**Form 1**

**STATEMENT OF THE BIDDER ON FULFILMENT OF CONDITIONS IN THE PROCUREMENT PROCEDURE**

**Under full substantive and criminal liability,** as a representative of the Bidder, I give the following

**STATEMENT**

Bidder *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* in the procurement procedure: Procurement and delivery of coal - lignite, – no. 4419/2014, fulfils all mandatory conditions defined in the tender documents for the subject procurement, as follows:

1) Bidder is registered with the competent authority, i.e. entered in the appropriate register;

2) Bidder and its legal representative have not been convicted of any of the criminal offenses as members of an organized criminal group, that they have not been convicted of crimes against the economy, crimes against the environment, the crime of receiving or giving bribe, the crime of fraud;

3) Bidder has not been pronounced the measure prohibiting performance of the activity, at the time of sending the invitation for submission of bids;

4) Bidder has settled all due taxes, fees and other public duties in accordance with the regulations of the Republic of Serbia (*or foreign state if it has registered seat in its territory);*

In the attachment to this statement we submit the following regarding the fulfilment of additional conditions defined in tender documents:

* Certified STATEMENT under full substantive and criminal liability by which we confirm that in the last 6 months before the date of publication of Invitation for submission of Bids we hadn’t had any days of insolvency on our current accounts (from 27.04.2014. to 27.10.2014.), signed by an authorized representative of the Bidder and its signature shall be certified on the statement by a competent authority of the country in which the Bidder has its registered office;
* Certified STATEMENT / CONFIRMATION ON POSSESSION OF GOODS (coal-lignite) IN WAREHOUSE / LANDFILL, by which we confirm, under full substantive and criminal liability, that we possess the amount of at least 50% of the required amount of coal (2.060.000  tons for the period of up to 5 months), and that the goods concerned do not involve the right of a third party, which excludes, reduces or limits the right of the Employer, signed by an authorized representative of the Bidder and its signature shall be certified on the statement by a competent authority of the country in which the Bidder has its registered seat;
* Certified STATEMENT / CONFIRMATION OF CARRIER ON THE PROVISION OF LOGISTICS, both by railway and by barges, with detailed description of the means of transport and the scope of engagement of transport means, quantities of wagons and locomotives, trucks and barges which will be used.
* CERTIFIED STATEMENT/ CONFIRMATION OF CARRIER FOR UNLOADING IN TEMPORARY PORTS AT TENT A AND TENT B SITES.

Place:\_\_\_\_\_\_\_\_\_\_\_\_\_ Bidder:

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_ STAMP \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

***Note:*** *If the Bid is submitted by a group of Bidders****,*** *the Statement shall be signed by an authorized person of each Bidder and stamped.*

**Form 14**

**MODEL CONTRACT**

**CONTRACTING PARTIES:**

**BUYER:**

Corporate Enterprise „Thermal Power Plants Nikola Tesla“ ltd. Оbrеnоvаc, Bоgоlјubа Urоšеvićа Crnоg, No. 44, Republic of Serbia, Registration Number 7802161, TIN 101217456, Current account number 205-13550-81 Kоmеrciјаlnа bаnkа, represented by legal representative Director Čеdоmir Pоnоćkо (hereinafter referred to as: **Buyer)**, with mandatory counter signature of General Manger of Public Enterprise Electric Power Industry of Serbia, Belgrade, Carice Milice 2, the Republic of Serbia, Aleksandar Obradovic, in the capacity of legal represtentaive of the Founder

and

**Bidder:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ from \_\_\_\_\_\_\_\_, str. \_\_\_\_\_\_\_\_\_\_\_\_, no.\_\_\_\_, registration number: \_\_\_\_\_\_\_\_\_\_\_, TIN: \_\_\_\_\_\_\_\_\_\_\_, current account number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_with bank, represented by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_, (as the leader on behalf of the group of Bidders*, [Note: it shall be stated in the text of the Contract in the event of joint bid]* (hereinafter referred to as the: **Seller)**

Concluded in Belgrade,

**SALE AND PURCHASE AGREEMENT**

**Preamble**

**Article 1**

whereas:

* The Seller conducted the procurement procedure, without application of Public Procurement Law of the Republic of Serbia (Official Gazette of RS No. 124/2012), in accordance with Article 122. paragraph 1. item 4) hereof, for procurement Number 4419/2014;
* The Invitation for bid submission related to subject procurement is published on \_\_.\_\_.2014., on websites of Seller and PE EPS ;
* Bid of the Seller in procurement procedure that was filed with Buyer under number \_\_\_\_\_\_\_\_\_\_\_\_\_ dated \_\_\_\_\_ 2014., fully complies with the request of the Buyer from the invitation for bid submission and tender documents;
* Buyer, based on the Bid of the Seller, selected the Seller for implementation of procurement and delivery of coal – lignite for needs of the Corporate Enterprise „thermal Power Plants Nikоlа Теslа“ ltd. Оbrеnоvаc (ТЕNТ А and ТЕNТ B) that operate within the system of Electric Power Industry of Serbia

The Contracting Parties acknowledge:

**SUBJECT OF THE CONTRACT**

**Article 2**

Subject of the contract is PROCUREMENT AND DELIVERY OF COAL – LIGNITE for generation of electricity in thermal power plants for the needs of the Buyer that operates within the system of Electric Power Industry of Serbia, successively, 7 days a week under written purchase order of the Buyer for 5 months in the period from 01.11.2014 until 31.03.2015, by months:

1. November 2014 in the amount of 150,000 t (+/-20%),
2. December 2014 in the amount of 310,000 t (+/-20%),
3. January 2015 in the amount of 310,000 t (+/-20%),
4. February 2015 in the amount of 280,000 t (+/-20%),
5. March 2015 in the amount of 250,000 t (+/-20%),

i.e. daily average of 10.000 t (+/-20%), low heating value of 6900-8600 kJ/kg (hereinafter referred to as: goods), which amounts to 1,560,000 tons with option +20%, in all parts in accordance with the tender documents and accepted Bid of the Seller, that make and integral part of this contract and represent its inseparable part.

Employer/ Buyer has the possibility to ask for delivery of higher quantity of coal for January, February and March, (up to 500,000 tons) as well as the possibility to cancel additional deliveries completely or in part of additional delivery for the same months, by submitting notification to the Bidder/ Seller: by 20.12.2014 for January, by 15.01.2015 for February and by 15.02.2015 for March.

The additional quantity for specific months is:

- January up to 180,000 tons

- February up to 150,000 tons

- March up to 170,000 tons,

which amounts to 500,000 tons.

Total quantity to be procured is 2,060,000 tons.

**The stated quantities are approximate and the Employer retains the right not the implement the concluded contract for the total quantity of 2,060,000 t.**

Unloading from wagon in bunkers or at landfills of the Employer TENT A and TENT B must be performed at the latest within 90 minutes from arrival of the train to the place of unloading.

The Seller shall for the needs of Buyer deliver the contracted goods form paragraph 1 hereof within the contracted deadline and unload in bunker or to disposal sites of the Employer TENT A and TENT B in all parts in accordance with the Bid of the Seller number \_\_\_\_\_\_\_\_ dated \_\_\_\_\_2014 and Tender documents for subject procurement that make an integral part of this Contract.

**Article 3**

Quality of goods from Article 2 hereof, »without tolerance« must comply with technical and technological, toxic and other characteristics, stipulated by legislation of the Republic of Serbia and international regulations and standards applied in production and placement of such type of goods, Technical specification, that as an Annex 2 makes an integral part of this Contract, as well as all other requests form Tender documents and Bid No. \_\_\_\_ dated \_\_\_\_2014 for procurement no. 4419/2014, that as an Annex 1 makes and integral part of this Contract and purpose for which the Buyer is buying the goods that is the subject of this contract.

The Seller states that:

1. It is fully acquainted with the purpose for which the Buyer is buying the goods that are the subject of this contract and
2. Guarantees that it is in accordance with valid legislation and standards of the Republic of Serbia and international regulations that are determined for its production and placement so that the Buyer for the aspect of efficiency and reliability may use it for the purpose for which it is bought.

**Article 4.**

This contract and its annexes are made in Serbian and English language. In the event of dispute the Serbian version shall prevail.

The laws of the Republic of Serbia shall apply to this contract. In the event of dispute applicable law shall be the law of the Republic of Serbia.

**Article 5**

Unit price of goods from Article 2 hereof shall amount to \_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_ RSD/EUR per ton VAT excluded (in words: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_). [note: fill in: RSD or EUR]

The Buyer shall pay to the Seller for the total price of 2,060,000.00 t of goods that is the subject of this contract in the amount of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_ RSD/EUR VAT excluded. (in words:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_).

VAT amounts to \_\_% \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ RSD/EUR.

Total contract value with VAT for 2,060,000.00 t of goods amounts at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ RSD/EUR. [note: fill in: RSD or EUR]

The Seller shall give its price for the goods delivered in bunkers or delivered to landfills of Buyer TENT A and TENT B with all costs included.

The Seller shall include in the offered price all costs that include costs of all security measures in accordance with valid regulation for transport of this type of goods (transport and delivery in the safe manners, cost of protection for partial or total loss or damage to the given conditions of loading, transporting , loading and unloading, ensuring the normal risk of theft, obtaining all necessary permits ) at their own expense , payment of taxes, fees , shipping costs , customs and other duties , as well as to comply with the regulations relating to the protection of environmental and other regulations , and comply with the same at their own expense , in accordance with the agreed point of delivery - unloaded in bunkers or unloaded at the landfills of the Employer TENT A and TENT B.

In the case of foreign Seller the contracted price shall only not include the costs of import customs clearance.

Unit price for goods from Article 2 hereof is defined by the bid of the Seller that makes an integral part of this contract (Annex 1)

The price is fixed for the entire contracted period and shall not be subject to any changes.

**Article 6.**

The Buyer shall pay to the Seller advance in the amount of 5% of the contracted value pursuant to Article 5 of this Contract, for the amount of goods of 2.060.000 tons, with value added tax calculated, after the Seller submits an estimate, advance payment bank guarantee and performance bond.

The rest of the payment for the total value of the delivered amount of goods for seven days, pursuant to Article 5 of this Contract, shall be made on the basis of the invoice value of the goods delivered, at the account of Seller No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ with the bank \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with proportional justification of the advance, within 10 (ten) days from the date of receipt of the original invoice with attached Protocols on quantitative and Protocols on qualitative acceptance of the goods supplied.

Invoicing shall be performed weekly, based on mutually signed protocols on quantitative and qualitative acceptance of goods. The invoice shall be issued no later than 3 days from the day of signing the protocol.

In case of contracting the price in foreign currency (EUR) local supplier shall invoice at the middle exchange rate of NBS on the day of turnover- signing of the protocol, while the payment of it shall be done at the middle exchange rate of NBS on the day of payment.

It is necessary to present the following documents with the invoice:

1. Copies of commercial (customs that accompany daily delivery) invoices for the value of the seven-day (one week) amount of goods delivered, certified by the Buyer, with confirmation of acceptance of goods,
2. Packing list in 3 (three) copies,
3. Signed CMR; B/L or CIM (depending on the type of transport), a document of all involved parties (Seller, Forwarder and Buyer),
4. Quality Certificate (1 original), issued in accordance with the requirement of the bidding documents, containing technical and elemental analysis as well as the mineral composition of coal;
5. Original Protocol on quantitative acceptance of goods, defined in Article 10 of this Contract, signed by the Buyer and the Seller,
6. Original Protocol on qualitative acceptance of goods, defined in Article 11 of this Contract, signed by the Buyer and the Seller,
7. The Buyer shall submit Protocol on quantitative acceptance of goods to the Seller no later than 3 days from the date of making the said Protocol,
8. The Buyer shall submit certified commercial (customs that accompany daily delivery) invoices, Protocol on qualitative acceptance of goods and Protocol on quantitative acceptance of goods to the Seller no later than 3 days from the date of making the said Protocol.

Bank charges related to payments on the territory of Serbia shall be borne by the Buyer and bank charges outside of Serbia shall be borne by the Seller.

**Article 7**

The Seller shall organize dispatching, transport and delivery of goods, within the limits established by the time schedule, in such a way that the acceptance of goods is entirely done in accordance with the instructions and requirements of the Buyer.

**Article 8**

The Seller shall notify the Buyer and confirm delivery time by e-mail, immediately upon receipt of Buyer's written order/ purchase order sent to an e-mail of the Seller.   
  
Notification from the preceding paragraph contains the following information: Contract number, according to which delivery is made, date of dispatch, name and registration number of the means of transport, quantity, value of shipment and the expected hour of arrival of supplies in storage area.

The Buyer shall, in accordance with the notification of the Seller, organize acceptance of goods on time and determine the quantity and quality of delivery.   
  
All correspondence and delivery of invoices or other payment documents, annexes to the contract, notifications or other documents sent by parties to each other in connection with this Contract shall be sent to the addresses listed below.

For the Buyer: Corporate Enterprise „Thermal Power Plants Nikola Tesla“ ltd.

11500 Obrenovac, Bogoljuba Uroševića-Crnog 44,

Republic of Serbia

For: \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name, surname and position)

Phone: + 381 11 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ mobile: \_\_\_\_\_\_\_\_\_\_

Fax: + 381 11 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

e-mail: [\_\_\_\_\_\_\_\_\_\_\_\_@tent.rs](mailto:____________@tent.rs)

For the Seller: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Address:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name, surname and position)

Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ mobile: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Fax: \_\_\_\_\_\_\_\_\_\_\_\_

e-mail:\_\_\_\_\_\_\_\_\_\_\_\_@.\_\_\_\_. \_\_

**Article 9**

Delivery of goods under Article 2 of this Contract shall be accompanied by the following documents:

* Copies of commercial (customs that accompany daily delivery) invoices for the value of the seven-day (one week) amount of goods delivered, certified by the Buyer, with confirmation of acceptance of goods,
* Certificate of analysis and report on coal testing, which shall be issued by an accredited laboratory and contain technical, physical and chemical characteristics with acceptability limits in accordance with technical specification,
* Transport document: rail (CIM) or bill of lading, boat, barge (B/L) – bill of lading or delivery note/CMR, for road transport;
* Certificate of origin of goods.

If the delivery is not accompanied by the documents referred to in paragraph 2 of this Article, the delivery cannot be considered as properly executed.

**Article 10**

The Buyer, to whom the goods are delivered, is obliged to immediately and without delay perform acceptance upon arrival of goods at the place of quantitative acceptance (station Tamnava West Field or Buyer’s warehouse).

The Buyer, to whom the goods are delivered, may postpone quantitative acceptance until the Seller delivers documents that are necessary for this purpose, but it is obliged to warn the Seller to submit those documents to it without delay.

Quantitative acceptance of goods by wagons railway cars, series Fals-z subseries 665 with pneumatic unloading shall be performed by measuring of wagons on railway weigh-bridge at the station Tamnava West Field, with mandatory engagement of an independent accredited institution. The cost of hiring the independent accredited institution shall be borne by the Seller. Attest for measuring devices cannot be older than three months.

If the transport of goods is organized by water, measurement will be performed upon delivery of goods at the landfills of the Buyer, TENT A and TENT B, by measuring draught of a full and empty boat or by certified truck scales, with mandatory engagement of an independent accredited institution. The cost of hiring the independent accredited institution shall be borne by the Seller. Attest for measuring devices cannot be older than three months.

Report on goods measurement shall be submitted to the Buyer by the Seller and it shall be an integral part of the Protocol on quantitative acceptance of goods.

In the protocol from the previous paragraph, name of the Buyer, to whom the goods are delivered, quantity and value of executed delivery at the place of unloading, shall be determined.

If during quantitative acceptance of goods, a defect or deficient amount is discovered, the Buyer shall promptly make an objection to the Seller, and it shall be entered in the Protocol on the quantitative acceptance.

The Seller shall immediately, and no later than the first following delivery, deliver goods to the Buyer, i.e. the quantity that was not delivered or was wrongly delivered or it has gone missing during transport, in conformity with contracted quality and quantity.

In the case of disagreement of signatories of the Protocol, in accordance with the Contract on key elements of delivery, the control of executed delivery shall be performed by ​​a legal entity registered for that in the Republic of Serbia, and it shall make Minutes on it. Seller shall bear the costs of this control if the complaint made by the Buyer is legitimate. If it isn’t legitimate, Buyer shall bear all the costs

**Article 11**

The Buyer shall upon quantitative acceptance, without delay, determine the quality of the delivered goods, by the means of laboratory analysis of each shipment (by wagons or barges), as soon as it is in the ordinary course of events and circumstances possible, but no later than three (3) days from the date of acceptance and make a Protocol on qualitative acceptance of goods.

The method of sampling:

1. For each delivery (one composition or one barge) in accordance with SRPS, the required number of individual samples shall be taken, manually, just before unloading in front of the bunker and coal landfill TENT A and TENT B.

2. Samples package shall be in accordance with SRPS B.H9.003.

3. Samples taken in the manner determined by this standard shall be packed in suitable PVC bags and marked by the number of sample, the number of train / barge which takes that sample, the date and hour of taking, and signed by the representatives of the Seller and the Buyer.

4. In the joint book, signed mutually by sample takers, records on the taken samples with the data identical with the data on the PVC bag shall be kept.

5. Three samples shall be taken, which present representative samples by further processing, from which in a random choice one goes to the laboratory of the Buyer, the second one to the laboratory of the Seller, and the third is kept in the joint cabinet, locked with two keys for the super analysis. Cabinet where the super sample is kept can be unlocked only with the presence of representatives of the Seller and the Buyer.

6. Sample takers of the contracting parties shall each keep their PVC bags with samples in special metal cabinets with the label of Buyer or the Seller and lock them with their keys.

7. Transport of the samples shall be arranged separately, by the Seller and the Buyer. Transport of the sample to the Buyer’s laboratory shall be arranged by the Buyer, the first following day until 12:00 hours.

8. Super analysis shall be performed by an independent accredited laboratory in the Republic of Serbia, agreed by both the Seller and the Buyer, and the cost of it shall be borne by the Seller.

The Buyer shall submit to the Seller protocols on quantitative and qualitative acceptance of goods within 3 days from the date of preparing the above-mentioned protocols.   
  
The Buyer may delay the determination of the quality of delivered goods until the Seller delivers documents that are necessary for this purpose, but it shall warn the Seller to submit them without delay.

If it is determined that the quality of the goods supplied does not match the agreed (low heating value, moisture and ash), the Buyer shall make a written complaint of the quality to the Seller, without delay, and no later than three (3) days from the date on which it found out that quality of the goods supplied does not match the contracted quality.

In case there is a disagreement in the results of chemical analyses of the Seller and the Buyer, the following shall apply:

1. In case that low heating value of the coal supplied is determined to be over 8600 kJ/kg in chemical analyses, the Buyer shall pay to the Seller the amounts supplied at the contract unit price.

2. In case that low heating value of the coal supplied is determined to be below 6900 kJ/kg in chemical analyses, and the difference of the low heating value measured in the laboratories of the Seller and the Buyer is more than 334 kJ / kg, the sample shall be sent for super analysis.

If super analysis confirms that the sample is below 6900 kJ/kg, and the Buyer timely made a complaint to the Seller about defects identified in the quality of goods, it shall request from the Seller, within the time set in the complaint, to deliver new quantities of goods without defects at the Seller’s expense.

The Seller shall, within three (3) days of receipt of the complaint referred to in paragraph 5 of this Article, notify the Buyer in writing of the outcome of the complaint.   
  
The Buyer is entitled to damages and lost profit. In addition, and independently of it, the Seller is liable to the Buyer for damages that the Buyer, due to defects in the delivered goods, suffered for its other goods according to the general rules of liability for damages.

**Article 12**

In the event that the Seller does not agree with the performed qualitative acceptance, as well as unacceptance or disputing claim of the Buyer, the control of executed goods shall be performed by and independent laboratory, approved by the Seller and the Buyer. The decision of the independent laboratory shall be final.

The decision of the independent laboratory for the control shall not exempt the Seller of its obligations and responsibilities under this Contract in any event.

Costs of control under paragraph 1 of this Article shall be borne by Seller if it is determined that Buyer’s complaint is reasonable. If it is determined that the complaint is ungrounded the Buyer shall bear all costs.

**Article 13**

If the Seller does not fulfill its obligations or does not deliver goods in contracted deadline and contracted dynamics, due to the reasons for which it is responsible, it shall pay contracted penalty, calculated to the value of goods not delivered.

If the Seller does not deliver goods in the deadlines and amounts (daily, weekly monthly), defined by Article 2 hereof, the Buyer shall give the additional deadline of seven days to the Seller for Contract execution. If the Seller does not perform delivery even in the additional deadline, the Customer is entitled to procure missing quantities from third person with the aim of Contract execution.

In the event of delay of delivery that is longer than 20 days, the Buyer shall collect financial security instrument, is entitled to terminate this Contract unilaterally and to request compensation for damage and lost profit from Seller.

**Article 14**

If the Seller does not execute this Contract or does not fulfill the instructions of the Buyer or if it does not perform it tasks in a good quality or within the deadline, or, despite of written warning of the Buyer, is in breach with the provisions of the Contract, the Buyer is entitled to state the breach of Contract provisions and submit a written warning to the Buyer on the topic.

If the Seller does not undertake measures for execution of this Contract, which are required from it, within 8 (eight) days upon the receipt of this written warning, the Buyer may unilaterarlly terminate this Contract within 5 (five) days according to the rules on Contract termination due to the non-fulfilment.

In the event of termination of this contract, in terms of this Article, contracting parties shall settle their liabilities incurred by the date of termination.

If Contract termination was caused by one contracting party, the other party is entitled to compensation and lost profit according to the general rules of the law of obligations.

**Article 15**

If there is a deviation of the expected delivery compared than confirmed places of loading, Buyer shall do everything to accept the delay of time of arrival, in such a way not to jeopardize the priority transport of col from MB Kolubara.

**Article 16**

Prior to delivering goods to the Buyer in bunkers or landfills of the Buyer TENT A and TENT B, the risk over goods shall be borne by the Seller, and upon delivery the risk is transferred to the Buyer.

Risk and ownership over goods are transferred from Seller to Buyer upon the acceptance of goods when Seller ceases to be responsible.

**Article 17**

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Seller shall be responsible if the sold goods from Article 2 hereof involve the right of a third party, which excludes, reduces or limits the right of the Buyer, and the Buyer has not been informed about the existence of such right, nor has agreed to take the goods burdened by such right.

When it turns out that a third party reserves a right to the sold goods, the Buyer shall inform the Seller about this and ask him to deliver goods free of third party rights or claims at reasonable time.

If the Seller fails to comply with the request of the Buyer, this Contract shall terminate at the Sellers expense.

**Article 18**

Force Majeure means any event that frees from the responsibility for carrying out all or some contractual obligations and for indemnification for partial or total non-performance of contractual obligations for such contractual party that was affected by force majeure, or both contracting parties when they are both affected by the Force Majeure, and the performance of obligations prevented by Force Majeure shall be suspended during the period of Force Majeure

Contracting party whose performance of contractual obligations has been prevented due to force majeure shall immediately, without delay, and not later than 48 (forty eight) hours from the time of occurrence of a force majeure event, notify the other party in writing about the occurrence of force majeure and the estimated or expected duration, including submitting the proof of the force majeure event occurrence.

During the period of force majeure, each contracting party shall bear its own costs and no cost or loss of one and/or both contracting parties incurred during the period of force majeure or with reference to force majeure is considered as damage that the other party is obliged to indemnify, neither during the period of force majeure nor upon its termination.

If force majeure lasts longer than 30 (thirty) calendar days, contracting parties shall agree on further actions on carrying out the provisions hereof – fulfillment delay and shall sign an annex to this Contract with reference to that, or negotiate the termination of this Contract, provided that in the case of termination based on this ground - neither party is entitled to any indemnification.

**Article 19**

The Seller shall at the time of signing, as urged condition of Art. 74. par. 2. of the Law of Obligations (“Off. Gazette of SFRY no. 29/78, 39/85 , 57/89 and “Off. Gazette of FRY” no. 31/93), no later than 15 (fifteenten) days from the date of Contract signing submit to Buyer the performance bank guarantee, unconditional, payable on first demand, without the right to object, with the indicated amount of 2% of the contract value excluding VAT, with a validity period 30 days longer than the date set for the final execution of works, submitted under the request in accordance with the Bidding documents.

If, during the validity period of the contract, deadlines for implementation of contractual obligations change, the validity of performance bank guarantee for the work execution shall be extended.

Funds from the performance bank guarantee shall be paid to the Buyer as the compensation for any loss incurred as a result of the inability of the Seller to fulfill its contractual obligations under this Contract

Performance bank guarantee is an integral part of this Contract, as the Annex 5 hereof.

Performance bank guarantee shall be automatically revolved for each used amount up to date of signing of the Statement on fulfillment of all conditions of the Seller pursuant to this Contract.

Statement from the paragraph above shall be signed by the authorized representative of the Seller and the Buyer.

Buyer shall return the performance guarantee to the Seller within 10 (ten) days from the date of guarantee validity expiry.

The contracting parties agree that the Employer may, without any prior consent of the Seller, issue for payment the means of financial security referred to in paragraph 1 hereof, in case of the Seller’s failure to perform obligations during the term of this contract.

The Seller shall at the time of signing, as urged condition of Art. 74. par. 2 of the Law of Obligations (“Off. Gazette of SFRY no. 29/78, 39/85, 57/89 and “Off. Gazette of FRY” no. 31/93), no later than 15 (fifteen) days from the date of Contract signing submit to Buyer the advance payment bank guarantee, unconditional, payable on first demand, without the right to object, with the indicated amount of 7% of the contract value under Article 5 of the Contract, for the amount of 2.060.000 tons of goods with VAT and which shall last until the justification of advance, at least.

If the Seller fails to comply as specified in the preceding paragraph, the Buyer shall realize advance payment bank guarantee in the amount of unjustified part of advance.

**Article 20.**

The Buyer shall submit the bank guarantee for timely payment to the Seller, prior to delivery of goods based on securing due payments.

Within 30 days from the date of conclusion of the contract based on securing due payments, he Buyer shall submit to the Seller the irrevocable, unconditional, (without the right to object) and payable at first demand bank guarantee for timely payment in the amount of 1.000.000 EUR with a validity period of 30 (thirty) days longer than the date set for the final execution of works. Documents for payment in accordance with the guarantee are: invoice-s and confirmation on receipt of documentation (transport document) for payment by the Buyer.

The contracting parties agree that the Seller may, without any prior consent of the Buyer, issue for payment the means of financial security referred to in paragraph 1 hereof, in case of the Seller’s failure to perform obligations during the term of this contract.

**Article 21.**

Amendments to this Contract can only be made in written form. Only amendments made and mutually agreed by the Seller and Buyer shall be final and binding upon the Contract signatories

**Article 22.**

This Contract and related correspondence shall be in Serbian and / or English.

**Article 23**

The contracting parties agree that all disputes shall be resolved amicably, otherwise the matter falls under jurisdiction of the competent court in Belgrade (Foreign Trade Court of Arbitration at the Serbian Chamber of Commerce, along with its application of its the Rulebook *[ note: the final text of the Contract depends on whether the Seller is domestic or foreign. ] )*

In case of dispute, the substantive and the civil procedure law of the Republic of Serbia shall apply, and the proceedings shall be in Serbian language.

***Article 24.***

For the execution of this procurement, in accordance with the Contract on joint business and technical cooperation, included as an Annex 8 hereof, The Seller shall hire following subcontractor/s:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The Seller shall be fully responsible for the execution of contracted procurement to the Buyer. *[Note : to be specified in the text of the Contract in case of bid selection with the subcontractor ]*

**Article 25.**

The Seller shall execute this purchase together within a group of bidders, in accordance with the Act - the Contract on joint execution of procurement set forth as an Annex 8 hereof, with the members of bidders:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Members of the group shall have unlimited joint liability towards the Buyer.

*[Note: to be specified in the text of the Contract in case of joint bid]*

**.**

**Article 26**

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In case of inconsistency between provisions of this Contract, the text of the Bidding Documents and Bid, provisions of this Contract shall apply in the first place, then the Bidding Documents, and then the Bid.

**Article 27.**

The corresponding provisions of the Law of Obligations (“Off. Gazette of SFRY” no. 29/78, 39/85 , 57/89 and “Off. Gazette of FRY” no. 31/93) and other laws, by-laws, standards and technical regulations of the Republic of Serbia shall apply to relations between contracting parties which are not stipulated under this Contract - applicable with respect to the scope of this Contract.

**Article 28.**

This Contract shall be deemed concluded when signed by the parties. It shall become effective upon submission of performance bank guarantee and shall be valid for 6 months.

**Article 29.**

Neither party shall be entitled to transfer its rights and obligations defined under this Contract to any third party without the prior written consent of the other party.

All amendments to this Contract are valid only if made ​​in written form, signed by both parties, and if they are in accordance with the regulations of the Republic of Serbia applicable with regard to the scope of work of the Contract.

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In case of status changes between the parties, their legal successors shall continue the execution of the Contract

In case of a legal entity liquidation of any party under this Contract, all rights and obligations shall be transferred to the corresponding successor.

Upon signing of this Contract, all prior agreements and communications between the parties relating to this Contract shall become invalid.

**OCCUPATIONAL HEALTH AND SAFETY**

Article 30

The Seller shall perform all works in order to implement this Contract in compliance with the regulations and ratified international conventions on occupational health and safety in the Republic of Serbia. The Seller shall also respect the acts passed by the Buyer, i.e. Contractual Parties conclude from the field of occupational health and safety in accordance with the regulations, in order to implement this Contract.

The Seller shall be responsible for undertaking all measures of occupational health and safety which, starting from the specificity of the work that is the subject of this Contract, work technology and experience gained, shall be implemented in order to protect employees with the Contractor, third parties and property.

In casy of any breach of the obligation specified in paragraph 1 and 2 of this Article, the Buyer may terminate this Contract.

Article 31

Rights and obligations of the Contracting Parties regarding the occupational health and safety are defined in the Annex of Occupational health and safety, which is an integral paret of this Contract.

Article 32

            Seller is obliged to compensate damage to the Employer and / or its employees, caused due to non-compliance with prescribed measures of occuaptional health and safety, by the Contractor, i.e. its employees, as well as other persons hired by the Seller, in order to perform works being the subject of this contract.

            Damage, in terms of par. 1. of this Art, means non-material damage caused due to death or injury of an employee with the Buyer, damage caused to the property of the Buyer, as well as all other costs and fees incurred by the Buyer in order to remove consequences of damage.

Article 33

            Seller shall, in accordance with law, suspend all operations at the workplace, if the work prohibition at the workplace or prohibition of the use of means of work, has been issued by the person designated, in accordance with regulations, ​​by the Buyer to enforce control over the application of preventive measures for safe and healthy work, until its remarks in connection with violation of health and safety at work, are eliminated.

            Seller is not entitled to reimbursement of expenses incurred due to reasonable suspension of operations as defined in paragraph 1 of this Article, nor can he extend the deadline for the execution of works because jobs are suspended by a person designated, in accordance with regulations, ​​by the Buyer, for the implementation of control of implementation of preventive measures for safe and healthy work.

**Article 34**

Integral parts of this Contract are:

Annex 1: Bid from ------------

Annex 2: Technical specification and coal specification

Annex 3: Delivery notice

Annex 4: Protocol on quantitative acceptance and Protocol on qualitative acceptance

Annex 5: Performance bank guarantee

Annex 6: Advance payment bank guarantee

Annex 7: Payment guarantee

Annex 8: Contract on joint execution of procurement/Contract on business and technical cooperation (in case of joint bid)

Annex 9: Purchase Order

Annex 10: Occupational health and safety

**Article 35**

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This contract is concluded in 6 (six) identical copies, out of which 3 (three) are submitted to each party.

|  |  |
| --- | --- |
| **BUYER**  THERMAL POWER PLANTS NIKOLA TESLA d.o.o Obrenovac  **............................................................**  Čеdоmir Pоnоćkо  Director | **SELLER**  ................................................. |
| **COUNTER SIGNATORY**  Public enterprise Electric Power Industry of Serbia, Belgrade  **............................................**  **Аlеksаndаr Оbrаdоvić**  General Manager |  |

**Attachment 6**

**ADVANCED PAYMENT GUARANTEE**

***(name of the bank, address of the branch of the issuer)***

ORDERING PARTY: (address)

USER:

Corporate Enterprise “Thermal Power Plants Nikola Tesla” d.o.o

Bogoljuba Uroševića Crnog 44, 11500 Obrenovac

Register no. 07802161

PIB: 101217456

**ADVANCED PAYMENT GUARANTEE NO.................**

According to our findings you concluded Contract no. ............... dated ......(hereinafter refered to as: Contract) with ................................................................./company name and address/ (hereinafter refered to as: Ordering party) for ................................ (description of work ) and according to the terms of Contract advance payment in the amount of ................./in figures/, which makes .........5..........% /.............percent/ of Contract value, should be made in favour of Ordering party, along with the submission of advance payment guarantee in the same amount.

In accordance with the above stated we, ......................../bank name and address/ hereby, irrevocably and undconditionally gurantee that we shall, at your first demand, waiving all rights to the objection and plea and despite the protest of the Ordering party pay each amount or amounts, which does not exceed the amount(s) of

.................................................../in figures/

(in letters: ............................................................)

Upon the receipt of your first written request for payment and your written statement in which it is stated: that the Ordering party breached its obligation(s) under Contract, and the type of breach.

For the purpose of identification, your demand for payment has to be submitted through your bank, which will confirm that the signatures on the demand for payment are genuine and legally binding for your company (institution).

Your payment demand shall also be accepted if it is submitted by coded SWIFT message through your bank which confirms that your demand for payment has been forwarded to us by registered mail and that the signatures on such demand for payment are genuine and legally binding for your company (institution).

The condition for each demand and payment under this guarantee is that the advance which is stated above received to the account of Ordering party no.....................................at (bank name and address)

This guarantee is valid at the latest until.................................... According to that, we have to receive each demand for payment until that date at the latest, or before that date.

This guarantee cannot be assigned or transferred without written consent of the User, Ordering party and Bank guarantor.

In the case that the business seat of the guarantor bank is in the Republic of Serbia, in the event of a dispute under this guarantee, jurisdiction of the Court in Belgrade shall be determined and the application of substantive law of the Republic of Serbia. In the event that the business seat of the guarantor bank is outside the Republic of Serbia, in the event of a dispute under this guarantee, jurisdiction of the International Commercial Arbitration at the Chamber of Commerce of Serbia shall be determined with the application of the Rulebook of Chamber of Commerce of Serbia and procedural and substantive law of the Republic of Serbia.

This guarantee is governed by the Uniform rules for guarantees on demand URDG 758, International Chamber of Commerce in Paris.

Signature