# SUPPLY CONTRACT NO. ................ DATE...........................

This public procurement contract (hereinafter referred to as the "Contract"), was concluded taking into account the provisions of Law no. [98/2016](https://idrept.ro/00178257.htm) on public procurement (hereinafter referred to as "Law no. 98/2016"), as well as any other legal provisions issued in its application, between:

CHIMCOMPLEX S.A. BORZEȘTI, a company established and organized according to the legislation of Romania, having its registered office in Mun. Onești, str. Industriilor nr. 3, county. Bacău, phone/fax: +40250701200; +4 0250 701 341/+4 0250 735 438, e-mail office@chimcomplex.com, registered with the Trade Register under no. J04/493/1991, unique registration code RO960322, having an account opened at Garanti Bank, IBAN RO28 UGBI 0000 5120 1154 3RON, represented by Mr. Stefan VUZA - Chairman of the Board of Directors, as contracting authority, on the one hand,

and

………………………**,** based in .................... ............ Street, no. ..........Tel. fax.

..................., having a unique registration code .................................., registered with the Trade Register under No. ………….., Having account open at Treasury No.

........................................., represented by , as

contractor, on the other hand

# Definitions

* 1. In this contract, the following terms shall be interpreted as follows:

1. contracting authority and contractor – the contracting parties, as they are called in this contract;
2. Addendum - document amending the terms and conditions of this public procurement contract, under the conditions of Law no. 98/2016 on public procurement;
3. specification - Annex 1 to the contract which includes the objectives, tasks, specifications and characteristics of the products objectively described, in a manner appropriate to the fulfilment of the contracting authority's needs, indicating, where appropriate, the methods and resources to be used by the contractor and/or the results to be achieved/provided and provided by the contractor, including quality levels, performance, environmental protection, public/sectoral health, safety and the like, as appropriate, as well as requirements applicable to the contractor in terms of the information and documents to be made available to the contracting authority;
4. fortuitous event - an event that cannot be foreseen or prevented by the person who would have been called to answer if the event had not occurred;
5. assignment of receivable - written agreement by which the contractor transfers to a third party, under the conditions of Law no. 98/2016 and the Civil Code the rights held by contract or part thereof;
6. conflict of interest – any situation affecting the ability of the contractor to express an objective and impartial professional opinion or which prevents the contractor, at any time, from giving priority to the interests of the contracting authority, any reason in relation to possible contracts in the future or in conflict with other commitments, past or present, of the contractor; these restrictions are also applicable to any subcontractors, acting under the authority and control of the contractor, under the conditions of Law no. 98/2016;
7. contract – this public procurement contract which has as its object the supply of products, for consideration, assimilated, according to the law, to the administrative act, concluded in writing, between the contracting authority and the contractor, which has as its object the supply of products;
8. subcontracting contract – the agreement concluded in writing between the contractor and a third party that acquires the status of subcontractor, under the conditions of Law no. 98/2016 by which the contractor subcontracts the part of the contract to the subcontractor in accordance with the provisions of the contract;
9. cost – all expenses incurred or to be incurred by the contractor, in connection with the performance of this contract, including indirect expenses or similar costs, but not including profit;
10. defect(s)/non-conformity (non-conformities) – the execution of poor quality or deficiencies that violate the safety, quality or technical and/or professional requirements provided for by this contract and/or by the applicable law and that make the delivered products unsuitable for their purposes, as provided for in this contract and/or by the applicable law, as well as any deviation from the requirements set out in the tender specifications.

Defects/non-conformities/defects also include non-conformities of incidental services and/or defects/defects of incidental works/operations regarding the placement/installation of the products, if and as the case may be, but also apparent defects as well as hidden defects of the products subject to this contract, as the case may be;

1. compensation – the amount, not expressly provided for in the contract, which is awarded by the court as compensation payable to the injured party as a result of the breach of the provisions of the contract by the other party;
2. final destination - the place where the contractor has the obligation to supply the products;
3. provision - written document issued by the contracting authority in the execution of the contract and in compliance with its provisions, within the limits of Law no. 98/2016 and its implementing rules;
4. contracting authority documents – any and all documents required directly or implicitly by the nature of the products covered by the contract, including, but not limited to: plans, regulations, specifications, drawings, sketches, models, computer data and reports, conformity documents, compliance documents, etc., provided by the contracting authority and necessary to the contractor in order to achieve the subject matter of the contract;
5. force majeure – an event beyond the control of the parties, which is not due to their fault or fault, which could not have been foreseen at the time of conclusion of the contract and which makes it impossible for one of the parties to fulfil its obligations and includes calamities, strikes, or other disruptions of industrial activity, actions of a public enemy, wars, whether declared or not, blockades, insurrections, riots, epidemics, landslides, earthquakes, storms, lightning, floods, spills, civil unrest, explosions and any other similar events that are unforeseeable, beyond the control of the parties and which could not be avoided by taking appropriate due diligence measures;
6. supplier - economic operator that makes available to a contractor, products, which are the subject of this contract, and which does not have the status of subcontractor;
7. Supply - In this contract, the delivery term is equivalent to the delivery and delivery term, representing the moment when the purchased goods come into the possession of the contracting authority.
8. delay – the period of time calculated from the due date/agreed term of the performance of any contractual obligation by the contracting authority or contractor;
9. law - norm, regulation of a binding nature and referring to Romanian legislation, but also to Regulations issued by the EC and also to the obligations arising from the treaties to which the Romanian State is a party and any other secondary legislation directly applicable from Community law or Community jurisprudence;
10. month - calendar month (12 months/year);
11. electronic means of communication under the contract – electronic processing equipment, including digital compression, and storage of data transmitted, transmitted and, respectively, received by cable, radio, optical means or other electromagnetic means and used including for the transmission of the results obtained under the contract;
12. tender – the legal act by which the contractor has expressed its will to be legally committed to this public procurement contract and includes the financial proposal, the technical proposal as well as other documents that have been requested by the award documentation and subsequently submitted;
13. penalty – the amount of money established as a percentage in the contract as being payable by one of the contracting parties to the other party in case of non-fulfillment of the obligations in the contract, in case of non-fulfillment of a part of the contract or late fulfillment of obligations, as established by the contract documents;
14. personnel – persons appointed by the contractor or by any of the subcontractors for the performance of the contract;
15. contract price – the price payable to the contractor by the contracting authority, based on and in accordance with the provisions of the contract, the contractor's tender and the award documentation, for the full and proper fulfillment of all obligations assumed by the contract;
16. damage – the damage caused to the contracting authority by the contractor by the non-performance/improper execution or delay of the obligations established in its charge, by this contract;
17. product acceptance report – the document by which the contracting authority expresses its agreement that the supplied products are accepted, drawn up by the contractor and signed by the contracting authority, by which the latter confirms the supply of the products properly by the contractor and that they have been accepted by the contracting authority;
18. products – equipment, machinery, machinery, any other goods, included in the annexes to this contract, which the contractor undertakes, by contract, to supply to the contracting authority;
19. acceptance - represents the operation of identification and quantitative and qualitative verification of the supplied products, through which the contracting authority finds that they correspond to the contractual clauses and requirements of the specifications/technical proposal by which the contracting authority expresses its agreement on the quantity and quality of the products supplied under the public procurement contract and on the basis of which it makes the payment;
20. result/results – any and all information, documents, reports collected and/or prepared by the contractor as a result of the supplied products as described in the tender specifications;
21. written or in writing – any set of words or figures that can be read, reproduced and communicated subsequently, stored on paper, including information transmitted and stored by electronic means of communication under the contract;
22. services – services related to the delivery of products, respectively activities related to the supply of products, such as transport, insurance, installation, commissioning, technical assistance during the warranty period and any other such obligations incumbent on the supplier by contract;
23. professional standards – professional requirements, technical and quality standards in force regulated in the form of laws, norms, regulations, technical codes, directives of the European Union, etc. related to the quality of products that must be respected by any diligent contractor who possesses the necessary knowledge and experience and that the contractor is obliged to comply with in the supply of all products included in this contract;
24. subcontractor - any economic operator that is not a party to the public procurement contract and that performs certain parts or elements of the works/services, being responsible to the contractor for the organization and development of all the necessary steps for this purpose. The provision of machinery or the supply of materials/goods within a public procurement contract is not considered subcontracting within the meaning of the law;

ii) term – the period of time within which the parties must fulfil their obligations, as established by the contract, expressed in days, which begins to run from the beginning of the first hour of the first day of the time limit and ends at the expiry of the last hour of the last day of the time limit; The day on which an event took place or an act of the contracting authority was carried out shall not be taken into account in the calculation of the time limit. If the last day of a time limit expressed other than in hours is a public holiday, a Sunday or a Saturday, the time limit ends at the end of the last hour of the next working day;

jj) day - means calendar day, unless it is expressly provided that it is a working day; the year means 365 days;

# Interpretation

* 1. In this Agreement, unless otherwise stated, words in the singular form shall include the plural form, and vice versa, and words in the masculine form shall include the feminine form, and vice versa, where permitted by the context.
  2. If contradictions are found between the provisions of the contractual clauses and the procurement documents, the specific rules established by the procurement documents will apply. The nullity of a clause does not entail the termination of the contract, if this was not essential. The other contractual provisions remain valid.

# Object of the contract

* 1. The object of this contract is ***the acquisition of equipment and services for the construction of the cogeneration plant with thermal engines with a total electrical power of at least 27 MW and a total thermal power of at least 26.10 MW, with three identical units*.**
  2. The contractor undertakes to supply and put into operation ***the equipment and services for the construction of the cogeneration plant with thermal engines with a total electrical power of at least 27 MW and a total thermal power of at least 26.10 MW, with three identical units***, in the Municipality of Râmnicu Vâlcea, in accordance with the provisions of this contract, Annex no. 1 - Specifications, Annex no. 2 - The technical proposal, with the legal provisions, approvals and technical, professional and quality standards in force.
  3. The contracting authority undertakes to purchase or pay the price agreed in this contract.

# Contract price

* 1. The contracting authority undertakes to pay the contractor the total price agreed by this contract, in the amount of ........................... to which is added the VAT in the amount of , according to the legal provisions.
  2. The contract price is firm and cannot be revised. By exception, the contract price may be adjusted if legislative changes take place or administrative acts have been issued by the local authorities that have as their object the establishment, modification or waiver of certain local taxes, the effect of which is reflected in the increase/decrease of the costs on which the prices were based.

# Duration of the contract

* 1. The total duration of the contract is (in accordance with the submitted bid), as follows:
* The buyer will issue the start order after signing the contract within a maximum of 6 months at the signing of the contract.
* The supplier is obliged to deliver the products and services for the construction of the cogeneration plant with thermal engines with a total electrical power of at least 27 MW and a total thermal power of at least 26.10 MW, with three identical units according to the offer submitted within .... from the issuance of the start order related to the contract, according to the delivery schedule annexed to the contract.
  1. The duration of the contract starts from its signature by both parties and ends on 30.06.2025.
  2. The contractor has the obligation to submit within 10 days from the signing of the contract by both parties the updated delivery schedule in relation to the date of signing the contract, with the obligation to comply with the deadlines related to the activities, as they were presented in the offer.

# Contract documents

* 1. The documents of this contract are:

1. the tender specifications, including, where applicable, the clarifications and/or remedial measures brought up to the submission of the bids regarding the technical and financial aspects - Annex no. 1;
2. the technical proposal, including, if applicable, the clarifications during the evaluation period - Annex no. 2;
3. the financial proposal, including, if applicable, the clarifications during the evaluation period - Annex no. 3;
4. delivery schedule - Annex no.
5. the firm commitment to support from a third party - Annex no. ;
6. The Association Agreement, if applicable - Annex no. ;
7. the subcontracting contract, if applicable - Annex no. .... .
8. addenda, if applicable;
9. the performance guarantee and the technical performance guarantee and the bank guarantee for the return of the advance, if applicable.

# Order of precedence

* 1. In case of any contradiction between the documents referred to in Article 6, their provisions shall be applied in the order of precedence established according to the sequence of documents listed above.
  2. If, during the performance of the contract, it is found that certain elements of the technical proposal are inferior or do not correspond to the requirements set out in the tender specifications, the provisions of the tender specifications shall prevail.

# Communication between the parties

* 1. Any communication made by the parties will be drafted in writing and submitted personally by the party/its representative or sent by registered letter with acknowledgment of receipt or by another means of communication that ensures the confirmation of receipt of the document.
  2. Communications between the parties can also be made by fax or e-mail, provided that the receipt of the document is confirmed in writing.
  3. If the sender requests acknowledgement of receipt, it must indicate this requirement in its communication and request such proof of receipt whenever there is a deadline for receipt of the communication. In any case, the sender shall take all necessary measures to ensure the timely and timely receipt of his communication.
  4. The addresses to which communications are sent are the following:

|  |  |
| --- | --- |
| For the contracting authority: | For the contractor: |
| Address: str Uzinei nr.1 Ramnicu-Valcea postal code 240050, Vâlcea county | Address: |
| Phone/Fax:+4 0250 701 382/+4 0250 735 438 | Phone/Fax: |
| E-mail:office@chimcomplex.com  narcis.floricioiu@chimcomplex.com | Email: |
| Contact person: Investment Director Adj. Narcis Floricioiu; mobile phone 0758 710 750 | Contact person: |

* 1. Any document (disposition, address, proposal, registration, receipt report, notification and others) drawn up within the contract, is made and transmitted, in writing, in a form that can be read, reproduced and recorded.
  2. Any communication between the parties shall contain details of the identification elements of the contract (title and registration number) and shall be sent to the address(es) referred to in Article 8.4.
  3. Any communication made by one of the parties will be considered received:

1. at the time of delivery, if it is submitted personally/through a representative by one of the parties,
2. at the time of receipt by the addressee, in the case of sending by registered letter with acknowledgement of receipt,
3. at the time of receipt of the confirmation by the sender, if the communication is made by fax or e-mail (provided that the sending did not occur on a non-working day, in which case it will be considered received at the first hour of the next working day).
   1. The parties declare that they agree that failure to comply with the requirements regarding the method of communication established in this contract shall be sanctioned with the unenforceability of such communication.
   2. In any situation where it is necessary for the issuance of notices, notices, instructions or other forms of communication by one of the parties, unless otherwise specified, such communications shall be drafted in the language of the contract and shall not be unduly withheld or delayed.
   3. No change to the contact details provided for in this contract is enforceable against the other party, unless it has been notified in advance.

# Guarantee of good performance of the contract and Technical guarantee of good performance of the contract

* 1. The contractor undertakes to provide the guarantee of good performance of the contract in the amount of 10% of the contract price excluding VAT, i.e. .............. lei, within *5* working days from the signing of the contract by both parties. This term may be extended at the justified request of the contractor, without exceeding 15 days from the date of signing the contract. The performance guarantee is constituted in accordance with the provisions of art. 154 of Law 98/2016, as well as with the provisions of art. 40 of GD no. [395/2016](https://idrept.ro/00178471.htm), as subsequently amended and supplemented.
  2. The performance guarantee is valid for the entire duration of the contract. If the duration of the contract is extended, the contractor has the obligation to extend the validity of the performance guarantee corresponding to the extension of the duration of the contract.
  3. In the case provided for in art. 9.2. of this contract, the contractor has the obligation to extend the validity of the performance guarantee by at least 5 days before the expiration of its validity, otherwise the provisions of art. 37 regarding the termination of this contract will apply.
  4. The contracting authority has the right to issue claims on the performance guarantee under the conditions provided for in art. 41 of GD no. [395/2016,](https://idrept.ro/00178471.htm) respectively at any time during the fulfillment of this contract, within the limit of the damage created, if the contractor fails to fulfill the obligations assumed by the contract due to its fault.
  5. Prior to the issuance of a claim on the performance guarantee, the contracting authority has the obligation to notify the claim to both the contractor and the issuer of the guarantee instrument, specifying the obligations that have not been complied with, as well as the method of calculating the damage.
  6. In the event of execution of the performance guarantee, partially or totally, the contractor has the obligation to replenish the guarantee in question in relation to the remainder to be executed, within 5 days from the moment it was retained by the contracting authority.
  7. The return of the performance guarantee shall be made within 14 days from the date of the contractor's fulfilment of the obligations assumed by the contract, if the contracting authority has not raised claims against it by that date.
  8. If during the execution of the public procurement contract its value is supplemented, the contractor has the obligation to complete the performance guarantee in correlation with the new value of the public procurement contract.
  9. The warranty of the products is distinct from the guarantee of good performance of the contract.
  10. The technical performance guarantee is distinct from the performance guarantee of the supply contract and insures the buyer in the event that the contractor fails to fulfil its contractual obligations within the warranty period granted to the products; The technical warranty of the products is 24 months (2 years) from commissioning.
  11. The technical performance guarantee is constituted in lei by means of a bank letter of technical guarantee or by a guarantee instrument, valid for the entire guarantee period issued by a credit institution in Romania or in another state or by an insurance company, 30 days before the expiry of the performance guarantee of the contract.
  12. The amount of the technical performance guarantee represents 3% of the contract price excluding VAT and is worth ................. Lei. In case of failure to provide the technical performance guarantee, within the term provided for in Article 9.11 of the contract, the buyer reserves the right to execute the performance guarantee.
  13. The buyer has the right to issue claims on the technical performance guarantee, within the limit of the direct damages created and/or the late payment penalties, if the contractor does not fulfill its obligations assumed by the contract, provided that the contractor is notified in advance, but without the contractor's acceptance being necessary.
  14. In case of retention by the Buyer of any damages from the value of the technical performance guarantee, the contractor undertakes to reconstitute the guarantee within 15 days up to the value prior to the retention of the damages.
  15. If applicable, the letter of bank guarantee for the refund of the advance in favor of the Contracting Authority will be submitted in original to the headquarters of the contracting authority or will be sent by the Contractor's bank by authenticated SWIFT message MT 760 to GARANTI BANK SA, Swift code UGBIROBUXXX, with approval instructions. The bank guarantee will expire 30 days from the date of delivery of the products.

# Start, Delays, Termination

* 1. The contractor is obliged to start supplying the products in accordance with the provisions of Article 5 of this contract.
  2. In the event of a situation of unforeseeable circumstances or force majeure, the obligations are suspended during the existence of these events, and the term for the delivery of the goods will be extended by a term that cannot exceed the duration of the existence of the event considered in the case, concluding an addendum in this regard. The contractor does not owe late payment penalties in this case.

# Contract development and monitoring

* 1. Reporting under the public procurement contract for products

1. if applicable, the contractor shall submit the documents and reports as specified in the tender specifications and in compliance with the deadline provided by art. 5;
2. the contractor has the obligation to prepare, during the period of supply of the products, all the reports and documents requested according to the provisions contained in the specifications;
3. The approval by the contracting authority of the reports and documents made and provided by the contractor, will be made as set out in the tender specifications and will certify that they are in accordance with the terms of the contract.
   1. The contractor will take all necessary or appropriate measures and actions to achieve at least the contractual performance as set out in the tender specifications.

# Delivery schedule

* 1. The parties shall ensure that the delivery schedule presented in accordance with art. 5.3. represents the physical staggering of the deliveries of products and the performance of all the activities of the contract established in correlation with the actual date of the signing of the contract and contains the exact data for all deadlines and/or benchmarks, as determined for all activities of the contract.
  2. The delivery of products and activities shall be carried out in succession and in compliance with the deadlines established by the delivery schedule, as accepted by the contracting authority and as constituted as an integral part of the contract.
  3. The verification of the fulfillment of the contractual obligations by the contractor and the evaluation of the status of the activities, in the sense of compliance with the deadlines and benchmarks established for the delivery of the products, is done in relation to the content of the accepted delivery schedule.
  4. If, during the duration of the contract, the contracting authority finds and considers that the delivery of the products does not comply with the physical scheduling of activities, as established by the delivery schedule, it will charge late payment penalties, as set out in art. 24.3.
  5. By exception, if the failure to comply with the delivery deadlines established by the initial schedule is due to causes that are not attributable to the contractor, the contracting authority has the obligation to request the contractor to submit the updated schedule, and the contractor has the obligation to submit the revised schedule, in order to finalize the contract on the date set in the contract.
  6. Any approved version of the delivery schedule supersedes previous versions.

# Modification of the contract

* 1. During the period of validity of the contract, the parties have the right to agree on the modification and/or completion of its clauses, without organizing a new award procedure, with the agreement of the parties, without affecting the general nature of the contract, within the limits of the provisions provided by the normative acts in force.
  2. Contractual amendments must not affect, in any case and in any way, the outcome of the award procedure, by cancelling or diminishing the competitive advantage on the basis of which the contractor was declared the winner in the award procedure.
  3. The party proposing the amendment of the contract has the obligation to submit to the other party the proposal to amend the contract in compliance with the clauses provided for in art. 8 Communication between the parties and the supporting documents at least 5 days before the date on which it is considered that the amendment should take effect.
  4. The amendment will only take effect if the parties have agreed on this in writing, such as by signing an addendum.

# Subcontracting

* 1. The Contractor shall have the right to subcontract parts of this contract and/or may change the subcontractors specified in the technical proposal only with the prior written consent of the contracting authority.
  2. The contractor has the obligation to present at the conclusion of the contract the contracts concluded with the subcontractors designated in the bid submitted for the award of this contract. Subcontracting contracts are an annex to the contract, being an integral part of it.
  3. The Contractor undertakes to conclude subcontracting contracts only with subcontractors who agree to the contractual obligations assumed by the Contractor under this Contract.
  4. The contractor has the right to request from the contracting authority, at any time during the performance of the contract, only on the basis of justified reasons, either the replacement/renunciation of a subcontractor, or the involvement of new subcontractors. The contractor must request, in writing, the prior approval of the contracting authority before its involvement in the performance of the contract. The written request in order to obtain the approval of the contracting authority regarding the involvement of new subcontractors is made only after the contractor has itself carried out a prior verification of the subcontractor to be proposed, in relation to the characteristics of the activities to be subcontracted, as well as in relation to the provisions of the public procurement legislation regarding the replacement/introduction of a subcontractor during the implementation of the contract.
  5. The replacement/involvement of subcontractors by the contractor during the contract implementation period may occur, with the agreement of the contracting authority, in the following situations:

1. the replacement of subcontractors named in the tender and whose activities have been indicated in the tender as being carried out by subcontractors;
2. the declaration of new subcontractors after the signing of the contract, given that the works/services to be subcontracted were provided for in the offer without initially indicating the option of subcontracting them;
3. waiving/withdrawing subcontractors from the contract.
   1. The contracting authority shall notify the contractor of its decision on the replacement of a subcontractor/involvement of a new subcontractor, giving reasons for its decision in the event of rejection of the approval.
   2. The contracting authority has the obligation to request the presentation of the contracts concluded between the contractor and the subcontractor/subcontractors declared subsequently, which must contain at least the following elements:
      * the activities to be subcontracted;
      * the name, contact details, legal representatives of the new subcontractor(s);
      * the value related to the services of the new subcontractor/subcontractors.
      * similar relevant and specific experience of the new subcontractor.
   3. The subcontractor/subcontractors have the obligation to submit a declaration on their own responsibility by which they assume compliance with the provisions of the tender specifications and the technical proposal submitted by the contractor to the tender, related to the part of the contract/activity subject to subcontracting.
   4. No subcontracting contract creates a contractual relationship between the subcontractor and the contracting authority. The contractor is fully liable to the contracting authority for the manner in which it performs the contract. The contractor is liable for the acts and deeds of its subcontractors as if they were its own acts or deeds. The approval by the contracting authority of the subcontracting of any part of the contract or the engagement by the contractor of subcontractors for certain parts of the contract does not relieve the contractor of any of its obligations under the contract.
   5. If a subcontractor fails to perform its contractual obligations, the contracting authority may require the contractor either to replace that subcontractor with another subcontractor, who has the qualifications and experience required by the contracting authority, or to take over the part of the contract that has been subcontracted itself.
   6. The part of the contract entrusted to a subcontractor by the subcontractor may not be entrusted to third parties by the subcontractor.
   7. Any change of the subcontractor without the prior written approval of the contracting authority or any entrustment of a part of the contract by the subcontractor to third parties is considered a breach of contract, a situation that entitles the contracting authority to terminate, according to the Civil Code, the contract and obtain compensation from the contractor.
   8. During the performance of the contract, the contractor shall ensure that subcontractors do not infringe the contracting authority's rights under this contract.
   9. During the performance of the contract, the contracting authority may require the contractor to replace a subcontractor who is in one of the exclusion situations specified in the legislation in force at the time of the award of the contract.
   10. If a subcontractor has expressed an option to be paid directly, then this option is valid only if the following conditions are cumulatively met:
4. this option is explicitly included in the subcontracting contract constituted as an annex to the contract and forming an integral part of it;
5. The subcontracting contract shall also include an explicit and specific annex on the manner in which the direct payment is made by the contracting authority to the subcontractor, specifying each and every one of the following elements:

* the part of the contract/activity performed by the subcontractor as specified in the invoice submitted for payment,
* the specific method of certification of the part of the contract/activity by the contractor for the result obtained by the subcontractor/part of the contract performed by the subcontractor before the presentation of the invoice by the contractor to the contracting authority,
* the part/proportion of the amount requested for payment corresponding to the part of the contract/activity that is the responsibility of the subcontractor, in relation to the conditions of acceptance for payment of the invoices issued by the contractor for the contracting authority, as detailed in the contract,
* sets out the conditions under which the direct payment option materialises,
* specify the subcontractor's bank account.

# Assignment

* 1. In this public procurement contract, only the assignment of the receivables arising from this contract is allowed, the obligations arising remaining in the responsibility of the contracting parties as they were initially stipulated and assumed, according to GEO no. 146/2002, with subsequent amendments and completions. The assignment of receivables will operate under the conditions provided by art. 1566 - 1592 of the Civil Code. The debt assignment contract takes effect vis-à-vis the contracting authority only from the moment of its written acceptance. The payment made to the contractor prior to the acceptance of the assignment of receivable is valid, and the contracting authority cannot be opposed to the assignment of receivable contract.
  2. The Contractor assigns to the Contracting Authority all rights arising from the Firm Commitment concluded with the supporting third party.

# Information privacy and protection of personal data

* 1. The Contractor will consider all documents and information made available to it for the purpose of concluding and executing the Contract as strictly confidential.
  2. The obligation of confidentiality does not apply in the case of legal requests regarding the disclosure of information from public authorities (e.g. courts, ANAF, contracting authorities, etc.), if the law provides for the obligation of the contracting authority to provide this information.
  3. In the processing of personal data according to the contract, the parties undertake to comply with all obligations established under the legislation on the protection of personal data including, but not limited to, the provisions of Regulation no. [679/2016](https://idrept.ro/12045068.htm) on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive [95/46/EC](https://idrept.ro/12015837.htm) ("GDPR").
  4. The contractor guarantees that it has the necessary technique, equipment and organizational measures to facilitate the storage and protection of personal data against loss or any form of illegal processing thereof, according to art. 5 para. (1) letter f) "GDPR". These measures exist to ensure an optimal level of security, within the limits of the available technology, and have been carried out in part to prevent further unnecessary processing of personal data.
  5. In the context of the conclusion and execution of the contract, the parties will be able to process a series of personal data, such as identification data and contact data such as name, surname, position held, email address, telephone number, signature of natural persons appointed directly or indirectly, by any of the parties as contact persons for the purpose of executing the contract, as well as identification data and contact data of the administrators, directors or other legal or contractual representatives of the parties responsible for signing, executing, terminating or carrying out any formalities resulting from the law or the agreement of the parties in order to fulfill the obligations established by this contract.
  6. The Parties declare and guarantee that they will inform each other in advance about the personal data processing activities, in compliance with the provisions of Article 13 of the GDPR and the relevant legislation, and that they will ensure adequate information of all natural persons whose personal data are processed and disclosed in the context of the conclusion and execution of this contract.
  7. In order to ensure the security and confidentiality of the processing of personal data, the parties will implement appropriate technical and organizational measures and will ensure that the persons who perform data processing operations of the data subjects know and comply with the legal requirements in this matter as well as the internal policies and procedures implemented at the level of each party.
  8. Each Party undertakes to inform the other Party of the existence of security breaches or breaches of the security of personal data without undue delay and to take the necessary measures to remedy them.
  9. The Contractor shall be liable for all damages suffered by the Contracting Authority and/or any of its associates as a result of or in connection with the Contractor's failure to perform its obligations under the Contract, relating to compliance with the "GDPR" and compliance with the standards of confidentiality and protection of personal data, including the goods involved and its employees and third parties who perform all or part of this contract, on behalf of the contractor. The term "associate" includes natural persons whose personal data becomes public or is used by the contractor in violation of the legislation on the protection of personal data

# Main obligations and rights of the contracting authority

* 1. The contracting authority will promptly make available to the contractor any information and/or documents in its possession that may be relevant to the performance of the contract. To the extent that the contracting authority does not provide the data/information/documents requested by the contractor, the deadlines set for the contractor for the supply of the products shall be extended accordingly.
  2. The contracting authority undertakes to comply with the provisions of the tender specifications.
  3. The contracting authority shall cooperate with the contractor in providing such information as the latter may reasonably request for the performance of the contract.
  4. The contracting authority has the obligation to designate, within 5 days from the signing of the contract, the contact person.
  5. The contracting authority or its representative shall be obliged to verify the conformity of the supplied products with the specifications in the annexes to the contract. By the end of the delivery period, the contractor will ensure the testing, validation and commissioning of the software applications that have been offered.
  6. In the situation provided for in art. 17.5., the contracting authority has the right:

1. to terminate the contract in full/in part;
2. to require the contractor to replace goods that have not been accepted or to which objections have been raised; Under these conditions, a reasonable period of time is established within which the contractor has the right to replace the good/remedy the deficiencies of the good. The granting of this additional period does not affect the right of the contracting authority to levy late payment penalties for the period between the time when the goods were to be handed over and the time when the goods were replaced/the defects in the goods were remedied;
3. to remedy the defects of the property, at the expense of the contractor. In this situation, the payment related to the costs will be paid from the performance guarantee, the contractor being obliged to replenish it within 5 days from the date on which it was notified of the payment by the contracting authority.
   1. In the event that the contracting authority has refused/objected only to a partial quantity of goods and has granted the contractor the right to replace/remedy the deficiencies of the goods, it has the right to partially terminate the contract, only in respect of the goods which have not been taken over or in respect of which remedies have been requested, and the contractor did not remedy them. The provisions of Articles 20.3, 24.2(i), 24.3, 24.7 and 24.8 shall apply to the Contractor.
   2. The right of the contracting authority to inspect, test and, if necessary, reject, shall not be limited or deferred due to the fact that the products have been inspected and tested by the contractor, with or without the participation of a representative of the contracting authority, prior to their delivery to the final destination.
   3. In the event that the contracting authority finds the existence of hidden defects/non-conformities of the good, it has the obligation to inform the contractor within 10 working days from the moment it discovered them. The remedy of hidden defects will be done according to the provisions of the specifications.
   4. If the defects/non-conformities of the good are discovered after the termination of the contract, the recovery of the damage caused will be made according to the rules of common law.
   5. In the event that the hidden defects/non-conformities concern only a part of the goods, the contracting authority has the right to partially terminate the contract in respect of these goods. The provisions of Articles 20.3, 24.2(i), 24.3, 24.7 and 24.8 shall apply to the Contractor.
   6. The qualitative and quantitative acceptance will be carried out at the final destination of the products, communicated by the contracting authority, based on the certificates of conformity, the warranty certificate and the shipment notice of the products, according to the specifications. Each product will be accompanied by all the subassemblies/component parts necessary for commissioning and maintenance.
   7. The acceptance of the products by the contracting authority will be made within a maximum of 1 month from the date of delivery by the contractor, in the locations established by the contracting authority, by means of the acceptance report signed by both parties, under the conditions provided in the tender specifications and this contract. The contracting authority is entitled to refuse acceptance in case of major non-conformities with the specifications of the tender specifications or any other non-conformities that do not allow the use in the parameters and capacity envisaged by the Tender Specifications  *of the Cogeneration Plant with thermal engines with a total electrical power of at least 27 MW and a total thermal power of at least 26.10 MW, with three identical units*.
   8. The delivery of the equipment for *the Cogeneration Plant with thermal engines with a total electrical power of at least 27 MW and a total thermal power of at least 26.10 MW, with three identical units* will be carried out by the contractor at the location provided in the Tender Specifications. All expenses occasioned by the delivery of the equipment will be borne by the contractor.
   9. The contracting authority shall make the payment to the contractor under the conditions of art. 31 of this contract.
   10. The contracting authority shall ensure and make available the necessary spaces for the delivery, placement, commissioning, testing and reception of the equipment covered by the contract.
   11. The contracting authority will notify the contractor, through the communication channels made available by it, of any incidents or malfunctions that occur during the period of the contract.
   12. The contracting authority reserves the right to recover from the contractor any damages that will be generated by the delays caused, by errors/lack of professionalism, by non-compliance with the obligations according to the contract, the specifications and the legislation in force.

# Association of economic operators (if applicable)

* 1. Each of the partners is individually and jointly liable to the contracting authority, being considered as having common and individual obligations for the execution of the contract.
  2. The members of the association understand and confirm that the leader established by the association agreement is appointed by the association to act on its behalf and is authorized to engage the association under the contract.
  3. The members of the association understand and confirm that the leader of the association is authorized to receive instructions from the contracting authority and to receive payment for and on behalf of the persons constituting the association.
  4. The provisions of the association contract are not enforceable against the contracting authority.

# Main obligations of the contractor

* 1. The contractor will supply the products and will carry out the activities, will execute the related operations required by the tender specifications and will fulfill its obligations under the conditions established by this contract, in compliance with the provisions of the award documentation and the offer based on which the contract was awarded.
  2. The Contractor shall supply the products and services with care, efficiency and diligence, in compliance with the legal provisions, approvals and technical, professional and quality standards in force.
  3. The contractor undertakes to submit the performance guarantee within a maximum of 5 working days from the signing of the contract by both parties. If the guarantee is constituted through successive withholdings, the provisions of Article 40 of GD 395/2016 will apply. This term may be extended at the justified request of the contractor, without exceeding 15 days from the date of signing the contract.
  4. The contractor will comply with all legal provisions in force and will ensure that its personnel, involved in the contract, will also comply with the legal provisions, approvals and technical, professional and quality standards in force.
  5. If the contractor is an association made up of two or more economic operators, all of them will be held jointly and severally responsible for fulfilling the obligations under the contract.
  6. The parties will cooperate in providing information that they can reasonably request from each other for the performance of the contract.
  7. The Contractor shall take all necessary measures to provide, on an ongoing basis, the personnel, equipment and support necessary for the effective fulfilment of the obligations assumed by the contract.
  8. The contractor has the obligation to designate, within 5 days from the signing of the contract, the contact person.
  9. The contractor has the obligation to ensure the availability of the personnel throughout the duration of the contract. The contractor has the obligation to ensure the performance of the activities stipulated in the contract by covering with specialized personnel throughout the implementation of the contract. The contractor must ensure that, throughout the period of the contract, the main staff assigned to each activity will fulfil the obligations set out for them.
  10. The Contractor shall not make any changes to the established personnel without the prior written approval of the Contracting Authority. The contracting authority will send the approval/rejection of the personnel changes within a maximum of 10 days, calculated from the receipt of the supporting documents in complete and correct form. The approval of the replacement of personnel/personnel takes effect on the date of its issuance by the contracting authority.
  11. In the event that the contractor or the contracting authority requests the replacement of the personnel, the contractor shall submit to the contracting authority, for verification and approval, supporting documents regarding the educational and/or professional qualification, skills, general and specific professional experience of the proposed personnel. In case of rejection of the proposed staff, the contracting authority will notify in writing the reasons for the rejection and the deadline for submitting a new proposal.
  12. If the contractor is unable to provide a replacement under the conditions set out in Art. 19.11, which does not diminish the advantage obtained by the contractor as a result of the application of the award criterion of this contract, the contracting authority shall decide to terminate the contract.
  13. The additional costs generated by the replacement of personnel shall be borne by the contractor.
  14. The contractor undertakes to issue the invoice for the products supplied under this contract only after receipt of the products under the conditions set out in Article 17 of the contract.
  15. The contractor shall be fully responsible for the supply of the products, the provision of services and the execution of related operations, as the case may be, under the terms of the tender specifications, in accordance with its technical proposal. At the same time, it is responsible for both the safety of all operations and methods of provision, as well as the qualification of the personnel used throughout the duration of the contract.
  16. The contractor has the obligation to update the data and information regarding the beneficial owner, on a regular basis, every time there is a change in them, until the termination of the contractual relations, subject to the application of legal sanctions.
  17. All obligations relating to the beneficial owner of the funds will also apply with regard to subcontractors.
  18. The contractor has the obligation to ensure the availability of the information and documents related to this contract, for 5 years from the date of termination of the contract, on the occasion of the control missions carried out by the Ministry of Investments and European Projects or by other structures with competences in the control and recovery of debts related to the non-reimbursable financing.
  19. The contractor has the obligation to ensure the maintenance of the products supplied according to the provisions of the specifications.
  20. Throughout the duration of the contract, both during the warranty period and after the expiration of the warranty period, as the case may be, the contractor will provide technical support, according to the provisions of the specifications.
  21. The contractor has the obligation to ensure the management of the waste resulting from the executed works. The waste will be removed within 48 hours of its production, with the assurance of taking over by authorized companies in this regard, as the case may be.

# Compensation

* 1. The contractor assumes the general risks identified in the tender specifications by participating in the public procurement procedure and signing this contract and will have no claim in the event of their occurrence, except in cases where the fault is due to third parties or reasons not attributable to him. The absence of fault must be proven by the contractor.
  2. The Contractor shall indemnify, protect and defend, at its own expense, the Contracting Authority against and against all legal actions, claims, losses and damages resulting from any act or omission of the Contractor, in the performance of this contract, including against any infringement of legal provisions or the rights of third parties, regarding patents, trademarks or other forms of intellectual property such as copyright.
  3. The Contractor undertakes to pay damages, expenses, taxes and expenses of any nature, in the event of non-performance or improper performance of the obligations under this contract.
  4. At its own expense, the Contractor shall indemnify, protect and defend the Contracting Authority, for and against all legal actions, claims, losses and damages resulting from the performance of this Contract by the Contractor, provided that the Contractor is notified by the Contracting Authority of such actions, claims, losses or damages, after the Contracting Authority has become aware of them; The limitation of liability shall not apply in cases of gross negligence or wilful failure to perform obligations.
  5. During the course of the contract, other specific risks may arise that may lead to delays in the performance of the contractor's activity and which will be solved by the parties, according to the legal provisions.
  6. For the risks included in this article and the tender specifications, the contracting authority will not accept subsequent requests for re-evaluation of the conditions in the technical and/or financial proposal, respectively for amendments to the contract, if the contractor's offer did not include the necessary diligence, respectively the inclusion of measures to eliminate the source of risk or to mitigate its impact.

# Obligations of the third-party supporter

* 1. If the contractor encounters difficulties during the performance of the contract, the supporting third party undertakes to ensure the full and regulatory fulfillment of the contractual obligations, for the part of the contract that is the subject of the firm commitment.
  2. The third-party supporter is obliged to answer for the damages caused to the contracting authority as a result of the failure to comply with the obligations provided for in the commitment.
  3. If the intervention of the third-party supporter will be necessary during the performance of the contract, this will be done through an addendum signed between the contracting authority, the third-party supporter and the contractor. After the conclusion of the addendum, the deadline for mobilizing all resources in order to fulfill the contract is 3 working days from the signing of the addendum.
  4. The third-party supporter is obliged to be liable to the beneficiary for the part of the contract that is the subject of the firm commitment, according to the contractual clauses.
  5. The withdrawal of the claim by the third-party supporter leads to the termination of the contract by operation of law, without summons, without notice and without the intervention of the court, as well as to claim the payment of damages, with the application of art. 21.2.

# Conflict of interest

* 1. The contractor will take all necessary measures to prevent or stop any situation that could compromise the objective and impartial performance of the contract. Conflicts of interest may arise, in particular, as a result of economic interests, political or nationality affinities, kinship or affinity ties or any other common ties or interests. Any conflict of interest arising during the performance of the contract must be notified in writing to the contracting authority without delay.
  2. The contractor will ensure that its staff are not in a situation that could give rise to a conflict of interest. The Contractor will replace, immediately and without any compensation from the contracting authority, any member of its staff, who finds himself in such a situation (e.g.: replacement, termination, approval, travel/delegation, schedule/schedule), with another person who meets the minimum conditions established by this contract.
  3. The contractor has the obligation to comply with the legal provisions in the field of procurement regarding the avoidance of conflict of interest. The Contractor is not entitled to enter into or conclude any other agreements regarding the supply of products, directly or indirectly, for the purpose of fulfilling the contract, with natural or legal persons who have been involved in the process of verification/evaluation of requests to participate/tenders submitted within an award procedure or employees/former employees of the contracting authority involved in the award procedure with which the contracting authority has terminated relations contracts subsequent to the award of the public procurement contract, during a period of at least 12 (twelve) months from the conclusion of the contract, under penalty of termination of the contract.

# Contractor's conduct

* 1. The contractor/contractor's staff/subcontractors will always act loyally and impartially and as a trusted advisor to the contracting authority, in accordance with the rules and/or code of conduct of its field of activity as well as with the necessary discretion.
  2. If the Contractor or subcontractor(s) offers to give/give or gives/grants to any person bribes, goods, facilities, commissions in order to determine or reward the fulfillment/non-performance of any acts or facts in connection with this Contract or to favor/disfavor any person in connection with this Contract, the Contracting Authority may decide to terminate the Contract.
  3. The contractor and its staff shall observe professional secrecy during the performance of the contract, including during any extension thereof, as well as after the termination of the contract.

# Obligations regarding damages and late payment penalties

* 1. The contractor undertakes to compensate the contracting authority within the limit of the damage created, against any:

1. claims and legal actions, resulting from the infringement of intellectual property rights (patents, names, trademarks, etc.), related to the equipment, materials, installations used for or in connection with the products supplied, and/or
2. damages, indemnities, penalties, costs, taxes and expenses of any nature, related to any violations of any of its obligations under the provisions of the contract.
   1. The contractor will compensate the contracting authority to the extent that the following conditions are cumulatively met:
3. the compensation must refer exclusively to the damages suffered by the contracting authority as a result of the contractor's fault;
4. The contracting authority has notified the contractor of the receipt of a notification/request regarding the incidence of any of the situations provided above;
5. The value of the compensation was established by enforceable titles issued according to the legal provisions/final court decisions, as the case may be.
   1. If the contractor, through its sole fault, fails to deliver the products on time, the contracting authority is entitled to charge late payment penalties in the amount of 0.1% per day of delay from the value of the products not delivered/delivered late, calculated over a period between the date set for the fulfilment of the obligations (according to the schedule) and the date of their actual fulfilment. If the delay exceeds 90 calendar days, the contract may be unilaterally terminated by the Contracting Authority.
   2. By exception to the provisions of art. 24.3, to the extent that one of the obligations that were not performed according to the contract was an evaluation factor in the award procedure, the contractor is obliged to compensate the buyer with an amount in the amount of 25% of the value of the contract.
   3. Without prejudice to art. 37, if the contractor does not fulfill its obligation to provide the performance guarantee assumed by the contract on time, the contracting authority will retain the participation guarantee, according to the provisions of GD no. [395/2016](https://idrept.ro/00178471.htm).
   4. If the contractor delivers goods affected by defects or non-conformities, and the contracting authority chooses to grant a deadline within which the contractor replaces/remedies the deficiencies of those goods, it has the right to charge late payment penalties in the amount of 0.1% day late from the value of the non-conforming products, calculated from the delivery deadline until the date when the replaced goods have been handed over or the deficiencies have been remedied.
   5. In the event that the provisions of art. 37 of the contract (termination of the contract) are applied, the contractor will be obliged to pay damages, in the amount of 0.1% per day of delay of the value of the contract, calculated until the award of the remaining products to be supplied, contracted through a new public procurement procedure.
   6. In the event of non-performance or improper performance of other contractual obligations, the contractor shall fully cover the damage caused to the contracting authority.
   7. The Contractor and the Contracting Authority agree to carry out a performance test for a period of 72 hours, after the commissioning of the installation followed by a period of at least 2 weeks of its normal and stable operation. The performance test ends with a Protocol that will record the results of the performance test. The contractor guarantees the performance of the cogeneration plant with thermal engines according to FORM F21 - GUARANTEED PARAMETERS: Pe, Qt, ηg, Pem, Qtm, ηgm, Nox, CO, DA and according to FORM F22 - GUARANTEED INDICATORS: Installed capacity in high-efficiency cogeneration, gas, flexible, Specific emissions. The confirmation of the parameters and indicators is demonstrated by the performance test. The rest of the indicators are demonstrated by calculation: Δem, B, η. The contractor undertakes to pay penalties in case of non-performance, as follows:
   * for each failure of 1% less than the guaranteed value of PE, the Contractor will be applied a penalty of one percent (1%) of the value of the equipment;
   * for each failure of 1% less than the guaranteed value of Qt, the Contractor will be penalized by one percent (1%) of the value of the equipment;
   * for each failure of 1% less than the guaranteed value ηg, the Contractor will be subject to a penalty of one percent (1%) of the value of the equipment;
   * for each failure of 1% less than the guaranteed value of ΔEm, the Contractor will be penalized by one percent (1%) of the value of the equipment;
   * for each failure of 1% less than the guaranteed value B, the Contractor will be subject to a penalty of one percent (1%) of the value of the equipment;

The total amount of penalties that may be applied to the Contractor in accordance with the provisions of art. 24.9 shall be deducted from the payment invoices and shall not exceed the value of 50% of the price of the equipment.

* 1. If the contracting authority does not honor the invoices within the term provided for in art. 33, to which is added a grace period of 30 calendar days, then the Contractor may claim the payment of a penalty interest in the amount of 0.1% per day of the amount due and unpaid, calculated until the date of payment in full of the amount due. Thus, the date from which the contracting authority owes the penalty interest is the date on which the aforementioned grace period expired. The total value of these penalties may not exceed 10% of the contract price.
  2. The obligation to pay the penalty interest incumbent on the contracting authority established in art. 24.10. operates only when:

1. the contractor, including subcontractors and/or third party supporters, have fulfilled their contractual obligations;
2. the contractor has not received the amount due on the due date, unless the contracting authority is not responsible for the delay.

# Packaging & Marking

* 1. 1. The contractor shall be obliged to package the products in such a way that they can withstand, without limitation, the harsh handling during transport, transit and exposure to extreme temperatures, sun and precipitation that may occur during transport and storage in the open air, in such a way that they reach their final destination in good condition.

2. In the case of packing weights and volumes in the form of boxes, the contractor shall take into account, where applicable, the long distance to the final destination of the products and the absence of heavy handling facilities at all transit points.

* 1. All packaging materials for the products, as well as all materials necessary for the protection of parcels (wooden pallets, protective sheets, etc.) remain the property of the contracting authority.

# Delivery and accompanying documents

* 1. Equipment for the construction *of the cogeneration plant with thermal engines with a total electrical power of at least 27 MW and a total thermal power of at least 26.10 MW, with three identical units* will be preserved and packaged according to the mode of transport at the responsibility and costs of the contractor. The delivery and final delivery of the products will be carried out by the contractor, at its own expense, respecting the specified delivery deadlines. The products will be insured against loss or damage occurred during transport and caused by any external factor.
  2. All costs associated with delivery, including all statutory fees and transport insurance, in case it is necessary to obtain approvals for oversized transport, must be obtained by the contractor, at its own cost.
  3. The Contractor also undertakes to comply with the commercial delivery deadline DDP to the Buyer's location, according to INCOTERMS 2020.
  4. The contractor has the obligation to deliver the products to the final destination indicated by the contracting authority, complying with:

1. data in this Agreement, and
2. the established commercial term;
   1. (1) When dispatching the products, the contractor is obliged to communicate, in writing, both to the contracting authority and, where applicable, to the insurance company, the dispatch dates, the contract number, the description of the products, the quantity, the place of loading and the place of unloading.

(2) The contractor shall submit to the contracting authority all the documents accompanying the products as follows:

(2).1.The Contractor shall submit to the Contracting Authority the following documents related to the delivered products:

**a)** the tax invoice; this will be drawn up with an advance reversal, if applicable;

**b)** the consignment note/packing-list together with the number, weight, dimensions and contents of the packages;

**c)** the warranty certificate from delivery;

d) instructions for proper storage of the goods;

e) quality certificate issued by the manufacturer, for each piece of equipment, in original;

f) EC declaration of conformity, for each equipment, in original;

g) the complete technical documentation (user manual) of each piece of equipment, customized with the type, series and year of manufacture, necessary for the proper assembly at the place of use, for the correct commissioning, operation and service and which will include, among other things, the assembly drawings together with the necessary details regarding the mechanical part, the control and measurement part, the electrical part, the list of subassemblies of the aggregates and of the control codes, and so on, according to cz. The documentation will be submitted in original, in English and in Romanian, both on paper and electronically;

h) the quality manual of the equipment, customized with the type, series and year of manufacture, which must include the quality/conformity/testing and approval certificates, inspection certificates, certificates and documentation according to PED for pressure vessels, the factory test of the equipment (FAT), as the case may be;

i) documentation of auxiliary equipment, as the case may be.

(2).2.The contractor undertakes to provide spare parts for a period of 25 years from the delivery of the equipment, for a fee.

* 1. The delivery of the products will be made to the location indicated by the beneficiary.
  2. Upon delivery of the first tranche of products, if the delivery will be made in installments, or upon delivery of all products, if the delivery will be made in a unitary manner), the entire technical equipment, tools, IT equipment, diagnostic logistics, hardware and software provided in the tender specifications, as well as all accompanying documentation in Romanian, will be handed over, without any expense from the contracting authority.
  3. If the report of qualitative acceptance of the equipment and services for the construction *of the cogeneration plant with thermal engines with a total electrical power of at least 27 MW and a total thermal power of at least 26.10 MW, with three identical units*  was signed without objection from the beneficiary, the contractor may issue the fiscal invoice, prepared in accordance with the legal provisions taking into account the recommendations specified in art.26.5.( 2).1.a).
  4. Each equipment must be accompanied at reception by the following technical documentation in Romanian:
* The manuals and documentation required by the specification;
* EC declarations of conformity by which the manufacturer or his authorised representative guarantees and declares that the product complies with all applicable requirements at EU level for marketing and use in EU Member States with all relevant provisions of the rules/directives/regulations governing the production/approval and marketing of the product type
* Warranty certificates and quality certificates issued by the manufacturer;
* Other documents referred to in art.26.5(2).1.
  1. The submission of the complete documentation to the contracting authority conditions the payment of the invoices for the delivered products.

# Insurance and occupational safety obligations to be complied with by the contractor

* 1. The contractor undertakes to comply with the regulations relating to working conditions and labour protection and, where appropriate, the agreed international labour standards, the conventions on freedom of association and collective bargaining, the elimination of forced and compulsory labour, the elimination of discrimination in employment and employment and the abolition of child labour.
  2. The contractor is the insurance party, which has the obligation to conclude, before the start of the contract, the insurances, as set out in the tender specifications.
  3. All costs arising from or in connection with the conclusion and maintenance of the contractor's insurance established in this contract shall be borne by the contractor.
  4. Any damages not covered by the insurance benefits are the responsibility of the party obliged to bear these damages according to the legislation in force and/or the contractual provisions.

# Training of staff for use (training services)

* 1. The training of the staff will be carried out at the beneficiary's headquarters. It will provide the classroom. Tuition must also include practical training.

The contractor will carry out at its own expense the training of the personnel designated by the Contracting Authority for the operation, maintenance, maintenance and repairs *of the cogeneration plant with thermal engines with a total electrical power of at least 27 MW and a total thermal power of at least 26.10 MW, with three identical units*.

* 1. The contractor will carry out the training of the personnel according to the schedule of activities annexed to the contract and will hand over the operating manuals in accordance with the requirements of the authority in the specifications.

# Product quality obligations

* 1. The contracting authority shall notify the contractor of each non-conformity as soon as it identifies it. Upon completion, the contractor notifies the contracting authority of the defects/non-conformities that have not been remedied and communicates to the contracting authority the period for remedying them. The rights of the contracting authority regarding any defect/non-conformity not identified or notified by the contractor, during the period of the contract, are not affected. The contractor shall remedy the defects/non-conformities, within the term communicated by the contracting authority.

# Insurance

* 1. The contractor has the obligation to fully insure the products supplied by the contract against unforeseen loss or damage in manufacturing, transport, storage and delivery, depending on the agreed commercial delivery time.

# Warranty period granted to products

* 1. The contractor has the obligation to guarantee that the products supplied under the contract are new, unused, state-of-the-art and incorporate all recent improvements in the design and structure of the materials and are not prototypes. The Contractor is also obliged to guarantee that all products supplied under the contract will not have any defects as a result of design, materials or workmanship or any other action or omission of the Contractor and that they will operate under normal operating conditions at the parameters of capacity, performance and availability offered.
  2. The full warranty of fault-free operation from the date of commissioning of the plant as a whole and all its components is \_\_\_\_\_\_\_\_\_\_\_ (to be completed according to the offer). The warranty period offered must also be found in the warranty certificate of each product, which is to be verified at the time of qualitative reception.
  3. During the warranty period, defects will be found and remedied according to the provisions of the specifications.

# Intellectual Property Rights

* 1. Any result(s) developed and/or processed by the contractor in the execution of the contract will become the exclusive property of the contracting authority, at the time of payment of the amounts due to the contractor according to the provisions of this contract. After the termination of this contract, the contractor shall not use the documents or materials developed and/or processed, for purposes unrelated to this contract, without the prior written consent of the contracting authority.
  2. The Contractor may publish articles relating to the subject matter of this contract and refer to it in the course of the performance of other contracts for third parties, with the prior written consent of the contracting authority only after the successful completion of this contract.
  3. Any results or rights, including copyrights or other intellectual or industrial property rights, acquired in the performance of the contract shall be the exclusive property of the contracting authority, which shall be able to use, publish, assign or transfer them as it sees fit, without geographical or other limitations, except in situations where such intellectual or industrial property rights already exist.

# Invoicing and payments under the contract

* 1. The payments to be made under the contract will be made only on the basis of the tax invoice, after the quantitative and qualitative acceptance of the products without objections, confirmed by the preparation of the quantitative and qualitative acceptance report, signed by the parties and all the supporting documents, according to the mentions in art. 26.8.
  2. Payment methods:
* Payment of an advance payment at the request of the supplier in accordance with Art. 33.8 below. The required advance can be a maximum of 30% of the contract value.
* Payment of up to 90% of the price of the equipment, within 30 days from the receipt of the equipment and signing without objection of the acceptance report by the contracting authority
* Payment of 10% of the value of the equipment, within 30 days from the PIF (commissioning of the equipment) and the performance test successfully performed, but no later than 12 months after delivery;
* The payment of the technical assistance services for assembly, commissioning, commissioning and performance test will be paid after the provision of services and the success of the performance test.
  1. The payment will be made by bank transfer, directly to the contractor's account opened at the Treasury .................. No. , using the unit prices from the financial offer. The qualitative and quantitative acceptance report will be drawn up within a maximum of 1 (one) month from the date of delivery by the contractor.
  2. The contracting authority has the obligation to make the payment to the supplier within the term provided for in art. 6 paragraph 1 letter a) of Law no. 72/2013, a term calculated from the date of registration of the invoice with the contracting authority, in conjunction with the provisions of art. 24.9 of this contract.
  3. The invoices provided will be issued and completed in accordance with the Romanian legislation in force, in lei, in accordance with the contractual provisions and the Fiscal Code in force.
  4. If the invoice has wrong elements and/or calculation errors identified by the contracting authority and revisions, further clarifications or other supporting documents are required from the contractor, the payment of the invoice is suspended. The deadline is made from the moment the invoice is issued correctly.
  5. The contractor is responsible for the correctness and accuracy of the data entered in the invoices and undertakes to return both the amounts collected in excess and the benefits unduly made related to them. The amounts collected in addition, as well as the undue benefits related to them (during the period from collection to their ascertainment), will be established following the verifications carried out by the contractor's internal control bodies or other control bodies empowered by law.

# Prepayment

The contracting authority accepts the possibility of offering advance payments in the amount of a maximum of 30%.

* + 1. The contracting authority may make advance payments at the request of the contractor, in order to supply the products of this contract, in accordance with the provisions of these clauses. The advance payment will be conditioned by the transmission to the Contracting Authority of the performance guarantee and the deposit of a guarantee for the return of the advance according to the specifications of art.9 in the amount of 100% of the value of the requested advance.
    2. The contractor, unless otherwise provided by law, shall present to the contracting authority a guarantee for the return of the advance and shall send it by SWIFT message, as specified in art.9. The guarantee for the repayment of the advance must cover both the recovery of the advance granted and the reparation of the damages that could be caused by the immobilization of public funds, for the period provided from the moment of payment until the full justification of the advance. The deposit repayment guarantee will be issued by a banking company and the contractor will submit the supporting documents in this regard. The guarantee for the return of the advance will be irrevocable and will provide that the payment of the guarantee for the return of the advance will be executed unconditionally, respectively at the first request of the contracting authority, based on its declaration of the contractor's fault. The guarantee for the return of the advance of an association or consortium will be issued on behalf of the association or consortium and for the benefit of the contracting authority.

The Contractor shall ensure that the deposit refund guarantee will remain valid and in force until the advance payment is justified or refunded, but the amount of the guarantee may be progressively reduced by the amounts justified by the Contractor, as indicated in the payment certificates. If the advance payment has not been fully justified or refunded 30 days before the expiration date of the guarantee, the contractor will extend the validity of the guarantee until the full justification or refund of the advance payment. If the deposit refund guarantee has ceased to be valid, and the contractor has not extended the validity of the guarantee, the amounts remaining to be justified from the advance will be considered, without further formality, as due and will be recovered by the contracting authority, by issuing a debit note to the contractor or by deducting from future payments due to the contractor under the contract with the collection of the existing late payment increases for income calculated for the period between the date of granting the advance and the date of recovery of the outstanding amounts.

The advance payment must be justified by the final delivery date of the goods related to this contract, according to the delivery schedule, annexed to this contract.

The deposit refund guarantee will be issued by the contracting authority to the contractor on the date and when the payment of the advance is fully justified or reimbursed.

* + 1. If the contract is terminated or terminated unilaterally or terminates in accordance with the provisions of art. 22, the amounts remaining to be justified from the advance will be considered, without further formality, as due by the contractor to the contracting authority and late payment penalties calculated for the period from the time the advance was granted until the moment of recovery will be charged. The deposit repayment guarantee may be enforced immediately by the contracting authority to reimburse the remaining amounts of the advance payment*.*
    2. The amounts representing advance payments and unjustified by goods delivered, under the conditions of the contractual provisions, will be recovered by the contracting authority.
    3. In case of non-delivery of the goods for which advances have been paid, the recovery of the amounts by the contracting authority is made by charging the late payment increases at the level of those existing for the budget revenues, calculated for the period from when they were granted until they were recovered.
    4. In case of non-fulfillment or improper fulfillment of the part of the contract for which the advance was granted, the recovery of the amounts by the contracting authority is made with the collection of late payment penalties, calculated for the period from when the advance was granted until the moment of recovery.
    5. The advance payment will be made in a single installment. The recovery of the advance will be made through full deductions (100%) from subsequent invoices.

# Suspension of the contract

* 1. In duly justified situations, the Contracting Authority may notify the Supplier of the suspension of the performance of the contract.
  2. If it is found that the procedure for the award of the product contract or the performance of the contract is vitiated by material errors, irregularities or fraud, the parties have the right to suspend the performance of the contract.
  3. In case of temporary suspension/cessation of the supply of products, the duration of the contract will be automatically extended by the period of suspension/termination.

# Suspensive clause

* 1. The conclusion of the public procurement contract is subject to the conclusion by the Contracting Authority of the contracts for the Acquisition of equipment and services for the construction of the high-efficiency combined cycle cogeneration plant with a total electrical power of at least 81 MW and a thermal power of at least 63 MW and the one for the integration of the high-efficiency gas cogeneration plant, in the district heating sector of the Municipality of Râmnicu Vâlcea. The suspensive clause acts for a period of 6 months from the date of communication of the result of the procedure.
  2. If, for any reason, the above-mentioned procurement contracts will not be signed, the Contracting Authority reserves the right to apply the provisions of art. 212 paragraph (1) letter c) of Law 98/2016. The Supplier accepts that the Contracting Authority cannot be held liable for any damage in the event of the cancellation of the award procedure, regardless of its nature and regardless of whether the Contracting Authority has been notified of the existence of such damage.

# Force majeure. The fortuitous case

* 1. Force majeure and unforeseeable circumstances exonerate the parties from liability in case of partial or total non-performance of the obligations assumed by this contract, in accordance with the provisions of art. 1.351 of the Civil Code.
  2. Force majeure and unforeseeable circumstances must be proved.
  3. The party invoking force majeure or unforeseeable circumstances has the obligation to inform the other party, in writing, as soon as the event has occurred.
  4. The party who invoked force majeure or unforeseeable circumstances has the obligation to inform the other party of the cessation of its cause as soon as the event has ended.
  5. The performance of the contract will be suspended during the period of force action, but without prejudice to the rights due to the parties until its occurrence.
  6. If force majeure acts or is expected to act for a period of more than 60 days, each party shall have the right to notify the other party of the automatic termination of this contract, without either party being able to claim damages from the other.

# Termination of the contract

* 1. This contract terminates upon reaching the deadline or at the time when all the obligations established for the parties have been performed.
  2. The contracting authority reserves the right to terminate the contract, without affecting the right of the parties to claim payment of damages or other prejudices, if:

1. the contractor fails to comply, within the period of time, according to the notification issued by the contracting authority, requesting it to remedy the non-conformity or to perform the obligations arising from this contract;
2. the contractor subcontracts parts of the contract without the written consent of the contracting authority;
3. the contractor assigns its rights without the written consent of the contracting authority;
4. any organisational change involving a change in the legal personality, nature or control of the contractor takes place, unless such changes are made by an addendum to this contract, in compliance with the legal provisions;
5. any other legal incapacities that prevent the performance of the contract become incidents;
6. the contractor fails to provide/maintain/extend/replenish/complete the guarantees or assurances required by the contract;
7. if, by a normative act, the public interest of the contracting authority in relation to the supply of the products covered by the contract is modified;
8. at the time of awarding the contract, the contractor was in one of the situations that would have led to its exclusion from the award procedure;
9. in the event that the contract should not have been awarded to the contractor because the obligations arising from the relevant European legislation have been seriously breached and this circumstance has been established by a decision of the Court of Justice of the European Union;
10. if bankruptcy proceedings are opened against the contractor;
11. the contractor has committed irregularities or fraud in the contract award procedure or in connection with its performance, which have caused injury to the contracting authority;
12. The capitalization by the contracting authority of the results of this contract is seriously compromised as a result of the delay in the services due to the fault of the contractor.
    1. The contractor may terminate the contract without affecting the right of the parties to claim payment of damages or other damages, if:

(i) the contracting authority has committed material errors, irregularities or fraud in the contract award procedure or in connection with its performance, which have caused injury to the contractor.

(ii) the contracting authority fails to fulfil its obligations to pay for the products supplied by the contractor, under the conditions set out in this contract.

* 1. The termination of the Contract under the conditions of art. 37.2 and art. 37.3 occurs with full effects, without the need to fulfill any prior formality and without the need for the intervention of any court and/or arbitration.
  2. The provisions of this contract regarding the termination of the contract are supplemented by the relevant provisions of the Civil Code in force.
  3. If the contractor does not provide the performance guarantee within the legal term, the contracting authority retains the participation guarantee. If the contractor does not submit/does not provide the performance guarantee within the term provided for in art. 9.1, the contract is terminated by law.
  4. The contracting authority reserves the right to unilaterally terminate the contract for the supply of products, within 30 days from the occurrence of circumstances that could not have been foreseen at the date of conclusion of the contract, provided that the contractor is notified at least 10 days before the moment of termination.
  5. The parties may be required, even after the termination of the contract, to repair the damages caused and, as the case may be, to return in kind or by equivalent, the products delivered/supplied and the ancillary services received following the conclusion of the contract.

# Insolvency and bankruptcy

* 1. In the event of the opening of a general insolvency procedure against the contractor, the contractor has the obligation to notify the contracting authority within 5 days of the opening of the procedure.
  2. The contractor is required to submit to the contracting authority, within 30 days of notification, a detailed analysis of the impact of the opening of the general insolvency proceedings on the contract and deliveries and to propose measures, acting as a diligent contractor.
  3. In the event of the opening of general insolvency proceedings against a subcontractor, a third-party supporter or, where applicable, in the situation referred to in Article 18 of this Agreement, the Contractor shall have the same obligations as those set forth in Articles 37.1 and 37.2 of this Agreement.
  4. If the Contractor enters bankruptcy, liquidation or is in a situation that produces similar effects, the contracting authority may unilaterally terminate the contract.
  5. No such measure proposed in accordance with the provisions of Articles 37.2, 37.3 of this contract may be applied unless accepted in writing by the contracting authority.

# Language of the contract

* 1. The language that governs the contract is Romanian.

# Governing Law

* 1. The contract will be interpreted according to the legislation of Romania.

# Resolution of possible divergences and disputes

* 1. The parties will make every effort to resolve amicably, through direct negotiations and amicable negotiation, any misunderstanding or disputes/divergences that may arise between them within or in connection with the performance of the contract.
  2. If the dispute has not been resolved in this way and the parties continue to have divergent views on or in the performance of the contract, they must notify each other in writing of their position on the issue in dispute and of the solution they envisage for its resolution.
  3. If the attempt at an amicable settlement fails or if one of the parties does not respond within 5 days of the request, either party has the right to appeal to the competent courts.

*This contract has been concluded in a number of 3 copies, two copies for the contracting authority and one copy for the contractor*.

**CONTRACTING AUTHORITY CONTRACTING**