

# Contract for the Supply and Installation

concluded by the contracting parties listed below in accordance with the provisions of Section 2586 et seq. Act No. 89/2012 Coll., the Civil Code (hereinafter referred to as the "Contract")

## Bottle Washer for the Kyselka Production Plant

### I Contracting Parties

**CLIENT:** **Mattoni 1873 a.s.**

Registered office: Horova 1361/3, 360 01 Karlovy Vary  
Company registration number: 14706725  
Bank details: (to be completed)  
Account number: (to be completed)  
Represented by: (to be completed)

Person authorised to act: in Contract-related matters: (to be completed)  
in technical matters: (to be completed)

Hereinafter referred to as the "Client"

and

**SUPPLIER:** (shall also be completed by the Contracting Authority before signing the Contract with the selected supplier; not to be completed by the participant in the procedure – hereinafter referred to as "to be completed")

Registered office: (to be completed)  
Company registration number: (to be completed)  
Tax identification number: (to be completed)  
Bank details: (to be completed)  
Account number: (to be completed)  
Represented by: (to be completed)

Persons authorised to act: in Contract-related matters: (to be completed)  
in technical matters: (to be completed)

Hereinafter referred to as the "Supplier".

### PREAMBLE

This Contract is concluded on the basis of the results of the tender procedure called "**Bottle Washer for the Kyselka Production Plant**" (hereinafter referred to as the "Tender Procedure"), conducted by the Client according to the Rules for the Selection of Suppliers of the Ministry of Industry and Trade of the Czech Republic, issued for the Operational Programme "Technologies and Applications for Competitiveness", effective from 13 October 2023 (hereinafter referred to as the "RSS"), and, at

the same time, conducted outside the regime of Act No. 134/2016 Coll. on public procurement, as amended.

## **II**

### **Subject Matter and Documents for the Implementation of the Contract**

#### **2.1 Subject Matter**

- 2.1.1 The Subject Matter hereof is the Supplier's obligation to deliver and install the bottle washing line for the operation of the Kyselka Production Plant, including the dosing stations (hereinafter referred to as the "Equipment"), based on and in accordance with the below binding documents, in the technical, functional, material and aesthetic design, to the extent and under the conditions specified in this Contract and its Annexes.
- 2.1.2 The Equipment shall be delivered new, unused and shall be delivered free of factual and legal defects.
- 2.1.3 In addition to the supply and installation of the Equipment, the Supplier's performance hereunder shall also include other activities of the Supplier listed herein, in particular, in Article III hereof (hereinafter collectively referred to as the "Subject of the Performance").

#### **2.2 Obligation to Pay the Agreed Price**

- 2.2.1 The Subject Matter hereof is also the obligation of the Client to pay the agreed price for the Subject of the Performance delivered properly and on time according to the terms of this Contract.

#### **2.3 Binding Documents**

- 2.3.1 The technical definition of the Subject of the Performance, its characteristics, details of the materials used and the equipment and technologies used, and the conditions of its performance are determined as binding by this Contract and its Annexes:
  - Binding work performance schedule (hereinafter referred to as the "Work Schedule"),
  - Supplier's Price Offer that was submitted by the Supplier in the Tender Procedure (hereinafter referred to as the "Price Offer"),
  - Document "Technical Specifications" that was part of the Tender Procedure documents,
  - Document "Technical Requirements – Checklist" that was submitted by the Supplier in the Tender Procedure,
  - Technical data sheets that were submitted by the Supplier in the Tender Procedure,
  - Equipment location in the line layout that was submitted by the Supplier in the Tender Procedure,
  - List of spare parts that was submitted by the Supplier in the Tender Procedure,
  - Other materials and documents that were part of the Tender Procedure and which, at the same time, condition or have an effect on the performance of this Contract and the Subject of the Performance, in particular, the drawing documentation and any specifying information and documents for the Subject

of the Performance that served as the basis for the Tender Procedure or that were in submitted by the Supplier in the Tender Procedure,

(hereinafter referred to as "Binding Documents").

- 2.3.2 The above documents are binding. Changes to the form of the defined Subject of the Performance or changes to the conditions of its implementation may only be made if such a change is permitted by this Contract and the Rules for the Selection of Suppliers.
- 2.3.3 The Supplier declares that it has fully familiarised itself with the scope and nature of the Subject of the Performance, with all Binding Documents that were submitted by the Client in the Tender Procedure, and with the place of implementation of the Subject of the Performance. The Supplier further declares that it has the capacities and expertise necessary for the proper performance of this Contract, and that it is not aware of any circumstances that would prevent it from the proper performance of this Contract and its Annexes. The Supplier further declares that it shall approach all activities within the framework of the performance of this Contract with maximum and proven know-how and at the same time with the knowledge and diligence of a member of all professional professions that are needed for the proper performance of this Contract.

## **2.4 Change of Obligations from the Contract**

- 2.4.1 The Contracting Parties are obliged to inform each other of any need to change the Subject of the Performance or its conditions to any extent, immediately after discovering such a need.
- 2.4.2 Based on the information submitted, the Client shall decide on the admissibility, classification and form of such a change in terms of the relevant legal regulations, this Contract and the RSS.
- 2.4.3 The Supplier is not entitled to decide on the changes itself or to implement them in violation of the stated rules. Such a procedure shall be considered a gross breach of the Contract.
- 2.4.4 Depending on the nature of the permissible change, the permissible change shall be made in accordance with this Contract, namely by a modification form, or a change in the form of an amendment to the Contract.

## **2.5 Place of Implementation of the Subject of the Performance**

- 2.5.1 The place of implementation of the contract and the delivery address is Kyselka 44, 362 72 Kyselka, building indication number 84 on land lot numbers 150/1, 150/2, 158, 156/9, 1215/2 and 1215/4 in the cadastral territory of Kyselka.
- 2.5.2 Any other place, as determined by the Client, may be the place for negotiations between the Client and the Supplier.

## **2.6 Co-Financing of the Contract**

- 2.6.1 The Supplier acknowledges that the price of the Subject of the Performance is proposed to be co-financed from the Operational Programme "Technologies and Applications for Competitiveness"; this Contract is therefore governed by the RSS.
- 2.6.2 The Supplier further acknowledges that the Client is interested in the proper fulfilment of this Contract even if it does not obtain co-financing in accordance with the previous paragraph.

### **III**

#### **Parts of the Subject of the Performance**

#### **3.1 Transportation, Installation and Assembly**

- 3.1.1 The Subject of the Performance includes the provision of all the following activities:
- a) Transportation of the Equipment to the place of performance and from the installation pit to the place of installation, with the exception of the unloading of the Equipment at the place of performance into the installation pit using a crane,
  - b) Installation, assembly and commissioning with a test before pre-acceptance of the Equipment,
  - c) Performance of all actions required for the proper assembly and installation of all parts of the Equipment,
  - d) Removal and disposal of the packaging material not later than upon the final handover and acceptance of the Equipment.
- 3.1.2 During the installation of the Equipment, the Supplier is obliged to consult the work procedure with the Client in advance, in particular, with regard to the place of performance and ensuring the operation of the Equipment, with regard to disruptive work (dusty, noisy, blocking place or otherwise preventing the proper operation of the place of delivery) and with regard to the security risks. The Supplier is obliged to respect any restrictions resulting from the operation of the place of delivery.

#### **3.2 Documentation and Training**

- 3.2.1 The Subject of the Performance includes the provision of all the following activities:
- a) Delivery of all necessary documents, technical data sheets and other similar documents related to the safe use and maintenance of the Equipment in printed and electronic form in Czech, in particular, the operating instructions, instructions for use and maintenance, manufacturer's instructions, etc.
  - b) Delivery of the necessary declarations on the conformity of the properties of the Equipment with the technical requirements established by the special legal regulations, taking into account the intended purpose of use,
  - c) Delivery of other documents for the Equipment, required by the generally applicable legislation or standards,
  - d) Providing the initial training of the operating personnel in Czech, or English, not later than before the pre-acceptance of the Equipment,
  - e) Providing the initial training for the maintenance personnel in Czech, or in English, not later than before the pre-acceptance of the Equipment.
- 3.2.2 The Supplier acknowledges that the Client intends to carry out maintenance and repairs of the Equipment preferably through its own employees; therefore, the Supplier undertakes to carry out the training of the Client's maintenance personnel to the extent that would allow such a procedure of the Client.
- 3.2.3 The training of the operating personnel, i.e. operators and their managers, shall be provided mainly in the following areas:

- a) General control of the Equipment
  - b) Basic maintenance
  - c) Troubleshooting
  - d) Safety and health protection when working on the Equipment
  - e) Conversion of the Equipment to a different bottle format.
- 3.2.4 The training of the maintenance and engineering team personnel shall be provided mainly in the following areas:
- a) General control of the Equipment
  - b) Mechanics of the Equipment
  - c) Electricity, programming and software
  - d) Troubleshooting
  - e) Preventive maintenance
  - f) Safety and health protection when working on the Equipment
  - g) Conversion of the Equipment to a different bottle format.
- 3.2.5 The training shall consist of both classroom lessons and practical lessons at the Equipment.
- 3.2.6 The training must provide the Client's employees with sufficient knowledge of the use and maintenance of the Equipment and adjustments to its settings and programme, as well as obtaining a full insight into the design and construction of the Equipment and the principles of its operation.
- 3.2.7 The training shall end with the verification of the acquired knowledge and skills in the form of a test.
- 3.2.8 Regarding the training of the Client's employees, the Supplier declares that it is aware that the Client's employees can work in three shifts.
- 3.2.9 Unless otherwise specified by the Client, all documents shall be handed over by the Supplier to the Client as part of the handover procedure in accordance with this Contract.
- 3.2.10 The Client is entitled to request the immediate submission of relevant documents at any time during the performance of this Contract, in particular, if it has doubts about the proper implementation of the Subject of the Performance and the Supplier is obliged to comply with such a request without delay.

### **3.3 Other Activities of the Supplier**

- 3.3.1 The Supplier undertakes to design and manufacture the Equipment in such a way as to take into account the limitations resulting from the drawing of the place of performance, which is included in the drawing documentation that was part of the Tender Procedure (i.e. in particular, columns, sewers, etc.).
- 3.3.2 The Supplier undertakes that the Equipment shall meet all required output parameters, including the effectiveness of the Equipment, as stated in the Technical Specifications, Technical Requirements - Checklist and other relevant Binding Documents.

- 3.3.3 The Supplier undertakes to design and manufacture the Equipment in such a way that the designed utility connections to the existing connection points make it possible to achieve the efficiency of the Equipment required in the Binding Documents. Furthermore, it undertakes to design the Equipment according to other required parameters listed in the Technical Specifications, Technical Requirements - Checklist and other relevant Binding Documents. The Supplier undertakes to provide the Client, not later than one month after the signature of this Contract, with technical information leading to the timely readiness of connection of all utility connection points (air, electric current, steam, etc.). Construction work consisting in the provision of connections to the utility connection points of the Equipment shall be performed by the Client based on the Supplier's proposal.
- 3.3.4 The Supplier further undertakes to provide the Client with the following:
- a) A backup of the software whenever the Client requests it and whenever the software is updated by the Supplier without undue delay; this obligation of the Supplier shall apply throughout the lifetime of the Equipment, at least 20 years from the final handover and acceptance of the Equipment,
  - b) Documents in editable form (unlocked docx, xlsx, dwg, eplan), including detailed plans, wiring diagram, operating manual, maintenance plan and a list of spare parts,
  - c) A list of spare parts for executing repairs and providing maintenance for the first 5 years of operation; the price of these spare parts is given in the document "Price Offer",
  - d) All inspections and certificates, including CE.
- 3.3.5 The Contracting Parties hereby declare that the following is not the Subject of the Performance:
- a) Performance of construction work, including the construction of an access opening for the installation of the Equipment in the building of the Kyselka Production Plant,
  - b) Removal of the existing equipment located at the place of performance and preparatory work for the installation of the Equipment,
  - c) Installation of power lines and pipes and other connections to the utility connection points.
- 3.3.6 The Supplier hereby declares that it has familiarised itself with the availability of the place of performance, in particular with the necessary passage through the warehouse building and the narrow passage between the river bank and the rock, as can be seen from the drawing documentation, and undertakes to ensure the transportation of the Equipment to the place that is marked in the drawing documentation.
- 3.3.7 The Client undertakes to unload the Equipment into the installation pit at the designated spot at the place of performance using a crane. The Supplier is obliged to ensure the presence of its representative throughout the unloading of the Equipment into the installation pit using a crane. The Supplier is obliged to raise objections to the method of unloading only immediately after the completion of the unloading into the installation pit. In the event that the Supplier continues to move the Equipment from the installation pit to the installation site, the unloading by the Client shall be deemed to have been carried out flawlessly.
- 3.3.8 The Supplier undertakes to install the Equipment at the place of performance, behind the installation pit in the production area.

- 3.3.9 As part of the installation, the Supplier shall provide all tools necessary for the proper installation, in particular, the handling equipment, scaffolding, welding equipment, safety equipment, anchoring, auxiliary material, etc.
- 3.3.10 The Supplier undertakes to provide a sufficient amount of resources for the installation and commissioning of the Equipment, so that all performance dates under the Contract are met.
- 3.3.11 The Supplier undertakes to commission and provide optimum setup of the Equipment without undue delay, after the completed installation of the Equipment, so that the Equipment meets all the conditions contained in the Technical Specifications.
- 3.3.12 For the duration of the warranty period of the Equipment according to Art. 12.1.2 hereof, the Supplier undertakes to remove, at its own expense, any defects in the Equipment, including the supply of spare parts according to the needs and authorised requirements of the Client, unless the Client executes the repairs and provides regular maintenance through its employees. In such cases, the Client is entitled to request the Supplier to provide spare parts in advance (i.e. before the occurrence of an event requiring their use).
- 3.3.13 The Supplier undertakes, for a period of 3 years after the end of the warranty period of the Equipment according to Art. 12.1.2 hereof, to remove defects of the Equipment and ensure the supplies of spare parts as needed and required by the Client, at the Client's expense (with the prices for the individual work positions being given in the Price Offer and in the List of Spare Parts, unless the Client executes repairs and provides regular maintenance through its employees.
- 3.3.14 The Supplier undertakes, for the remainder of the Equipment's lifetime, to remove defects of the Equipment and ensure the supplies of spare parts as needed and required by the Client, at the Client's expense, agreed ad hoc for a specific case, unless the Client executes repairs and provides regular maintenance through its employees.

## **IV**

### **Price of the Subject of the Performance**

#### **4.1 Price of the Equipment**

- 4.1.1 The price of the Equipment, all its components and all activities and costs necessary for its production, assembly, installation and performance of all other work hereunder (hereinafter referred to as the "Price of the Equipment") is set by the Contracting Parties as the maximum allowable price.
- 4.1.2 The Price of the Equipment is set at EUR (to be completed) without VAT.
- 4.1.3 The Price is set on the basis of the Annex – Price Offer.

#### **4.2 Total Price**

- 4.2.1 The Price of the Equipment includes the evaluation of all supplies, activities and costs of the Supplier, i.e. the remuneration for the work performed, reimbursement of the costs incurred, which are necessary for the implementation of this part of the Subject of the Performance, the remuneration, costs associated with the performance of all related activities in relation to the supply and commissioning of the Equipment under this Contract, and the remuneration and costs associated with all activities of the Supplier, which are necessary for the proper performance of this Contract, with the

exception of the price according to Art. 4.3 hereof, about which the Supplier, based on its professional knowledge and/or the documents and information submitted by the Client, should and could have known.

- 4.2.2 The Price of the Equipment also includes the cost of risk coverage, warranties, taxes, customs, transport costs, benefits, fees, insurance premiums and the Supplier's profit.

#### **4.3 Price of Maintenance Services and Spare Parts**

- 4.3.1 The Price Offer also includes the price of the services of the Supplier's specialists who shall provide maintenance and repair defects of the Equipment, or other services hereunder.
- 4.3.2 Spare parts and consumables that are not covered by the warranty conditions and that are not provided free of charge as part of other services under this Contract, shall always be provided and delivered by the Supplier, in the specification and prices according to the List of Spare Parts that is annexed to this Contract.
- 4.3.3 The price of spare parts and services of the Supplier's specialists is binding for the maintenance and defect removal for a period of 5 years from the start of the warranty period. For the next period according to Art. 3.3.14, these prices are not agreed; they shall be agreed ad hoc between the Client and the Supplier for such relevant period.

### **V Terms of Payment**

#### **5.1 Invoicing**

- 5.1.1 The payment for the Equipment shall be made on the basis of the Supplier's invoicing.
- 5.1.2 The Client shall pay the Price of the Equipment to the Supplier as follows:
- a) Part of the Price of the Equipment corresponding to 30 % of the Total Price of the Equipment shall be paid after the conclusion of this Contract; the condition for the payment of this part of the Price of the Equipment is the delivery of a bank guarantee for the advance payment by the Supplier to the Client in accordance with Art. 12.3.1 hereof,
  - b) Part of the Price of the Equipment corresponding to 35 % of the Total Price of the Equipment shall be paid after the delivery of the Equipment to the place of performance; the condition for the payment of this part of the Price of the Equipment is the delivery of a bank guarantee for the proper fulfilment of the Contract by the Supplier to the Client in accordance with Art. 12.3.3 hereof,
  - c) Part of the Price of the Equipment corresponding to 20 % of the Total Price of the Equipment shall be paid after the successful completion of the pre-acceptance test,
  - d) Part of the Price of the Equipment corresponding to 15 % of the Total Price of the Equipment shall be paid after the successful completion of the test operation and the final handover of the Equipment; the condition for the payment of this part of the Price of the Equipment is the delivery of a bank guarantee for warranty defects by the Supplier to the Client in accordance with Art. 12.3.6 hereof.
- 5.1.3 The payment of the price of maintenance services and spare parts shall be made on the basis of the Supplier's invoicing in accordance with the Price Offer, the List of

Spare Parts and Art. 4.3 hereof, always after the proper completion of the respective service or the delivery of the respective spare parts or consumables.

5.1.4 The Supplier is entitled to issue an invoice after the relevant conditions specified in Art. 5.1.2 or 5.1.3 hereof are met.

5.1.5 The due date of the invoice is set at 60 calendar days from the issue thereof. The issued invoice must be delivered to the Client within 3 working days of its issue. In case of later delivery, the due date of the invoice shall be extended by that time.

## **5.2 Invoice Details**

5.2.1 The invoice must have the details according to Act No. 235/2004 Coll. on value added tax, as amended.

5.2.2 In the event that the invoice does not contain the proper details according to the applicable legislation, is not based on the handover report for the duly handed over Subject of the Performance without defects and unfinished work within the meaning of this Contract, or is in conflict with this Contract, the Client shall immediately notify the Supplier thereof. The due date shall be interrupted by this and the Client shall not be in arrears with the obligation to pay the erroneously issued invoice. After removing the discrepancies, the Supplier is obliged to issue a corrected invoice, indicating the new due date in its entire original length.

## **5.3 Non-Cash Payments**

5.3.1 All payments shall be made on a non-cash basis to the accounts of the Contracting Parties, defined in this Contract or communicated during the performance of this Contract to the other Contracting Party.

# **VI**

## **Deadlines for the Implementation of the Subject of the Performance**

### **6.1 Work Schedule**

6.1.1 The Supplier is obliged to start the implementation of the Subject of the Performance immediately after the signature of this Contract.

6.1.2 The binding dates and deadlines are specified in the binding Work Schedule, which is an integral part of this Contract.

6.1.3 The period of implementation of the Subject of the Performance is expressly determined, including the time necessary for the handover procedure, i.e. in particular including the time necessary to remove the possible defects and complete the unfinished work and the time necessary for the Client to accept the Subject of the Performance.

### **6.2 Handover Procedure**

6.2.1 The Supplier is obliged to deliver to the Client a written call to participate in the Handover Procedure at least one week before the start thereof.

### **6.3 Clearing the Premises and Cleaning**

6.3.1 The Supplier is obliged to clear and vacate the relevant premises not later than the day following the date of handover of the Subject of the Performance.

- 6.3.2 The Supplier shall provide routine cleaning of the place of performance, which shall enable the functioning of the place of performance in a standard mode.

## **VII**

### **Adjustment of the Dates of the Subject of the Performance**

#### **7.1 Permissible Adjustments**

- 7.1.1 The adjustment of the dates for the implementation of the Subject of the Performance is possible only on the basis of objective facts, with which this Contract associates such a possibility of adjustment.
- 7.1.2 This adjustment shall always be considered to be a change to the obligation from the Contract within the meaning of Art. 2.4 hereof.

#### **7.2 Obligation of the Supplier in the Event of Obstacles to Performance**

- 7.2.1 The Supplier is always obliged to immediately notify the Client of the existence of obstacles to performance or the risk of time delays against the binding performance dates.
- 7.2.2 At the same time, the Supplier is obliged to submit without delay all other relevant information regarding, in particular, the possible consequences of obstacles to performance, and to propose a solution to these consequences. The fulfilment of this obligation does not release the Supplier from responsibility for property or non-property damage on the part of the Client caused by the Supplier's delay.

## **VIII**

### **Obligations of the Supplier During the Performance**

#### **8.1 Liability of the Supplier**

- 8.1.1 The Supplier shall implement the Subject of the Performance at its own expense and risk.
- 8.1.2 The Supplier is obliged to proceed in accordance with the generally applicable legislation, valid ČSN, EN and regulations regarding work safety and technical equipment, hygiene, fire protection and environmental regulations.
- 8.1.3 The Supplier is obliged to proceed with professional care, without unnecessary delays, in accordance with the interests of the Client and independently, unless the Client gives it other instructions.
- 8.1.4 The Supplier is obliged to notify the Client in a timely manner of all circumstances that it has discovered during the performance hereof and which may have an effect on a change in the Client's instructions.
- 8.1.5 The Supplier is obliged to provide the Client with explanations and documents necessary for consideration of further instructions in a timely manner.
- 8.1.6 The Supplier undertakes to notify the Client of any contradiction of the instructions with a technical (other) standard, legal regulation or decision or opinion of a relevant public administration body.
- 8.1.7 The Supplier is obliged to notify the Client in a timely manner of any incompleteness or inappropriateness of the instructions given by the Client. If the Supplier follows the

Client's instructions without notifying it of their inappropriateness, the Supplier shall be deemed to have approved the appropriateness of the instructions and shall be fully liable for defects and damage caused by following that instruction.

## **8.2 Subsuppliers and Members of the Supplier's Team**

- 8.2.1 In the event that the Supplier entrusts the performance of activities hereunder to another, it is responsible as if it had performed such activities itself.
- 8.2.2 The installation work may be performed by a subsupplier of the Supplier, which shall be approved in writing by the Client in advance. Such approval shall not release the Supplier from liability according to Art. 8.2.1. The Supplier is obliged to ensure the participation of the installation/commissioning manager during the installation, who shall be a member of the Supplier's team and who shall check the proper installation of the Equipment and the overall quality and safety of the installation work.
- 8.2.3 The Supplier is obliged to provide the Subject of the Performance through workers, whether its employees or subsuppliers, so that the persons implementing the Subject of the Performance in the position of the installation/commissioning manager, service automation engineer and field service engineer (mechanical), through whom the Supplier has demonstrated qualifications in the Tender Procedure, shall always perform that part of the Subject of the Performance for which they have proven their qualifications in the Tender Procedure, i.e.:
- a) The installation/commissioning manager shall coordinate a multidisciplinary team during the process of installation and start-up of the Equipment according to the Work Schedule, ensure the communication and cooperation between the technicians, technical support of the Supplier and the Client and be responsible for the performance tests and compliance with work safety at the workplace
  - b) The Service Automation Engineer shall solve problems with the automation of the Equipment, independently remove malfunctions and defects, make adjustments to the software and setup of the Equipment in order to increase the stability of the production and the efficiency of the Equipment and provide training to the operating and maintenance personnel and electronic technicians
  - c) The Field Service Engineer (Mechanical) shall solve mechanical issues of the Equipment, independently remove malfunctions and defects, or carry out maintenance and general repairs, propose improvements leading to an increase in the efficiency of the Equipment and provide training to the operating and maintenance personnel.
- 8.2.4 The Supplier may change the person performing one of the positions given in the previous paragraph only if the person performing the new position in question meets the qualification requirements specified for the relevant position in the conditions of the Tender Procedure. The Supplier is obliged to prove the fulfilment of these conditions to the Client in the same way as in the Tender Procedure.
- 8.2.5 As soon as the Supplier becomes aware of the need to replace a person in the position specified in Art. 8.2.3 hereof, it is obliged to notify the Client thereof without undue delay.
- 8.2.6 If a person in the position referred to in Art. 8.2.3 hereof violates the Supplier's obligations under this Contract or otherwise implements the Subject of the Performance in a defective manner, the Client is entitled to demand from the Supplier the replacement of such a person; the person performing the new position in question

must meet the conditions specified in Art. 8.2.3 hereof. Moreover, the Client may refuse the replacement of the person in the position specified in Art 8.2.3 hereof if the new position in question should be performed by a person who does not meet the conditions for such a position required in the Tender Procedure.

### **8.3 Insurance of the Supplier**

- 8.3.1 The Supplier is obliged to be insured throughout the performance of this Contract under a valid and effective insurance contract for liability insurance for damage from the performance of business activities, which shall cover damage to property (caused by damage, destruction or loss) and to health (death, injury or illness) and the damage caused, as well as the professional liability insurance of a supplier in the full scope of its activities in relation to the Subject of the Performance of this Contract, in an amount corresponding to at least EUR 1,000,000 or the equivalent in Czech crowns in relation to each insured event. The Supplier's insurance must also include insurance of the Equipment during transport and unloading at the place of performance.
- 8.3.2 The insurance under the previous paragraph must be in effect until the final handover of the Equipment according to Art. 11.4.14 hereof.
- 8.3.3 The Supplier is obliged to prove to the Client the existence of such insurance upon the conclusion of this Contract by presenting a copy of the valid insurance contract.
- 8.3.4 The Client is entitled to check this fact at any time during the performance hereunder and the Supplier is obliged in such a case to submit a copy of the valid insurance contract to the Client without undue delay.

## **IX**

### **Cooperation of the Client**

#### **9.1 Access to the Place of Performance**

- 9.1.1 The Client shall ensure or enable the following for the Supplier:
- Access to the place of Equipment unloading,
  - Access to the place of performance for the Supplier's employees,
  - Releasing all work areas at the place of performance where the Subject of the Performance shall be implemented and removal of obstacles that would prevent access to these areas,
  - Access to the electricity and water connection points at the place of performance and ensuring their consumption necessary for the implementation of the Subject of the Performance.

#### **9.2 Utilities Consumed**

- 9.2.1 The utilities consumed, which shall be necessary for the implementation of the Subject of the Performance, shall be paid by the Client.

#### **9.3 Analogy for Defect Removal**

- 9.3.1 The given conditions according to this Article shall apply analogously to the removal of defects on the already handed over and accepted Equipment, unless otherwise agreed between the Contracting Parties.

## **X**

### **Checking the Implementation of the Subject of the Performance**

#### **10.1 Authorisation to Check**

- 10.1.1 The Client or a representative authorised by it is entitled to check the implementation of the Subject of the Performance.
- 10.1.2 If the Client discovers that the Supplier is implementing the Subject of the Performance in violation of its obligations, it is entitled to stop the work being performed and demand that the Supplier remove the defects caused by faulty execution without undue delay and continue to perform the Contract in a proper manner. If the Supplier does not do so even within the reasonable period provided to it for this purpose and the Supplier's action would lead to a breach of the Contract, the Client has the right to withdraw from the Contract.
- 10.1.3 At the request of the Client, the Supplier is obliged to ensure the presence of the person responsible for the Subject of the Performance on the Supplier's side at the place of performance.
- 10.1.4 The Supplier is obliged to perform a FAT (factory acceptance test) in the premises of its production plant before the delivery of the Equipment to the place of performance, by which the completeness and functionality of the Equipment shall be checked. The Supplier is obliged to notify the Client at least one week in advance of the FAT date and to allow the Client's representatives to participate in the FAT.
- 10.1.5 In the event of any defects in the Equipment during the FAT, the Supplier is obliged to remove such defects before delivering the Equipment to the place of performance.

## **XI**

### **Handover and Acceptance of the Subject of the Performance**

#### **11.1 Subject of the Performance as a Whole**

- 11.1.1 The Contracting Parties agree that the Subject of the Performance shall be handed over as a whole.

#### **11.2 Definition of the Implementation of the Subject of the Performance**

- 11.2.1 A properly implemented Subject of the Performance shall mean the delivery of the Subject of the Performance in the scope, with the parameters and characteristics, determined by this Contract, its Annexes and the Client's instructions, made in the necessary quality, properly and on time, which is handed over without defects and unfinished work that would mean restrictions on the proper use, comfort, quality, aesthetic or functional properties of the Subject of the Performance, and for which the Supplier has provided the documentation required by this Contract and its Annexes, and, at the same time, for which the Supplier has provided the related work according to Article III. hereof.
- 11.2.2 The correctness of the implementation of the Subject of the Performance shall fundamentally be demonstrated by the Supplier.

#### **11.3 Defects and Unfinished Work**

- 11.3.1 Unfinished work and defects that would limit the proper use, comfort, quality,

aesthetic or functional properties of the Subject of the Performance, as well as legal defects, shall be deemed defects and unfinished work.

#### **11.4 Handover Procedure**

- 11.4.1 The Subject of the Performance shall be handed over to the Client on the basis of a Handover Procedure.
- 11.4.2 The Supplier's written call to the participation of the Client in the Handover Procedure must be delivered to the Client in the binding deadline according to Art. 6.2 hereof.
- 11.4.3 The Supplier undertakes to perform a pre-acceptance test (PAT) of the Equipment within a period of one week after the completed installation and commissioning of the Equipment; the functionality of the inputs and outputs of the Equipment shall be checked and a production test of the Equipment shall be performed as part of the PAT.
- 11.4.4 The PAT shall consist of the continuous operation of the Equipment for a period of 16 hours, during which the Equipment must meet the following conditions:
  - a) Technical efficiency of at least 98.5 % at the nominal power of the Equipment,
  - b) Microbiological purity of the washed bottles = 100 %,
  - c) Water consumption lower than or equal to the data according to the production documentation of the Equipment,
  - d) Heat consumption lower than or equal to the data according to the production documentation of the Equipment,
  - e) CIP working without errors,
  - f) The exchange of signals works without problems and in accordance with the agreed specifications,
  - g) The dosing station works without defects.
- 11.4.5 If the conditions of the PAT are not met, the Supplier must immediately remove all defects and then perform a repeated PAT. If the condition of 100% microbiological purity of the bottles is not met in the PAT, the costs associated with the performance of each such PAT shall be paid by the Supplier, including the consumed utilities and the Client's costs.
- 11.4.6 The Contracting Parties shall draw up a written report on the progress of the PAT, describing its progress and any defects of the Equipment that occur during the PAT, and in which the severity of such defects and the evaluation of the PAT shall be described.
- 11.4.7 After the successful completion of the PAT, the Client and the Supplier shall draw up a report on the pre-acceptance of the Equipment (PAC).
- 11.4.8 Immediately after the successful completion of the PAT and the preparation of the Equipment Pre-Acceptance report (PAC), a 4-week test operation of the Equipment shall be performed, which shall take place during the full production operation of the Client.
- 11.4.9 During the test operation, the Supplier shall provide the Client with the cooperation necessary for the proper test operation and in the evaluation of its progress and the detection of any defects that might occur during it.

- 11.4.10 The supplier undertakes to provide the Client with the following cooperation during the test operation:
- a) Provision of a non-stop hotline with remote Internet access,
  - b) Nonstop technical assistance available by phone,
  - c) Immediate technical assistance at the place of performance, if the problem cannot be solved using the hotline.
- 11.4.11 If any defects discovered by the Client during the test operation remain uncorrected by the Supplier even after its completion, the Client shall be entitled to a reasonable discount from the price of the Subject of the Performance. The Client is entitled to provide the Supplier with an additional reasonable period to repair such defects; in such a case, the Client shall have the right to a discount from the price of the Subject of the Performance if the Supplier does not remove the defects even within the reasonable period so provided.
- 11.4.12 If the defects are removed by the Supplier during the test operation, the test operation shall continue.
- 11.4.13 If the test operation is properly performed and completed, the Contracting Parties shall prepare a final acceptance certificate (FAC) that shall be signed by the authorised representatives of both Contracting Parties (and upon the signing of which all remaining relevant documentation specified in this Contract, including the "as built" drawing documentation, shall also be handed over to the Client.
- 11.4.14 The FAC must contain a listing of the Subject of the Performance, a list of the submitted documentation and the Client's opinion on the absence of defects and unfinished work according to this Contract. In the event that the work is handed over with defects and unfinished work that do not prevent the proper use (see the definition of the execution of the work according to Art. 11.2.1 hereof), a list of these defects and unfinished work must be given in the FAC and, at the same time, a deadline for their removal must be set.
- 11.4.15 In the event that the Client does not accept the Subject of the Performance due to defects and unfinished work, both Contracting Parties shall draw up a record with a list of relevant defects and unfinished work and with a deadline set for their removal, or completion and information on holding a new Handover Procedure.
- 11.4.16 With the final handover and acceptance of the Equipment, the ownership of the Equipment and the risk of damage to property shall be transferred to the Client; from the start of the test operation to the moment of the final handover and acceptance of the Equipment, the Client shall be using the Equipment free of charge.

## **XII**

### **Warranties**

#### **12.1 Scope of Warranties and Warranty Period**

- 12.1.1 The Supplier is responsible for the proper, professional and high-quality implementation of the Subject of the Performance, for all specific characteristics that the Subject of the Performance is supposed to have hereunder, and for all its defects, both factual and legal, permanent or hidden, removable and irremovable.
- 12.1.2 The Warranty Period is agreed by the Contracting Parties for a duration of two years starting from the day following the preparation of the FAC.

- 12.1.3 The Warranty Period for the mechanical structure is agreed by the Contracting Parties for a duration of ten years starting from the day following the preparation of the FAC.

## **12.2 Removal of Defects**

- 12.2.1 In the event that any defect in the Subject of the Performance appears during the Warranty Period, the Supplier is obliged to remove this defect at its own expense, with the exception of defects caused by the Client's failure to follow the correct procedure, which is stated in the Equipment documentation handed over to the Client in accordance with Art. 3.2.1 (a) hereof, and in which the Client (its employees) has been properly trained by the Supplier in accordance with Art. 3.2 hereof.
- 12.2.2 A notification of defects shall be made by the Client in writing.
- 12.2.3 In the case of defects, the removal of which cannot be delayed, the Supplier is obliged to start their removal without delay, but not later than within 24 hours of the notification of the defect. In other cases, the repair date shall be agreed with the Client. In such a case, unless otherwise agreed between the Contracting Parties, the Supplier is obliged to start the removal of defects not later than 10 working days from the notification of the defect.
- 12.2.4 The defect must be removed by the date agreed upon by the Contracting Parties, and if no such agreement is reached, it must be removed without delay, taking into account the nature of the defect, but not later than 4 days from the start of the removing thereof, unless the nature of the defect precludes this.
- 12.2.5 If the Supplier does not remove the defects in a timely and proper manner, the Client has the right to remove the defects itself or have them removed by a third party, in both cases at the Supplier's expense. All cases of self-help stated in this paragraph shall not affect any other rights of the Client arising from the warranty.
- 12.2.6 In addition to the rights set forth in this Article, the Client has the right to claim compensation for any damage incurred as a result of a breach of the Supplier's obligations according to this Contract, the law, the relevant standard or a similar obligation of the Supplier.

## **12.3 Bank Guarantees**

- 12.3.1 The Supplier undertakes, without undue delay after the conclusion of this Contract, to hand over to the Client a guarantee deed issued by a reputable bank in a wording acceptable to the Client, from which it shall result that the bank provides an irrevocable and unconditional guarantee for the advance payment in favour of the Client up to the total amount of (an amount corresponding to 30 % of the total price of the Equipment to be completed) as the guaranteed amount and that the bank undertakes to pay the Client, at its first written request, without objections arising from the Contract and without reviewing the legal relationship in question, any amount(s) up to the guaranteed amount, upon the submission of a notice together with a written statement that the Supplier has breached its obligation arising from the Contract or legal regulations and indicating in what respect it has committed the breach, and that the Supplier has not returned a paid advance or part thereof to the Client.
- 12.3.2 The Bank Guarantee for the advance payment according to the previous paragraph shall be valid for at least 150 days from the conclusion of this Contract.
- 12.3.3 The Supplier undertakes, without undue delay after the delivery of the Equipment to the place of performance, to hand over to the Client a guarantee deed issued by a

reputable bank in a wording acceptable to the Client, from which it shall result that the bank provides an irrevocable and unconditional guarantee in favour of the Client for the proper fulfilment of the Contract up to the total amount of (an amount corresponding to 10 % of the total price of the Equipment to be completed) as the guaranteed amount and that the bank undertakes to pay the Client, at its first written request, without objections arising from the Contract and without reviewing the legal relationship in question, any amount(s) up to the guaranteed amount, upon the submission of a notice together with a written statement that the Supplier has breached its obligation arising from this Contract or legal regulations and indicating in what respect it has committed the breach, and that the Client has the right to a contractual penalty, a discount from the price of the work, compensation for damage or other loss or the release of unjustified enrichment, or the right to any other financial performance (whether of a punitive, reparative, restitution or other nature) as a result of such breach hereunder.

- 12.3.4 The Bank Guarantee for the proper fulfilment of the Contract according to the previous paragraph shall be valid for at least 7 months from the issue thereof or from the delivery of the Equipment to the place of performance, whichever occurs later.
- 12.3.5 If the full guaranteed amount according to Art. 12.3.1 hereof has not been used up by the Client by that time, the Client undertakes to return to the Supplier the guarantee deed of the bank guarantee for the advance payment provided to the Client in accordance with Art. 12.3.1 hereof not later than upon the acceptance of the guarantee deed of the bank guarantee for the proper fulfilment of the Contract provided to the Client in accordance with Art. 12.3.3 hereof.
- 12.3.6 The Supplier undertakes, without undue delay after drawing up the report on the final acceptance of the Equipment in accordance with Art. 11.4.13 hereof, to hand over to the Client a guarantee deed issued by a reputable bank in a wording acceptable to the Client, from which it shall result that the bank provides an irrevocable and unconditional guarantee in favour of the Client for the proper removal of defects and completion of unfinished work up to the total amount of (an amount corresponding to 5 % of the total price of the Equipment to be completed) as the guaranteed amount and that the bank undertakes to pay the Client, at its first written request, without objections arising from the Contract and without reviewing the legal relationship in question, any amount(s) up to the guaranteed amount, upon the submission of a notice together with a written statement that the supplier did not fulfil its obligations during the Warranty Period set out in the Contract, i.e. did not properly remove defects or complete unfinished work, which are covered by the Supplier's warranty for defects hereunder.
- 12.3.7 The Bank Guarantee for the proper removal of defects and completion of unfinished work according to the previous paragraph shall be valid for at least 26 months from the issue thereof or from the signature of the report on the final acceptance of the Equipment, whichever occurs later.
- 12.3.8 If the full guaranteed amount according to Art. 12.3.3 hereof has not been used up by the Client by that time, the Client undertakes to return to the Supplier the guarantee deed of the bank guarantee for the proper fulfilment of the Contract provided to the Client in accordance with Art. 12.3.3 hereof not later than upon the acceptance of the guarantee deed of the bank guarantee for the proper removal of defects and completion of unfinished work provided to the Client in accordance with Art. 12.3.6 hereof.
- 12.3.9 If the full guaranteed amount according to Art. 12.3.6 hereof has not been used up by the Client and if as of the end of the Warranty Period there are no defects in the Equipment covered by the Supplier's warranty and which were properly exercised by the Client during the Warranty Period, the Client undertakes to return to the Supplier

the guarantee deed of the bank guarantee for the proper removal of defects and completion of unfinished work not later than 10 days after the end of the Warranty Period; in the event that such defects exist, the Client shall provide the Supplier with the guarantee deed within 10 days after the removal of the last such defect.

### **XIII**

#### **Contractual Penalties and Damages**

##### **13.1 Amount of the Contractual Penalties**

- 13.1.1 The Supplier is obliged to pay a Contractual Penalty in the amount of 1 % of the total price of the Subject of the Performance for the first commenced week of delay in the delivery of the Equipment to the place of performance.
- 13.1.2 The Supplier is obliged to pay a Contractual Penalty in the amount of 2 % of the total price of the Subject of the Performance for each additional commenced week of delay in the delivery of the Equipment to the place of performance.
- 13.1.3 The Supplier is obliged to pay a Contractual Penalty in the amount of 1 % of the total price of the Subject of the Performance for the first commenced week of delay in the performance of the PAT and the pre-handover of the Equipment.
- 13.1.4 The Supplier is obliged to pay a Contractual Penalty in the amount of 2 % of the total price of the Subject of the Performance for each additional commenced week of delay in the performance of the PAT and the pre-handover of the Equipment.
- 13.1.5 The Supplier is obliged to pay a Contractual Penalty in the amount of 1 % of the total price of the Subject of the Performance for the first commenced week of delay in the proper performance of the test operation and the final handover of the Equipment.
- 13.1.6 The Supplier is obliged to pay a Contractual Penalty in the amount of 2 % of the total price of the Subject of the Performance for each additional commenced week of delay in the proper performance of the test operation and the final handover of the Equipment.
- 13.1.7 In the event that multiple performance dates are not met at the same time, the Contractual Penalties according to Art. 13.1.1 to 13.1.6 are added together.
- 13.1.8 In the event that the Supplier delivers the Equipment to the place of performance more than 3 hours later than the time that it had notified the Client in advance in accordance with the Work Schedule, it is obliged to pay the Client a Contractual Penalty of CZK 150,000.
- 13.1.9 The Supplier is obliged to pay the Client a Contractual Penalty in the amount of CZK 100,000 for each day of delay and a case of a breach of the Supplier's obligations to properly and timely remove defects in the Subject of the Performance according to Art. 12.2.3 and 12.2.4 hereof.
- 13.1.10 The total amount of the Contractual Penalties according to this Article hereof shall be not more than 20 % of the total price of the Subject of the Performance.

##### **13.2 Maturity of the Contractual Penalties and Relation to Damages**

- 13.2.1 The Contractual Penalties are payable within 21 calendar days from the date on which the obliged party received a written request to pay them from the entitled party, by cashless payment to the account of the entitled party specified in the written request.

- 13.2.2 The right of the entitled party to damages in full is not affected by the application of the Contractual Penalties or the payment thereof.

### **13.3 Damages**

- 13.3.1 The Contracting Parties are obliged to compensate property and non-property damage within the meaning of the civil law regulations.

## **XIV Confidentiality**

### **14.1 Extent of the Confidentiality Obligation**

- 14.1.1 The Contracting Parties are obliged to maintain confidentiality in matters related to the performance of this Contract, their own activities, cooperation and internal affairs of the Contracting Parties and they undertake to keep non-public information confidential.

## **XV Contract Termination**

### **15.1 Withdrawal from the Contract**

- 15.1.1 The Client has the right to immediately withdraw from the Contract in the event of a material breach of the Contract by the Supplier, without any application of penalty claims by the Supplier against the Client.
- 15.1.2 Withdrawing from the Contract shall terminate the Contract from the beginning.

### **15.2 Agreement of the Contracting Parties**

- 15.2.1 This Contract may also be terminated by written agreement of the Contracting Parties.
- 15.2.2 In the event of a mutual agreement to terminate this contractual relationship, both Contracting Parties shall compensate each other for the work already performed, unless otherwise agreed between the Parties. The method of settlement of all obligations of the Contracting Parties shall be recorded in the agreement.

## **XVI Common and Final Provisions**

### **16.1 Quality Assessment Dispute**

- 16.1.1 In the event of a dispute regarding the assessment of the quality of the Subject of the Performance or part thereof, which shall result in an agreement between the Supplier and the Client being unable to be reached, the Contracting Parties agree to recognise an independent assessment of a specialist in the field or a forensic expert chosen by the Contracting Parties by mutual agreement.
- 16.1.2 If this assessment proves a reduced quality compared to the required quality under this Contract and its Annexes, or against the applicable quality standards, any costs associated with this service shall be the Supplier's expense. Otherwise, these costs shall be covered by the Client.

## 16.2 Validity and Effectiveness of the Contract

- 16.2.1 This Contract becomes valid and effective upon the signature of the Contracting Parties.

## 16.3 Final Provisions

- 16.3.1 The Contract is governed by the law of the Czech Republic.
- 16.3.2 Contractual relationships not expressly regulated herein are governed by Act No. 89/2012 Coll., the Civil Code, as amended, and by the implementing regulations.
- 16.3.3 The Contracting Parties agree that the court with the subject matter and local jurisdiction of the registered office of the Client shall be the court competent for deciding disputes arising from or in connection with this Contract.
- 16.3.4 The Contract is made in 2 copies with the validity of the original. Each Contracting Party shall receive one copy.
- 16.3.5 Unless otherwise stipulated herein, all changes and additions to this Contract are possible only in the form of written amendments signed by both Contracting Parties.
- 16.3.6 The Contracting Parties declare that they are familiar with the entire content of the Contract and that they concluded the Contract based on their free and earnest will and that they unconditionally agree with the content of this Contract. In witness whereof, they affix the handwritten signatures of their authorised representatives.

### Annexes:

- Work Schedule,
- Price Offer,
- Technical Specifications,
- Technical Requirements – Checklist,
- Technical Data Sheets,
- Equipment Location in the Line Layout,
- List of Spare Parts.

In xxx on (to be completed)

In (to be completed) on (to be completed)

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For the Client

xxx

xxx

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For the Supplier

(to be completed)