

# SUPPLY CONTRACT

no..... / Date.....

## 1. Contracting Parties

Under the Law no. 98/2016 on public procurement, Decision no. 395/2016 for the approval of the Methodological Norms for the application of the provisions regarding the award of the public procurement contract / the framework agreement of Law no. 98/2016 on public procurement, this supply contract has been concluded between:

**National Research and Development Institute for Geology and Marine Geoecology - GeoEcoMar**, with the registered office in Romania, Bucharest, 23-25 Dimitrie Onciu street, Sector 2, phone: +40 21 303 16 00/fax: +40 21 319 05 51, registered at the Trade Register Office under no. J40/1075/1997, Sole Registration Code RO 5194978, IBAN code: RO 95 RNCB 0073049976680001, bank: B.C.R. Sector 2, represented by the General Director, **Dr. Adrian STANICA**, as **PURCHASER**, on the one hand,

and

----- (**name of company**), with registered office in ----- (complete address), phone: --- -----/fax: -----, Trade Registry Number.-----, Tax Identification Number -----, IBAN code: ----- bank -----, represented by -----, holding the position of....., as **SUPPLIER**, on the other hand.

## 2. Definitions

2.1 – In the present contract the following terms shall be interpreted as follows:

- a. contract** – the present contract and all its annexes;
- b. purchaser and supplier** – the contracting parties, as referred to in the present contract;
- c. price of the contract** - the price payable to the supplier by the purchaser, based on the contract, for the supply of the products purchased by the Purchaser by contract;
- d. products** – the equipment and any other goods listed in the annexes of the present contract, which the supplier undertakes by contract to provide to the purchaser and which the purchaser undertakes by contract to purchase from the supplier;
- e. services** – the services related to the delivery of products, namely activities related to the supply of products such as transport, insurance, installation, commissioning, technical assistance during the warranty period and any other such obligations that the supplier has under the contract;
- f. origin** - the place where the products were made, manufactured. The products are manufactured when by the process of manufacturing, processing or major and essential assembly of the composing elements results in a new commercially recognized product, which is different by its basic characteristics, purpose or utility from its components. The origin of the products and services can be different from the nationality of the supplier;
- g. final destination** – the place where the supplier is required to supply the products;
- h. force majeure** - an event beyond the control of the parties, which is not due to their fault or guilt, which could not have been foreseen at the time of the conclusion of the contract

and renders impossible the execution and the fulfillment of the contract; such events are considered to be: wars, revolutions, fires, floods or any other natural disaster, restrictions resulting from quarantine, embargo, the list is not exhaustive but enunciating. An event similar to the ones above mentioned, which without creating the impossibility of execution, but turns the execution of the obligations of one of the parties extremely expensive, is not considered a force majeure event;

*i. day – calendar day; year - 365 days.*

### **3. Interpretation**

3.1 – In the present contract, except for contrary provisions, the words in the singular shall include the plural and vice versa, wherever this is allowed by the context;

3.2 – The terms “day” or “days” or any other reference to days represent calendar days unless otherwise specified.

### **4. Subject of the contract**

4.1 – The Supplier commits to provide the **Greenhouse Gases Monitor – photoacoustic method**;

4.2 – The Purchaser commits to acquire the **Greenhouse Gases Monitor – photoacoustic method**, respectively to pay to the Supplier the agreed price within this contract.

### **5. Price of the contract**

5.1 – The agreed price for the fulfillment of the contract, respectively the total price for **the Greenhouse Gases Monitor – photoacoustic method** payable to the Supplier by the Purchaser, is ..... **EURO** (excluding VAT), as specified in Annex 2

5.2 – The unit price and total value are specified in the Annex 2 (financial proposal).

### **6. Duration of the contract**

6.1 – The duration of this contract is 30 days from the date of its signature by both parties.

### **7. Documents of the contract**

The documents of the contract are:

- a) The Tender Book;
- b) Annex 1 (technical proposal);
- c) Annex 2 (financial proposal);
- d) The Performance guarantee

### **8. Main obligations of the Supplier**

8.1 – The Supplier commits to deliver the product, namely **Greenhouse Gases Monitor – photoacoustic method**, to the standards and performances specified in the technical proposal in accordance with the Annex 1.

8.2 – The Supplier commits to deliver the products at the final destination, namely the Constanta branch of NRD GeoEcoMar, address: Mamaia Blvd. no. 304, Constanta, Romania, within 30 days of the date of award of the contract.

8.3 – The Supplier commits to inform in writing the Purchaser in case of incidents in the performance of the contract within 10 working days, by agreeing the necessary measures.

8.4 – The Supplier commits to restore/resolve the issues notified by the Purchaser within no more than 30 days from the date of the referral.

8.5 – The Supplier commits to bear the costs incurred by replacing the equipment found at reception as being missing, damaged or inadequately qualitative.

8.6 – The Supplier commits to compensate the Purchaser against any:

- i) claims and legal actions resulting from the violation of intellectual property rights (brevets, commercial names, trademarks etc.), regarding the equipment, materials, installations or machinery used for or in connection with the purchased products, and
- ii) damages—interests, costs, fees and expenses of any type, excepting for the situation when such a violation results from the compliance with the Tender Book prepared by the Purchaser.

## **9. Main obligations of the Purchaser**

9.1 – The Purchaser commits to receive the **Greenhouse gases monitor – photoacoustic method** within the period agreed in the present contract at art. 13.2.

9.2 - The Purchaser commits to receive the products together with the supplier's delegate, on the basis of the accompanying documents of the products.

9.3 – The Purchaser commits to pay the price of the products to the Supplier within the period agreed in the present contract at art. 10.1.

9.4 - The Purchaser commits to make available to the Supplier in a timely manner all the information that is required to be communicated.

## **10. Payment**

10.1 – The Purchaser commits to make the payment to the Supplier within 30 days from the date of the final reception of the products at his premises, on the basis on the invoice issued by the Supplier and sent to the Purchaser.

## **11. Sanctions for the culpable failure to fulfill the obligations**

11.1 - If, the Supplier fails to fulfill his obligations under the contract, by its exclusive fault, the Purchaser has the right to deduct from the price of the undelivered products, as penalties, an amount equivalent to a percentage quota of 0.15% for each day of delay, until the actual fulfillment of the obligations.

11.2 - If the Purchaser fails to pay the invoice within 10 days of the date of expiry of the payment deadline, he must pay, as penalties, an amount equivalent to a percentage quota of 0.15% for each day of delay, until the actual fulfillment of the obligations.

11.3 - The culpable failure to comply with the obligations undertaken by this contract by one of the parties, entitles the affected party to consider the contract as terminated and to claim damages.

11.4 - The Purchaser reserves the right to unilaterally denounce the contract, by a written notification addressed to the Supplier, without any compensation, if the latter undergoes bankruptcy, on the condition that such denouncement does not prejudice or affect the right to take action or be paid damages for the Supplier. In this case, the Supplier is entitled to claim only the payment corresponding to the part of the contract that was fulfilled until the date of the unilateral denouncement of the contract.

## **12. Adjusting the contract price**

12.1 – For the equipment described at art. 4, the payment due by the Purchaser to the Supplier is the one stated in the financial proposal and in the Annex 2 of the contract.

12.2 – The price of the contact remains firm throughout the contract duration and is not subject of updating.

## **13. Reception, inspections and tests**

13.1 – The Purchaser or its representative is entitled to inspect and/or test the **products** delivered for checking the compliance with the conformity with the specifications in the technical proposal and Annex 1 of the contract.

13.2 – The qualitative reception will be made at the premises of the Purchaser, after the commissioning/testing the equipment by the Purchaser, within a maximum of 5 days from the date of receipt.

13.3 – If, during the reception process, the products inspected or tested does not comply with the technical specifications, according to Annex 1, the Supplier shall, without changing the contract price:

- do any necessary changes to make the products to meet the technical specifications, or
- replace the refused products, upon receiving a notification from the Purchaser.

13.4 - The right of the Purchaser to inspect, test and, if necessary, reject the products shall not be limited or delayed due to the fact that the products were inspected and tested by the Supplier, with or without the participation of a representative of the Purchaser, prior to the delivery thereof at the final destination.

13.5 - The provisions of clauses 13.1-13.3 shall not remove the obligation of the Supplier to undertake the guarantees or any other obligations stipulated in the contract.

#### **14. The performance guarantee of the contract**

14.1 – The Supplier commits to provide the performance guarantee of the contact, by payment order, within 5 days from the date of signing the contact by both parties. The amount of the performance guarantee representing ..... EUR (10 % of the total price of the contact) will be deposited into the account ....., bank.....

14.2 – The Purchaser commits to release the tender guarantee only after the Supplier has provided evidence of creating the performance guarantee.

14.3 – The Purchaser is entitled to issue claims on the performance guarantee, to the extent of the damage caused, if the Supplier does not perform, performs with delay or performs improperly the obligations assumed under this contract. Prior to the issuance of a claim on the performance guarantee, the Purchaser commits to notify the Supplier of this, specifying also the obligations which were not complied with.

14.4 – The Purchaser commits to return the performance guarantee to the Supplier within a maximum of ..... days from the date of the minutes of reception of the equipment subject to the contract and / or from the payment of the invoice, if it has not claimed until that date.

14.5 – The warranty of the equipment is distinct from the performance guarantee of the contract.

#### **15. Packaging and marking**

15.1 –The Supplier has the obligation to pack the products in order to withstand, without limitation, handling during the transport and exposure to extreme temperatures, sunlight, and rainfall that may occur during transport in order to arrive in good condition at the final destination.

15.2 – All packaging materials for the products, as well as all materials necessary for the protection of the parcels, remain the property of the Purchaser.

#### **16. Delivery and documents accompanying the products**

16.1 - The Supplier commits to deliver the products at the final destination (address: Mamaia Blvd. 304, Constanta, Romania), within maximum 30 days from the date of signing the contract by both parties.

16.2 – The Supplier shall provide the following accompanying documents to the Purchaser:

- the invoice
- the quality certificate and warranty certificate

- delivery note
- the user manual (also in electronic format).

16.3 - The certification by the Purchaser of the fact that the products have been properly delivered is made after the qualitative reception by signing the qualitative reception protocol. Following the signing of the qualitative reception protocol, the Purchaser waives any complaints about the apparent defects of the products.

16.4 – The delivery of the products is deemed to be completed when the provisions of the reception clauses are fulfilled.

## **17. Insurance**

17.1 – The Supplier has the obligation to fully insure the product subject of the contract against loss or damage unforeseen in manufacturing, transport, storage and delivery, to the final destination, i.e the premises of the purchaser.

## **18. Amendments**

18.1 – During the performance of the contract, the contracting parties have the right to agree on the modification of the contract's clauses by an additional document, only in the event of circumstances that are prejudicial to their legitimate commercial interests and which could not be foreseen at the date of signing the contract.

## **19. Warranty period granted to the product**

19.1 - The Supplier commits to ensure that the products provided by the contract are new, unused, and incorporates all recent improvements in design and material structure. The Supplier shall also guarantee that all products provided by contract shall have no defect resulting from the project, materials or labor (except when the project and/ or material is expressly required by the Purchaser) or any other action or omission of the Supplier and that they shall operate at the required parameters, under normal operating conditions.

19.2 – The warranty period granted to the product is..... months from the date of the product's reception at the final destination.

19.3 - The Purchaser is entitled to promptly notify the Supplier (in writing) of any complaint or claim arising under this warranty.

19.4 - As regarding the warranty period, the Supplier has the obligation to repair and/or replace the defective components of the delivered equipment, at his own expense (including the transport), only with new components, according to the configuration in the technical proposal, within..... working days, without additional costs for the Purchaser. Equipment that replaces the defective products during the warranty period benefits from a new warranty period from the date of replacement of the product.

19.5 - If the Supplier, after being notified, fails to remedy the defect within the agreed period, the Purchaser is entitled to take measures for the remediation on the risk and expense of the Supplier and without prejudice to any other rights the Purchaser might have to the supplier by contract.

## **20. Delayed fulfillment of the contract**

20.1 - The Supplier has the obligation to fulfill the supply contract within the period specified at art. 16.

20.2 – If, during the performance of the contract, the Supplier does not comply with the delivery schedule specified at art 16.1, then it shall notify the Purchaser in due time. The change of the delivery time shall be done with the agreement of the parties, by an additional document.

20.3 – Unless the Purchaser agrees with an extension of the delivery time, any delay in the performance of the contract entitles the Purchaser to claim penalties from the Supplier.

## **21. Start, termination, delay, cessation**

21.1. The amendment to the present contract may be made only in compliance with the appropriate conditions, specified in the Law no. 98/2016, at art. 221. The Purchaser is entitled to unilaterally terminate the contract if the Supplier does not understand to comply with the legal provisions on changing the contracts.

21.2 This contract terminates in following situations:

- a) by reaching the deadline;
- b) by agreement of the parties;
- c) cancellation
- d) force majeure in the situation specified at art. 22

21.3 The Purchaser is entitled to cancel the present contract in any of the following situations:

- a) if three reception reports are recorded during the contract period in which irregularities have been recorded related to the manner of fulfillment of the contract and they have not been remedied within the stipulated term;
- b) if the Purchaser has sent by fax, email or post at least two notifications regarding the failure of the Provider to fulfill the assumed obligations, the non-conformities being not remedied within the deadline established by the notification;
- c) if the Supplier has no longer the capacity to provide the services subject of the contract by his own fault. In this case, the Supplier will bear the difference between the value of the services to be provided by the Supplier until the conclusion of the contract and the value of those services which the Purchaser will be obliged to purchase them from another provider, as well as any other damage to the Purchaser.

21.4. The Purchaser reserves the right to request the termination of the contract by notification sent to the administrator / liquidator in the situation where the Supplier has entered insolvency under the conditions established by Law no. 85/2014, without the denunciation prejudicing or affecting the right to action or compensation for the Purchaser, in compliance with the provisions of art. 167 par. (1) lit. b) and par. (2) of the Law no. 98/2016.

21.5. Termination of the contract in any of the aforementioned situations will have no effect on obligations already settled between the Parties.

21.6. Specific cases of termination of the public procurement contract: Without prejudice to the provisions of the ordinary law on termination of contracts or the right of the Contracting Authority to request the declaration of absolute nullity of the public procurement contract in accordance with the provisions of the ordinary law, the Purchaser is entitled to unilaterally terminate the public procurement contract during its period of validity in one of the following situations:

- a) the Provider was, at the moment of awarding the contract, in one of the situations that would have determined his exclusion from the award procedure according to art. 164 - 167 of Law no. 98/2016;
- b) the contract should not have been awarded to the Provider in view of a serious breach of the obligations arising out of the relevant European legislation and found by a decision of the Court of Justice of the European Union.

## **22. Force majeure**

22.1 – The force majeure is acknowledged by a competent authority.

22.2 – The force majeure exonerates the contracting parties from the fulfillment of the obligations undertaken by this contract throughout its whole period in which it is effective.

22.3 - The fulfillment of the contract will be suspended during the period of force majeure, but without prejudice to the rights to the parties until its occurrence.

22.4 - The Contracting Party invoking force majeure shall notify the other Party forthwith and fully of its production and take any measures available to it to mitigate the consequences.

22.5 - In case of the force majeure acts or is expected to take longer than 1 (one) month, each party shall be entitled to notify the other party the de jure termination of the present contract, without the possibility of claiming for damages - interests.

**23. Settlement of disputes**

23.1. The Purchaser and the Supplier shall make all efforts to settle amicably, by direct negotiations, any misunderstandings or dispute that may arise between them within or in connection with the performance of the contract.

23.2. If, 15 (fifteen) days after the commencement of these negotiations, the Purchaser and the Supplier fail to amicably settle a contractual divergence, each party may request that the dispute be settled by the courts in Romania.

**24. Language governing the contract**

24.1 – The languages governing the contract are Romanian and/or English.

**25. Communications**

25.1 - (1) Any communication between the parties concerning the fulfillment of this contract shall be transmitted in writing.

(2) Any written document shall be recorded both at the time of transmission and at the time of receipt.

25.2 – The communications between parties may also be made by telephone, telegram, fax or email, only with written confirmation of receipt.

**26. Law applicable to the contract**

26.1. – The contract shall be interpreted according to the Romanian laws.

The Parties agreed to sign today..... (*date of signature by the parties*) the present contract in 2 (two) counterparts, one for each party.

**Purchaser,**

.....  
**(authorized signature)**

**Supplier,**

.....  
**(authorized signature)**