; and

18.14.4 Sections 18.5 through 18.12 shall apply equally in the submission of claims from Defects under Section 18.14.2 and (i) SES shall be obliged to inspect the Subject of Performance prior to the signing of PAC and (ii) SES shall be obliged to deliver a notice of Defect ascertained by SES in such inspection to the Contractor not later than 20 (twenty) days upon the signing of PAC. For the avoidance of doubts, the provisions of the third sentence of Section 18.5 shall apply equally; however, the Defect under the third sentence of Section 18.5 must at each time be Defect under Section 18.14.2.

## 19 INTERRUPTION OF PERFORMANCE OF THE SUBJECT OF PERFORMANCE

19.1 Interruption from the side of SES. SES shall be entitled, at any time in its own discretion, upon written notice to the Contractor, interrupt performance of the Subject of Performance or its part. In such a case the following provisions shall apply:

19.1.1 The Contractor shall be obliged, without undue delay upon delivery of the notice under the first sentence of Section 19.1, to proceed under the second sentence of Section 4.2 (including Sections 4.2.1 through 4.2.3). To that extent it shall apply that the notice under the first sentence of Section 19.1 shall be deemed Instruction.

19.1.2 The Contractor shall be obliged, within a term fixed by SES, otherwise without undue delay upon delivery of the notice under the first sentence of Section 19.1, and to the extent fixed by SES, (i) to make conservation of works made to that date (ii) interrupt fulfillment of the Subject of Performance, except for works, the interruption of which could cause Defects and (iii) decrease a number of Personnel and the performance of non-fulfilled obligations to minimize costs. Contractor's liability for Defects and Contractor's obligations related thereto, as well as the information duty of the Contractor under Section 28.6, remain preserved at each time in full, unless SES provides otherwise.

19.1.3 If a risk of damage to the Subject of Performance was not transferred to SES, the Contractor shall be obliged, during interruption,, to protect, store and ensure Subject of Performance and any of its parts against damage, loss, devaluation or harm. If part of the Subject of Performance is also activity on the Site, the provision of the foregoing sentence shall also apply to the Site, unless SES provides otherwise.

19.1.4 SES shall be entitled, at any time in its own discretion, upon notice in writing to the Contractor, to instruct resumption of the performance of the Contract. The Contractor shall be obliged, in a term fixed by SES, otherwise without undue delay; however, not later than 15 (fifteen) days upon delivery of the notice under the first sentence of this Section, to continue in the fulfillment of the Subject of Performance.

19.1.5 The Contractor has towards SES a claim to a reasonable extension of Times for Performance; however, not more than to the extent of the actual duration of interruption, and/or a claim to the compensation of costs, only upon the fulfillment of all following conditions:

- (a) the Contractor has fulfilled its obligations in connection with interruption duly and on-time;
- (b) interruption was not ordered for the reason for which the Contractor is liable, even partially, under the Contract; and
- (c) the Contractor submits such claim not later than 30 (thirty) days upon delivery of the notice under Section 19.1.4. In the submission of such claim, the Contractor shall proceed under Section 4.5.3 accordingly, but the 15-day period under Section 4.5.3 (a) shall be replaced by a 1 (one) month period and the 5-day period under Section 4.5.3 (a) shall be replaced by a period of 15 (fifteen) days.

19.2 Interruption from the side of Contractor. The Contractor shall be entitled, upon notice in writing to SES, to interrupt performance the Subject of Performance, only if SES is in delay with the payment of an invoice for the Contract Price or Partial Payments exceeding 30 % of the total Contract Price for more than 60 (sixty) days and failed to remove such violation even within an additional period of 30 (thirty) days upon delivery of a request from the Contractor in



writing. The Contractor shall be entitled to send such request to SES not sooner than on a day following expiration of the 60-day period under the first sentence of this Section. If the Contractor legitimately interrupts fulfillment of the Subject of Performance, the provisions of Sections 19.1.1 through 19.1.5 shall apply equally, with the fact that (a) as the notice of SES under the first sentence of Section 19.1 shall be deemed the Contractor's notice under the first sentence of this Section, (b) the term and extent of interruption of fulfillment of the Subject of Performance under Section 19.1.2 point (ii) shall be fixed by the Contractor in such a manner so that SES/Customer/Owner incur damages as a result of the interruption as little as possible and limitation of their operational activity as little as possible and (c) as the notice of SES under the first sentence of Section 19.1.4 shall be deemed a day of payment of the Contract Price or Partial Payments, which were a reason for the interruption under the first sentence of this Section, regardless of the fact whether SES notifies the Contractor of such payment or not. For the avoidance of doubts, unless the Contract expressly provides for otherwise, the Contractor shall not be entitled to interrupt, suspend and/or deny performance of the Subject of Performance for a reason other than the reason specified in this Section, not even if the governing law, Applicable Law and/or other legal regulations concedes such right to him otherwise.

## 20 FORCE MAJEURE

- 20.1 Consequences. A Party shall not be liable towards the other Party for a violation of its obligation under the Contract, if (i) a direct and main cause of such violation is Force Majeure; however, only to such extent and for the duration thereof, and (ii) a Party referring to Force Majeure, fulfills its obligations under Sections 20.2 and 20.3. However, a Party may never be discharged from the liability under the first sentence of this Section, if a Party, at the time of the occurrence of the Force Majeure, was already in delay with the fulfillment of its obligation, in connection with which it refers to the Force Majeure.
- 20.2 Information duty. A Party referring to Force Majeure shall be obliged to notify the other Party in writing of, and prove with reliable documents, the occurrence of Force Majeure and consequences of the Force Majeure to the performance of its obligations promptly; however, not later than 5 (five) business days from the day on which it learns about the Force Majeure, or could have learned, if acting with due care.
- 20.3 Prevention to damage. A Party referring to Force Majeure shall be obliged to take all necessary measures to minimize further damage. Without prejudice to the obligation under the first sentence of this Section, if the Contractor refers to Force Majeure, he shall be obliged at each time to take all necessary measures for the protection of the Subject of Performance or its affected part.
- 20.4 Contractor's claim. If the Contractor legitimately refers to Force Majeure and has fulfilled all its related obligations, he has towards SES a claim to reasonable extension of Times for Performance (however; not a claim to the compensation of costs, or other claim), however; not more than for the duration of Force Majeure, if he submits such claim not later

than 30 (thirty) days upon expiry of the Force Majeure. Section 4.2.2 shall apply to the submission of such claim accordingly.

## 21 WITHDRAWAL FROM THE CONTRACT

- 21.1 Withdrawal from the Contract by SES for reasons on the side of Contractor. SES shall be entitled to withdraw from the Contract at any time, also in part, if:
- (a) the Contractor abandons the Site or shows in other manner that he does not intend to carry on with fulfillment of the Subject of Performance;
  - (b) the Contractor is in delay with the fulfillment of the Subject of Performance, or its part for more than 30 (thirty) days;
  - (c) the Contractor fails to take steps under Section 5.4.2 duly and on-time or such steps are as per opinion of SES insufficient;
  - (d) amount of the contractual penalties for delay of the Contractor under the Contract exceeds 20% (twenty percent) of the total Contract Price;
  - (e) the Contractor is in delay with the submission of any bank guarantee under the Contract for more than 15 (fifteen) days;
  - (f) the Contractor will not be deleted from the list under the first sentence of Section 8.12 even within 30 (thirty) days upon its registration in such list;
  - (g) the Contractor fails to remove Defect in accordance with the Contract;
  - (h) the Subject of Performance, or its part has Defect which represents a material violation of the Contract under the conditions specified in Section 18.7 (e);
  - (i) the Contractor is in delay with the fulfillment of any obligation under Section 27.8;
  - (j) the Contractor violates the Contract in a material manner;
  - (k) the Contractor violates the Contract in a manner other than a material manner and fails to remove such violation even within an additional reasonable period upon delivery of a request from SES for remedy;
  - (l) the Contractor materially or repeatedly violates any Applicable Law;
  - (m) bankruptcy, restructuring or other proceeding is declared over Contractor's assets, the purpose of which is to collectively satisfy Contractor's creditors; and/or
  - (n) the Contractor becomes insolvent, or Contractor is, as per justified opinion of SES, in a situation in which he is not able to duly and/or on-time fulfill its obligations.
- 21.2 Withdrawal from the Contract by SES for other reasons. In addition to the reasons stated in Section 21.1, SES shall be entitled to withdraw from the Contract, also in part, if
- (a) Force Majeure, regardless of the fact which of the Parties is affected thereby, shall last consecutively for more than 6 (six) months or in total in the aggregate of Force Majeure for more than 12 (twelve) months; however, not later than 30 (thirty) days upon a day on which SES learned about such reason or could have learned, if she had acted with due care;
  - (b) SES and/or Customer/Owner unilaterally terminated the Main Contract; and/or



(c) SES decides so at any time, also without specifying a reason.

21.3 Withdrawal from the Contract by Contractor for reasons on the side of SES. Contractor shall be entitled to withdraw from the Contract at any time, also in part, if SES is in delay with

(a) invoice payment for the Contract Price or Partial Payments exceeding 30% of the total Contract Price for more than 150 (one hundred fifty) days and failed to remove such violation even within an additional period of 30 (thirty) days upon delivery of a request from the Contractor in writing; however, provided that the Contractor failed to exercise its right under Section 19.2 and/or

(b) fulfillment of the obligation under the first sentence of Section 5.5 and also other conditions under Section 5.5 shall be fulfilled; however, not less than by 60 (sixty) days, and she failed to remove such violation even within an additional period of 15 (fifteen) days upon delivery of a written request from the Contractor,

and such delay of SES represents a material violation of the Contract from the side of SES. The Contractor shall be entitled to send the requests for additional fulfillment of the obligation under the first sentence of this Section to SES not sooner than on a day following expiration of the 150-day period under letter (a), or the 60-day period under letter (b).

21.4 Withdrawal from the Contract by Contractor due to Force Majeure. In addition to the reasons stated in Section 21.3, the Contractor shall be entitled to withdraw from the Contract, also in part, if Force Majeure, regardless of the fact which of the Parties is affected thereby, shall last consecutively for more than 6 (six) months or in total in the aggregate of Force Majeure for more than 12 (twelve) months. However, the Contractor is not entitled to withdraw from the Contract under this Section upon expiration of 30 (thirty) days upon a day on which he learned about such reason or could have learned, if he had acted with due care.

21.5 Impossibility of withdrawal. If a withdrawal from the Contract requires a reason, none of the Parties is entitled to withdraw from the Contract for the reason which at the time of dispatching a withdrawal notice no longer existed. The provision of the foregoing sentence applies equally, if the Contract stipulates a period for the exercise of the right to withdraw from the Contract.

21.6 Manner of withdrawal. Withdrawal from the Contract must be made in writing with specification of the reasons of withdrawal, if the Contract requires so, and must be delivered to the other Party in a manner which can be proven.

21.7 General effects of withdrawal. Regardless of the fact which Party withdraws from the Contract, withdrawal from the Contract has at each time the following effects:

21.7.1 By withdrawal from the Contract the Contract shall be terminated upon delivery of a notice to the other Party.

21.7.2 Without prejudice to the provisions of Section 31.2, any rights and obligations of the Parties occurred prior to withdrawal shall remain preserved, in

particular (i) claims for the compensation of costs; (ii) claims of the compensation of damage; (iii) claims for contractual penalties, interest, interest for delay and other sanctions recognized by the Contract; (iv) rights and obligations from issued bank guarantees, promissory notes, letters of credit and/or warranty representations; and (v) the right of SES to Retention for Guarantee Period and Retention for VAT.

21.7.3 With respect to ownership right and other rights under Section 17.2.2 to the Subject of Performance, or its part, applies that:

(a) such rights to the Subject of Performance, or its part, which already at the time of the effectiveness of withdrawal were transferred to SES, remain preserved, unless SES in its withdrawal or a statement, if any, to withdrawal of the Contractor, which SES shall send not later than thirty (30) days upon delivery of withdrawal of the Contractor, determines that such rights shall be transferred back to the Contractor to a specified extent. If SES makes the determination pursuant to the foregoing sentence, the Contractor shall be obliged, within thirty (30) days upon delivery of the determination pursuant to the foregoing sentence (i) part of the Subject of Performance, which SES will not retain, to remove from the place where it is located and (ii) in respect to such part of the Subject of Performance to return the pertaining part of the Contract Price together with interest of 0.03 % (three hundredths of one percent) from such amount of the Contract Price, for each day from the payment thereof to the Contractor until the return thereof to SES. Other claims of SES under the Contract remain unaffected; and

(b) if SES did not acquire such rights to the already performed Subject of Performance, or its part, prior to the effectiveness of withdrawal, such rights shall be transferred upon the effectiveness of withdrawal to SES, unless SES in its withdrawal or a statement, if any, to withdrawal of the Contractor, which SES shall send not later than thirty (30) days upon delivery of withdrawal of the Contractor, determines that such rights shall be not be transferred to SES. Second and third sentences of Section 21.7.3 (a) apply equally.

21.7.4 SES shall pay to the Contractor any unpaid part of the Contract Price pertaining to that part of the Subject of Performance, which SES did not reject under Section 21.7.3 and the Contractor shall return to SES provided Advance Payments.

21.7.5 Unless SES determines otherwise, the Contractor shall

(a) promptly suspend all works; except for works the suspension of which could cause immediate occurrence of damage on the Subject of Performance and/or Project;

- (b) decrease a number of Personnel, Services and outstanding obligations in order to minimize costs; and
- (c) terminate all outstanding relations with Sub-contractors and shall settle all obligations and claims incurred in connection with the termination.

For the avoidance of doubts, other determination of SES under this Section 21.7.5 may not go beyond a level reasonable to the fact that the Contract is terminated by the withdrawal therefrom.

- 21.7.6 Contractor's liability for Defects, including rights and obligations of the Parties arising out of the relevant provisions of the Contract on Guarantee and Guarantee Period, to the extent of the Subject of Performance, in respect of which SES shall retain ownership right and other rights under Section 17.2.2, remain unaffected. However, if withdrawal from the Contract becomes effective prior to the signing of PAC, Guarantee Period for the retained part of the Subject of Performance shall begin running on a day of the effectiveness of withdrawal or on a day of the acceptance of the last part of the Subject of Performance under Section 21.7.5 (a), whichever occurs later. For the avoidance of doubts, if withdrawal from the Contract becomes effective upon the signing of PAC, such withdrawal shall not affect Contractor's liability for Defects, including Guarantee and Guarantee Period.

- 21.8 Special nature of the effects of withdrawal of SES for reasons on the side of Contractor. If SES withdraws from the Contract under Section 21.1, such withdrawal has, in addition to the effects stated in Section 21.7, the following effects:

- 21.8.1 SES has towards the Contractor a claim for the compensation of damage incurred as a result of withdrawal.
- 21.8.2 If SES, even if partially, instructs the Contractor for the restitution to original condition under Section 21.7.3, the Contractor shall make such restitution at its own costs.
- 21.8.3 SES shall be entitled, notwithstanding any other rights under the Contract, to complete the Subject of Performance herself or through a third person at Contractor's costs. SES shall be obliged to notify the Contractor of its decision not later than 60 (sixty) days upon the effectiveness of withdrawal. If SES fails to do so, she shall be entitled to retain the payments under Section 21.8.4 not later than 30 (thirty) days upon expiration of the period for making the notice pursuant to the foregoing sentence.
- 21.8.4 If SES decides to carry on in the substitute fulfillment of the Subject of Performance under Section 21.8.3, SES shall be entitled to retain any payment to the Contractor, regardless of its title and/or maturity, until the fulfillment of the Subject of Performance by SES or a third person. SES shall

be, upon such substitute fulfillment, (i) obliged to make to the Contractor any retained payments, decreased by any and all claims which SES has or may have towards the Contractor under the Contract or (ii) entitled to submit towards the Contractor a claim for the reimbursement of the relevant claims exceeding payments retained in such a manner.

- 21.9 Special nature of the effects of withdrawal due to Force Majeure. If SES withdraws from the Contract under Section 21.2 (a) or the Contractor withdraws from the Contract under Section 21.4, such withdrawals has, in addition to the effects under Section 21.7, the following effects:

- 21.9.1 the Contractor has towards SES a claim to the compensation of costs in connection with activities under Section 21.7.5;
- 21.9.2 the Parties shall not have towards each other any claim for the compensation of damage in connection with such withdrawal; and
- 21.9.3 if SES, even partially, instructs the Contractor for the restitution to original condition under Section 21.7.3, the Contractor shall make such restitution, and costs related to such restitution shall be divided in a proportion to the extent in which Force Majeure prevented a Party from the performance.

- 21.10 Special nature of the effects of withdrawal in other cases. If SES withdraws from the Contract under Section 21.2 (b) or (c) or the Contractor withdraws from the Contract under Section 21.3, such withdrawals has, in addition to the effect under Section 21.7 such effect that if SES, even partially, instructs the Contractor for the restitution to original condition under Section 21.7.3, the Contractor shall make such restitution, and has towards SES a claim for the compensation of costs.

- 21.11 Restriction of Contractor's claims. Notwithstanding any other provision of the Contract, the Contractor shall not have towards SES in connection with withdrawal from the Contract, regardless of a withdrawing Party, any claim exceeding the Contract Price, decreased by the amount of (i) already made payments and (ii) claims of SES towards the Contractor under the Contract.

- 21.12 Legitimacy of withdrawal. If any Party legitimately withdraws from the Contract for reasons attributable to other Party, it shall apply that such Party cannot get as a result of such withdrawal into a worse position than it was in before such withdrawal.

- 21.13 Unlawfulness of withdrawal. If any Party unlawfully withdraws from the Contract and proceeds in such a manner that the other Party incurs or may incur damage, a withdrawing Party shall be obliged to compensate such damage, if a withdrawing Party in such withdrawal and/or procedure failed to act in a good faith and with due care, that the withdrawal is legitimate.

- 21.14 Other manners of Contract termination. The Contract cannot be terminated by a unilateral act of a Party in a manner other than provided expressly for by the Contract. For the avoidance of doubts, an option of the Parties for earlier

termination of the Contract shall not be affected, if such agreement is in the form of Amendment.

## 22 CONTRACTUAL PENALTIES

22.1 Claim of SES to contractual penalties. SES shall be entitled to demand from the Contractor the payment of a contractual penalty amounting to

- (a) 100% of the total Contract Price, if the Contractor violates any its obligation under Sections 28.4.1 and/or 28.5;
- (b) 1% (one percent) of the total Contract Price for each commenced day of Contractor's delay with the fulfillment of any part of the Subject of Performance with separately specified Time for Performance, for each such part of the Subject of Performance separately;
- (c) 0.5 % (five tenths of one percent) of the total Contract Price for each commenced day of Contractor's delay with Defect removal under Section 18.8;
- (d) EUR 5,000 for each commenced day of Contractor's delay with return of the Construction Site and/or Workplace under Section 14.17;
- (e) EUR 1,500 for each violation of the regulations pertaining to the safety and protection of health at work, fire protection or environmental protection by the Contractor in the performance of activities on the Site, for each violation separately; and/or
- (f) EUR 1,000 for each commenced day of Contractor's delay with the submission of Time Schedule under Section 5.2;
- (g) EUR 1,000 for each commenced day of Contractor's delay with the submission of Progress Report under Section 5.3, for each violation separately;
- (h) EUR 1,000 for each commenced day of Contractor's delay with the fulfillment of any obligation under Section 13.5.1, for each control test, control or inspection under the Control and Inspection Plan separately;
- (i) EUR 500 for each commenced day of Contractor's delay with a statement to Defect under Section 18.6, in respect to each notice of Defect under Section 18.5, or to the submission of a claim under Section 18.7, unless it was already part of a notice of Defect under Section 18.5, separately;
- (j) stated in the Basic Provisions, SC or Annex in connection with a failure to fulfill guaranteed parameters of the Subject of Performance.

22.2 Maturity of contractual penalty. A contractual penalty is payable within 30 (thirty) days upon delivery of a request for the payment thereof, together with its settlement, to the Contractor.

22.3 Relation to Contractor's performance. The Contractor's liability to perform any obligation secured by a contractual penalty shall not cease to exist upon the submission and/or payment of a contractual penalty.

22.4 Relation to other claims of SES. The claim of SES for the compensation of damage towards the Contractor shall not be affected by the submission and/or payment of a contractual penalty. The provision of the foregoing sentence shall apply equally also to other claims of SES towards the

Contractor arising out of any violation of the obligation secured by a contractual penalty.

22.5 Interest for delay. In case of Contractor's delay with the payment of a contractual penalty, SES shall be entitled towards the Contractor to interest for delay of 0.03 % (three hundredths of one percent) from an unpaid contractual penalty for each day of delay. Interest for delay with the unpaid contractual penalty shall be payable within 30 (thirty) days upon delivery of the settlement thereof to the Contractor.

22.6 Claim of the Contractor to contractual penalties. If Basic Provisions and/or SC expressly provide for the Contractor's right to demand the payment from SES of a contractual penalty, provisions of Sections 22.2 through 22.5 shall apply equally and SES shall be deemed Contractor and Contractor to be SES.

## 23 COMPENSATION FOR DAMAGE

23.1 Claims between Parties. If a Party violates its obligation under the Contract, governing law, Applicable Law and/or other legal regulation, such Party shall be obliged to compensate the other Party for damage caused by such violation, regardless of the fault of a breaching Party, to the extent and under conditions specified in the Contract. For the avoidance of doubts, the claim for the compensation of damage pursuant to the foregoing sentence shall be deemed the claim under Sections 25.1 and 25.2. However, if the Contract expressly recognizes in connection with the violation of a certain obligation of a Party under the first sentence of this Section to the other Party a pecuniary claim other than a claim for the compensation of damage (e.g., claim to the interest for delay), the claim for the compensation of damage under the first sentence of this Section shall be excluded. The provision of the foregoing sentence shall not apply, if provisions of the Contract providing for such other pecuniary claim pursuant to the foregoing sentence expressly stipulate that such other pecuniary claim does not exclude further claims of a Party arising out of a violation of the other Party (e.g., Section 22.4).

23.2 Restriction of Contractor's claims. As part of the claim for the compensation of damage under Section 23.1, the Contractor shall not never have towards SES a claim for the compensation of (i) a lost profit, (ii) any additional costs expended by the Contractor as a result of the violation of a legal obligation from the side of SES in preventing from the occurrence of further damage or in mitigation of the consequences of damage, (iii) costs pertaining to the enforcement of claims under the Contract, whether before the relevant court or not and (iv) a Contractor's loss incurred in connection with the submission of claims by third persons (including Customer, Owner and/or Sub-contractor) as a result of the violation of an obligation from the side of SES. Regardless of the foregoing sentence, the Contractor's claim to the compensation of damage towards SES cannot ever exceed the total Contract Price. The restrictions under this Section shall not apply if SES caused damage to the Contractor intentionally.

23.3 Liability of Parties towards third persons. The liability of a Party (i) for the death or injury of any natural person, damage to the property of a natural person and/or any other claim of a natural person and (ii) for damage to property and/or any other claim of a third legal person, including Customer/Owner, unless it is damage caused on the property of Customer/Owner in connection with the Subject of Performance, shall be governed by the relevant Applicable Law. However, a Party which would otherwise be liable for the claims of the persons under the first sentence of this Section pursuant to the Contract, shall at each time indemnify the other Party and hold it harmless against all claims of the persons under the first sentence of this Section and/or against all damage of any kind resulting therefrom.

23.4 Damage prevention. A Party raising an objection towards the violation of an obligation of the other Party under Section 23.1 shall be obliged to take all reasonable measures to minimize damage which has occurred or may occur.

## 24 EXCLUSION OF LIABILITY

24.1 Exclusion of liability of Contractor. The Contractor's liability towards SES for (i) the violation of its any legal obligation, and (ii) claims which SES has towards the Contractor also for a case of the non-violation of a legal obligation by the Contractor (e.g., the claim under Section 2.3), shall be excluded only if the Contract expressly provides so and only to such extent. In any doubts it is presumed that the Contract does not exclude the Contractor's liability under the first sentence. However, the Contractor cannot ever discharge from liability for the due and on-time performance of its obligations under the Contract, if:

24.1.1 the Contractor failed to fulfil the Subject of Performance duly and on-time as a result of:

- (a) incorrectness, incompleteness or inaccuracy of Known Information about Conditions, regardless of the fact whether he learned about it or could have learned, if he had acted with due care, upon initiative of SES, Customer, Owner, any third person or upon its own initiative, if he could have ascertained such incorrectness, incompleteness or inaccuracy prior to the conclusion of the Contract, if he had acted with due care; and/or
- (b) even partial misunderstanding of Known Information about Conditions.

24.1.2 this relates to the obligation to fulfil the Subject of Performance free from Defects referring to the fact that SES, Customer, Owner, Competent Authority and/or other person named by one from among such persons has:

- (a) participated in any test, control and/or inspection of the Subject of Performance or its part and raised no objection;
- (b) taken any step in any test, control and/or inspection of the Subject of Performance or its part, unless it was Instruction in respect of which the Contractor's liability is excluded under Section 4.3.1;

(c) raised comments on Documentation and/or any other part of the Subject of Performance, unless it was Instruction in respect of which the Contractor's liability is excluded under Section 4.3.1;

(d) provided to the Contractor material, document and/or service in connection with the fulfillment of the Subject of Performance, unless it was Instruction in respect of which the Contractor's liability is excluded under Section 4.3.1; and/or

(e) taken any other step (e.g., consent to a certain part of the Subject of Performance, acceptance of a certain part of the Subject of Performance and/or the signing of protocol, certificate, minutes from a meeting, or other document, regardless of the contents thereof), unless the Contract expressly connects the exclusion of the Contractor's liability under the Contract with such step, confirmation of the Contractor's claim and/or a waiver of SES.

24.1.3 this relates to the obligation to fulfil the Subject of Performance on time, if the Contractor is not and/or shall not have towards SES any claim for the extension of Times for Performance.

24.2 Exclusion of the liability of SES. The liability of SES towards the Contractor for (i) the violation of its any legal obligation, and (ii) claims that the Contractor has towards SES also for a case of the non-violation of a legal obligation from the side of SES (e.g., the claim under Section 2.3), is excluded, only if:

- (a) the Contract expressly provides for such exclusion;
- (b) the Contract expressly provides that the Contractor in this regard does not have and/or shall not have towards SES a claim for the compensation of costs, claim for the extension of Times for Performance and/or any other claim; and/or
- (c) this relates to cases in which the Contractor cannot discharge from its liability for the due and/or on-time performance of its obligations under the Contract,

and only to such extent. In any doubts it is presumed that the Contract does not exclude the liability of SES under the first sentence.

## 25 SUBMISSION, WAIVER AND ACKNOWLEDGEMENT OF CLAIMS

25.1 Contractor's claims. If the Contract in connection with a certain situation (e.g., Instruction, delay of SES under Section 5.5, interruption of performance the Subject of Performance under Section 19.1, Force Majeure under Article 20, violation of the obligations of SES under Section 23.1, etc.) recognizes to the Contractor towards SES a certain claim (e.g., claim for the compensation of costs, claims for the extension of Times for Performance, right to withdraw from the Contract, claim for the compensation of damage, etc.), the following provisions shall apply:

25.1.1 Exclusivity. The Contractor has towards SES only such claim, only to such extent and only under the conditions as expressly provided for in the Contract.



Contract provisions stipulating a mutual relationship of the Contractor towards SES remain unaffected.

- 25.1.2 General. In addition to special prerequisites of the submission of a claim which individual Contract provisions may require, the Contractor shall be obliged to duly justify each claim towards SES, by specifying decisive facts as well as with a reference to those Contract provisions, which support its claim. If the Contractor fails to fulfill its obligation pursuant to the foregoing sentence, the Contractor shall not have towards SES any claim in this regard.
- 25.1.3 Form. Unless the Contract expressly provides for otherwise, the Contractor shall be obliged to submit any claim towards SES in writing and deliver it in accordance with Article 29. If the Contractor fails to fulfill its obligation pursuant to the foregoing sentence, the Contractor has no claim towards SES in this regard.
- 25.1.4 Period. Unless the Contract expressly provides for a period to submit a claim, the Contractor shall be obliged to submit each claim towards SES without undue delay; however, not later than 30 (thirty) days from a day on which he learned about it or could have learned, if he had acted with due care. However, if this relates to a claim of the Contractor, about which the Contractor know or could have known, if he had acted with due care, that SES could transfer such claim, even theoretically and/or even partially, to Customer/Owner under the Main Contract, the Contractor shall be obliged to submit such claim with SES not later than 5 (five) days prior to expiration of the period for SES to submit the claim with Customer/Owner. Unless Basic Provisions or SC provide for periods for SES to submit the claim with Customer/Owner, for the purposes of the foregoing sentence shall apply that:
- (a) The Contractor shall be obliged to demand, within 15 (fifteen) days upon the conclusion of the Contract, from SES information about such periods for SES under the Main Contract.
  - (b) If SES fails to notify the Contractor of such periods upon request under Section 25.1.4 (a), the Contractor shall be obliged to repeatedly request SES for such information promptly; however, not later than 24 (twenty four) hours after he learns about an option to submit a claim towards SES, or could have learned, if he had acted with due care.
  - (c) If (i) SES fails to notify the Contractor of the relevant period under the Main Contract even upon request under Section 25.1.4 (b) not later than 3 (three) days prior to the expiration thereof, (ii) the Contractor does not learn about such period for SES under the Main Contract in other manner, and could have not learned, even if he had acted with due care, and (iii) the Contractor submits such claim towards SES in good faith that the period for SES to transfer a claim of the Contractor to Customer/Owner under the Main Contract has been complied

with; however, not later than in the period under the first sentence of Section 25.1.4, the submission of Contractor's claim shall be deemed on-time, despite a failure to comply with the period under the second sentence of Section 25.1.4.

If the Contractor fails to submit a claim towards SES on time, the Contractor shall not have towards SES in this regard any claim. For the avoidance of doubts, SES shall not be obliged to notify the Contractor of periods under the Main Contract, even upon the Contractor's requests under Sections 25.1.4 (a) and/or 25.1.4 (b).

- 25.1.5 Performance of related obligations. If the Contract requires in connection with the submission of a Contractor's claim that the Contractor shall fulfill a certain obligation; however, the Contractor fails to fulfill such obligation duly and on-time, the Contractor shall not have towards SES in this regard any claim. Notwithstanding the foregoing sentence and exclusively for illustration, the Contractor shall not have towards SES any claim, in particular in connection with:
- (a) Instruction, if he fails to fulfill duly and on-time in particular the obligations stated in Sections 4.2 through 4.5;
  - (b) other situation under the Contract, in respect to which the Parties are to proceed, even partially, under the provisions of Article 4 and the Contractor fails to fulfill its obligation duly and on-time, e.g., in case of any delay with fulfillment of the Subject of Performance and/or Project, if the Contractor fails to fulfill duly and on-time in particular the obligations stated in Section 5.4.
  - (c) delay of SES with performance of its obligations under Section 5.5, if the Contractor fails to fulfill duly and on-time in particular the obligations under Section 5.5;
  - (d) Defect, if the Contractor fails to fulfill duly and on-time its obligations under Section 18.6;
  - (e) interruption of performance the Subject of Performance, if the Contractor fails to fulfill duly and on-time its obligations under Section 19.1; and/or
  - (f) Force Majeure under Section 20.1, if the Contractor fails to fulfill duly and on-time its obligations under Sections 20.2 through 20.4.

For the avoidance of doubts, the Contractor's obligation to fulfill the obligation related to the submission of a claim under the first sentence of Section 25.1.5 remains unaffected also if the Contractor does not have any claim towards SES.

- 25.1.6 More favorable consequences. If certain provisions of the Contract provide for consequences of a failure of the Contractor related to the submission of a claim under the first sentence of Section 25.1.5 more favorably for SES than the first sentence of Section 25.1.5, such more favorable consequence shall, to the extent of such more favorable



consequence, prevail over the consequence in the first sentence of Section 25.1.5.

25.1.7 Response of SES. If the Contract expressly does not provide for the manner and/or period for the response of SES to the submission of a Contractor's claim, SES shall be obliged, without undue delay upon delivery of the Contractor's claim, to proceed under Section 25.2.2 accordingly. A response of SES or the absence thereof, to any claim of the Contractor, shall never be deemed the acknowledgement of such claim and/or a waiver of any counter-claim, unless (i) the Contract expressly specifies such consequence and/or (ii) the conditions under Section 25.4 are performed.

25.2 Claims of SES. If the Contract in connection with a certain situation (e.g., violation of Contractor's obligation to fulfil the Subject of Performance duly and on-time) recognizes to SES towards the Contractor a certain claim (e.g., claim from Defect, claim to a contractual penalty, right to withdraw from the Contract, claim for the compensation of damage, etc.), the following provisions shall apply:

25.2.1 Exclusivity. SES has towards the Contractor only such claim, only to such extent and only under such conditions as expressly stipulated in the Contract. Provisions of the Contract providing for a mutual relationship of the claims of SES towards the Contractor remain unaffected.

25.2.2 General. In addition to special prerequisites of the submission of a claim which individual Contract provisions may require, SES shall be obliged to reasonably justify each claim towards Contractor. If this relates to Customer's Claim, the claim of SES shall at each time be deemed reasonably justified, if SES without further action forwards Customer's Claim to the Contractor. If SES fails to fulfill its obligation under the first sentence of this Section, SES shall not have towards the Contractor any claim in this regard.

25.2.3 Form. Unless the Contract expressly provides for otherwise, SES shall be obliged to submit each claim towards the Contractor in writing and deliver in accordance with Article 29. If this relates to Customer's Claim, a claim of SES shall at each time have a written form, if SES delivers Customer's Claim to the Contractor via email under the last sentence of Section 29.1, in the text and/or annex of which the Customer's Claim is contained. If SES fails to fulfill its obligation under the first sentence of this section, SES shall not have towards the Contractor any claim in this regard.

25.2.4 Period. Unless the Contract expressly provides for a period to submit a claim, SES shall be obliged to submit its claim towards the Contractor within 4 (four) years from a day on which she learned about it or from a day of the signing of FAC, whichever occurs later. If SES is late with a period to submit a claim, SES shall not have towards the Contractor any claim in this regard, unless she is late with the period for a reason which may be justified.

25.2.5 Response of Contractor. Unless the Contract expressly provides for a manner and/or period for a response of the Contractor to submission of a claim of SES, Contractor shall be obliged, without undue delay upon delivery of a claim from SES, to proceed under Section 25.1.2 accordingly. A Contractor's response or its absence, in respect to any claim of SES shall never be deemed the acknowledgement of such claim and/or a waiver of any counter-claim, unless (i) the Contract expressly specifies such consequence and/or (ii) conditions under Section 25.4 shall be fulfilled. However, if the Contractor knew or could have known, if he had acted with due care, that a claim of SES follows from the Customer's Claim, the Contractor shall be obliged to respond to such claim of SES at each time within a period determined by SES in the submission of a claim. The Contractor shall not have towards SES any counter-claim, if any, in connection with Customer's Claim, whether under the Contract, governing law, the Applicable Law and/or other legal regulation, if the Contractor fails to fulfill the condition pursuant to the foregoing sentence and/or fails to provide Cooperation to SES duly and on-time.

25.3 Other claims of Parties. The Parties confirm that (i) the Contract contains comprehensive provision for the claims of the Parties arising out of and/or related to situations forecasted by the Contract and (ii) the Parties shall not have towards each other in connection with situations forecasted by the Contract any claims other than those specified in the Contract (Sections 25.1.1 and 25.2.1). However, if the governing law, Applicable Law and/or any other legal regulation established, in connection with a certain situation (e.g., acceptance of the performance in connection with the Contract without a legal reason), to a Party towards the other Party any claim non-provided for by the Contract and it is not be possible to proceed under Section 1.2.1 (a), (a) or (c) or Section 1.3.2 (e.g., claim for delivery of unjust enrichment), an entitled Person shall in the submission of such claim proceed at each time under Section 25.1, or 25.2. Consequences related to the submission of the claim under Sections 25.1 and 25.2 shall apply in full also to further claim of a Party under the second sentence of this Section.

25.4 Waiver of right and confirmation of claim. Any waiver of a right and/or confirmation of a claim must be express and must comply with prerequisites of Amendment. No waiver of a right and/or confirmation of a claim shall be construed as a waiver of similar right and/or confirmation of similar claim in a comparable case in the past or in the future. If a Party does not strictly enforce Contract provisions, it shall not be deemed a waiver of any corresponding right and/or confirmation of corresponding claim. Contract provisions under which certain conduct/omission of a Party has such consequence that such Party shall not have towards the other Party any claim remain unaffected by provisions of this Section.

## 26 GOVERNING LAW A DISPUTE RESOLUTION

26.1 Governing law.

- 26.1.1 Without prejudice to Contract provisions which apply to a relationship of the Contract and the governing law, the governing law for the legal relationship established by the Contract shall be material law of the Slovak Republic and in cases under Section 23.3 also rules of conflict applicable in laws of the Slovak Republic.
- 26.1.2 Provisions of UN convention on contracts for the international sale of goods shall not apply to the legal relationship established by the Contract.

26.2 Dispute resolution.

- 26.2.1 In case of any dispute between the Parties arising out of and/or related to the Contract, the Parties agree to exert reasonable efforts for its amicable settlement, considering the circumstances of a case. Notwithstanding the foregoing sentence it applies that if any dispute pursuant to the foregoing sentence is not resolved in the form of Amendment within 30 (thirty) days upon delivery of notice, which is a basis of such dispute, any Party shall be entitled to proceed under Section 26.2.2. If the Parties fail to resolve a dispute under the first sentence of this Section amicably, then in any further dispute they need not proceed under the first sentence of this Section and any Party shall be entitled to proceed under Section 26.2.2.
- 26.2.2 The courts of the Slovak Republic has jurisdiction to hear and finally determine any dispute between the Parties arising out of and/or related to the Contract. The provision of the foregoing sentence does not prevent a Party to claim the granting of a preliminary injunction against the other Party also before the court of other country, if necessary for the protection of rights of the first Party.
- 26.2.3 If this relates to
- (a) Customer's Claim and Customer/Owner shall commence against SES any litigation and/or arbitration proceeding under the Main Contract, or
  - (b) Contractor's Claim, about which the Contractor learns at any time or could learn, if he had acted with due care, that SES could transfer such claim, even theoretically and/or even partially, to Customer/Owner under the Main Contract, and SES in this regard shall commence against Customer/Owner such proceeding with the relevant court/arbitration court under the Main Contract,

the Contractor agrees that upon request of SES he shall (i) file under the first sentence of Section 26.2.2 a motion to interrupt a proceeding until valid and effective termination of a proceeding between SES and Customer/Owner and/or (ii) enter, as a regular party to the proceeding, the proceeding between SES and Customer/Owner and shall protect in such proceeding, with due care and in light of its representations under Section 2.1, the rights of SES towards Customer/Owner in

connection with the Subject of Performance. A result of the proceeding between SES and Customer/Owner shall be binding and final on the Contractor in that part in which it affects rights and obligations of the Contractor under the Contract. The provision of the foregoing sentence applies regardless of the fact whether the Contractor enters such proceeding between SES and Customer/Owner or not, whether as a result of the fact that such entry is not possible or SES does not request the Contractor for such entry. Notwithstanding the provisions of this Section, the Contractor's obligation to provide Cooperation remains unaffected.

- 26.2.4 No dispute between the Parties arising out of and/or related to the Contract shall discharge the Contractor from liability to duly and on-time to perform its obligations under the Contract.

27 **INSURANCE**

- 27.1 Liability insurance. The Contractor undertakes to conclude and maintain with first class insurance companies, for the term of the Contract, all types of insurance policies, at a minimum in such amount and to such extent as provided to him by Applicable Law. For the avoidance of doubts, if the Contractor is obliged to conclude such insurance policy also under the Contract, Contract provisions stipulating more strict conditions on the Contractor than Applicable Law shall for purposes of the Contract prevail.
- 27.2 General liability insurance. The Contractor agrees to conclude and maintain with a first class insurance company, for the term of the Contract, an insurance policy to cover any damage in respect to injury and/or death of persons, loss and/or damage to the property of any natural and/or legal person, including SES/Customer/Owner, which could in any manner occur, follow or relate to (i) fulfillment of the Subject of Performance, also through Sub-contractors, including the use of machines, equipment and vehicles of the Contractor and/or activities in premises, buildings, equipment, machines or vehicles of SES, Customer, Owner and/or any other persons and (ii) Defects for which he is liable under the Contract.
- 27.3 Construction-installation insurance.
- 27.3.1 If the Contractor ensures construction works and/or Installation, he shall be obliged to conclude and maintain with a first class insurance company, for the term of the Contract, an insurance policy to cover any damage caused by construction works and/or Installation.
- 27.3.2 If SES ensures construction-installation insurance for Project or its part and if Goods are included into such insurance, the Contractor agrees to provide to SES without undue delay any information necessary to conclude construction-installation insurance, as well as any information which could affect the insurance at issue. At the same time, the Contractor undertakes to notify SES without undue delay of any damage on the insured property, about which

he knows, or could have known, if he had acted with due care, as well as of any facts which could lead to any damage to the insured property.

- 27.4 Liability insurance for damage caused by the operation of motor vehicles. The Contractor agrees to conclude and maintain with a first class insurance company, for the term of the Contract, an insurance policy to cover any damage caused by the operation of motor vehicles.
- 27.5 Professional liability insurance. The Contractor agrees to conclude and maintain with a first class insurance company, for the term of the Contract, an insurance policy to cover any damage caused due to professional liability.
- 27.6 Further insurance. If the Contractor agreed pursuant to the Contract to ensure also other insurance policies (insurance), the Contractor undertakes to submit a draft of such insurance policies to SES within 15 (fifteen) days upon conclusion of the Contract for approval and undertakes, subsequently upon the approval and conclusion thereof, to submit to SES the copies or insurance certificates thereof not later than 20 (twenty) days upon conclusion of the Contract.
- 27.7 Insurance standard. The conditions and extent of the insurances under Sections 27.1 through 27.6 must comply with customarily used international standards and trade usages for projects with comparable extent and nature as Project. Simultaneously, the following minimum requirements have been determined in respect to insurance:
- (a) insurance under Section 27.2 with a minimum insurance coverage of EUR 200,000 (two hundred thousand Euros); and
  - (b) insurance under Section 27.4 with a minimum insurance coverage under Applicable Laws.
- 27.8 Proving of insurance. The Contractor agrees that (i) not later than at the conclusion of the Contract he shall submit to SES an insurance certificate or the copy of an concluded insurance policy in respect to the insurances under Sections 27.1 through 27.6, (ii) at any time upon request of SES shall prove in a reliable manner that the insurances under Sections 27.1 through 27.6 are valid and effective in full. Any amendment to and/or termination of the insurances under Sections 27.1 through 27.6 by the Contractor is allowed only upon prior written consent from SES.
- 27.9 Substitute insurance. If the Contractor violates any its obligation under Sections 27.1 through 27.8, SES shall be entitled to conclude the insurance at issue on behalf of the Contractor at Contractor's costs.
- 27.10 Compensation for damage in insurance event.
- 27.10.1 In case of any insurance event for which the Contractor is liable, the Contractor shall pay to SES all costs and expenses incurred by SES, in particular, in connection with the documentation and liquidation thereof.
  - 27.10.2 If any damage occurs the coverage of which was to be ensured by the Contractor under the Contract through insurance; however, it is ascertained during investigation that Contractor's insurance was not effective and/or was not in accordance with the

Contract, the Contractor shall compensate SES for any damage within 30 days upon delivery of request from SES for the payment thereof.

- 27.11 Relationship to other claim. The submission of any claim of SES under Article 27 shall not affect the submission of any other claim of SES under the Contract.

## 28 MISCELANEOUS

### 28.1 Intellectual property rights.

28.1.1 The Contractor agrees to hold SES harmless against any claims of third parties and indemnify SES for all requirements incurred by any violation of intellectual property rights, in particular, copyrights and industrial rights (trade name, patents, utility models, technical solutions, designs, right to the designation of goods and services, trademarks and so forth), and/or other protected rights of third persons in connection with the Subject of Performance.

28.1.2 If the Contractor violates the rights under Section 28.1.1, he shall promptly ensure upon request of SES, for SES all rights necessary to use the Subject of Performance, or upon consent of SES, shall substitute the Subject of Performance or its part by such performance by which such rights shall not be violated.

28.1.3 The Contractor shall transfer, free of charge, to SES, Customer and Owner, to right to use without limitation the Subject of Performance or its part protected by the rights under Section 28.1.1. The right to use the Subject of Performance shall also include the right to make on the Subject of Performance or its part protected by such rights, changes or repairs, as well as to further provide the same rights to third parties. SES, Customer and Owner shall be entitled to assign such rights to third parties, including the material carriers thereof, for purpose to make spare parts, perform adjustment/repair, as well as use the Subject of Performance.

28.2 Documents of SES. SES shall retain the rights under Section 28.1.1 in respect to documents prepared by SES in connection with the Subject of Performance. The Contractor shall be entitled to copy, use and accept such documents at its own costs only for purpose to perform the Contract. The Contractor shall be obliged to return, within 90 (ninety) days upon the fulfillment of all its obligations from the Contract, to SES all documents he received from SES, as well as all copies thereof, including electronic copies.

28.3 Documents of Contractor. The Contractor shall retain the rights under Section 28.1.1 to documents prepared by him in connection with the Subject of Performance, and which do not correspond to Documentation. At the same time, the Contractor shall provide, free of charge, to SES a time-unlimited, transferable, non-exclusive license to copy and use Documentation, including the making and using the modification thereof. Such license shall:

- (a) apply for the entire term of the actual or expected lifetime of the relevant part of Project, whichever is longer;
- (b) entitle Customer/Owner and any other party acquiring the relevant part of Project to copy and use the Contractor's documents under the first sentence of Section 28.3 for purpose of using, completing, operation, maintenance, adjustments, repairs or dismantling of Project, and
- (c) in case of the Contractor's documents under the first sentence of Section 28.3, which are in the form of computer programs (software), allow the use thereof on any computer used for the purpose of Project.

28.4 Assignment.

28.4.1 The Contractor shall not be entitled to assign and/or transfer to a third party, in full or partly, any its rights and/or obligations under the Contract, including the sale of an enterprise or its part, without prior written consent of SES. Such action shall be ineffective towards SES and shall not discharge the Contractor from the obligation to perform duly and on-time its obligations under the Contract, until SES submits a written consent in this regard and only to the extent of such consent of SES.

28.4.2 The Contractor agrees that SES assign and/or transfer any its rights and/or obligations under the Contract to Customer/Owner. In other cases Section 28.4.1 shall apply accordingly.

28.5 Pledge. The Contractor shall be entitled to create a pledge in favor of a third person to an asset, right, or other property value, which arose and/or shall arise from the Contract or in connection with the Contract only upon prior written consent from SES. SES shall not withhold such consent unreasonably, if a pledge is necessary to ensure the funding and/or bank guarantees pursuant to the Contract. Unless SES in such consent provides for otherwise, such consent shall only apply to a specific pledge stated in such consent.

28.6 Information duty. Notwithstanding other provisions of the Contract, the Parties agree to notify each other of all facts which have or may have a material impact on the fulfillment of the Subject of Performance, unless this contradict to their eligible interests. However, the Contractor shall be at each time obliged to promptly inform SES about:

- (a) circumstances, which may affect the due and on-time fulfillment of the Subject of Performance regardless of the fact who is liable for the occurrence of such circumstances;
- (b) any damage, its risk and/or events which may lead towards it, which (i) has occurred/incurred or may occur/incur in connection with fulfillment of the Subject of Performance/Project and/or (ii) has occurred/incurred in the premises of the Site, for which SES is liable;
- (c) changes related to its trade name, seat, place of business, object of business, ownership structure, statutory bodies and other persons entitled to act on behalf of the Contractor in commercial matters, including the manner and extent of their conduct on behalf of the Contractor, with the understanding that by

the time of notification of such changes, such information shall be binding on SES as of the conclusion of the Contract;

- (d) a risk or commencement of an execution/distress proceeding, tax execution proceeding, customs execution proceeding, proceeding for the enforcement of a decision, expropriate proceeding, bankruptcy proceeding, restructuring proceeding, liquidation or other similar proceeding.

28.7 Denying of consents. A Party shall not deny and/or refuse the provision of any confirmation, consent, etc., to the other Party without unreasonable grounds.

28.8 Language. If Basic Provisions and/or SC expressly provide for a language of the Contract, the Parties shall use such language in correspondence and meetings. If Basic Provisions and/or SC do not expressly provide for the language, the Contract language shall be the language in which Basic Provisions are made. If (i) any other Contract Document is in a language other than the Contract language, and (ii) the Contractor needs for fulfilment of the Subject of Performance a translation of such other Contract Document to a Contract language and/or to any other language, the Contractor shall ensure such translation at its own costs and liability. Such translation (i) shall only serve for internal purposes of the Contractor and (ii) shall not be binding on SES and for fulfillment of the Subject of Performance in accordance with the Contract. The Contractor shall ensure such translation also if SES requests therefor. The necessity to ensure any translations of Contract Documents by the Contractor shall not discharge the Contractor from liability for due and on-time fulfillment of its obligations under the Contract. The Contractor shall be liable for the completeness, correctness and accuracy of a translation and agrees to indemnify SES for any damage incurred by an incorrect translation.

28.9 Negative obligation of the Contractor. The Contractor agrees not to pursue any activity for the term of the Contract leading to the solicitation of employees or workers of SES, Customer, Owner and other contractors of SES, Customer and/or Owner, or other persons which engage in any manner in the performance of Project from a will of SES, Customer, Owner and other contractors of SES, Customer and/or Owner.

29 **NOTICES**

29.1 Manner of delivery. Unless the Contract expressly provides for otherwise, any notice and any communication between the Parties related to the Contract must be in writing and delivered in person, registered mail, courier, fax or email to the address of the relevant Party specified in the Basic Provisions or other address notified to the other Party in accordance with this Section. Unless the Contract expressly provides for otherwise,

- (a) notices related to the occurrence, change, termination or invalidity or unenforceability of the Contract or the occurrence, change and termination of rights and obligations of the Parties arising out of the Contract;
- (b) submission of claims and notices of the Parties related therewith, including statements, warnings and other



correspondence, which a Party is obliged to make in connection with a claim under the Contract;

- (c) notices regarding any corporate changes, including a change in any of the addresses for delivery, related to the Parties or the sale of an enterprise of a Party; and
- (d) notices on the commencement of any bankruptcy, restructuring, execution/distress proceeding, tax execution proceeding, customs execution proceeding, proceeding for the enforcement of a decision, expropriation proceeding or other similar proceeding towards a Party;

may be also delivered via fax or email, attached to which shall be the relevant notice; however, a notifying Party must confirm such notice by dispatching a notice via registered mail or courier or deliver such notice in person not later than on the seventh day upon dispatching a notice via fax or email. However, confirmation of a notice by a notifying Party pursuant to the foregoing sentence is not required, if obvious from the actions of the other Party that a notice delivered via fax or email was taken by the other Party into account and confirmation of the notice is not expressly required. If a notifying Party confirms the notice under the second sentence of this Section, or if such confirmation is not required pursuant to the foregoing sentence, a notice shall be deemed delivered on a day of delivery of the notice via fax or email or on a day when it becomes obvious based on the conduct of the other Party, that the other Party took the notice delivered via fax or email into account. For the avoidance of doubts, unless the Contract expressly provides for otherwise, the email attached to which is not a notice in writing, shall not have in case of the notices stated in the Section under letters (a) through (d) any relevance, even if confirmed under this Section or in cases when the confirmation of a notice is not required. However; it shall apply in respect to notices other than those stated under letters (a) through (d) that an email meets the written form of a notice if it allows to catch up the contents of a notice and the designation of an acting person.

- 29.2 Time of delivery. Without prejudice to the provisions of Section 29.1, if there is no evidence of earlier delivery, a notice shall be deemed delivered: (i) if a notifying Party delivers it in person, on a business day when it left a notice at the address of the other Party; (ii) if a notifying Party sends it by courier or registered mail, on a day of the actual delivery to the address of the other Party; (iii) if a notifying Party forwards it via fax or email, on the day of dispatch, unless Section 29.1 provides for otherwise. If a notifying Party delivers a notice in person, the notice shall be deemed delivered also on a day on which the other Party without a proper reason rejects to accept the notice being delivered. If a notifying Party dispatches a notice via registered mail, the notice shall be deemed delivered also on a day (i) on which the other Party rejects to accept the notice being delivered without a proper reason or disallows the acceptance of the notice in other manner, (ii) deposition of a notice at the post office, when a deposit period to collect a notice expires in vain, also if an addressee did not become aware of deposition of the notice, (iii) collection of a notice at the post office by the other Party or (iv) on which an employee of the post office labelled on the consignment the note "the addressee has moved out", "the addressee is unknown", or

a note with a similar meaning, provided that such note is truthful. If a notifying Party sends a notice via courier, points (i) and (iv) of the foregoing sentence shall apply equally.

## 30 CONFIDENTIALITY OF INFORMATION

- 30.1 Confidentiality of information. The Contract and all information contained therein, as well as any information exchanged between the Parties and provided in connection with the Contract and the performance thereof is confidential information. The Parties agree:

30.1.1 keep such information confidential and use such confidential information to a necessary extent and exclusively only to perform the Contract, in particular not to use the confidential information for one's unauthorized financial or other benefit and/or such benefit of any third party;

30.1.2 take all necessary steps and measures to protect and ensure the confidential information; and

30.1.3 not to provide such confidential information to any third party without prior written consent of the affected Person, except for:

- (a) the provision of information to employees, partners or shareholders of the Parties to the extent, inevitably necessary for the performance of their work or rights;
- (b) the provision of information to legal counsels, tax advisors, auditors, banking institutions or other advisors to the Parties, bound by the obligation of confidentiality under the relevant legal regulations or based on a confidentiality agreement concluded with the relevant Party; or
- (c) cases, when required so based on a legal regulation, administrative, judicial or arbitral decision or the rules of any stock exchange or required so to submit claims or defense against any claims in connection with the Contract.

- 30.2 Exemptions. The confidential information shall not include (i) any information which at the time of disclosure is, or shall become upon the publication thereof, publicly available in a manner other than as a result of disclosure in violation of the confidentiality obligation, (ii) information in respect to which any Party may prove that the information was owned by or at disposal to such Party prior to the disclosure thereof and has not been obtained directly or indirectly in conflict with the confidentiality obligation or in violation of generally binding legal regulations and (iii) information which a receiving Party received from a third person without the obligation of confidentiality.

- 30.3 Provision of confidential information to Customer/Owner. Notwithstanding of Sections 30.1 and 30.2, SES shall be entitled to provide any confidential information to Customer/Owner. The Contractor shall be entitled to provide confidential information to Customer/Owner only upon prior written consent of SES and only to the extent specifically provided for in such consent.



### 31 FINAL PROVISIONS

- 31.1 Severability. If any of the provisions of the Contract are declared by the relevant public authority to be ineffective, invalid or unenforceable for any reason or ceases to be effective, valid and/or enforceable for any other reason, this shall not affect the validity, effectiveness and enforceability of the remaining provisions of the Contract. The Parties agree to negotiate in good faith to replace an invalid, ineffective or unenforceable provision of the Contract with such a new provision that will be valid, effective and enforceable and that will, with respect to its purpose and function, best fit the purpose and function of the original provision.
- 31.2 Surviving obligations. The obligations of the Parties which given to their nature are to survive also termination of the Contract, shall not cease to exist and shall be further valid and effective in full. Without limitation of the general nature of the above stated, in particular shall not cease to exist (i) claims to the payment of contractual penalties, if any, claims to the compensation of damage, or other claims under the Contract, (ii) Contract provisions on the manner of delivery of notices between the Parties, on the governing law, on the manner of dispute resolution incurred by the Parties in connection with the Contract, on the rights under Section 28.1, on language and confidentiality of information and (iii) Contract provisions which stipulate the survival also upon termination of the Contract.
- 31.3 Legal representation. The Parties confirm that prior to conclusion of the Contract they had an option to hire a legal counsel. Each of the Parties shall bear in connection with negotiations or conclusion of the Contract (including the costs of legal counsel) its own costs.
- 31.4 Amendments to Contract. Unless the Contract expressly provides for otherwise, the Contract (including rights and obligations ensuing therefrom and the security thereof) may be amended or supplemented only by agreement in writing, regardless of its designation, which shall (i) be prepared on one deed, and in case of several pages of such a deed they must be firmly fastened, (ii) clearly express consenting intents of the Parties leading to an amendment or supplement of the Contract (including rights and obligations ensuing therefrom) and (iii) signed by statutory bodies of the Parties ("Amendment"). Any document, the contents of which could be construed as agreement of the Parties on amendment and/or supplement of the Contract pursuant to the governing law; however, which fails to meet prerequisites of the Amendment pursuant to the foregoing sentence, shall not be deemed legally binding and enforceable. The provisions of this Section cannot be amended in a manner other than by the Amendment even if the governing law allows such a change in any manner.
- 31.5 Commercial representatives of the Parties. Persons specified in the Basic Provisions as persons authorized to act on behalf of the Contractor in commercial matters shall be entitled to act on behalf of the Contractor in all actions in connection with the Contract. Persons specified in the Basic Provisions as persons authorized to act on behalf of SES in commercial matters shall be entitled to act on behalf of SES in all actions in connection with the Contract, except for actions in respect

of which a form of the Amendment is required, unless having a special power of attorney from SES for such action.

- 31.6 Revocability of draft Contract. SES shall be entitled to revoke its draft Contract at any time until the receipt thereof by the Contractor, also without specifying a reason and without the occurrence of any Contractor's claims. Draft Contract from the side of SES shall be deemed accepted from the side of Contractor upon delivery of a signed counterpart of the Basic Provisions by the Contractor to SES.
- 31.7 Entire agreement. The Contract contains the entire and final agreement between the Parties. All previous contracts, correspondence, agreements, declarations, assurances, promises, regardless of their forms, shall not be taken into account upon the conclusion of the Contract.