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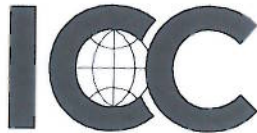
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Your shipment 4603490382 was delivered on 30 December 2016 at 13.02

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Signature		Receiver Address	15 - 17 Ion Mihalache Blvd Floors 11 - 14 Sector 1 ROMANIA
Shipment Status	Delivered	Piece ID(s)	JD0000833027312851

Additional Shipment Details

Service	EXPRESS WORLDWIDE eu	Shipper Name	ICC
Picked Up	29 December 2016 at 17.03	Shipper Address	33-43 Av. du President Wilson PARIS FRANCE
Number of Pieces	1	Shipper Reference	22482/MHM
Weight	4.54 lbs / 2.06 kg		
Contents	documents		



INTERNATIONAL COURT OF ARBITRATION® | INTERNATIONAL CENTRE FOR ADR | LEADING DISPUTE RESOLUTION WORLDWIDE



29 December 2016 /ab

22482/MHM

1. ANDRITZ HYDRO GMBH (formerly known as VA TECH ESCHER WYSS GMBH) (Germany)
2. ANDRITZ HYDRO GMBH (formerly known as VA TECH HYDRO GMBH & CO) (Austria) vs/ HIDROELECTRICA S.A. (Romania)

Counsel: Ms Maria Hauser-Morel
Deputy Counsel: Ms Ivana Blagojević

(Tel: + 33 1 49 53 30 90)
(Tel: + 33 1 49 53 30 91)
(Fax : + 33 1 49 53 57 99)
(Email : ica7@iccwbo.org)

HIDROELECTRICA S.A.
15 - 17 Ion Mihalache Blvd
Floors 11 - 14
Sector 1
Bucharest
Romania

By DHL

Dear Mesdames and Sirs,

The Secretariat of the International Court of Arbitration of the International Chamber of Commerce ("Secretariat") notifies you that, on 16 December 2016, it received a Request for Arbitration ("Request") from ANDRITZ HYDRO GMBH (formerly known as VA TECH ESCHER WYSS GMBH) and ANDRITZ HYDRO GMBH (formerly known as VA TECH HYDRO GMBH & CO) represented by Dr Hans-Jürg Schürmann and Dr Axel Buhr of CMS VON ERLACH PONCET LTD. in Zurich, Switzerland and by Dr Christian W. Konrad of KONRAD & PARTNER ECHTSANWÄLTE GMBH in Vienna, Austria that names you as Respondent.

Pursuant to Article 4(2) of the ICC Rules of Arbitration ("Rules"), this arbitration commenced on that date.

The caption and reference of this arbitration are indicated above. Please include the reference **22482/MHM** in all future correspondence.

In all future correspondence, any capitalised term not otherwise defined will have the meaning ascribed to it in the Rules and references to Articles of the Rules generally will appear as: "(Article ***)".

We enclose a copy of the Request and the documents annexed thereto (Article 4(5)).

Answer to the Request

Your Answer to the Request ("Answer") is due within **30 days** from the day following your receipt of this correspondence (Article 5(1)).

.../...

INTERNATIONAL CHAMBER OF COMMERCE (ICC)
INTERNATIONAL COURT OF ARBITRATION

www.icc-arbitration.org

HEADQUARTERS
33-43 avenue du Président Wilson
75116 Paris
France
T +33 (0)1 49 53 29 05
F +33 (0)1 49 53 29 33
E arb@iccwbo.org

ASIA OFFICE
Suite 2, 12/F Fairmont House
8 Cotton Tree Drive
Central, Hong Kong
T +852 3607 5600
F +852 2523 1619
E ica8@iccwbo.org

NORTH AMERICA OFFICE
in affiliation with Sicana, Inc.
1212 Avenue of the Americas
New York, NY 10036, USA
T +1 646 699 5704
F +1 212 221 1295
E ica9@iccwbo.org

Please send us 6 copies of your Answer, together with an electronic version.

You may apply for an extension of time for submitting your Answer by nominating an arbitrator (Article 5(2)). Such information will enable the International Court of Arbitration of the International Chamber of Commerce ("Court") to take steps towards the constitution of the arbitral tribunal.

If any of the parties refuses or fails to take part in the arbitration or any stage thereof, the arbitration will proceed notwithstanding such refusal or failure (Article 6(8)).

Joinder of Additional Parties

No additional party may be joined to this arbitration after the confirmation or appointment of any arbitrator, unless all parties including the additional party otherwise agree (Article 7(1)). Therefore, if you intend to join an additional party and seek an extension of time for submitting your Answer, please inform us in your application for such extension.

Constitution of the Arbitral Tribunal

The arbitration agreement provides for three arbitrators. Claimants have nominated Dr Georg von Segesser as co-arbitrator. We will invite the prospective arbitrator to complete a Statement of Acceptance, Availability, Impartiality and Independence, which we will send to all parties.

You are required to nominate jointly a co-arbitrator in your Answer or in any request for an extension of time for submitting your Answer (Article 12(4)). In the absence of a joint nomination (Article 12(6)) within 30 days from the day following your receipt of this correspondence, and where all parties fail to agree to a method for constituting the arbitral tribunal, the Court may appoint each member of the arbitral tribunal and designate one of them to act as president (Article 12(8)).

The arbitration agreement provides that *"If one party fails to appoint its arbitrator within twenty-eight (28) days after the other party has appointed its arbitrator, the party which has named an arbitrator may request the Appointing Authority to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such applications shall be the sole arbitrator for that dispute."*

According to the arbitration agreement, the co-arbitrators will nominate the President. The co-arbitrators will have 28 days from their confirmation or appointment to nominate the President. The arbitration agreement states that *"If the arbitrators named by the parties do not succeed in appointing a third arbitrator within twenty-eight (28) days after the latter of the two arbitrators named by the party has been appointed, the third arbitrator shall, at the request of either party, be appointed by the Appointing Authority designated in the SCC"*.

Place of Arbitration

The arbitration agreement provides that *"[t]he place of arbitration shall be: Bucharest/Geneva as per the plaintiff's choice"*. We note that Geneva, Switzerland is the place of arbitration, as per Claimants' choice.

Language of Arbitration

The arbitration agreement provides for *"the language in which [the] Contract has been executed"* as the language of arbitration. Claimants have proposed English.

Please comment on the language of arbitration in your Answer or in any request for an extension of time for submitting your Answer.

.../...

If the parties disagree, the arbitral tribunal will determine the language or languages of arbitration (Article 20).

Representation

If you are represented by counsel, please provide the relevant contact details.

Communication with the Secretariat

Please provide your email addresses (or fax numbers if email is not available), as the Secretariat generally transmits correspondence by email.

Efficient Conduct of the Arbitration

The Rules require the parties and the arbitral tribunal to make every effort to conduct the arbitration in an expeditious and cost-effective manner having regard to the complexity and value of the dispute (Article 22(1)).

In making decisions as to costs, the arbitral tribunal may take into account such circumstances as it considers relevant, including the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner (Article 37(5)).

Amicable Settlement

Parties are free to settle their dispute amicably at any time during an arbitration. The parties may wish to consider conducting an amicable dispute resolution procedure pursuant to the ICC Mediation Rules, which, in addition to mediation, also allow for the use of other amicable settlement procedures. ICC can assist the parties in finding a suitable mediator. Further information is available from the ICC International Centre for ADR at +33 1 49 53 30 53 or adr@iccwbo.org or www.iccadr.org.

Your Case Management Team

Ms Maria Hauser-Morel, Counsel (direct dial number: +33 1 49 53 30 90)
 Ms Ivana Blagojević, Deputy Counsel (direct dial number: +33 1 49 53 30 91)
 Ms Darya Shirokova, Deputy Counsel (*on leave*) (direct dial number: +33 1 49 53 30 97)
 Ms Anzehla Torosyan, Deputy Counsel (direct dial number: +33 1 49 53 30 97)
 Ms Daniela Kalinski Pillaut, Assistant (direct dial number: +33 1 49 53 30 93)
 Ms Mohammed Safyan, Assistant (direct dial number: +33 1 49 53 30 94)
 Fax number +33 1 49 53 57 99
 Email address ica7@iccwbo.org

While maintaining strict neutrality, we are at the parties' disposal regarding any questions they may have concerning the application of the Rules.

Please find enclosed a note that highlights certain key features of ICC arbitration.

Finally, we invite you to visit our website at www.iccarbitration.org to learn more about our Dispute Resolution services.

Yours faithfully,



Maria Hauser-Morel
 Counsel
 Secretariat of the ICC International Court of Arbitration

- encl. *(for Respondent only)*
- All correspondence exchanged to date
 - Request for Arbitration with documents annexed thereto
 - ICC Rules of Arbitration *(see also www.iccarbitration.org)*
 - Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration
- c.c. - Dr Hans-Jürg Schürmann *By email : hansjuerg.schuermann@cms-vep.com*
- Dr Axel Buhr *axel.buhr@cms-vep.com*
- Dr Christian W. Konrad *By email : c.konrad@konrad-partners.com*



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S.P.E.E.H. HIDROELECTRICA S.A.
CABINET DIRECTOR GENERAL

Nr.

20 December 2016 / ACS-NN

22482/MHM

1. ANDRITZ HYDRO GMBH (formerly known as VA TECH ESCHER WYSS GMBH) (Germany)
2. ANDRITZ HYDRO GMBH (formerly known as VA TECH HYDRO GMBH & CO) (Austria) vs/
HIDROELECTRICA S.A. (Romania)

Hans-Jürg Schürmann
Axel Buhr
CMS VON ERLACH PONCET LTD.
Dreikönigstrasse 7
P.O. Box 2991
8022 Zurich
Switzerland

*By email: hansjuerg.schuermann@cms-vep.com;
axel.buhr@cms-vep.com*

Christian W. Konrad
KONRAD & PARTNER RECHTSANWÄLTE GMBH
Rotenturmstrasse 13
1010 Vienna
Austria

By email: c.konrad@konrad-partners.com

Dear Sirs,

The Secretariat of the International Court of Arbitration of the International Chamber of Commerce ("Secretariat") acknowledges receipt of your Request for Arbitration ("Request") dated 16 December 2016. Your Request was received on 16 December 2016. Pursuant to Article 4(2) of the ICC Rules of Arbitration in force as from 1 January 2012 ("Rules"), this arbitration commenced on that date.

The caption and reference of this arbitration are indicated above. Please ensure that the caption is accurate and include the reference **22482/MHM** in all future correspondence.

In all future correspondence, any capitalised term not otherwise defined will have the meaning ascribed to it in the Rules and references to Articles of the Rules generally will appear as: "(Article ***)".

Filing Fee

We acknowledge receipt of the non-refundable filing fee.

.../...

INTERNATIONAL CHAMBER OF COMMERCE (ICC)
INTERNATIONAL COURT OF ARBITRATION

www.iccarbitration.org

HEADQUARTERS
33-43 avenue du Président Wilson
75116 Paris
France
T +33 (0)1 49 53 28 28
F +33 (0)1 49 53 29 33
E arb@iccwbo.org

ASIA OFFICE
Suite 2, 12/F Fairmont House
8 Cotton Tree Drive
Central, Hong Kong
T +852 3607 5600
F +852 2523 1619
E ica8@iccwbo.org

NORTH AMERICA OFFICE
in affiliation with Sicana, Inc.
1212 Avenue of the Americas
New York, NY 10036, USA
T +1 646 699 5704
F +1 212 221 1295
E ica9@iccwbo.org

Copies of the Request

We have received an electronic version and five copies of the Request.

Please provide an electronic version of the exhibits annexed thereto to ica7@iccwbo.org within **10 days** from the day following the receipt of this correspondence.

Your Case Management Team

Ms Maria Hauser-Morel, Counsel.....(direct dial number +33 1 49 53 30 90)
Ms Ivana Blagojevic, Deputy Counsel.....(direct dial number +33 1 49 53 30 91)
Ms Darya Shirokova, Deputy Counsel.....(direct dial number +33 1 49 53 30 97)
Mr Mohammed Safyan, Assistant.....(direct dial number +33 1 49 53 30 94)
Ms Daniela Kalinski Pillault, Assistant.....(direct dial number +33 1 49 53 30 93)
Fax(+33 1 49 53 57 99)
Email(ica7@iccwbo.org)

Your case management team will write to you concerning the notification of the Request and other relevant information.

Please find enclosed a note that highlights certain key features of ICC arbitration.

Finally, we invite you to visit our website at www.iccarbitration.org to learn more about our Dispute Resolution services.

Yours faithfully,



Andrea Carlevaris
Secretary General
ICC International Court of Arbitration

- encl. - ICC Rules of Arbitration (*see also* www.iccarbitration.org)
- Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration ([click here to download it](#))



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S.P.E.E.H. HIDROELECTRICA S.A.
CABINET DIRECTOR GENERAL

Nr.

29 December 2016 /ab

22482/MHM

1. ANDRITZ HYDRO GMBH (formerly known as VA TECH ESCHER WYSS GMBH) (Germany)
2. ANDRITZ HYDRO GMBH (formerly known as VA TECH HYDRO GMBH & CO) (Austria) vs/
HIDROELECTRICA S.A. (Romania)

Counsel: Ms Maria Hauser-Morel

(Tel: + 33 1 49 53 30 90)

Deputy Counsel: Ms Ivana Blagojević

(Tel: + 33 1 49 53 30 91)

(Fax : + 33 1 49 53 57 99)

(Email : ica7@iccwbo.org)

Dr Georg von Segesser
SCHELLENBERG WITTMER LTD
Löwenstrasse 19
P.O. Box 1876
8021 Zurich
Switzerland

By email: georg.vonsegesser@swlegal.ch

Dear Sir,

The Secretariat of the ICC International Court of Arbitration ("Secretariat") informs you that you have been nominated by Claimants for confirmation as co-arbitrator.

Please complete, sign and email to ica7@iccwbo.org by **6 January 2016**, the enclosed fillable PDF forms of (i) Statement of Acceptance, Availability, Impartiality and Independence ("Statement"), and (ii) *curriculum vitae*, which we encourage you to complete electronically. In completing your Statement, please take the time to respond to the question concerning your availability at the top of page two. The question should be answered by providing dates that you have already booked in your diary and that you would not be able to use for purposes of hearings or meetings in this arbitration.

We invite you to provide any relevant information in the above-mentioned forms.

Please note that in all future correspondence, any capitalised term not otherwise defined will have the meaning ascribed to it in the Rules and references to Articles of the Rules generally will appear as: "(Article ***)".

We invite you to read carefully the enclosed Case Information and Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration ("Note").

Banking instructions

Please also complete, sign and email within the above mentioned time limit the enclosed Banking Instructions fillable PDF form, to enable the Secretariat to reimburse your expenses and pay your fees as quickly as possible.

.../...

INTERNATIONAL CHAMBER OF COMMERCE (ICC)
INTERNATIONAL COURT OF ARBITRATION

www.iccarbitration.org

HEADQUARTERS
33-43 avenue du Président Wilson
75116 Paris
France
T +33 (0)1 49 53 29 05
F +33 (0)1 49 53 29 33
E arb@iccwbo.org

ASIA OFFICE
Suite 2, 12/F Fairmont House
8 Cotton Tree Drive
Central, Hong Kong
T +852 3607 5600
F +852 2523 1619
E ica8@iccwbo.org

NORTH AMERICA OFFICE
in affiliation with Sicana, Inc.
1212 Avenue of the Americas
New York, NY 10036, USA
T +1 646 699 5704
F +1 212 221 1295
E ica9@iccwbo.org

In doing so, please:

- consult your bank if you do not know the IBAN and Swift codes, because without these codes, payments may be considerably delayed;
- indicate the information related to the final account into which payments are to be deposited, as we do not accept intermediary banks; and
- notify us immediately of any change to your banking instructions, otherwise payments may be made using the prior instructions and/or could be delayed.

We will keep your banking instructions confidential.

If you have questions, please do not hesitate to contact us.

Yours faithfully,



Maria Hauser-Morel
Counsel
Secretariat of the ICC International Court of Arbitration

- encl. - Case Information
 - Financial Table
 - ICC Rules of Arbitration (*see also www.iccarbitration.org*)
 - Statement of Acceptance, Availability, Impartiality and Independence PDF Form
 - *Curriculum vitae* PDF Form
 - Banking Instructions PDF Form
 - Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration (*[click here to download it](#)*)

c.c. (*without enclosures*)

- Dr Hans-Jürg Schürmann
- Dr Axel Buhr
- Dr Christian W. Konrad
- HIDROELECTRICA S.A.

By email : hansjuerg.schuermann@cms-vep.com

axel.buhr@cms-vep.com

By email : c.konrad@konrad-partners.com

By DHL



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29 December 2016 /ab

22482/MHM

1. ANDRITZ HYDRO GMBH (formerly known as VA TECH ESCHER WYSS GMBH) (Germany)
2. ANDRITZ HYDRO GMBH (formerly known as VA TECH HYDRO GMBH & CO) (Austria) vs/
HIDROELECTRICA S.A. (Romania)

Counsel: Ms Maria Hauser-Morel

Deputy Counsel: Ms Ivana Blagojević

(Tel: + 33 1 49 53 30 90)

(Tel: + 33 1 49 53 30 91)

(Fax : + 33 1 49 53 57 99)

(Email : ica7@iccwbo.org)

Dr Hans-Jürg Schürmann
Dr Axel Buhr
CMS VON ERLACH PONCET AG
Dreikönigstrasse 7
P.O. Box 2991
8022 Zurich
Switzerland

*By email : hansjuerg.schuermann@cms-vep.com
axel.buhr@cms-vep.com*

Dr Christian W. Konrad
KONRAD & PARTNER RECHTSANWÄLTE GMBH
Rotenturmstrasse 13
1010 Vienna
Austria

By email : c.konrad@konrad-partners.com

Dear Sirs,

Further to the Secretary General's correspondence to you dated 20 December 2016, the Secretariat acknowledges receipt of an electronic version of the exhibits to the Request for Arbitration and is notifying your Request to Respondent.

Constitution of the Arbitral Tribunal

The arbitration agreement provides for three arbitrators.

You have jointly nominated Dr Georg von Segesser as co-arbitrator. We will invite the prospective arbitrator to complete a Statement of Acceptance, Availability, Impartiality and Independence, which we will send to all parties.

.../...

**INTERNATIONAL CHAMBER OF COMMERCE (ICC)
INTERNATIONAL COURT OF ARBITRATION**

www.iccarbitration.org

HEADQUARTERS
33-43 avenue du Président Wilson
75116 Paris
France
T +33 (0)1 49 53 29 05
F +33 (0)1 49 53 29 33
E arb@iccwbo.org

ASIA OFFICE
Suite 2, 12/F Fairmont House
8 Cotton Tree Drive
Central, Hong Kong
T +852 3607 5600
F +852 2523 1619
E ica8@iccwbo.org

NORTH AMERICA OFFICE
in affiliation with Sicana, Inc.
1212 Avenue of the Americas
New York, NY 10036, USA
T +1 646 699 5704
F +1 212 221 1295
E ica9@iccwbo.org

The arbitration agreement provides that *“If one party fails to appoint its arbitrator within twenty-eight (28) days after the other party has appointed its arbitrator, the party which has named an arbitrator may request the Appointing Authority to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such applications shall be the sole arbitrator for that dispute.”*

According to the arbitration agreement, the co-arbitrators will nominate the President. The co-arbitrators will have 28 days from their confirmation or appointment to nominate the President. The arbitration agreement states that *“If the arbitrators named by the parties do not succeed in appointing a third arbitrator within twenty-eight (28) days after the latter of the two arbitrators named by the party has been appointed, the third arbitrator shall, at the request of either party, be appointed by the Appointing Authority designated in the SCC”*.

Amount in dispute

The amount in dispute currently is US\$ 13 623 700 (*i.e.*, EUR 13 015 329,06).

Place of Arbitration

The arbitration agreement provides that *“[t]he place of arbitration shall be: Bucharest/Geneva as per the plaintiff’s choice”* and you have chosen Geneva as the place of arbitration. We note that Geneva, Switzerland is the place of arbitration, as per Claimants’ choice.

Language of Arbitration

The arbitration agreement provides for *“the language in which [the] Contract has been executed”* as the language of arbitration.

You have proposed English. We have requested Respondent’s comments.

If the parties disagree, the arbitral tribunal will determine the language or languages of arbitration (Article 20).

Provisional Advance

The Secretary General fixed a provisional advance of US\$ 108 000 to cover the costs of arbitration until the Terms of Reference are established (Article 36(1)), based on an amount in dispute quantified at US\$ 13 623 700 (*i.e.*, EUR 13 015 329,06 and three arbitrators).

We enclose a table on the financial aspect of this arbitration (“Financial Table”) and a Payment Request that indicates the amount to be paid and when such payment is due.

Neither the Court nor the Secretary General will take any decisions until we receive such payment.

Efficient Conduct of the Arbitration

The Rules require the parties and the arbitral tribunal to make every effort to conduct the arbitration in an expeditious and cost-effective manner having regard to the complexity and value of the dispute (Article 22(1)).

..../...

While maintaining strict neutrality, we are at the parties' disposal regarding any questions they may have concerning the application of the Rules.

In making decisions as to costs, the arbitral tribunal may take into account such circumstances as it considers relevant, including the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner (Article 37(5)).

Amicable Settlement

Parties are free to settle their dispute amicably at any time during an arbitration. The parties may wish to consider conducting an amicable dispute resolution procedure pursuant to the ICC Mediation Rules, which, in addition to mediation, also allow for the use of other amicable settlement procedures. ICC can assist the parties in finding a suitable mediator. Further information is available from the ICC International Centre for ADR at +33 1 49 53 30 53 or adr@iccwbo.org or www.iccadr.org.

Yours faithfully,



Maria Hauser-Morel
Counsel
Secretariat of the ICC International Court of Arbitration

encl. - Financial Table
 - Payment Request

c.c. - HIDROELECTRICA S.A.

By DHL



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FINANCIAL TABLE

Date: 29 December 2016

22482/MHM

1. ANDRITZ HYDRO GMBH (formerly known as VA TECH ESCHER WYSS GMBH) (Germany)
2. ANDRITZ HYDRO GMBH (formerly known as VA TECH HYDRO GMBH & CO) (Austria) vs/
HIDROELECTRICA S.A. (Romania)

The following table reflects the financial situation of the arbitration.

PROVISIONAL ADVANCE

AMOUNT IN DISPUTE

Amount in dispute	US\$ 13 623 700	
Principal claims	US\$ 13 623 700	(i.e., EUR 13 015 329,06)

PROVISIONAL ADVANCE FIXED BY THE SECRETARY GENERAL

Amount	US\$ 108 000
--------	--------------

RANGE OF ARBITRATOR'S FEES

Arbitrator's fees may vary between a minimum of and a maximum of	US\$ 41 486 x 3 = US\$ 124 458 US\$ 196 133 x 3 = US\$ 588 399	
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PAYMENT RECEIVED

Claimants	US\$ 3 000
-----------	------------

PAYMENTS REQUESTED

Claimants	US\$ 105 000
-----------	--------------

INTERNATIONAL CHAMBER OF COMMERCE (ICC)
INTERNATIONAL COURT OF ARBITRATION

www.iccarbitration.org

HEADQUARTERS
33-43 avenue du Président Wilson
75116 Paris
France
T +33 (0)1 49 53 29 05
F +33 (0)1 49 53 29 33
E arb@iccwbo.org

ASIA OFFICE
Suite 2, 12/F Fairmont House
8 Cotton Tree Drive
Central, Hong Kong
T +852 3607 5600
F +852 2523 1619
E ica8@iccwbo.org

NORTH AMERICA OFFICE
in affiliation with Sicana, Inc.
1212 Avenue of the Americas
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T +1 646 699 5704
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E ica9@iccwbo.org



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PAYMENT REQUEST

Date: 29 December 2016

22482/MHM

1. ANDRITZ HYDRO GMBH (formerly known as VA TECH ESCHER WYSS GMBH) (Germany)
2. ANDRITZ HYDRO GMBH (formerly known as VA TECH HYDRO GMBH & CO) (Austria) vs/
HIDROELECTRICA S.A. (Romania)

1. ANDRITZ HYDRO GMBH (formerly known as VA TECH ESCHER WYSS GMBH)
2. ANDRITZ HYDRO GMBH (formerly known as VA TECH HYDRO GMBH & CO)

Origin of payments: Payments must originate from parties to the case in which the payment has been requested.

Amount to be paid: **US\$ 105 000**

Time limit for payment: **30 January 2017**

Beneficiary (*Account holder*): International Chamber of Commerce
33–43 avenue du Président Wilson
75116 Paris
France

Bank of Beneficiary: NATIXIS
30 Avenue Pierre Mendes France
75013 Paris
France

SWIFT/BIC code: NATXFRPP

IBAN: FR 76 3000 7999 9927 8288 3000 012

Reference of the case: Include reference **22482/MHM/Claimants / 1. ANDRITZ HYDRO GMBH (formerly known as VA TECH ESCHER WYSS GMBH)**
2. ANDRITZ HYDRO GMBH (formerly known as VA TECH HYDRO GMBH & CO) to help ensure that the payment is accurately credited.

.../...

INTERNATIONAL CHAMBER OF COMMERCE (ICC)
INTERNATIONAL COURT OF ARBITRATION

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HEADQUARTERS
33-43 avenue du Président Wilson
75116 Paris
France
T +33 (0)1 49 53 29 05
F +33 (0)1 49 53 29 33
E arb@iccwbo.org

ASIA OFFICE
Suite 2, 12/F Fairmont House
8 Cotton Tree Drive
Central, Hong Kong
T +852 3607 5600
F +852 2523 1619
E ica8@iccwbo.org

NORTH AMERICA OFFICE
in affiliation with Sicana, Inc.
1212 Avenue of the Americas
New York, NY 10036, USA
T +1 646 699 5704
F +1 212 221 1295
E ica9@iccwbo.org

Payments made without indication of the reference may be rejected.

Banking charges:

Banking charges associated with the payment should be borne by the party making such payment.



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22 September 2016

NOTE TO PARTIES AND ARBITRAL TRIBUNALS ON THE CONDUCT OF THE ARBITRATION UNDER THE ICC RULES OF ARBITRATION

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I - General Information

This Note is intended to provide parties and arbitral tribunals with practical guidance concerning the conduct of arbitrations under the 2012 ICC Rules of Arbitration ("Rules") as well as the practices of the International Court of Arbitration of the International Chamber of Commerce ("Court"). For arbitrations conducted pursuant to previous versions of the Rules, please contact the Secretariat of the Court ("Secretariat").

A - The ICC International Court of Arbitration and its Secretariat

1. The Court is an administrative body which ensures that ICC arbitrations are conducted in accordance with the Rules. It does not itself resolve disputes (Article 1(2)).
2. The Court is assisted by its Secretariat (Article 1(5)). The Secretariat is directed by the Secretary General, the Deputy Secretary General and the Managing Counsel. It is composed of nine teams, one of which is based in Hong Kong and one in New York (in affiliation with SICANA), each of which is headed by a Counsel.
3. The Secretariat closely monitors the progress of the proceedings and assists the parties and the arbitral tribunals on any questions relating to the conduct of an arbitration. The parties and/or their legal representatives are encouraged to contact the Secretariat with any queries or comments arising from the Rules and/or from this Note.
4. At the end of the arbitration you will be invited to complete an evaluation form. Your answers will be confidential and will allow us to assess and improve the quality of our services.

B - Communications

5. Pursuant to Article 3(1) of the Rules, parties and arbitrators must send copies of all written correspondence directly to all other parties, arbitrators and the Secretariat.
6. The Request for Arbitration (Article 4), the Answer and any counterclaims (Article 5), and any Request for Joinder (Article 7) must be sent to the Secretariat in hard copy as well as in electronic form by email. To the extent possible, any other written documents should be sent to the Secretariat by email in electronic form only. There is no need to send hard copies to the Secretariat, even in arbitrations where the arbitral tribunal has asked to be provided with hard copies.
7. The Secretariat will generally send correspondence by email, so parties, their counsel and prospective arbitrators must provide the Secretariat with their email addresses.

II - Parties

A - Where Requests for Arbitration can be Submitted

8. ICC arbitration is commenced upon the Secretariat's receipt of a Request for Arbitration at any of its offices (Articles 4(1) of the Rules and 5(3) of Appendix II). The Secretariat has offices in Paris, Hong Kong and New York (in affiliation with SICANA) for purposes of Articles 4(1) of the Rules and 5(3) of Appendix II.

B - Representation

9. If the parties foresee being represented by counsel, they must inform the Secretariat and the arbitral tribunal of the name and address of such counsel. The parties must also timely inform the Secretariat and the arbitral tribunal of any changes in their representation.

C - Joinder of Additional Parties

10. Requests for Joinder of a party are similar to Requests for Arbitration (Article 7). When a Request for Joinder is submitted, the additional party becomes a party to the arbitration and may raise pleas pursuant to Article 6(3). It is important to be aware of the timing for such joinder, as no additional party may be joined after the confirmation or appointment of an arbitrator, unless the parties and the additional party agree otherwise. Thus, a party to an arbitration wishing to join an additional party must file its Request for Joinder before any arbitrator is confirmed or appointed under the Rules.

D - Communication of Reasons for Court Decisions

11. Article 11(4) provides that the Court shall not communicate the reasons for its decisions on the appointment, confirmation, challenge or replacement of an arbitrator. However, upon request of all the parties, the Court may communicate the reasons for (i) a decision made on the challenge of an arbitrator pursuant to Article 14, and (ii) a decision to initiate replacement proceedings and subsequently to replace an arbitrator pursuant to Article 15(2). The Court may also, upon request of all the parties, communicate the reasons for decisions pursuant to Articles 6(4) and 10.
12. The parties may agree to request reasons for the Court's decisions in their arbitration agreement, in the Terms of Reference, or at any other stage of the proceedings. However, any request for the communication of reasons must be made in advance of the decision in respect of which reasons are sought. For decisions pursuant to Article 15(2), the parties are to address their request to the Court when they are invited to comment pursuant to Article 15(3).
13. The Court has full discretion to accept or reject a request for communication of reasons. The Court may subject the communication of reasons to an increase in the administrative expenses, normally not exceeding US\$ 5 000.

III - Arbitral Tribunal

14. Disputes are resolved by arbitral tribunals, the members of which will be either confirmed, in the case of arbitrators nominated by the parties or the co-arbitrators (Articles 13(1) and 13(2)), or appointed by the Court (Articles 13(3) and 13(4)).

A - Statement of Acceptance, Availability, Impartiality and Independence

15. Arbitrators have the duty to act at all times in an impartial and independent manner (Articles 11 and 22(4)).
16. The Court requires all prospective arbitrators to complete and sign a Statement of Acceptance, Availability, Impartiality and Independence ("Statement") (Article 11(2)).

17. The parties have a legitimate interest in being fully informed of all facts or circumstances that may be relevant in their view in order to be satisfied that an arbitrator or prospective arbitrator is and remains independent and impartial or, if they so wish, to explore the matter further and/or take the initiatives contemplated by the Rules.
18. An arbitrator or prospective arbitrator must therefore disclose in his or her Statement, at the time of his or her appointment and as the arbitration is ongoing, any circumstance that might be of such a nature as to call into question his or her independence in the eyes of any of the parties or give rise to reasonable doubts as to his or her impartiality. Any doubt must be resolved in favour of disclosure.
19. A disclosure does not imply the existence of a conflict. On the contrary, arbitrators who make disclosures consider themselves to be impartial and independent, notwithstanding the disclosed facts, or else they would decline to serve. In the event of an objection or a challenge, it is for the Court to assess whether the matter disclosed is an impediment to service as arbitrator. Although failure to disclose is not in itself a ground for disqualification, it will however be considered by the Court in assessing whether an objection to confirmation or a challenge is well founded.
20. Each arbitrator or prospective arbitrator must assess what circumstances, if any, are such as to call into question his or her independence in the eyes of the parties or give rise to reasonable doubts as to his or her impartiality. In making such assessment, an arbitrator or prospective arbitrator should in particular, **but not limited to**, pay attention to the following circumstances:
 - The arbitrator or prospective arbitrator or his or her law firm represents or advises, or has represented or advised, one of the parties or one of its affiliates.
 - The arbitrator or prospective arbitrator or his or her law firm acts or has acted against one of the parties or one of its affiliates.
 - The arbitrator or prospective arbitrator or his or her law firm has a business relationship with one of the parties or one of its affiliates, or a personal interest of any nature in the outcome of the dispute.
 - The arbitrator or prospective arbitrator or his or her law firm acts or has acted on behalf of one of the parties or one of its affiliates as director, board member, officer, or otherwise.
 - The arbitrator or prospective arbitrator or his or her law firm is or has been involved in the dispute, or has expressed a view on the dispute in a manner that might affect his or her impartiality.
 - The arbitrator or prospective arbitrator has a professional or close personal relationship with counsel to one of the parties or the counsel's law firm.
 - The arbitrator or prospective arbitrator acts or has acted as arbitrator in a case involving one of the parties or one of its affiliates.
 - The arbitrator or prospective arbitrator acts or has acted as arbitrator in a related case.
 - The arbitrator or prospective arbitrator has in the past been appointed as arbitrator by one of the parties or one of its affiliates, or by counsel to one of the parties or the counsel's law firm.
21. The duty to disclose is of an ongoing nature and it therefore applies throughout the duration of the arbitration.
22. Although an advance declaration or waiver in relation to possible conflicts of interest arising from facts and circumstances that may arise in the future may or may not in certain

circumstances be taken into account by the Court, it does not discharge an arbitrator from his or her ongoing duty to disclose.

23. When completing his or her Statement and identifying whether he or she should make a disclosure, both at the outset of the arbitration and subsequently, an arbitrator or prospective arbitrator should make reasonable enquiries in his or her records, those of his or her law firm and, as the case may be, in other readily available materials.
24. For the scope of disclosures, an arbitrator will be considered as bearing the identity of his or her law firm, and a legal entity will include its affiliates. In addressing possible objections to confirmation or challenges, the Court will consider the activities of the arbitrator's law firm and the relationship of the law firm with the arbitrator in each individual case. Arbitrators should in each case consider disclosing relationships with another arbitrator or counsel who is a member of the same barristers' chambers. Relationships between arbitrators, as well as relationships with any entity having a direct economic interest in the dispute or an obligation to indemnify a party for the award, should also be considered in the circumstances of each case.
25. Arbitrators have a duty to devote to the arbitration the time necessary to conduct the proceedings as diligently, efficiently and expeditiously as possible. Accordingly, prospective arbitrators must indicate in the Statement the number of arbitrations in which they are currently acting, specifying whether they are acting as president, sole arbitrator, co-arbitrator or counsel to a party, as well as their availability over the next 24 months.
26. If one or more parties object to the confirmation of a prospective arbitrator, or in case of a challenge, the Secretariat will invite the other party or parties and the arbitrator or prospective arbitrator to comment.

B - Publication of Information Regarding Arbitral Tribunals

27. The Court endeavours to make the arbitration process more transparent in ways that do not compromise expectations of confidentiality that may be important to parties. Transparency provides greater confidence in the arbitration process, and helps protect arbitration against inaccurate or ill-informed criticism.
28. Consistent with that policy and unless otherwise agreed by the parties, the Court will publish on the ICC website, for arbitrations registered as from 1 January 2016, the following information: (i) the names of the arbitrators, (ii) their nationality, (iii) their role within a tribunal, (iv) the method of their appointment, and (v) whether the arbitration is pending or closed. The arbitration reference number and the names of the parties and of their counsel will not be published.
29. By accepting to serve as an arbitrator under the Rules, a prospective arbitrator accepts that such information will be published on the ICC website.
30. The information will be published after the Terms of Reference have been transmitted to, or approved by, the Court. It will be updated in the event of a change in the arbitral tribunal's composition (without however mentioning the reason for the change).
31. The information will remain on the ICC website for a period of time after the closure of the arbitration. The parties may request the Court to publish additional information about a particular arbitration.

IV - Conduct of the Arbitration

A - Advance on Costs

32. A provisional advance is fixed by the Secretary General upon receipt of the Request for Arbitration (Article 36(1)). It is intended to cover the costs of the arbitration until the Terms of Reference have been drawn up.
33. Payment of the provisional advance will be considered as a partial payment by the claimant of the advance on costs subsequently fixed by the Court. Transmission of the file to the arbitral tribunal, once constituted, will be subject to prior payment of the provisional advance (Article 16).
34. The advance on costs is intended to cover the arbitral tribunal's fees and arbitration-related expenses, as well as the ICC administrative expenses (Article 36 of the Rules and Article 1(4) of Appendix III).
35. The parties will be invited to pay the advance on costs in accordance with paragraphs 2, 3, 4 and 5 of Article 36 of the Rules. The payment must originate from a party to the arbitration in which the payment has been requested. All bank charges must be borne by the party making the payment.
36. The advance on costs may be readjusted by the Court if the development of the arbitration so requires (Article 36(5)). The arbitral tribunal should inform the Secretariat of any developments in the value and complexity of the arbitration or any other issues it considers relevant.
37. The arbitral tribunal should clarify with the parties whether they will be directly responsible for the costs of any hearing or whether such costs should be included in the arbitration-related expenses. If hearing costs will be included in the arbitration-related expenses, the arbitral tribunal should provide the Secretariat with an estimate of such costs. Thereafter, the Secretariat may examine whether it is appropriate to invite the Court to reconsider the advance on costs.

B - Time Limits under the Rules

38. Rapid and cost-efficient resolution of arbitrations is one of the main priorities of the Court. Arbitrators should devote the time and effort necessary to conduct the arbitration in accordance with the requirements of the Rules. The Rules contain strict time limits, in particular:
 - **Terms of Reference:** must be established within **two months** from the transmission of the file to the arbitral tribunal (Article 23(2)).
 - **Case management conference:** must be convened with the parties when drawing up the Terms of Reference or as soon as possible thereafter (Article 24(1)).
 - **Procedural timetable:** must be established during or immediately following the case management conference and transmitted to the Court and the parties (Article 24(2)).
 - **Closing of the proceedings:** must be done as soon as possible after the last hearing on matters to be decided in an award, or the filing of the last authorised submissions concerning such matters (Article 27).

- **Date for submission of draft awards:** must be indicated to the Secretariat and the parties when the arbitral tribunal closes the proceedings in relation to the award (Article 27).
- **Final award:** must be rendered within the time limit fixed by the Court based upon the procedural timetable or, if the Court does not fix such time limit, within **six months** from the date of the last signature added to the Terms of Reference or the date of notification of their approval (Article 30(1)).

C - Techniques for Controlling Time and Costs

39. The Rules require the arbitral tribunal and the parties to make every effort to conduct the arbitration in an expeditious and cost-effective manner, having regard to the complexity and value of the dispute (Article 22(1)).
40. In order to ensure effective case management, the arbitral tribunal, after consulting the parties, may adopt such procedural measures as it considers appropriate, provided that they are not contrary to any agreement of the parties (Article 22(2)). The arbitral tribunal should consider the case management techniques referred to in Appendix IV to the Rules and the report of the ICC Commission on Arbitration and ADR entitled *Controlling Time and Costs in Arbitration*, available on the ICC website.

D - Efficiency in the Submission of Draft Awards to the Court

41. The Court expects arbitral tribunals to render awards within six months from the drawing up of the Terms of Reference, or within the time limit fixed by the Court for this purpose (Article 30(1)).
42. While having the power to extend such time limits, the Court will consider the diligence and efficiency, the time spent, the rapidity of the proceedings, the complexity of the dispute and the timeliness of submission of draft awards, when fixing arbitrators' fees at the end of the arbitration (Article 2(2) of Appendix III).
43. In this regard, sole arbitrators are expected to submit draft awards within two months and three-member arbitral tribunals within three months after the last substantive hearing on matters to be decided in the award or the filing of the last written submissions concerning such matters (excluding cost submissions), whichever is later (Article 27).
44. Whenever the Arbitral Tribunal has conducted the arbitration expeditiously, the Court may increase the arbitrators' fees above the amount that it would otherwise consider fixing.
45. Where the draft award is submitted after the time referred to in paragraph 43 above, the Court may lower the fees as set out below, unless it is satisfied that the delay is attributable to factors beyond the arbitrators' control or to exceptional circumstances, and without prejudice to any other measures that it may take, such as replacing one or more of the arbitrators:
 - If the draft award is submitted for scrutiny up to 7 months after the last substantive hearing or written submissions (excluding cost submissions), whichever is later, the fees that the Court would otherwise consider fixing are reduced by 5% to 10%.
 - If the draft award is submitted for scrutiny up to 10 months after the last substantive hearing or written submissions (excluding cost submissions), whichever is later, the fees that the Court would otherwise consider fixing are reduced by 10% to 20%.

- If the draft award is submitted for scrutiny more than 10 months after the last substantive hearing or written submissions (excluding cost submissions), whichever is later, the fees that the Court would otherwise consider fixing are reduced by 20% or more.
46. In deciding on the above, the Court may also take into account any delays incurred in the submission of one or more partial awards.

E - Closing of the Proceedings and Scrutiny of Awards

47. An arbitral tribunal should declare the proceedings closed as soon as possible after the last hearing or the last authorised submission filed in relation to matters to be decided in an award, whether final or otherwise (Article 27). Upon doing so, the arbitral tribunal must inform the Secretariat and the parties of the date by which it expects to submit the draft award for the Court's scrutiny (Article 33).
48. The scrutiny process carried out by the Court with the assistance of its Secretariat is a unique and thorough procedure designed to ensure that all awards are of the best possible quality and are more likely to be enforced by state courts. All draft awards undergo a three-step review process, starting with the Counsel of the team in charge of the arbitration that has followed the proceedings since the inception of the arbitration, followed by review by the Secretary General, the Deputy Secretary General or the Managing Counsel, before being submitted for the Court's scrutiny. For certain arbitrations, generally those involving state parties or dissenting opinions, a Court member will draft a report with recommendations on the draft award.
49. All draft awards are scrutinised at a Committee Session of the Court, composed of three Court members, or at a Plenary Session of the Court. Draft awards scrutinised at a Plenary Session include, but are not limited to, matters involving a state or a state entity, matters in which one or more arbitrators have dissented, matters raising issues of policy, and matters in which a Committee Session has been unable to reach a unanimous decision or otherwise makes a referral to the Plenary.
50. Upon receipt of a draft award, the Secretariat promptly informs the parties and the arbitral tribunal that the draft will be scrutinised at one of the Court's next Sessions. After scrutiny, the Secretariat informs the parties and the arbitral tribunal that the award either was approved or will be further scrutinised at one of the Court's next Sessions.
51. Any draft award submitted to the Court will be scrutinised within three to four weeks of receipt by the Secretariat. For purposes of timing, scrutiny is the first submission of the award to the Court for approval, irrespective of whether the award is approved or not at that Court Session. As a Plenary Session of the Court is held only once a month (generally the last Thursday of the month), the time needed for Plenary review of a draft award will depend on when it is submitted, and may take up to five or six weeks.
52. If delay in the scrutiny process is not attributable to exceptional circumstances beyond the Court's control, the Court's administrative expenses will be reduced by up to 20% depending on the length of the delay.

F - ICC Award Checklist

53. The Checklist is intended to provide arbitrators with guidance when drafting awards and is not an exhaustive, mandatory or otherwise binding document. It should not be thought to

reflect the opinion of the members of the Court or of its Secretariat, but is intended to facilitate the arbitrators' mission. It may not be published or used for any purpose other than the conduct of ICC arbitrations. The Checklist is not exhaustive of issues that may be raised by the Court under Article 33.

G - Arbitral Tribunal's Fees and Administrative Expenses

Advance on Fees

54. The Court fixes arbitrators' fees at the end of the arbitration, although advances on fees may be granted upon request and the completion of concrete milestones in the arbitration.

Allocation among Arbitral Tribunal Members

55. When there is a three-member arbitral tribunal, arbitrators may agree on the fee allocation for each arbitrator and inform the Secretariat of their agreement as early as possible in the proceedings. Arbitrators may modify their agreement in the course of the proceedings. Unless the Court is advised in writing that the arbitral tribunal has agreed on a different allocation, the Court will fix the arbitrators' fees so that the president receives between 40% and 50% of the total fees and each co-arbitrator receives between 25% and 30%, as the case may be. The Court may decide upon a different allocation based on the circumstances. Unless otherwise agreed, the same allocation may apply to any advances on fees granted by the Court.

Calculation of Fees

56. Arbitrators' fees in ICC arbitration are calculated on an *ad valorem* basis. Parties and arbitrators are encouraged to consult the Cost Calculator on the ICC website and the scales contained in Article 4 of Appendix III. Arbitrators' fees will normally be fixed by the Court at a figure within the limits specified in the scales or, in exceptional circumstances, at a figure higher or lower than those limits.
57. Fees are fixed exclusively by the Court. Separate fee arrangements between the parties and arbitrators are not permitted.
58. Advances on costs to cover fees and expenses are normally fixed on the basis of the average fee provided by the scales. The Court may fix or readjust the advance on costs on the basis of a lower or higher amount. Whenever the Court fixes or readjusts the advance on costs, a detailed financial table is provided to the parties and arbitrators for information and guidance. The advance on costs is not necessarily used in its entirety by the Court when fixing the fees of the arbitrators at the end of the arbitration.
59. As a matter of guidance only, the Court may proceed as follows when fixing the fees of the arbitrators or granting advances on fees when the advance on costs has been fixed on the basis of the average fee:
- | | | |
|----|--|------------------------------------|
| a. | Terms of Reference established | 50% of minimum fee |
| b. | A partial award issued / major hearing | Minimum fee |
| c. | Multiple partial awards | Between 50% of average and average |
| d. | Final award issued | Average fee |

60. The Court may depart from this guidance depending on the circumstances of each arbitration, the criteria set forth in Article 2 of Appendix III, and the practice set forth in section IV(D) of the present Note.
61. Pursuant to Article 2 of Appendix III, when fixing the arbitrators' fees the Court may take into consideration, among other criteria, the time spent by arbitrators and the complexity of the dispute. To this end, the Secretariat will request from the arbitrators a periodical report on their activities, which should include a description of the tasks performed, an estimate of the amount of time spent on each of those tasks, and any other information related to those tasks that the arbitrators may deem relevant. For this purpose, arbitrators are encouraged to use the ICC form for statements of time and travel, available on the [ICC website](#). If arbitrators use time sheets as part of their normal professional activities, they may provide the Secretariat with such time sheets instead. Arbitrators are encouraged to send such reports to the Secretariat also on their own initiative after completing a procedural milestone or when requesting advances on fees or the readjustment of the advance on costs.

Replacement

62. When fixing the fees of an arbitrator who has been replaced, the Court will take into consideration the nature of and reasons behind the replacement, the milestones completed in the arbitration, and the work expected to be completed by the successor. The Court may deduct the replaced arbitrator's fees from those of the successor.

Administrative Expenses

63. ICC administrative expenses are calculated on an *ad valorem* basis. Parties and arbitrators are encouraged to consult the [Cost Calculator](#) on the ICC website and the scales contained in Article 4 of Appendix III. ICC administrative expenses will normally be fixed by the Court in accordance with the scale. In exceptional circumstances, the Court may fix them at a figure higher or lower than that which would result from the application of such scale, provided that they shall normally not exceed the maximum amount of the scale.
64. As a matter of guidance only, the Court may proceed as follows when fixing the ICC administrative expenses:
- | | | |
|----|---|------|
| a. | File transmitted to the arbitral tribunal | 25% |
| b. | Terms of Reference established | 50% |
| c. | Partial award(s) or other major procedural milestones completed | 75% |
| d. | Final award | 100% |
65. The Court may depart from this guidance depending on the circumstances of each arbitration. In any event, the figures above do not include abeyance fees, increases in the administrative expenses pursuant to section II(D) of the present Note, or additional advances to cover Article 35 applications.

Declaration to French Tax Authorities

66. Under French tax laws, ICC is required to declare the amount of fees, including advances on fees, paid to any arbitrator during each calendar year, as well as any expenses reimbursed during the same period.

H - Decisions as to the Costs of the Arbitration

67. Arbitral tribunals may make decisions as to costs, except for those to be fixed by the Court, and order payment thereof at any time during the proceedings (Article 37(3)).
68. In making decisions as to costs, the arbitral tribunal may take into account such circumstances as it considers relevant, including the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner (Article 37(5)). Further information on this topic may be found in the ICC Commission Report *Decisions on Costs in International Arbitration*, available on the ICC website.
69. If the parties withdraw their claims or the arbitration terminates before the rendering of a final award, the Court shall fix the fees and expenses of the arbitrators and the ICC administrative expenses. If the parties have not agreed upon the allocation of the costs of the arbitration or other relevant issues with respect to costs, such matters shall be decided by the arbitral tribunal (Article 37(6)). If the arbitral tribunal has not been constituted at the time of the withdrawal, any party may request the Court to proceed with the constitution of the arbitral tribunal so that it may make decisions as to costs.

I - Signature of Terms of Reference and Awards

70. Subject to any requirements of mandatory law that may be applicable, and unless the parties agree otherwise, (1) the Terms of Reference may be signed by each party and member of the arbitral tribunal in counterparts, and (2) such counterparts may be scanned and communicated to the Secretariat pursuant to Article 3 of the Rules by email or any other means of telecommunication that provides a record of the sending thereof.
71. Each party, each arbitrator and the Secretariat receive an original of the awards, *addenda* and decisions signed by the arbitrators after approval of the drafts by the Court. The arbitral tribunal must thus provide the Secretariat with the required number of originals (unbound) requested by the Secretariat. The originals must be signed and dated after the date of the Court Session at which awards, *addenda* and decisions were approved; their date should be the date on which the last arbitrator signed.
72. The arbitral tribunal must also provide the Secretariat with a PDF of the signed original by email, which will be sent to the parties before the originals are received and notified.
73. Subject to any requirements of mandatory law that may be applicable, the parties may agree (1) that any award be signed by the members of the arbitral tribunal in counterparts, and/or (2) that all such counterparts be assembled in a single electronic file and notified to the parties by the Secretariat by email or any other means of telecommunication that provides a record of the sending thereof, pursuant to Article 34 of the Rules.

J - Notification of Awards, *Addenda* and Decisions

74. The Secretariat will notify to the parties an original of the awards, *addenda* and decisions (Article 34(1)).
75. A courtesy copy of the PDF signed original of the awards, *addenda* and decisions will be sent to the parties by email. The sending of a courtesy copy by email does not trigger any of the time limits under the ICC Rules of Arbitration.

K - International Sanctions Regulations

76. International sanctions regulations may in certain cases apply to the arbitration. Parties and arbitrators must consult the Note to Parties and Arbitral Tribunals on ICC Compliance, available on the [ICC website](#).

V - Administrative Secretaries

Appointment, Duties and Remuneration of Administrative Secretaries

77. The Rules are silent as to the appointment, duties and remuneration of arbitral tribunal administrative secretaries or other assistants ("Administrative Secretaries"). This Note sets out the policy and practice of the Court and its Secretariat regarding the engagement of Administrative Secretaries by arbitral tribunals. It applies with respect to any Administrative Secretary appointed on or after 1 August 2012.

Appointment

78. Administrative Secretaries can provide a useful service to the parties and arbitral tribunals in ICC arbitration. While principally engaged to assist three-member arbitral tribunals, an Administrative Secretary may also assist a sole arbitrator. Administrative Secretaries can be appointed at any time during an arbitration.
79. If an arbitral tribunal envisages the appointment of an Administrative Secretary, it shall consider carefully whether in the circumstances of that particular arbitration such an appointment would be appropriate.
80. Administrative Secretaries must satisfy the same independence and impartiality requirements as those which apply to arbitrators under the Rules. ICC staff members are not permitted to serve as Administrative Secretaries.
81. There is no formal process for the appointment of an Administrative Secretary. However, before any steps are made to appoint an Administrative Secretary, the arbitral tribunal shall inform the parties of its proposal to do so. For this purpose, the arbitral tribunal shall submit to the parties the proposed Administrative Secretary's *curriculum vitae*, together with a declaration of independence and impartiality, an undertaking on the part of the Administrative Secretary to act in accordance with the present Note and an undertaking on the part of the arbitral tribunal to ensure that this obligation on the part of the Administrative Secretary shall be met.
82. The arbitral tribunal shall make clear to the parties that they may object to such proposal and an Administrative Secretary shall not be appointed if a party has raised an objection.

Duties

83. Administrative Secretaries act upon the arbitral tribunal's instructions and under its strict supervision. The arbitral tribunal shall, at all times, be responsible for the Administrative Secretary's conduct in relation to the arbitration.
84. An Administrative Secretary may perform organisational and administrative tasks such as:

- transmitting documents and communications on behalf of the arbitral tribunal;
 - organising and maintaining the arbitral tribunal's file and locating documents;
 - organising hearings and meetings;
 - attending hearings, meetings and deliberations; taking notes or minutes or keeping time;
 - conducting legal or similar research; and
 - proof-reading and checking citations, dates and cross-references in procedural orders and awards, as well as correcting typographical, grammatical or calculation errors.
85. Under no circumstances may the arbitral tribunal delegate decision-making functions to an Administrative Secretary. Nor should the arbitral tribunal rely on the Administrative Secretary to perform any essential duties of an arbitrator.
86. The Administrative Secretary may not act, or be required to act, in such a manner as to prevent or discourage direct communications among the arbitrators, between the arbitral tribunal and the parties, or between the arbitral tribunal and the Secretariat.
87. A request by an arbitral tribunal to an Administrative Secretary to prepare written notes or memoranda shall in no circumstances release the arbitral tribunal from its duty personally to review the file and/or to draft any decision of the arbitral tribunal.
88. When in doubt about which tasks may be performed by an Administrative Secretary, the arbitral tribunal or the Administrative Secretary should contact the Secretariat.

Disbursements

89. The arbitral tribunal may seek reimbursement from the parties of the Administrative Secretary's justified reasonable personal disbursements for hearings and meetings.

Remuneration

90. With the exception of the Administrative Secretary's reasonable personal disbursements, the engagement of an Administrative Secretary should not pose any additional financial burden on the parties. Accordingly, the arbitral tribunal may not look to the parties for the reimbursement of any costs associated with an Administrative Secretary beyond the scope prescribed in this Note.
91. Any remuneration payable to the Administrative Secretary shall be paid by the arbitral tribunal out of the total funds available for the fees of all arbitrators, such that the fees of the Administrative Secretary will not increase the total costs of the arbitration.
92. In no circumstances should the arbitral tribunal seek from the parties any form of compensation for the Administrative Secretary's activity. Direct arrangements between the arbitral tribunal and the parties on the Administrative Secretary's fees are prohibited. Since the fees of the arbitral tribunal are established on an *ad valorem* basis, any compensation to be paid to the Administrative Secretary is deemed to be included in the arbitral tribunal's fees.

VI - Expenses

Personal and Arbitral Tribunal Expenses

How to Submit a Request for Expenses

93. The Secretariat will reimburse expenses and pay *per diem* allowances only upon receipt of a request in a readily comprehensible form including a cover page listing each payment claimed and the reason for it. Expense reimbursement claims must be supported by original receipts. This is necessary so that the Secretariat can carry out its accounting responsibilities and, from time to time, provide the parties with comprehensive statements of expenses incurred by arbitrators.

When to Submit a Request for Expenses

94. Arbitrators should submit their requests for the reimbursement of expenses and/or the payment of *per diem* allowances, together with any required supporting documentation as specified below, **as soon as possible after expenses are incurred**. This will help ensure that the advance on costs paid by the parties is adequate to cover the costs of the arbitration.
95. All requests for the reimbursement of expenses and/or the payment of *per diem* allowances relating to any period prior to the submission of the draft final award must be provided at the latest when the draft final award is submitted to the Secretariat. Three-member arbitral tribunals should co-ordinate their submission of requests for reimbursement of expenses and/or payment of *per diem* allowances in order to ensure that they reach the Secretariat no later than the draft final award. Requests for the reimbursement of expenses and/or the payment of *per diem* allowances submitted **after the Court has approved the final award will not be taken into account by the Court when fixing the costs of the arbitration and will not be paid**, save in exceptional circumstances as decided by the Secretary General.
96. In the event of the withdrawal of all claims or the termination of the arbitration before the rendering of a final award, all requests for the reimbursement of expenses and/or the payment of *per diem* allowances must be submitted within the time limit granted by the Secretariat. Requests for the reimbursement of expenses and/or the payment of *per diem* allowances submitted after the Court has fixed the costs of arbitration will not be taken into account by the Court and will not be paid.

Travel Expenses

97. If required to travel for the purpose of an ICC arbitration, an arbitrator will be reimbursed for the actual travel expenses he or she incurs travelling from and returning to his or her usual place of business as indicated on the *curriculum vitae* filed for the relevant ICC arbitration. Travel expenses will be reimbursed in accordance with paragraphs 98 to 100 below.
98. A request for reimbursement of travel expenses must be accompanied by the originals of all receipts claimed or other proper substantiation if receipts are unavailable. Travel expenses that are not fully and comprehensively justified will not be reimbursed.
99. The reimbursement of travel expenses is subject to the following strict limits:
- Air travel: an airfare equivalent to the applicable standard business-class airfare.
 - Rail travel: the applicable first-class train fare.
 - Transport to and from airport(s) and/or train station(s): the applicable standard taxi fare.

- d. Travel by private car: a flat rate for every kilometre driven, plus all necessary actual parking and toll charges incurred. The flat rate is US\$ 0.80 per kilometre.
100. Except for expenses claimed pursuant to paragraph 99(d) above, travel expenses will, where possible, be reimbursed in the currency in which they were incurred. An arbitrator may alternatively request reimbursement in US dollars provided that the request is accompanied by a statement of the US dollar amount and evidence of the exchange rate (for example, a printout from www.oanda.com). The date for the currency conversion should be the date on which the expense was incurred.

Per Diem Allowance

101. In addition to travel expenses, an arbitrator will be paid a flat-rate *per diem* allowance in accordance with paragraphs 102 to 105 below for every day of an ICC arbitration that he or she is required to spend outside his or her usual place of business as indicated on the *curriculum vitae* filed for the relevant ICC arbitration. The arbitrator is not required to submit receipts in order to claim the *per diem* allowance, but simply evidence of the travel for purposes of the arbitration.
102. If the arbitrator is not required to use overnight hotel accommodation, the flat-rate *per diem* allowance is US\$ 400.
103. If the arbitrator is required to use overnight hotel accommodation, the flat-rate *per diem* allowance is US\$ 1 200.
104. The applicable *per diem* allowance is deemed to cover fully all personal living expenses of whatever nature and of whatever actual value (other than travel expenses) incurred by an arbitrator. In particular, the applicable *per diem* allowance is deemed to cover, among other expenses, the total cost of:
- Accommodation (except where paragraph 102 above applies)
 - Meals
 - Laundry/ironing/dry cleaning and other housekeeping or similar services
 - Inner-city transport
 - Telephone calls, faxes, emails and other means of communication
 - Gratuities
105. For the avoidance of doubt, no *per diem* allowance will be paid in respect of time spent by an arbitrator travelling to or from the relevant destination.
106. Since the *per diem* allowance is deemed to cover all personal living expenses incurred by an arbitrator while outside his or her usual place of business on ICC arbitration business, the Secretariat will not reimburse expenses over and above the applicable *per diem* allowance under any circumstances.

General Office Expenses and Courier Charges

107. General office expenses and overheads incurred in the ordinary course of business by an arbitrator or an arbitral tribunal in connection with an ICC arbitration will not be reimbursed. However, an arbitrator or an arbitral tribunal may request to be reimbursed at cost for any courier, photocopying, fax or telephone charges incurred for the purposes of an ICC arbitration, provided such request is accompanied by detailed receipts.

Advance Payments on Expenses

108. An arbitrator may request an advance payment of travel expenses and/or the applicable *per diem* allowance in accordance with paragraphs 97 to 106 above. If an advance is granted, the arbitrator must subsequently submit the relevant supporting documentation to the Secretariat, including all receipts and a statement of working days and nights spent outside of his or her usual place of business on ICC arbitration business.

VII - Administrative Services**A - Deposit of Funds other than the Advance on Costs for Arbitration*****ICC as Depositary***

109. ICC may offer arbitrators and parties who expressly so request in writing a service allowing funds to be deposited, in the course of an arbitration, into an account administered by ICC for the purpose of paying an advance on VAT due on the arbitrators' fees or an advance to cover fees and expenses of any expert appointed by the arbitral tribunal, or for escrow purposes.
110. When arbitrators and parties avail themselves of this service and ICC consents to provide it, ICC acts as the depositary of the funds. ICC receives funds from one or more parties who have been instructed accordingly by an arbitrator (president or member of an arbitral tribunal on behalf of the other tribunal members, or sole arbitrator) and makes the payments from the account at the request of the arbitrator.
111. ICC acts as depositary of funds related to:
- a. VAT, taxes, charges and imposts applicable to arbitrators' fees;
 - b. Experts;
 - c. Escrow accounts.
112. This service is available to arbitrators and parties from any country.
113. The deposit accounts are administered solely in US dollars or in Euros.
114. The deposit accounts do not yield interest for the parties or the arbitrators.

Procedure**115. *Step 1: Request for a Deposit Account***

Any arbitrator wishing to use this service shall inform the Secretariat in writing and request ICC to act as depositary of funds to be paid by one or more parties as an advance on the VAT due on the arbitrators' fees or an advance to cover fees and expenses of any expert appointed by the arbitral tribunal, or for escrow purposes.

The initiative of requesting the opening of a deposit account, calling deposits, and making payments from the amounts deposited lies solely with the arbitrators.

Arbitrators are responsible for ensuring that payments are made in compliance with applicable laws and banking practices.

116. *Step 2: Estimation of Amounts*

The arbitrator determines the funds to be paid by one or more parties into a deposit account.

If, in the course of an arbitration, the amount of the advance on costs is increased pursuant to a decision of the Court, this step may be repeated. Likewise, if, in the course of the arbitration, the amount of the funds deposited to cover the fees and expenses of any expert or the amount of the funds deposited into an escrow account is increased pursuant to a decision of the arbitral tribunal, this step may be repeated.

117. *Step 3: Funds to be Deposited*

The arbitrator requests one or more parties to pay the funds and sets a time limit in which to do so.

The Secretariat will provide the party/parties with the relevant banking instructions.

All bank charges must be borne by the party making the payment.

The payment must originate from a party to the arbitration in which the payment has been requested.

118. *Step 4: Acknowledgement of Payments and Administration*

The Secretariat confirms to the arbitrator and the parties receipt of the amounts paid by the party/parties.

If the arbitrator receives no confirmation from the Secretariat of receipt of payment by the party or parties, it is up to the arbitrator to renew his or her request for payment and to fix a time limit for this purpose.

ICC administers the funds on behalf of the arbitrator.

119. *Step 5: Payments*

The arbitrator requests ICC to make payments from the funds deposited by the parties.

Payments are made by ICC within the limits of the funds deposited.

120. *Step 6: Balance of Account*

At the end of the arbitration the Secretariat seeks instructions from the arbitrator with regard to closing the deposit account. On the basis of the information provided by the arbitrator and in accordance with his or her instructions, the Secretariat closes the deposit accounts and returns to the party or parties any amounts remaining from the funds deposited with ICC.

After advising the arbitrator, ICC may close the deposit account if no balance remains. The account will be closed even if a request by the arbitrator for the payment of funds is still outstanding.

Deposits for VAT, Taxes, Charges and Imposts Applicable to Arbitrators' Fees

121. Amounts paid to an arbitrator do not include any possible value added taxes (VAT) or other taxes or charges and imposts applicable to the arbitrator's fees (Article 2(13) of Appendix III). Parties have a duty to pay any such taxes or charges; however, the recovery of any such charges or taxes is a matter solely between the arbitrator and the parties.
122. Arbitrators subject to VAT and other taxes, charges and imposts ("VAT") can expressly request in writing their wish to use the service described above allowing them to have the funds corresponding to their estimate of the VAT due on their fees and expenses (hereinafter "Fees") administered by ICC.
123. This service is totally separate from, and has no effect on, the procedure for paying advances as set out in the Rules. Should the parties fail to pay the VAT on the arbitrators' fees, this cannot be invoked by the arbitrators before the Court, for instance as a ground for suspending the arbitration.
124. If the president of an arbitral tribunal requests a VAT advance on behalf of all those members of the arbitral tribunal who are subject to VAT, the president shall inform the Secretariat of the breakdown of this advance arbitrator-by-arbitrator.
125. Arbitrators bear sole responsibility for ensuring that the procedure described above complies with the tax laws and regulations applicable to the exercise of their profession as arbitrators, including the payment of their fees. Arbitrators are encouraged to check the basis on which they should calculate the amount of VAT due.
126. ICC acts exclusively as depositary and is not in a position to advise arbitrators on tax law issues.
127. The arbitrator determines the amount of VAT on his or her fees in light of the rules that apply at the place where he or she is taxable.
128. Arbitrators may use the Cost Calculator on the ICC website to estimate the amount of the fees that may be payable. They are however reminded that the breakdown of fees between the members of the arbitral tribunal (from 40% to 50% for the president, and 25% to 30% for each co-arbitrator) is given merely as a guide and may be changed by the Court.
129. Any invoice issued by an arbitrator to a party for fees and, as the case may be, VAT applicable to those fees should be for the portion of the fees and the amount of tax payable by that party. No invoice should in principle be issued by an arbitrator to ICC, save in special circumstances to be discussed in advance with the Secretariat.
130. When drawing up his or her invoice, the arbitrator requests ICC to pay the amount corresponding to the VAT on the fees due by the party. This applies at the time of the final award, but also in the event that the Court decides to pay an advance on fees to arbitrators who reside in countries where, under local tax law, VAT becomes payable to the tax authorities when fees are paid in advance.

B - Assistance with the Conduct of the Arbitration

Conduct of the Arbitration

131. The Secretariat may provide parties and arbitral tribunals with assistance regarding the conduct of the arbitration. The services the Secretariat may offer include but are not limited to:
- a. **Deposit of documents:** the Secretariat may act as depositary of documents such as settlement or sealed offers or similar (see paragraph 97 of the ICC Commission Report *Decisions on Costs in International Arbitration*, available on the ICC website).
 - b. **Conference calls:** the Secretariat may assist arbitral tribunals in organising conference calls with the parties and, when required, participate in such calls.
 - c. **Administrative secretaries:** the Secretariat may assist arbitral tribunals in identifying administrative secretaries for appointment pursuant to section V above.
 - d. **Model documents:** the Secretariat may provide arbitral tribunals with model documents related to the conduct of the arbitration, in particular terms of reference and procedural timetables.
 - e. **Transparency:** pursuant to paragraph 31 above, the Court may, at the request of parties, publish on its website or otherwise make available to the public information or documents related to an ICC arbitration that is subject to transparency rules or regulations.
 - f. **ADR:** the ICC International Centre for ADR provides parties and arbitral tribunals with a number of services relevant to ongoing ICC arbitrations, in particular the proposal and appointment of experts (see section VIII below).
 - g. **ICC Commercial Crime Services:** the Secretariat may assist arbitral tribunals and parties in liaising with ICC Commercial Crime Services (for more information visit: www.icc-ccs.org).

Hearings and Meetings

132. The Secretariat may provide services or assist parties and arbitral tribunals with the organisation of hearings and meetings, in particular:
- a. **ICC Hearing Centre in Paris (France):** the ICC Hearing Centre offers flexible packages and a range of specialised facilities and services for hearings and meetings. Parties and arbitral tribunals may contact the Secretariat for further information or visit the website at www.icchearingcentre.org. By reserving a room at the ICC Hearing Centre for an ICC arbitration, parties and arbitrators accept that their contact details be communicated by the Secretariat to the ICC Hearing Centre for the sole purpose of their booking.
 - b. **Other hearing facilities:** ICC has agreements with other hearing facilities around the globe. Parties and arbitral tribunals may consult the Secretariat for further information.
 - c. **Court reporting:** the Secretariat may also provide parties and arbitral tribunals with information regarding services for hearings such as court reporting and simultaneous interpretation.
 - d. **Visas and other authorisations:** the Secretariat may issue letters to facilitate the obtaining of visas or other authorisations for individuals participating in a hearing or meeting related to an ICC arbitration.
 - e. **Hotels:** ICC negotiates preferential rates with a number of hotels in Paris and other jurisdictions. Parties and arbitral tribunals may consult the Secretariat for further information.

Post-Award Services

133. In accordance with Article 34 of the Rules, the Secretariat shall assist the parties in complying with whatever formalities that may be necessary. These may include, but are not limited to:
- a. Certified copies of awards, Terms of Reference, correspondence or any other document issued or approved by the Secretariat or the Court;
 - b. Notarisation by the ICC notary public in Paris of signatures of members of the Secretariat who certify copies of documents;
 - c. Certificates;
 - d. Non-certified copies of documents from the case file, limited in size and number;
 - e. Letters reminding parties of their obligation to comply with the award.
134. As some post-award services take time and preparation, parties should allow sufficient time when requesting such assistance from the Secretariat.

VIII - ICC International Centre for ADR**A - ICC Mediation Rules**

135. Parties are free to settle their dispute amicably prior to or at any time during an arbitration. They may wish to consider conducting an amicable dispute resolution procedure administered by the ICC International Centre for ADR ("Centre") pursuant to the ICC Mediation Rules, which, in addition to mediation, allow for the use of other amicable settlement procedures. The Centre can also assist the parties in finding a suitable mediator.
136. Where appropriate, arbitrators may wish to remind the parties about the ICC Mediation Rules.
137. Further information is available from the Centre at +33 1 49 53 30 53 or adr@iccwbo.org or www.iccadr.org.

B - ICC Expert Rules

138. If a party requires the assistance of an expert, the Centre can, upon request, propose experts with a wide range of specialisations. The fee for this service is US\$ 3 000.
139. Likewise, if the assistance of an expert is required by the arbitral tribunal, the Centre can, upon request, propose experts. This service is provided free of charge to arbitrators.
140. Further information is available from the Centre at +33 1 49 53 30 53 or expertise@iccwbo.org or www.iccexpertise.org.

IX - Dispatch of Materials to ICC and Customs Charges

141. Materials sent to ICC (correspondence, submissions, binders, tapes, CDs, etc.) must be sent exclusively as "Documentation". No other description should be indicated on the transportation slip or waybill. Generally, documentation is not subject to customs taxes. Other material may be subject to taxes, which vary according to the origin, content and weight of such material. Customs charges, if any, will increase the costs of arbitration.



CMS
Law . Tax

By Courier

Advance copy by e-mail (PDF) to arb@iccwbo.org

International Chamber of Commerce
Secretariat of the International Court of Arbitration
33-43 avenue du Président Wilson
75116 Paris
France

CMS von Erlach Poncet Ltd.
Dreikönigstrasse 7
P.O. Box
8022 Zurich
Switzerland

T +41 44 285 11 11
F +41 44 285 11 22

cms.law

Dr Hans-Jürg Schürmann
Attorney at Law
Hansjuerg.Schuermann@cms-vep.com

Dr Axel Buhr
Attorney at Law
axel.buhr@cms-vep.com

16 December 2016
213363/06/02314390.docx/AXB/axb

Request for Arbitration

Dear Sir or Madam

In the matter of

Andritz Hydro GmbH (formerly known as VA Tech Escher Wyss GmbH),
Escher-Wyss-Weg 1, 88212 Ravensburg, Germany

Claimant 1

and

Andritz Hydro GmbH (formerly known as VA Tech Hydro GmbH & Co),
Eibesbrunnengasse 20, 1120 Vienna, Austria

Claimant 2

both represented by Dr Hans-Jürg Schürmann and/or Dr Axel Buhr,
CMS von Erlach Poncet AG, Dreikönigstrasse 7, 8022 Zürich, Switzerland

and/or by Dr Christian W. Konrad, LL.M.,
Konrad & Partner Rechtsanwälte GmbH, Rotenturmstrasse 13, 1010 Vienna, Austria

collectively the **Claimants**

versus

Hidroelectrica S.A.,
15-17 Ion Mihalache Blvd., Floor 11-14, Sector 1, Bucharest, Romania

Respondent

Claimants and Respondent collectively referred to as the **Parties**

Registered in the Attorneys' Registry.

CMS von Erlach Poncet Ltd. is a member of CMS, the organisation of European law firms. In certain circumstances, CMS is used as a brand or business name of some or all of the member firms. Further information can be found at cms.law.

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the undersigned, acting for and on behalf of Claimants, hereby respectfully submit, in accordance with Article 4 of the Rules of Arbitration of the International Chamber of Commerce as in force from 1 January 2012 (the "**ICC Rules**"), this

REQUEST FOR ARBITRATION

with the following

Prayers for Relief:

1. That Respondent shall be ordered to pay to Claimants
EUR 13'015'329.06 plus interest in the amount of 6% per annum from the
due date.
2. That Respondent shall be ordered to bear all the costs of the arbitration
and to compensate Claimants for all their reasonable legal fees, expenses
and other cost incurred in connection with the arbitration, including all
internal costs.

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I. INTRODUCTION

1. The scope of this Request for Arbitration is limited to the content required by Article 4 of the ICC Rules.
2. Claimants reserve their right to amend their prayers for relief, to present their case and to submit evidence in support of their case in the course of the arbitral proceedings, to the extent admissible under the ICC Rules.

II. THE PARTIES AND RELEVANT THIRD PARTIES

A. Claimants

3. Andritz Hydro GmbH (formerly known as VA Tech Escher Wyss GmbH, "**Claimant 1**") is a company duly incorporated under the laws of Germany which has its registered office at

Escher-Wyss-Weg 1
88212 Ravensburg
Germany

Evidence: Excerpt from the German Commercial Register on Andritz Hydro GmbH (Germany)

C-1

4. Andritz Hydro GmbH (formerly known as VA Tech Hydro GmbH & Co; "**Claimant 2**"), is a company duly incorporated under the laws of Austria which has its registered office at

Eibesbrunnnergasse 20
1120 Vienna
Austria

Evidence: Excerpt from the Austrian Commercial Register on Andritz Hydro GmbH (Austria)

C-2

5. Claimants are represented in these arbitral proceedings by

Dr Hans-Jürg Schürmann
Dr Axel Buhr
CMS von Erlach Poncet AG
Dreikönigstrasse 7
8022 Zürich
Switzerland

Tel: +41 44 285 11 11
Fax: +41 44 285 11 22
e-mail: hansjuerg.schuermann@cms-vep.com
e-mail: axel.buhr@cms-vep.com

and/or by

Dr Christian W. Konrad, LL.M.
Konrad & Partner Rechtsanwälte GmbH
Rotenturmstrasse 13
1010 Vienna
Austria

Tel: + 43 1 512 95 00
Fax: + 43 1 512 95 00 95
e-mail: c.konrad@konrad-partners.com

6. Counsel for Claimants are duly authorized to act for and on behalf of Claimants.
7. Any correspondence in these arbitral proceedings for the attention of Claimants may be sent to Counsel for Claimants, their address being valid for services for the purposes of these arbitral proceedings.

B. Respondent

8. Hidroelectrica S.A. ("**Respondent**") is a company which is incorporated under the laws of Romania. Respondent has its registered office at

15-17 Ion Mihalache Blvd.
Floor 11-14
Sector 1
Bucharest
Romania

Evidence: Excerpt from
<http://www.hidroelectrica.ro/Details.aspx?page=48>

C-3

C. Relevant Third Parties

9. Andritz Hydro AG (formerly known as VA Tech Hydro AG) is a company which is duly incorporated under the laws of Switzerland and has its registered office at

Obernauerstrasse 4
6010 Kriens
Switzerland

Evidence: Excerpt from the Swiss Commercial Register on Andritz Hydro AG

C-4

III. NATURE AND CIRCUMSTANCES OF THE DISPUTE

A. The Portile de Fier II Project

10. Andritz Hydro, which is headquartered in Vienna (Austria), is a global supplier of electro-mechanical systems and services for hydropower plants and one of the leaders in the world market for hydraulic power generation. Until 31 December 2008, Andritz Hydro was known as VA Tech Hydro.

Evidence: Excerpt from <http://www.andritz.com/hydro.htm>

C-5

11. Respondent claims that it is "*the leading energy generator and supplier in Romania and the main provider of ancillary services*".
Evidence: Excerpt from
<http://www.hidroelectrica.ro/Details.aspx?page=13> **C-6**
12. Respondent is owned and controlled by the State of Romania: 80.06% of its shares are held by the Romanian Ministry of Economy, Commerce and Business Environment.
Evidence: Excerpt from
<http://www.hidroelectrica.ro/Details.aspx?page=12> **C-7**
13. Portile de Fier II ("*iron gate II*"; "**PdF II**") is a hydro power plant complex at the Danube river at the Romanian border to Serbia. PdF II consists of a total of 10 hydro power units. Eight of the Romanian units (units nos. 1-8) are located on the main river, two further Romanian units (units nos. 9 and 10) are located at a sidearm of the Danube river near Gogosu (Romania), about 12km away from the units at the main river. All ten Romanian units of PdF II are operated by Respondent.

At the barrage at which PdF II is situated, ten further units are operated on the Serbian side ("**Djerdab**"). The Serbian units are located adjacent to the eight units of PdF II at the same dam and are just separated by a pane of glass.
Evidence: Overview of Portile de Fier II **C-8**
14. Starting November 2001, Respondent engaged Andritz Hydro for the overhaul and modernisation of PdF II (the "**Portile de Fier II Project**");
15. On 9 November 2001, VA Tech Hydro AG of Switzerland (today Andritz Hydro AG) and Respondent entered into Contract Agreement No.2 I / 50765 (the "**Contract**"), comprising the contract documents listed in Article 1.1 of the Contract and Appendices 1-8 enclosed to the Contract. Thereby, Respondent entrusted VA Tech Hydro AG with the overhaul and modernisation of units nos. 1-8 (including turbines, generators and auxiliaries; "**Phase I**").
Evidence: Contract Agreement No.2 I / 50765 dated 9 November 2001 **C-9**
General Conditions of Contract **C-10**
Special Conditions of Contract **C-11**
16. On 29 November 2001, Andritz Hydro AG (formerly known as VA Tech Hydro AG), in accordance with Clause 43 of the Special Conditions, assigned the Contract to a consortium consisting of Claimants 1 and 2. Respondent was notified on the same day about the assignment.
Evidence: Assignment Agreement dated 29 November 2001 **C-12**
Notification Letter dated 29 November 2001 **C-13**

17. With Amendment No. 2 dated 22 March 2002, the scope was extended to include as **Phase II** the modernization of the auxiliary equipment of the first eight units.
18. By entering into Amendment No. 4 dated 5 December 2002 to the Contract, the scope was further extended to include, as **Phase III, Stage 1**, among others, the overhaul and modernisation of units nos. 9 and 10. In a Letter of Understanding dated 6 December 2002, the Parties thereby agreed

"Clause 1

It is agreed that the Contract Agreement, No. 2 I 50765 dated November 9, 2001, for the overhaul and modernisation of the HPP Portile de Fier II is consisting of the following Phases:

Phase I: negotiated with Contract Agreement No. 2 I / 50765, dd. 9th day November, 2001

Phase II; negotiated with Amendment No. 2 to Contract Agreement, dd. 22nd March, 2002

Phase III; negotiated for Stage 1 with Amendment No. 4 to Contract Agreement, dd. 5th December 2002

It is foreseen to negotiate and to conclude an Contract Agreement for the remaining Stage 2 of Phase III during the first quarter of 2003.

With Contract Agreement for Phase III / Stage 2 the parties shall regard the Contract for HPP Portile de Fier II (including Gogosu) as a package to be concluded.

Clause 2

It is therefore agreed to foresee the entire Phase III to be concluded with signature of the Contract Agreement for the remaining Stage 2. Contract will then be allowed to receive the related advance payment for the entire Phase III however, in no case later than 31st March 2013."

Evidence: Amendment No. 4 dated 5 December 2002 and Letter of Understanding dated 6 December 2012

C-14

19. With Amendment No. 6 dated 26 March 2003, the scope was accordingly further extended to include as **Phase III, Stage 2**, among others, also the modernization of the auxiliary equipment of units nos. 9 and 10. Notably, in addition to the modernization of the two additional units and all their auxiliary equipment (including their control room), the following further works formed part of Phase III:

- (i) the refurbishment of the control room of the main units of PdF II, and

- (ii) the refurbishment of the control room of Portile de Fier I, a different hydro power plant which is situated more than 30 km upstream of PdF II.

Evidence: Amendment No. 6 dated 26 March 2003

C-15

"Scope of Supply (HPP Gogosu Stage 2)" dated 20 March 2003

C-16

20. The agreed contract price for Phase I and II was EUR 200'350'000 (cf. Article 2.1.1 of Amendment No. 6; Exhibit C-15). The agreed contract price for Phase III was EUR 54'500'000 (cf. Article 2.1.2 of Amendment No. 6; Exhibit C-15).
21. Pursuant to Appendix 1 (Terms and Procedures of Payment) to the Contract, as amended by Amendment No. 17 dated 1 March 2012, the Parties agreed that 25% of the Contract Price for each of the phases was to be paid by Respondent as an advance. E.g., the advance payment of EUR 13'625'000 for Phase III was paid by Respondent in nine instalments in May and June 2003.

Evidence: Amendment No. 17 dated 1 March 2012, including Attachment 5 and 7 (Appendix 1 - Terms and Procedures of Payment, as amended by Amendment No. 17 dated 1 March 2012)

C-17

22. As may be seen from the timetable fixed by the Parties in Clause 1 of the Special Conditions (Exhibit C-11), it was agreed to take each of the units out of operation, dismantle and reassemble them one after the other. It was planned that the first unit would be taken out of operation 20 months after the effective date of the Contract and that it would take 12 months for the dismantling, overhaul, modernization and reassembly, so that it could go back to operation 32 months after the effective date. Then, the next unit would be taken out of operation, dismantled, overhauled, modernized and reassembled and it would be put back to operation after a year, and so forth. The Parties planned that starting with the third unit the overhaul intervals would decrease from 12 months initially to 11 months.

B. The Opening of Respondent's Insolvency Proceedings in June 2012

23. On 20 June 2012, much to the surprise of Claimants, insolvency proceedings were opened for the reorganization of Respondent. The relevant announcement on Respondent's webpage read:

"On June 20th 2012, the company has entered into an insolvency process in order to be re-organized, and EURO INSOL SPRL has since been appointed as the Judicial Administrator and represented by Ph. D. Attorney at Law Remus Borza."

Evidence: Excerpt from

www.hidroelectrica.ro/Details.aspx?page=2&Article=2

C-18

24. The question whether Respondent was indeed overindebted or illiquid and whether the legal requirements for the opening of insolvency proceedings under Romanian laws were actually met is not subject to the proceedings at hand. In view of investigations of the EU concerning illegal state aid and requests of both the International Monetary Fund and the EU in connection with a New Economic Program for Romania to further privatize Romania's state-owned companies, it may be assumed that the Romanian state, which holds 80.06% of the shares in Respondent, chose to open insolvency proceedings for Respondent at least also in an attempt to thereby eliminate Respondent's obligations vis-à-vis the so-called "smart guys" (companies that entered into long-term energy supply agreements with Respondent at below market prices) and its numerous creditors, such as Respondent's obligations vis-à-vis Claimants in relation to the Pdf II Project.

Evidence: Press Release "Largest Romanian energy producer Hidroelectrica files for insolvency" dated 18 June 2012

C-19

Press Release "Hidroelectrica insolvency is 'shocking' and 'historic', but poses no risk" of EURO Insol dated 1 July 2012

C-20

Press Release "Hidroelectrica contracts with 'smart guys' to be terminated unless renegotiation meets our terms" of EURO Insol dated 5 July 2012

C-21

25. Indeed, in 2015, Respondent boasted about its successful reorganization which allegedly turned Respondent into *"the most profitable company from Romania"*:

"Hidroelectrica has concluded the financial year 2014 with the highest turnover from the company's history, of 3.4 billion lei, with the highest ever reached profit of 1.2 billion lei and with the lowest production price of the last 5 years.

[...]

If we report ourselves to another financial indicator – EBITDA, we can tell, without overstating, that in 2014 Hidroelectrica was the most profitable company from Romania. Last year, Hidroelectrica registered a value of EBITDA of 65% reported to the turnover."

Even if this were true, Respondent's magical recovery would cast doubts over whether the conditions for insolvency had actually been met.

Evidence: Excerpt dated 19 September 2015 from <http://www.hidroelectrica.ro/Main.aspx>

C-22

26. By decision dated 16 February 2015 of the Romanian High Court of Cassation and Justice, Mr. Borza was convicted for awarding, in his capacity as judicial administrator of Respondent, numerous engagements to his own law firm. Between November 2012 and February 2013, Mr. Borza signed 34 payment orders for Respondent in favor of his own law firm and thereby realized a profit of about EUR 220'000. Mr. Borza

(same as Nicoleta Munteanu, his partner at EURO Insol and his law firm) was found guilty of violating applicable conflict of interest rules and sentenced to one year prison on probation. Nevertheless, EURO Insol and Mr. Borza remained in office.

Evidence: Press release dated 24 February 2015

C-23

Press release "Mafia practicienilor în insolvență (II)"

C-24

27. As noted in the above-mentioned press release, Mr. Borza purported to aggressively terminate "several hundred" contractual relationships of Respondent which led to more than 75 proceedings in court. In Claimants' case, the judicial administrator requested an unacceptable discount of 15% to 25% not only on works already performed but even unconditionally listed in the table of receivables and on future works.

Evidence: Letter of Respondent dated 24 July 2012

C-25

Minutes of Meeting No. 224 dated 13 September 2013
(recte: 2012)

C-26

28. As reported by Claimants' external counsel in its e-mail dated 17 December 2012 on a meeting with Mr. Borza regarding the so-called Lower Olt Project¹ held on 13 December 2012, the judicial administrator's demands were made in an extortionate manner:

"Mr Borza further mentioned the 12.12.2012 meeting with Andritz regarding the PDF II contract, how 'unreasonable' Andritz was, that he will send on Monday (December 17, 2012) a notification for termination for PDF II and Gogosu Units 8, 9, 10 to Andritz Ravensburg, and threatened that he could do the same for the Lower Olt contract. We replied to Mr. Borza that he is not entitled to terminate Lower Olt, as this is a substantially completed contract that is actually close to finalization, and that the PDF II contract is also substantially completed. To this Mr. Borza responded that Hidroelectrica is a State-owned company, that the syndic judge is also a 'representative' of the State, and that this is a matter of which party shall be more 'convincing' in front of the syndic judge. At that point, we asked Mr. Borza if he is saying that the syndic judge is not impartial, to which he responded that the syndic judge is 'very partial'."

Evidence: E-mail by Claimants' external counsel dated 17 December 2012

C-27

29. This is in line with an internal report of Claimants' representatives on the meeting with Mr. Borza of 12 December 2012, where Mr. Borza stated in Romanian:

¹ Respondent contracted, based on Contract no. 23.534/H.700.116004 dated 27 April 2004, as further amended, a consortium of Claimant 1 and Voith Hydro Holding GmbH & Co KG for the refurbishment of the hydro power plants at the Lower Olt river.

"No court in Romania will decide against HE."

Evidence: Claimants' internal report on the meeting with Mr. Borza dated 12 December 2012

C-28

30. When Claimants showed "lack of cooperation", the term used to justify Claimants' legitimate refusal to make unacceptable price concessions, Mr. Borza, regardless of the legal situation, purported to terminate the PdF II Contract.

C. The Dispute between the Parties

31. In essence, the Parties are in dispute over two terminations dated 31 January 2013 and 6 June 2013 which were declared by Respondent's judicial administrator and Respondent respectively in relation to the PdF II Contract and its Amendments No. 4 and 6. The dispute concerns the validity of both terminations and their legal effects, if any:

- (i) Following the discussions in December 2012, Respondent's judicial administrator, by letter dated 31 January 2013, ordered, based on Romanian insolvency laws, the unilateral termination of Amendments No. 4 and 6 to the Contract. In the same letter, the judicial administrator requested the repayment of the advance in the amount of EUR 13'625'000 paid by Respondent for Phase III.

Claimants reject Respondent's termination and repayment request essentially on the grounds (i) that the termination could not be validly made based on Romanian insolvency laws and (ii) that the Contract expressly provides that even in case of a valid termination, *"it is agreed, as a compensation all payments made to the Contractor [Claimants] up to the time of termination will not be refunded"* (Clause 42.1.3 of the General Conditions, Exhibit C-10).

Evidence: Mr. Borza's termination order dated 31 January 2013

C-29

- (i) On 6 June 2013, Respondent purported to terminate the PdF II Contract on contractual grounds. Later on, Respondent, invoking a valid termination of the Contract, requested the handover of the equipment of unit no. 1 which at the time of Respondent's termination was in the process of being refurbished by Claimants.

Claimants reject Respondent's termination essentially on the grounds (i) that the termination was not declared by authorized representatives of Respondent and (ii) that Respondent failed to send a *"notice of termination that refers to this GC.42.1"*, as required by Clause 42.1.1 of the General Conditions (Exhibit C-10). However, even in the event of a valid termination, the handover obligation was agreed to be *"subject to the payment specified in GC 42.1.3"* (Clause 42.1.1 of the General Conditions, Exhibit C-10) by Respondent to Claimants, which has yet to happen.

Evidence: Termination letter of Respondent dated 6 June 2013

C-30

D. The Status of the Works in June 2013

32. Under the Contract, the Parties agreed on a specific commissioning and acceptance procedure which was to be followed for each of the ten units. The commissioning and acceptance procedure, which is set out in detail in Clauses 24-27 of the General Conditions (Exhibit C-10) and Clauses 24-27 of the Special Conditions (Exhibit C-11), is summarized in the introduction to Clause 24, 25 and 27 of the Special Conditions. The procedure includes
- (i) the issuance of a Provisional Acceptance Certificate ("PAC") following which the unit is put back into operation,
 - (ii) a defect liability period ("DLP") of two years which starts with the issuance of the Provisional Acceptance Period, and
 - (iii) the issuance of a Final Acceptance Certificate ("FAC") at the end of the defect liability period.
33. In June 2012, at the time when the insolvency proceedings were opened against Respondent and the dispute between the Parties arose, the work on six units at the main river had been completed. Final Acceptance Certificates had been issued by Respondent for four of these units.
34. When Respondent purported to terminate the Contract on 6 June 2013 (Exhibit C-30), Claimants were unable to complete the ongoing works on unit no. 1. As a result of the unilateral termination of Amendments No. 4 and 6 to the Contract in January 2013 (Exhibit C-29), works on units nos. 9 and 10 could not be started. However, the basic design for Phase III had been made and all orders for the components of the remaining two turbines had been placed with Claimants' component suppliers.
35. Today, the status of the last four units at the main river is as follows:

	Unit no. 8	Unit no. 2	Unit no. 6	Unit no. 1
Start of Works	10 March 2009	19 April 2010	30 May 2011	6 July 2012
PAC	25 May 2010	27 May 2011	5 July 2012	-
FAC	-	12 July 2013	-	-

36. Ever since the dispute between the Parties arose, Respondent refuses to issue the FACs for units no. 6 and 8. Respondent's abusive behaviour has the sole purpose of keeping two first demand performance guarantees for units no. 6 and 8 in force, which Claimants provided as a security for any defects occurring during DLP, and of constantly threatening Claimants that Respondent would call such guarantees unless Claimants extend the lifetime of the guarantees and fulfil Respondent's continuing yet illegitimate requests to "remedy defects" which in reality are requests of Respondent for the performance of further work without compensation, thus holding Claimants hostage of the performance bank guarantees.

E. The First Closing of the Insolvency Proceedings in June 2013

37. In August 2012, Claimants lodged numerous payment claims against the estate of Respondent, which at the time of their filing had arisen from and were due in connection with (i) the PdF II Project and (ii) a further project called the 'Lower Olt Project', by which Respondent contracted, based on Contract no. 23.534/H.700.116004 dated 27 April 2004, as further amended, a consortium of Claimant 1 and Voith Hydro Holding GmbH & Co KG for the refurbishment of the hydro power plants at the Lower Olt river.
38. Due to the fact that the reorganization magically turned Respondent into "*the most profitable company from Romania*" (cf. above at n. 25), none of the claims lodged by Respondent's creditors had to be written off: Respondent which allegedly was insolvent was financially able to honor 100% of the registered and acknowledged claims!
39. In Respondent's reorganization plan dated 11 June 2013, Respondent unconditionally acknowledged (i) with respect to the PdF II Project Claimants' claims in the total amounts of EUR 11'540'329 and RON 12'106'290 and (ii) with respect to the Lower Olt Project Claimants' claims in the total amounts of EUR 10'526'528 and RON 15'745'372. In addition, Respondent acknowledged Claimants' claims in the amount of RON 23'033'413 "*under the condition of the calculation performed upon the financial closing*" of the respective project steps.
40. Pursuant to the reorganization plan, Respondent undertook to pay the unconditionally acknowledged receivables to Claimants until 30 June 2013. However, those receivables, even though unconditionally acknowledged by Respondent, were not fully paid. On the contrary, Respondent, without giving Claimants any notice or explanation, deducted (i) from the receivables payable with respect to the PdF II Project EUR 6'362'905 and (ii) from the receivables payable with respect to the Lower Olt Project EUR 7'262'095 – in total EUR 13'625'000 (an amount equivalent to the advance paid for Phase III).
41. By Decision no. 6482 of 26 June 2013, the syndic judge in charge of the insolvency proceedings, Mr. Moldovan, (i) approved the Judicial Administrator's final "*Activity Report regarding the fulfilment of all payment obligations undertaken within the Reorganization Plan voted by Hidroelectrica SA's creditors on 18.06.2013 and confirmed by the Syndic Judge through Civil Decision no. 6251 rendered in public hearing on 20.06.2013*" (ii) rejected Claimants' oppositions to the closing of Respondent's insolvency proceedings, which were based on the fact that Respondent had not paid Claimants their due receivables as per the reorganization plan, and (iii) closed Respondent's insolvency proceedings.
42. By Decision no. 456/25.02.2014 in file no. 22456/3/2012/a1, the Bucharest Court of Appeals on 25 February 2014, among others, admitted Claimants' appeal against Mr. Moldovan's decision no. 6482 of 26 June 2013, annulled such decision, and sent

the case for retrial at the first court. As a result, the insolvency proceedings of Respondent were "reopened".

43. It may be added that Mr. Moldovan was arrested in 19 May 2014, after *"jumping the fence of his house and running away"*, on charges of bribery and abuse of office:

"On 19 May 2014 taking into consideration the fact that the 4 persons are being judges, the anticorruption prosecutors requested to the Supreme Council of Magistrates the acceptance for the remand and preventive arresting of all the 4 accused. The prosecutors had for this file the specialised support from SRI and the management of Bucharest Court.

The judge Mircea Moldovan, from Bucharest Court, who is being prosecuted for corruption was excluded in 2002 from the magistracy for 'deeds which affect the professional deontology', being subsequently reaccepted in the guild of magistrates following to an appeal made at the Supreme Court of Justice.

Mircea Moldovan is a bankruptcy/ syndic judge, i.e. he has duties within bankruptcy and insolvency proceedings. He was involved in resolving of the case files regarding the insolvency of Rodipet, insolvency of Metro and insolvency of Hidroelectrica, he was the one who admitted the application for entry into insolvency of Hidroelectrica.

On Monday evening the investigators didn't bring Mircea Moldovan to the hearings together with his other 3 judges colleagues; he was seen on the cameras of a neighbouring company jumping the fence of his house and running away and later on when he arrived at the premises of DNA, accompanied by his lawyers, Mircea Moldovan said that he did not knew that he was looked for and that he had a walk during this time."

Mr. Moldovan was not allowed to stay in office: In February 2015, Mr. Moldovan was sentenced to 22 years (!) in prison after being convicted of taking bribes to hand down favourable rulings.

Evidence: Press release dated 20 May 2014

C-31

Press releases dated 2 February 2015

C-32

44. By decision No. 4437 of 21 June 2016, the insolvency proceedings were recently closed for the second time. Notably, the insolvency proceedings were again closed even though the remainder of the unconditionally acknowledged receivables in the amount of EUR 13'625'000 still has not been paid. In line with the Romanian laws of civil procedure, the reasons of the decision have not yet been published. Claimants reserve the right to appeal the decision, once the reasons are published. In the event that the closing of the insolvency proceedings is again appealed and that such appeal is again granted, the insolvency proceedings will have to be "reopened" again.

F. Pending Arbitration Proceedings (Cases Nos. 19414/MHM and 20861/MHM)

45. The dispute between the Parties led to a multitude of proceedings. To the extent that acts based on Romanian insolvency law are in dispute, challenges were brought before the Romanian state courts.
46. The contractual aspects of the dispute, however, are subject to an arbitration agreement between the Parties. Based thereon, each of the Parties initiated different arbitration proceedings and requested the respective arbitral tribunal to adjudicate certain aspects of the dispute:

1. Case No. 19414/MHM

47. The proceedings in case no. 19414/MHM, as they developed over time, may be summarized as follows:
 - (i) On 22 April 2013, in view of the purported unilateral termination of Amendments No. 4 and 6 on 31 January 2013 by Euro Insol and Respondent's related request for reimbursement of the advance (Exhibit C-29), Claimants initiated, as case no. 19414/MHM, arbitration proceedings against Respondent with place of arbitration in Geneva and requested with their Prayer for Relief No. 1:

"That the Arbitral Tribunal shall declare that Respondent is not entitled to claim from any Claimant party (re-)payment, in full or in part, of an amount of EUR 13'625'000 representing the advance payment made by Respondent to Claimants in May and June 2003 for Phase III of the overhaul and modernisation of the Portile de Fier II hydro power plant complex under Contract Agreement No.2 I / 50765 dated 9 November 2001, as amended by Amendments No. 4 and No. 6 entered into between the Parties on 5 December 2002 and 26 March 2003."
 - (ii) By letter dated 6 June 2013 (Exhibit C-30), Respondent sought, but failed, to validly terminate the Contract. Accordingly, on 7 June 2013, Claimants filed their Prayer for Relief No.2 with the following request :

"That the Arbitral Tribunal shall declare that Respondent's purported termination of Contract Agreement No.2 I / 50765 dated 9 November 2001 by letter dated 6 June 2013 was wrongful and that the Contract Agreement No.2 I / 50765 dated 9 November 2001, as amended and supplemented, is valid, subsisting and binding on the Parties."
 - (iii) At the end of June 2013, the insolvency proceedings were closed despite Respondent's failure to pay Claimants an amount of EUR 6'362'905 out of the receivables which had arisen from the PdF II Project and which had been unconditionally acknowledged by Respondent in the reorganization plan. Accordingly, on 16 November 2013, Claimants filed their Prayer for Relief No. 3 with the following request:

"That the Arbitral Tribunal shall order Respondent to pay to Claimants EUR 6'362'905 plus interest in the amount of 6 % per annum since 26 June 2013."

- (iv) On 19 December 2013, the Parties and the Arbitral Tribunal signed the Terms of Reference for case no. 19414/MHM.
- (v) In November 2014, Euro Insol publicly announced in an activity report to the Romanian insolvency courts to enforce a claim for compensation of costs allegedly incurred by Respondent in connection with the dispute between the Parties. On 16 December 2014, following Euro Insol's public announcement in November 2014, Claimants, quoting the Activity Report, filed their Prayer for Relief No. 4, with the following request:

"That the Arbitral Tribunal shall declare that Respondent may not claim compensation for damages allegedly caused by Claimants 'through not handing over of the parts of the last refurbished unit from HPP Portile de Fier II, for the costs reduction and recovering of the advance payment paid for Gogosu, and for some technical problems that will eventually remain open after the works which are currently performed at one of the units within HPP Portile de Fier II.'"

- (vi) On 22 February 2015, following Respondent's continued and illegitimate refusal to issue the FACs for Unit No. 6 and 8 and in view of Respondent's pressure exerted on Claimants to have the bank guarantees extended sine die and to request the performance of further work without compensation, Claimants filed their Prayer for Relief No. 5 with the following request:

"That the Arbitral Tribunal shall order Respondent to issue Final Acceptance Certificates for units no. 6 and no. 8.

In the alternative, that the Arbitral Tribunal shall issue Final Acceptance Certificates for units no. 6 and no. 8 on behalf of Respondent."

- (vii) By Procedural Order No. 5 dated 1 April 2015, the Arbitral Tribunal admitted Claimants' Prayers for Relief No. 4 and 5, which had been filed after the signing of the Terms of Reference dated 19 December 2013, and rejected Respondent's respective objections.
 - (viii) By Procedural Orders No. 8 and 9 dated 18 June 2015 and 2 July 2015, the Arbitral Tribunal, on Claimants' request, ordered Respondent not to call the performance bank guarantee provided by Raiffeisen Landesbank Oberösterreich to Respondent upon Claimants' request for unit no. 1.
 - (ix) Thereafter, the Parties exchanged two rounds of written submissions on all claims. The exchange was completed in November 2015.
48. In view of the fact that the relief sought in the present arbitration and in case no. 19414/MHM all root in the same dispute, Claimants would have strongly pre-

ferred, for the sake of efficient dispute resolution, to seek the relief sought in the present arbitration proceedings from the Arbitral Tribunal in case no. 19414/MHM.

49. However, given that the terms of reference in case no. 19414/MHM were signed in December 2013, that Respondent opposed the late filing of Prayers for Relief No. 4 and 5 in December 2014 and February 2015 and that the exchange of two rounds of written submissions on all claims was completed in November 2015 already, it would be unreasonable to request from the Arbitral Tribunal in case no. 19414/MHM at this late stage of the proceedings based on Article 23(4) of the ICC Rules an approval for filing the present Prayer for Relief in case no. 19414/MHM.

2. Case No. 20861/MHM

50. On 18 February 2015, Respondent initiated, under case no. 20861/MHM, further arbitration proceedings with place of arbitration in Bucharest. In these proceedings, Respondent seeks in relation to unit no. 1, the refurbishment of which could not be continued or completed (cf. above at n. 34), the following relief (the term "Claimant" refers to Respondent and vice versa):

"(1) to order Respondents to hand over to Claimant, based on Inventory, the Plant and Equipment of Unit #1 which is the property of Claimant:

(i) existing Plant and Equipment dismantled/disassembled from Unit #1 which was not refurbished by Respondents and

(ii) new Plant and Equipment placed in the custody of Respondents as per Custody Protocols and

(iii) Employer's Equipment as per Appendix 6 of the Contract (items 2 – 5, item 5 of which as per the Bill of Assembling Devices - assembling devices for the turbine part);

(2) To order Respondents to pay to Claimant the prejudice caused to Claimant due to Respondents' failure to hand over to Claimant the Plant and Equipment under (1) above, composed of: (i) the amount of EUR 2,123,832 plus (ii) a rolling monthly amount of LEI 575,920 (approximately EUR 128,732) as continuous prejudice until the handover of Plant and Equipment under (1) above, plus (ii) interest of 6% per annum applicable as of 9 January 2015 [...]"

51. Given that Respondent, with its Request for Relief No. 2, asks the Arbitral Tribunal to adjudicate the very same claim which Claimants submitted to the Arbitral Tribunal in case no. 19414/MHM as third part of Prayer for Relief No. 4, and that both Requests for Relief are dependent on the outcome of the proceedings in case no. 19414/MHM, Claimants challenged the jurisdiction of the Arbitral Tribunal in case no. 20861/MHM and, in the alternative, requested a stay of the proceedings.

Since Claimants do not consider the Arbitral Tribunal in case no. 20861/MHM competent, seeking the relief sought in this arbitration from the Arbitral Tribunal in case no. 20861/MHM is not an option.

52. In this context, it may be mentioned that in November 2015 Respondent also applied to the Romanian state courts, requesting by way of an interim injunction the handover of the equipment of unit no. 1 which had been stored by Claimants on site. In June 2016, the first instance granted Respondent's request and ordered the handover of the equipment, notwithstanding the fact that the same claim for the handover at that time already was, and still is, pending a decision in case no. 20861/MHM. While Claimants appealed against the injunction, such appeal did not stop Respondent from seizing the equipment.

G. Background of the Relief Sought in the Present Arbitration Proceedings

53. As noted above (cf. n. 34), following the purported termination of the Contract on 6 June 2013 (Exhibit C-30), works on unit no. 1 continued for some time.
54. More specifically, considerable works on unit no. 1 were performed by Claimants in 2013 and 2014 which remained unpaid. Notably, the majority of Claimants' claims for the payment of these works could not be lodged against the estate of Respondent, since the claims became due and payable only after the expiry of the time limit for registering of claims in the insolvency table (cf. above at n. 37 et seqq.). Only the amounts invoiced on 19 March 2015 concern claims which were registered by Claimants in the insolvency table and conditionally acknowledged in Respondent's reorganization plan (cf. above at n. 39).
55. Among others, the following invoices remained unpaid:

Invoice No.	Date	Subject	Amount (EUR)
1860008849	16.09.2013	PAC Control Room GOG	30'055.90
1860008854	22.08.2013	Control Room Local Supplies	91'000.00
1860008855	22.08.2013	Control Room Local Supplies	4'724.98
1860008904	21.11.2013	On Shore Supplies 67 MVA Block Trafo	54'477.90
1860008910	29.11.2013	PAC 67 MVA Block Trafo	12'106.20
1860009228	16.03.2015/23.06.2015	Progress Invoice Unit#1 Ph I Mech. Off Shore	787'595.16
1860009229	16.03.2015/23.06.2015	Progress Invoice Unit#1 Ph I Mech. On Shore	494'693.02
1860009230	16.03.2015/23.06.2015	Progress Invoice Unit#1 Ph I Elec. Off Shore	300'049.01
1860009231	16.03.2015/23.06.2015	Progress Invoice Unit#1 Ph I Elec. On Shore	583'236.45
1860009232	16.03.2015/23.06.2015	Progress Invoice Unit#1 Ph II Mech. Off Shore	106'836.19

1860009233	16.03.2015/23.06.2015	Progress Invoice Unit#1 Ph I Mech. On Shore	123'451.70
1860009234	16.03.2015/23.06.2015	Progress Invoice Unit#1 Ph II Elec. Off Shore	356'563.53
1860009235	16.03.2015/23.06.2015	Progress Invoice Unit#1 Ph II Elec. On Shore	132'375.48
1860009236	17.03.2015/23.06.2015	Unit#1 Price Adjustment Ph I Mechanical Part	1'770'144.86
1860009237	17.03.2015/23.06.2015	Unit#1 Price Adjustment Ph I Electrical Part	1'310'735.64
1860009238	17.03.2015/23.06.2015	Unit#1 Price Adjustment Ph II Mechanical Part	345'058.79
1860009239	17.03.2015/23.06.2015	Unit#1 Price Adjustment Ph II Electrical Part	855.502,86
1860009240	18.03.2015/23.06.2015	Unit#1 Interests on delayed payment	15'118.06
1860009241	18.03.2015/23.06.2015	Unit#1 Costs incurred in protecting the Works	472'542.00
1860009242	18.03.2015/23.06.2015	Unit#1 Change in the works Mechanical part ("German" portion)	127'574.66
1860009243	18.03.2015/23.06.2015	Unit#1 Change in the works Electrical part ("Austrian" portion)	667'268.09
1860009244	18.03.2015/23.06.2015	Unit#1 Expenses related to the Extension of time for completion	1'775'000.00
1860009245	19.03.2015	Unit#6 Expenses related to the Extension of time for completion	542'749.91
1860009251	19.03.2015	Unit#6 Change in the works Mechanical part ("German" portion), partial payment of 185'130.00 EUR already received	1'099'210.00
1860009252	19.03.2015	Unit#6 Change in the works Electrical part ("Austrian" portion)	957'258.67
TOTAL			13'015'329.06

56. With its Prayer for Relief No. 1, Claimants request that the Arbitral Tribunal shall order Respondent to pay to Claimants the above-mentioned open invoices plus interest in the amount of 6% per annum from the due date of each invoiced amount.

IV. AS TO THE ARBITRATION PROCEDURE

A. The Arbitration Agreement

57. Pursuant to Clause 6 of the General Conditions (Exhibit C-10), it was agreed to resolve any disputes in accordance with the following procedures:

"6. Settlement of Disputes

6.1 Adjudicator

6.1.1 If any dispute of any kind whatsoever shall arise between the Employer and the Contractor in connection with or arising out of the Contract, including

without prejudice to the generality of the foregoing any question regarding its existence, validity or termination, or the execution of the Works, whether during the progress of the Works or after their Completion and whether before or after the termination, abandonment or breach of the Contract, the parties shall seek to resolve any such dispute or difference by mutual consultation. If the parties fail to resolve such dispute or difference by mutual consultation, then the dispute shall be referred to in writing by either party to the Adjudicator, with a copy of the other party.

6.1.2 The Adjudicator shall give its decision in writing to both parties within twenty-eight (28) days of being referred to a dispute. If neither party notifies the other of its disagreement with the Adjudicator's decision within twenty-eight (28) days of the decision, that decision shall be final and binding for both parties. If, within twenty-eight (28) days of the decision, either party notifies the other of its disagreement, the dispute shall be referred by either party to arbitration within twenty-eight (28) days. If the parties can not agree who shall be the Adjudicator, each Party shall be entitled to refer the dispute to arbitration pursuant to GC 6.2

6.1.3 The Adjudicator shall be paid an hourly fee at the rate, which will be mutually agreed upon by the parties with the Adjudicator plus reasonable expenditures incurred in the execution of his duties as Adjudicator, and these costs shall be divided equally between the Employer and the Contractor.

6.1.4 Should the Adjudicator resign or die, or should the Employer and the Contractor agree that the Adjudicator is not fulfilling his duties in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by the Employer and the Contractor. Failing agreement between the two within twenty-eight (28) days, the new Adjudicator shall be designated by the Appointing Authority specified in the SCC at the request of either party and thereupon shall be jointly appointed by the Employer and the Contractor.

6.2 Arbitration

6.2.1 If the Adjudicator does not give its decision within twenty-eight (28) days of a referred dispute, or if either the Employer or the Contractor notifies the other in accordance with Sub-Clause GC 6.1. that it disagrees with the Adjudicator's decision, then either the Employer or the Contractor may give written notice, within twenty-eight (28) days, to the other party of its intention to refer the dispute to arbitration.

6.2.2 Any dispute submitted by a party to arbitration shall be heard by an arbitration panel composed of three arbitrators, in accordance with the provisions set forth below.

6.2.3 The Employer and the Contractor shall each appoint one arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the

arbitration panel. If the arbitrators named by the parties do not succeed in appointing a third arbitrator within twenty-eight (28) days after the latter of the two arbitrators named by the parties has been appointed, the third arbitrator shall, at the request of either party, be appointed by the Appointing Authority designated in the SCC.

6.2.4 If one party fails to appoint its arbitrator within twenty-eight (28) days after the other party has appointed its arbitrator, the party which has named an arbitrator may request the Appointing Authority to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the sole arbitrator for that dispute.

6.2.5 If for any reason an arbitrator is unable to perform its function, a substitute shall be appointed in the same manner as the original arbitrator.

6.2.6 Arbitration proceedings shall be conducted (i) in accordance with the rules of procedure designated in the SCC, (ii) in the place designated in the SCC, and (iii) in the language in which this Contract has been executed.

6.2.7 The decision of a majority of the arbitrators (or of the third arbitrator if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction. The parties thereby waive any objections to or claims of immunity from such enforcement.

6.3 Notwithstanding any reference to the Adjudicator or arbitration herein,

(a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and

(b) the Employer shall pay the Contractor any monies due to the Contractor."

58. Further to Clause 6 of the General Conditions, Clause 6 of the Special Conditions provides for the following (Exhibit C-11):

"(Clause 6) Settlement of Disputes

SC 6.1 Adjudicator: the adjudicator will be appointed for technical disputes only. He shall be a neutral consulting engineer. Adjudicator's procedure on mediation is optional for the two parties and cannot be carried out without previous written agreement between the two parties.

All and only technical aspects arising in connection with the interpretation and/or performance of this Contract can be the object of such adjudicator's procedure (e.g., the results of expertise of tests for PAC/FAC).

SC 6.1.3 The fees for this adjudicator will be shared equally between both parties.

SC 6.1.4 The Project Manager for Employer and Contractor's Representative shall within three months agree on the consulting company to be appointed as Adjudicator.

SC 6.2.3 Appointing Authority for the third Arbitrator: according to ICC Rules Paris / France.

SC 6.2.6 (i) Rules of procedure for arbitration proceedings: ICC, Paris / France.

SC 6.2.6 (ii) The place of arbitration shall be Bucharest / Geneva as per the plaintiff's choice."

59. It follows from Clause 1.1 of the Contract that the terms of the Special Conditions supersede the terms of the General Conditions.

B. No Pre-Arbitration Procedure

60. Clause 6.1 of the General Conditions requires that any dispute between the Parties must first be referred to an adjudicator before submitting such dispute to arbitration. However, Clause 6.1 of the Special Conditions provides that an adjudicator will be appointed for technical disputes only.
61. The present dispute not being technical in nature, Clause 6.1 of the General Conditions does not apply to the present dispute. Accordingly, Claimants may, in line with Clause 6.2.1 of the General Conditions, refer the present dispute to arbitration without submitting the dispute first to an adjudicator.

C. Appointing Authority and Applicable Arbitration Rules

62. Clause 6.2.3 of the Special Conditions provides with regard to the appointing authority for the third arbitrator: "*according to ICC rules, Paris / France*".
63. Clause 6.2.6 (i) of the Special Conditions provides for the rules of procedure governing the arbitration proceedings: "*ICC, Paris / France*".

D. Place of Arbitration

64. Pursuant to Clause 6.2.6 (ii) of the Special Conditions, the place of the arbitration shall be Bucharest or Geneva as per the plaintiff's choice.
65. When Claimants initiated the arbitration proceedings in April 2013 under case no. 19414/MHM, they chose Geneva as the place where the dispute between the parties shall be settled. Accordingly, the place of the present arbitration shall be Geneva as well.

E. Number of Arbitrators

66. In accordance with Clause 6.2.2 of the General Conditions, the Arbitral Tribunal shall be composed of three arbitrators.

F. Claimants' Nomination

67. In line with Clause 6.2.3 of the General Conditions and Article 12(4) and 12(6) of the ICC Rules, Claimants jointly nominate as arbitrator:

Dr. Georg von Segesser, FCI Arb.	Tel: +41 44 215 5254
Schellenberg Wittmer	Fax: +41 44 215 5296
Löwenstrasse 19	e-mail: georg.vonsegesser@swlegal.ch
P.O. Box 1876	
8021 Zurich	
Switzerland	

G. Applicable Law

68. Pursuant to Clause 5.1 of the Special Conditions, the Contract is governed by Romanian law. The Arbitral Tribunal shall therefore apply Romanian law to the merits of the dispute.

H. Language

69. Clause 6.2.6 of the General Conditions states that arbitration proceedings shall be conducted in the language in which the Contract has been executed.
70. Whilst the Contract Agreement has been executed in English and Romanian, the General Conditions, the Special Conditions and Amendments No. 4 and 6 have been exclusively executed in English.
71. Clause 3.1 of the General Conditions provides that

"3.1 Language

3.1.1 Unless the Contractor is a national of the Employer's country and the Employer and the Contractors agree to use the local language, all Contract Documents, all correspondence and communications to be given, and all other documentation to be prepared and supplied under the Contract shall be written in English, and the Contract shall be construed and interpreted in accordance with that language.

3.1.2 If any of the Contract Documents, correspondence or communications are prepared in any language other than the governing language under GC 3.1.1 above, the English translation of such documents, correspondence or communications shall prevail in matters of interpretation."

72. Clause 3.1.1 of the Special Conditions further states:

"The Contract shall be concluded in English and Romania. In case of discrepancies the English Version will prevail."

73. As a consequence of the fact (i) that the General Conditions, the Special Conditions and the Amendments No. 4 and 6 have been exclusively executed in English, (ii) that even where documents have been executed in both English and Romanian, the Parties agreed that the English version shall prevail, (iii) that the Respondent's representatives are fluent in English, whereas Claimants' representatives do not speak Romanian and (iv) that the Parties agreed that the place of arbitration shall be Bucharest or Geneva at the plaintiff's choice and that Claimants chose Geneva, Claimants request that the arbitration shall be conducted in the English language.

V. FILING FEE

74. In accordance with Article 4(4)(b) and Article 1(1) of Appendix III to the ICC Rules, the filing fee in the amount of USD 3'000 has been transferred to the NATIXIS-account of the International Chamber of Commerce.

Respectfully submitted on behalf of Claimants.

Yours sincerely

Dr. Hans-Jürg Schürmann

Dr. Axel Buhr

Five copies

Exhibits as per separate List of Exhibits

LIST OF EXHIBITS

Exhibit C-1	Excerpt from the German Commercial Register on Andritz Hydro GmbH (Germany)
Exhibit C-2	Excerpt from the Austrian Commercial Register on Andritz Hydro GmbH (Austria)
Exhibit C-3	Excerpt from http://www.hidroelectrica.ro/Details.aspx?page=48
Exhibit C-4	Excerpt from the Swiss Commercial Register on Andritz Hydro AG
Exhibit C-5	Excerpt from http://www.andritz.com/hydro.htm
Exhibit C-6	Excerpt from http://www.hidroelectrica.ro/Details.aspx?page=13
Exhibit C-7	Excerpt from http://www.hidroelectrica.ro/Details.aspx?page=12
Exhibit C-8	Overview of Portile de Fier II
Exhibit C-9	Contract Agreement No.2 I / 50765 dated 9 November 2001
Exhibit C-10	General Conditions of Contract
Exhibit C-11	Special Conditions of Contract
Exhibit C-12	Assignment Agreement dated 29 November 2001
Exhibit C-13	Notification Letter dated 29 November 2001
Exhibit C-14	Amendment No. 4 dated 5 December 2002 and Letter of Understanding dated 6 December 2012
Exhibit C-15	Amendment No. 6 dated 26 March 2003
Exhibit C-16	"Scope of Supply (HPP Gogosu Stage 2)" dated 20 March 2003
Exhibit C-17	Amendment No. 17 dated 1 March 2012, including Attachment 5 and 7 (Appendix 1 - Terms and Procedures of Payment, as amended by Amendment No. 17 dated 1 March 2012)
Exhibit C-18	Excerpt from www.hidroelectrica.ro/Details.aspx?page=2&Article=2
Exhibit C-19	Press Release "Largest Romanian energy producer Hidroelectrica files for insolvency" dated 18 June 2012
Exhibit C-20	Press Release "Hidroelectrica insolvency is 'shocking' and 'historic', but

- poses no risk" of EURO Insol dated 1 July 2012
- Exhibit C-21** Press Release "Hidroelectrica contracts with 'smart guys' to be terminated unless renegotiation meets our terms" of EURO Insol dated 5 July 2012
- Exhibit C-22** Excerpt dated 19 September 2015 from <http://www.hidroelectrica.ro/Main.aspx>
- Exhibit C-23** Press release dated 24 February 2015
- Exhibit C-24** Press release "Mafia practicienilor în insolvență (II)"
- Exhibit C-25** Letter of Respondent dated 24 July 2012
- Exhibit C-26** Minutes of Meeting No. 224 dated 13 September 2013 (recte: 2012)
- Exhibit C-27** E-mail by Claimants' external counsel dated 17 December 2012
- Exhibit C-28** Claimants' internal report on the meeting with Mr. Borza dated 12 December 2012
- Exhibit C-29** Mr. Borza's termination order dated 31 January 2013
- Exhibit C-30** Termination letter of Respondent dated 6 June 2013
- Exhibit C-31** Press release dated 20 May 2014
- Exhibit C-32** Press releases dated 2 February 2015

Common register portal of the German federal states

You are here: [> Homepage](#) [> Normal search](#) [> Search Result](#) [> Entity data](#)

Entity data

Company: Baden-Württemberg District court Ulm HRB 551539 – ANDRITZ HYDRO GmbH	
Legal status:	Gesellschaft mit beschränkter Haftung
Capital:	10.226.000,00 EUR
Date of entry:	27/10/1994 (When entering date of entry, wrong data input can occur due to system failures!)
Date of removal:	-
Balance sheet available:	-
Address (subject to correction):	ANDRITZ HYDRO GmbH Escher-Wyss-Weg 1 88212 Ravensburg



MAG. JOHANNES DIWALD
ÖFFENTLICHER NOTAR
A-1140 Wien Missindorfstraße 16
Telefon: (+43 1) 982 03 83
Telefax: (+43 1) 982 03 83-17
diwald.gessler@notar.at

JUSTIZ REPUBLIK ÖSTERREICH
FIRMENBUCH

FB

Stichtag 2.4.2013

Auszug mit aktuellen Daten

FN 61833 g

Grundlage dieses Auszuges ist das Hauptbuch ergänzt um Daten aus der Urkunden-
sammlung.

Letzte Eintragung am 16.01.2013 mit der Eintragsnummer 91
zuständiges Gericht Handelsgericht Wien

- 1 früher Handelsgericht Wien HRB 43798
Ersteintragung am 30.12.1988

FIRMA

- 82 ANDRITZ HYDRO GmbH

RECHTSFORM

- 1 Gesellschaft mit beschränkter Haftung

SITZ in

- 1 politischer Gemeinde Wien

GESCHÄFTSANSCHRIFT

- 90 Eibesbrunnnergasse 20
1120 Wien

GESCHÄFTSZWEIG

- 42 Energieerzeugungssysteme

KAPITAL

- 44 EUR 1.000.000

STICHTAG für JAHRESABSCHLUSS

- 1 31. Dezember

JAHRESABSCHLUSS (zuletzt eingetragen; weitere siehe Historie)

- 89 zum 31.12.2011 eingereicht am 27.08.2012

KONZERNABSCHLUSS (zuletzt eingetragen; weitere siehe Historie)

- 29 zum 31.12.1998 eingereicht am 21.06.1999

VERTRETUNGSBEFUGNIS

- 1 Die Gesellschaft wird, wenn mehrere Geschäftsführer
bestellt sind, durch zwei Geschäftsführer gemeinsam oder
durch einen von ihnen gemeinsam mit einem Prokuristen
vertreten.

ART DER BEKANNTMACHUNG

- 1 Die Bekanntmachungen der Gesellschaft erfolgen im
Amtsblatt zur Wiener Zeitung.

1	Gesellschaftsvertrag vom 21.12.1988	001
1	Generalversammlungsbeschluss vom 26.09.1989 um ATS 399.500.000,- auf ATS 400.000.000,-. Neufassung des Gesellschaftsvertrages.	002
1	Der Gesellschaftsvertrag wurde mehrfach geändert, zuletzt mit Beschluss der Generalversammlung vom 15.10.1991	003
8	Generalversammlungsbeschluss vom 03.05.1994 Neufassung des Gesellschaftsvertrages.	004
26	Generalversammlungsbeschluss vom 14.12.1998 Neufassung des Gesellschaftsvertrages.	005
30	Generalversammlungsbeschluss vom 02.08.1999 Spaltung	006
30	zur Aufnahme in die VA TECH Participation GmbH (FN 139284 f) durch Übertragung des operativen Betriebes gemäß Spaltungs- und Übernahmevertrag vom 02.08.1999.	007
30	Gesellschaftsvertrag mit Generalversammlungsbeschluss vom 02.08.1999 gemäß 1. Euro-JuBeG angepasst.	008
30	Generalversammlungsbeschluss vom 02.08.1999 Kapitalerhöhung aus Gesellschaftsmitteln um EUR 930.866,33. Neufassung des Gesellschaftsvertrages.	009
40	Generalversammlungsbeschluss vom 14.06.2000 Kapitalherabsetzung um EUR 29.000.000,- auf EUR 1.000.000,- beabsichtigt.	010
42	Generalversammlungsbeschluss vom 23.08.2000 Neufassung des Gesellschaftsvertrages.	011
44	Generalversammlungsbeschluss vom 14.06.2000 Kapitalherabsetzung um EUR 29.000.000,- durchgeführt. Änderung des Gesellschaftsvertrages im § 4.	012
45	Generalversammlungsbeschluss vom 29.12.2000 Spaltung	013
45	zur Aufnahme in die VA TECH Beteiligungsverwaltung GmbH (FN 201595 p) durch Übertragung der Beteiligungen an VA TECH Ferranti-Packard de Mexico S.A. de C.V., VA TECH Transformateurs Ferranti-Packard (Quebec) Inc und VA TECH ELIN Mexicana, S.A. de C.V. gemäß Spaltungs- und Übernahmevertrag vom 21.12.2000	014
45	Generalversammlungsbeschluss vom 29.12.2000 Spaltung	015
45	zur Aufnahme in die VA TECH Transmission Holding GmbH (FN 198281 s) durch Übertragung der Beteiligung an VA TECH ELIN NL Holding BV gemäß Spaltungs- und Übernahmevertrag vom 21.12.2000	016

66	Verschmelzungsvertrag vom 02.05.2006	017
66	Generalversammlungsbeschluss vom 02.05.2006 Diese Gesellschaft wurde als übernehmende Gesellschaft mit der VA TECH HYDRO Beteiligungs GmbH (FN 275500 y) als Übertragender Gesellschaft verschmolzen. Sitz der Übertragenden Gesellschaft in Wien.	018
66	Übernahme des Vermögens der VA TECH HYDRO GmbH & Co (FN 186084 d) gemäß § 142 HGB.	019
67	Generalversammlungsbeschluss vom 10.05.2006 Abspaltung	020
67	zur Neugründung der Siemens Power Generation Anlagentechnik GmbH (FN 278563 b) durch Übertragung des Teilbetriebes EPC gemäß Spaltungsplan vom 29.03.2006.	021
67	Generalversammlungsbeschluss vom 10.05.2006 Spaltung zur Aufnahme eines Vermögensteiles der VA TECH SAT Beteiligungsverwaltung GmbH (FN 141254 b) und zwar des Teilbetriebes: SAT-HYDRO	022
82	Generalversammlungsbeschluss vom 09.12.2008 Neufassung des Gesellschaftsvertrages	023
	GESCHÄFTSFÜHRER/IN (handelsrechtlich)	
78	BI Ing. Michael Komböck, geb. 23.08.1958 vertritt seit 01.07.2008 gemeinsam mit einem weiteren Geschäftsführer oder einem Prokuristen	
78	BP Dipl.-Ing. Wolfgang Semper, geb. 09.03.1958 vertritt seit 01.07.2008 gemeinsam mit einem weiteren Geschäftsführer oder einem Prokuristen	
77	CY Dr. Harald Heber, geb. 24.10.1961 vertritt seit 01.11.2007 gemeinsam mit einem weiteren Geschäftsführer oder einem Prokuristen	
	PROKURIST/IN	
11	AI Dipl.Ing. Alexander Schwab, geb. 06.04.1957 vertritt seit 28.09.1995 gemeinsam mit einem Geschäftsführer oder einem weiteren Gesamtprokuristen	
33	AZ Ing. Erich Köstenbauer, geb. 26.06.1952 vertritt seit 21.01.2000 gemeinsam mit einem Geschäftsführer oder einem weiteren Prokuristen	
34	BE Dkfm. Thomas Drouin, geb. 27.02.1957 vertritt seit 26.01.2000 gemeinsam mit einem Geschäftsführer oder einem weiteren Prokuristen	
43	BO Dr. Werner Marckhgott, geb. 15.04.1954 vertritt seit 22.09.2000 gemeinsam mit einem Geschäftsführer oder einem weiteren Prokuristen	
46	BQ Hans Peter Binggeli, geb. 21.08.1949 vertritt seit 30.11.2000 gemeinsam mit einem Geschäftsführer oder einem weiteren Prokuristen	
56	BX DI Karl Scherer, geb. 25.07.1955 vertritt seit 17.06.2003 gemeinsam mit einem Geschäftsführer oder einem weiteren Prokuristen	

70 CL Mag. Helmut Nekam, geb. 13.01.1951
 vertritt seit 02.06.2006 gemeinsam mit
 einem Geschäftsführer oder einem weiteren Prokuristen
 70 CM Mag. Manfred Kandler, geb. 04.05.1963
 vertritt seit 02.06.2006 gemeinsam mit
 einem Geschäftsführer oder einem weiteren Prokuristen
 70 CO Mag. Alexander Krause, geb. 25.11.1967
 vertritt seit 02.06.2006 gemeinsam mit
 einem Geschäftsführer oder einem weiteren Prokuristen
 70 CP Dr. Thomas Harbort, geb. 02.08.1965
 vertritt seit 20.06.2006 gemeinsam mit
 einem Geschäftsführer oder einem weiteren Prokuristen
 70 CR Dipl.-Ing. Helmut Friedl, geb. 30.01.1961
 vertritt seit 02.06.2006 gemeinsam mit
 einem Geschäftsführer oder einem weiteren Prokuristen
 73 CW Dr. Andreas Starzer, geb. 21.12.1962
 vertritt seit 08.01.2007 gemeinsam mit
 einem Geschäftsführer oder einem weiteren Prokuristen
 75 CK DI Gerhard Steiner, geb. 23.10.1954
 vertritt seit 20.07.2007 gemeinsam mit
 einem Geschäftsführer oder einem weiteren Prokuristen
 80 DA DI Dr. Christian Jagob, geb. 27.12.1954
 vertritt seit 01.09.2008 gemeinsam mit
 einem Geschäftsführer oder einem weiteren Prokuristen
 80 DB DI Karl-Reinz Schlögelbauer, geb. 15.02.1964
 vertritt seit 01.09.2008 gemeinsam mit
 einem Geschäftsführer oder einem weiteren Prokuristen
 80 DC Mag. Martin Schöberl, geb. 06.10.1968
 vertritt seit 01.09.2008 gemeinsam mit
 einem Geschäftsführer oder einem weiteren Prokuristen
 80 DD Mag. Wolfgang Köhldorfer, geb. 08.03.1959
 vertritt seit 01.09.2008 gemeinsam mit
 einem Geschäftsführer oder einem weiteren Prokuristen
 80 DE Ing. Mag. Jürgen Holzer, geb. 16.11.1970
 vertritt seit 01.09.2008 gemeinsam mit
 einem Geschäftsführer oder einem weiteren Prokuristen
 83 DF Mag. Janin Baumgartner, geb. 12.06.1967
 vertritt seit 01.03.2009 gemeinsam mit
 einem Geschäftsführer oder einem weiteren Prokuristen

	GESELLSCHAFTER/IN	STAMMEINLAGE	HIERAUF GELEISTET
69	CH Andritz AG		
69	EUR 999.000	
			EUR 999.000
69	CI Lenser Verwaltungs GmbH		
69	EUR 1.000	
			EUR 1.000
	Summen:	EUR 1.000.000	EUR 1.000.000

AUFSICHTSRATSMITGLIED
 31 AU Siegfried Tromaier, geb. 15.06.1964
 Mitglied
 78 BL Dipl.-Ing. Dr. Franz Strohmer, geb. 23.06.1945
 Mitglied
 88 CK Mag. Ernst Zsifkovits, geb. 13.12.1953
 Mitglied
 88 CT Dipl.-Ing. Friedrich Papst, geb. 06.11.1952
 Stellvertreter/in des/der Vorsitzenden
 88 CU Dr. Wolfgang Leitner, geb. 27.03.1953
 Vorsitzende/r
 78 CZ Ole-Christian Wolff, geb. 05.10.1955
 Mitglied

--- PERSONEN ---

11 AI Dipl.-Ing. Alexander Schwab, geb. 06.04.1957

31 AU Siegfried Tromaier, geb. 15.06.1964
 33 AZ Ing. Erich Köstenbauer, geb. 26.06.1952
 33 Elingasse 3
 8160 Weiz
 34 BE Dkfm. Thomas Drouin, geb. 27.02.1957
 91 Eibesbrunnnergasse 20
 1120 Wien
 41 BI Ing. Michael Komböck, geb. 23.08.1958
 41 Gregorygasse 21-27/6/1
 1230 Wien
 43 BL Dipl.-Ing.Dr. Franz Strohmer, geb. 23.06.1945
 91 Eibesbrunnnergasse 20
 1120 Wien
 43 BO Dr. Werner Marckhgott, geb. 15.04.1954
 43 Lunzerstraße 78
 4031 Linz
 43 BP Dipl.-Ing. Wolfgang Semper, geb. 09.03.1958
 43 Lunzerstraße 78
 4031 Linz
 46 BQ Hans Peter Binggali, geb. 21.08.1949
 91 Eibesbrunnnergasse 20
 1120 Wien
 56 BX DI Karl Scherer, geb. 25.07.1955
 57 Elingasse 3
 8160 Weiz
 69 CH Andritz AG
 69 (FN 50935 f)
 69 Stattegger Str. 18
 8045 Graz
 69 CI Lenser Verwaltungs GmbH
 69 (Amtsgericht Memmingen HRB 6013)
 69 Breslauerstraße 8
 DEU-89250 Senden/Iller
 70 CK Mag. Ernst Zsifkovits, geb. 13.12.1953
 70 Stattegger Straße 18
 8045 Graz
 70 CL Mag. Helmut Nekam, geb. 13.01.1951
 70 Stattegger Straße 18
 8045 Graz
 70 CM Mag. Manfred Kandler, geb. 04.05.1963
 70 Stattegger Straße 18
 8045 Graz
 70 CO Mag. Alexander Krause, geb. 25.11.1967
 70 Stattegger Straße 18
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 70 Stattegger Straße 18
 8045 Graz-Andritz
 70 CU Dr. Wolfgang Leitner, geb. 27.03.1953
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 75 Elingasse 3
 8160 Weiz
 77 CY Dr. Harald Heber, geb. 24.10.1961
 77 Stattegger Straße 18
 8045 Graz-Andritz

78 CZ Ole-Christian Wolff, geb. 05.10.1955
 91 Eibesbrunnnergasse 20
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 80 DA DI Dr. Christian Jagob, geb. 27.12.1954
 91 Eibesbrunnnergasse 20
 1120 Wien
 80 DB DI Karl-Heinz Schlögelbauer, geb. 15.02.1964
 91 Eibesbrunnnergasse 20
 1120 Wien
 80 DC Mag. Martin Schöberl, geb. 06.10.1968
 91 Eibesbrunnnergasse 20
 1120 Wien
 80 DD Mag. Wolfgang Köhldorfer, geb. 08.03.1959
 80 Lunzerstraße 78
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 80 Elingasse 3
 8160 Weiz
 83 DF Mag. Janin Baumgartner, geb. 12.06.1967
 91 Eibesbrunnnergasse 20
 1120 Wien

----- VOLLZUGSÜBERSICHT -----

Handelsgericht Wien

1	Ersterfassung abgeschlossen am 18.11.1993	Geschäftsfall 920 Fr	781/93 f
	Ersterfassung gem. Art. XXIII Abs. 4 FBG		
8	eingetragen am 21.06.1994	Geschäftsfall 701 Fr	7914/94 v
	Antrag auf Änderung eingelangt am 17.06.1994		
11	eingetragen am 31.10.1995	Geschäftsfall 702 Fr	11529/95 a
	Antrag auf Änderung eingelangt am 23.10.1995		
26	eingetragen am 12.01.1999	Geschäftsfall 72 Fr	631/99 b
	Antrag auf Änderung eingelangt am 05.01.1999		
29	eingetragen am 11.08.1999	Geschäftsfall 72 Fr	9144/99 x
	Antrag auf Änderung eingelangt am 21.06.1999		
30	eingetragen am 17.08.1999	Geschäftsfall 72 Fr	9758/99 z
	Antrag auf Änderung eingelangt am 03.08.1999		
31	eingetragen am 10.11.1999	Geschäftsfall 72 Fr	13731/99 t
	Antrag auf Änderung eingelangt am 03.11.1999		
33	eingetragen am 21.01.2000	Geschäftsfall 72 Fr	749/00 b
	Antrag auf Änderung eingelangt am 18.01.2000		
34	eingetragen am 26.01.2000	Geschäftsfall 72 Fr	847/00 x
	Antrag auf Änderung eingelangt am 18.01.2000		
40	eingetragen am 24.06.2000	Geschäftsfall 72 Fr	7523/00 p
	Antrag auf Änderung eingelangt am 20.06.2000		
41	eingetragen am 19.07.2000	Geschäftsfall 75 Fr	356/00 x
	Antrag auf Änderung eingelangt am 14.07.2000		
42	eingetragen am 22.09.2000	Geschäftsfall 75 Fr	1446/00 z
	Antrag auf Änderung eingelangt am 31.08.2000		
43	eingetragen am 24.10.2000	Geschäftsfall 75 Fr	3095/00 z
	Antrag auf Änderung eingelangt am 10.10.2000		
44	eingetragen am 10.11.2000	Geschäftsfall 75 Fr	3938/00 p
	Antrag auf Änderung eingelangt am 31.10.2000		
45	eingetragen am 05.01.2001	Geschäftsfall 75 Fr	101/01 f
	Antrag auf Änderung eingelangt am 29.12.2000		
46	eingetragen am 02.02.2001	Geschäftsfall 75 Fr	920/01 i
	Antrag auf Änderung eingelangt am 31.01.2001		
56	eingetragen am 18.10.2003	Geschäftsfall 75 Fr	12808/03 i
	Antrag auf Änderung eingelangt am 15.10.2003		
57	eingetragen am 05.12.2003	Geschäftsfall 75 Fr	14807/03 z
	Antrag auf Änderung eingelangt am 03.12.2003		
66	eingetragen am 06.05.2006	Geschäftsfall 75 Fr	4974/06 s
	Antrag auf Änderung eingelangt am 03.05.2006		
67	eingetragen am 17.05.2006	Geschäftsfall 75 Fr	5375/06 f
	Antrag auf Änderung eingelangt am 11.05.2006		
69	eingetragen am 08.06.2006	Geschäftsfall 75 Fr	6277/06 g

Antrag auf Änderung eingelangt am 01.06.2006
 70 eingetragen am 12.07.2006 Geschäftsfall 75 Fr 7156/06 z
 Antrag auf Änderung eingelangt am 26.06.2006
 73 eingetragen am 30.01.2007 Geschäftsfall 74 Fr 1058/07 h
 Antrag auf Änderung eingelangt am 23.01.2007
 75 eingetragen am 18.09.2007 Geschäftsfall 74 Fr 9846/07 g
 Antrag auf Änderung eingelangt am 12.09.2007
 77 eingetragen am 09.11.2007 Geschäftsfall 74 Fr 12198/07 s
 Antrag auf Änderung eingelangt am 24.10.2007
 78 eingetragen am 29.07.2008 Geschäftsfall 73 Fr 8046/08 k
 Antrag auf Änderung eingelangt am 02.07.2008
 80 eingetragen am 20.09.2008 Geschäftsfall 73 Fr 11339/08 d
 Antrag auf Änderung eingelangt am 18.09.2008
 82 eingetragen am 31.12.2008 Geschäftsfall 73 Fr 16442/08 h
 Antrag auf Änderung eingelangt am 12.12.2008
 83 eingetragen am 15.04.2009 Geschäftsfall 71 Fr 4192/09 m
 Antrag auf Änderung eingelangt am 01.04.2009
 88 eingetragen am 01.06.2012 Geschäftsfall 71 Fr 5500/12 m
 Antrag auf Änderung eingelangt am 23.05.2012
 89 eingetragen am 29.08.2012 Geschäftsfall 71 Fr 13665/12 w
 Einreichung Jahresabschluss eingelangt am 27.08.2012
 90 eingetragen am 09.11.2012 Geschäftsfall 71 Fr 19445/12 w
 Antrag auf Änderung eingelangt am 23.10.2012
 91 eingetragen am 16.01.2013 Geschäftsfall 71 Fr 351/13 z
 Antrag auf Änderung eingelangt am 10.01.2013

----- INFORMATION DER ÖSTERREICHISCHEN NATIONALBANK -----

zum 02.04.2013 gültige Identnummer: 717320

erstellt über Verrechnungsstelle WENT ***** HA221

Firmenbuch

Abgefragt am 2.4.2013, um 09:41:23 MEZ



öffentlicher Notar
als Gerichtskommissär

Certified Translation from German

(Austrian Coat of Arms)
MAG. ULRIKE GESSLER-WOLFINGER
NOTARY PUBLIC
A-1140 Vienna, Missindorfstrasse 16 [Austria]
Phone: +43 (0)1 9820383
Fax: +43 (0)1 9820383-17
diwald.gessler@notar.at

The Judiciary **REPUBLIC OF AUSTRIA**
Register of Companies

FB

EXTRACT FROM THE REGISTER OF COMPANIES

Reflecting updated information

as on 02 April, 2013

Reg.No. FN 61833 g

This extract is based on the Master Register supplemented by data from the Documents File.

Last entry on 16 January, 2013, under Entry Number 91

Competent Court: Vienna Commercial Court

- 1 formerly Vienna Commercial Court Reg. No. HRB 43798
First registered on 30 December, 1988

COMPANY'S NAME

- 82 ANDRITZ HYDRO GmbH.

LEGAL FORM

- 1 Gesellschaft mit beschränkter Haftung (private company limited by shares under Austrian law)

HEAD OFFICE in

- 1 City of Vienna

REGISTERED OFFICES

- 90 Eibesbrunnnergasse 20
A-1120 Vienna [Austria]

SCOPE OF BUSINESS

- 42 Systems for energy production

NOMINAL CAPITAL

- 44 EUR 1.000,000

ANNUAL FINANCIAL STATEMENTS

- 1 to be established as at 31 December

LATEST ANNUAL FINANCIAL STATEMENT FILED

- (for further annual financial statements refer to historical excerpt)
89 filed on 27 August, 2012
as at 31 December, 2011

CONSOLIDATED FINANCIAL STATEMENTS (last filed;
for further financial statements refer
to historical excerpt)

29 filed on 21 June, 1999,
as at 31 December, 1998

AUTHORIZED SIGNATORIES

- 1 If there be more than one managing director,
any two of them together or any one of them
together with a "Prokurist" ("authorized
signatory" [translator's note: employee with
full signatory authorization pursuant to
section 49 Commercial Code, hereinafter "Joint
Authorized Signatory"]) shall be authorized to
jointly act for the Company.

MANNER OF PUBLICATIONS

- 1 Publications from the Company shall be
published in the Amtsblatt zur Wiener Zeitung
(official gazette).
- 1 Articles of Association dtd. 21 December, 1988 001
- 1 Resolution of Shareholders in General Meeting 002
dated 26 September, 1989
[Increase of share capital]
by ATS 399.500.000 to ATS 400.000.000 ,
Revision of Articles of Association.
- 1 The Articles of Association have been 003
repeatedly amended, last by Resolution of
Shareholders in General Meeting dated
15 October, 1991
- 8 Resolution of Shareholders in General Meeting 004
dated 03 May, 1994,
Revision of Articles of Association
- 26 Resolution of Shareholders in General Meeting 005
dated 14 December, 1998
Revision of Articles of Association
- 30 Resolution of Shareholders in General Meeting 006
dated 02 August, 1999
Division
- 30 for merger into 007
VA TECH Participation GmbH
(Reg. of Companies FN 139284 f)
by transfer
of the Company's operational business
under Division and Merger Agreement
dated 02 August, 1999
- 30 Resolution of Shareholders in General Meeting 008
dated 02 August, 1999
Articles of Association were amended in
accordance with the First Euro-related
Amendment to Civil Law (1.Euro-JuBeG).
- 30 Resolution of Shareholders in General Meeting 009
dated 02 August, 1999
Increase of share capital by EUR 930,866.33
from the Company's funds.
Revision of Articles of Association.

Register of Companies Extract as on 02 April, 2013

Reg.No. FN 61833 g

40	Resolution of Shareholders in General Meeting dated 14 June, 2000 Decrease of share capital by EUR 29.000,000 to EUR 1.000,000 intended.	010
42	Resolution of Shareholders in General Meeting dated 23 August, 2000 Revision of Articles of Association.	011
44	Resolution of Shareholders in General Meeting dated 14 June, 2000 Decrease of share capital by EUR 29.000.000 effected. Section 4 of the Articles of Association has been amended.	012
45	Resolution of Shareholders in General Meeting dated 29 December, 2000 Division	013
45	for merger into VA TECH Beteiligungsverwaltung GmbH (Reg. of Companies FN 201595 p) by transfer of the interest held in VA TECH Ferranti- Packard de Mexico S.A. de C.V., VA TECH Transformateurs Ferranti-Packard (Quebec) Inc and VA TECH ELIN Mexicana, S.A. de C.V. under Division and Merger Agreement dated 21 December, 2000	014
45	Resolution of Shareholders in General Meeting dated 29 December, 2000 Division	015
45	for merger into VA TECH Transmission Holding GmbH (Reg. of Companies FN 198281 s) by transfer of the interest held in VA TECH ELIN NL Holding BV under Division and Merger Agreement dated 21 December, 2000	016
66	Articles of Merger dated 02 May, 2006	017
66	Resolution of Shareholders in General Meeting dated 02 May, 2006 This Company absorbed VA TECH HYDRO Beteiligungs GmbH (Reg. of Companies FN 275500 y), the latter company being merged into the former. Head office of the absorbed company in Vienna.	018
66	Acquisition of the assets of VA TECH HYDRO GmbH & Co (Reg. of Companies FN 186084 d), under § (sec.) 142 (Austrian) Commercial Code.	019
67	Resolution of Shareholders in General Meeting dated 10 May, 2006	020

Register of Companies Extract as on 02 April, 2013

Reg.No. FN 61833 g

- | | Division | |
|----|---|-----|
| 67 | for new formation of
Siemens Power Generation
Anlagentechnik GmbH
(Reg. of Companies No. FN 278563 b)
by transfer
of the separate division EPC under Plan of
Division dated 29 March, 2006 | 021 |
| 67 | Resolution of Shareholders in General Meeting
dated 10 May, 2006
Division for acquisition of part of
VA TECH SAT Beteiligungsverwaltung GmbH's
(Reg. of Companies No. FN 141254 b)
assets, viz. of
the separate division: SAT-HYDRO | 022 |
| 82 | Resolution of Shareholders in General Meeting
dated 09 December, 2008
Revision of Articles of Association. | 023 |

MANAGING DIRECTORS (under commercial law)

- | | |
|----|--|
| 78 | BI Ing. Michael Komböck, born 23 August, 1958
he, together with another managing director or a
Prokurist ("authorized signatory"), is authorized to
act for the company, since 01 July, 2008 |
| 78 | BP Dipl.-Ing. Wolfgang Semper, born 09 March, 1958
he, together with another managing director or a
Prokurist ("authorized signatory"), is authorized to
act for the company, since 01 July, 2008 |
| 77 | CY Dr. Harald Heber, born 24 October, 1961
he, together with another managing director or a
Prokurist ("authorized signatory"), is authorized to
act for the company, since 01 November, 2007. |

PROKURIST

- | | |
|----|---|
| 11 | AI Dipl.-Ing Alexander Schwab, born 06 April, 1957
he, together with a managing director or another
Gesamtprokurist ("joint authorized signatory"),
is authorized to act for the company, since
28 September, 1995. |
| 33 | AZ Ing. Erich Köstenbauer, born 26 June, 1952
he, together with a managing director or another
Gesamtprokurist ("joint authorized signatory"),
is authorized to act for the company, since
21 January, 2000. |
| 34 | BE Dkfm. Thomas Drouin, born 27 February, 1957
he, together with a managing director or another
Gesamtprokurist ("joint authorized signatory"),
is authorized to act for the company, since
26 January, 2000. |
| 43 | BO Dr. Werner Marckhgott, born 15 April, 1954
he, together with a managing director or another
Gesamtprokurist ("joint authorized signatory"),
is authorized to act for the company, since
22 September, 2000. |
| | BQ Hans Peter Binggeli, born 21 August, 1949 |

- 46 he, together with a managing director or another
Gesamtprokurist ("joint authorized signatory"),
is authorized to act for the company, since
30 November, 2000.
- BX DI Karl Scherer, born 25 July, 1955
- 56 he, together with a managing director or another
Gesamtprokurist ("joint authorized signatory"),
is authorized to act for the company, since
17 June, 2003
- CL Mag. Helmut Nekam, born on 13 January, 1951
- 70 he, together with a managing director or another
Gesamtprokurist ("joint authorized signatory"),
is authorized to act for the company, since
02 June, 2006
- CM Mag. Manfred Kandler, born 04 May, 1963
- 70 he, together with a managing director or another
Gesamtprokurist ("joint authorized signatory"),
is authorized to act for the company, since
02 June, 2006
- CO Mag. Alexander Krause, born on 25 November, 1967
- 70 he, together with a managing director or another
Gesamtprokurist ("joint authorized signatory"),
is authorized to act for the company, since
02 June, 2006
- CP Dr. Thomas Harbort, born on 02 August, 1965
- 70 he, together with a managing director or another
Gesamtprokurist ("joint authorized signatory"),
is authorized to act for the company, since
02 June, 2006
- CR Dipl.-Ing. Helmut Friedl, born on 30 January, 1961
- 70 he, together with a managing director or another
Gesamtprokurist ("joint authorized signatory"),
is authorized to act for the company, since
02 June, 2006
- CW Dr. Andreas Starzer, born on 21 December, 1962
- 73 he, together with a managing director or another
Gesamtprokurist ("joint authorized signatory"),
is authorized to act for the company, since
08 January, 2007
- CX DI Gerhard Steiner, born on 23 October, 1954
- 75 he, together with a managing director or another
Gesamtprokurist ("joint authorized signatory"),
is authorized to act for the company, since
20 July, 2007
- DA DI Dr. Christian Jagob, born on 27 December, 1954
- 80 he, together with a managing director or another
Gesamtprokurist ("joint authorized signatory"),
is authorized to act for the company, since
01 September, 2008
- DB DI Karl-Heinz Schlögelbauer, born on 15 February, 1964
- 80 he, together with a managing director or another
Gesamtprokurist ("joint authorized signatory"),
is authorized to act for the company, since
01 September, 2008
- DC Mag. Martin Schöberl, born on 06 October, 1968

Register of Companies Extract as on 02 April, 2013

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- 80 he, together with a managing director or another
Gesamtprokurist ("joint authorized signatory"),
is authorized to act for the company, since
01 September, 2008
- DD 80 Mag. Wolfgang Köhldorfer, born on 08 March, 1959
he, together with a managing director or another
Gesamtprokurist ("joint authorized signatory"),
is authorized to act for the company, since
01 September, 2008
- DE 80 Ing. Mag. Jürgen Holzer, born on 16 November, 1970
he, together with a managing director or another
Gesamtprokurist ("joint authorized signatory"),
is authorized to act for the company, since
01 September, 2008
- DF 83 Mag. Janin Baumgartner, born on 12 June, 1967
she, together with a managing director or another
Gesamtprokurist ("joint authorized signatory"),
is authorized to act for the company, since
01 March, 2009

SHAREHOLDER(S)	ORIGINAL SHARE SUBSCRIBED	OF WHICH PAID IN
CH Andritz AG		
69	EUR 999,000	
69		EUR 999,000
CI Lenser Verwaltungs GmbH		
69	EUR 1,000	
69		EUR 1,000
Totals:	EUR 1.000,000	EUR 1.000,000

MEMBER OF THE SUPERVISORY BOARD

- 31 AU Siegfried Tromaler, born 15 June, 1964
Member
- 78 BL Dipl.-Ing.Dr. Franz Strohmer, born 23 June, 1945
Member
- 88 CK Mag. Ernst Zsifkovits, born on 13 December, 1953
Member
- 88 CT Dipl.Ing. Friedrich Papst, born on 06 November, 1952
Deputy Chairman
- 88 CU Dr. Wolfgang Leitner, born on 27 March, 1953
Chairman
- 78 CZ Ole-Christian Wolff, born 05 October, 1955
Member

PERSONS

- 11 AI Dipl.-Ing Alexander Schwab, born 06 April, 1957
- 31 AU Siegfried Tromaler, born 15 June, 1964
- 33 AZ Ing. Erich Köstenbauer, born 26 June, 1952
Elingasse 3
A-8160 Weiz [Austria]
- 34 BE Dkfm. Thomas Drouin, born 27 February, 1957
91 Eibesbrunnnergasse 20
A-1120 Vienna [Austria]
- 41 BI Ing. Michael Komböck, born 23 August, 1958

41		Gregorygasse 21-27/6/1 A-1230 Vienna [Austria]
43	BL	Dipl.-Ing.Dr. Franz Strohmer, born 23 June, 1945
91		Eibesbrunnnergasse 20 A-1120 Vienna [Austria]
43	BO	Dr. Werner Marckhgott, born 15 April, 1954
43		Lunzerstrasse 78, A-4031 Linz [Austria]
43	BP	Dipl.-Ing. Wolfgang Semper, born 09 March, 1958
43		Lunzerstrasse 78, A-4031 Linz [Austria]
46	BQ	Hans Peter Binggeli, born 21 August, 1949
91		Eibesbrunnnergasse 20 A-1120 Vienna [Austria]
56	BX	DI Karl Scherer, born 25 July, 1955
57		Elingasse 3 A-8160 Weiz [Austria]
69	CH	Andritz AG
69		(Reg. of Companies No. FN 50935 f)
69		Stattegger Str. 18 A-8045 Graz [Austria]
69	CI	Lenzer Verwaltungen GmbH
69		([Reg. of Companies] Amtsgericht Memmingen No. HRB 6013)
69		Breslauerstrasse 8 DEU-89250 Senden/Iller [Germany]
70	CK	Mag. Ernst Zsifkovits, born on 13 December, 1953
70		Stattegger Str. 18 A-8045 Graz [Austria]
70	CL	Mag. Helmut Nekam, born on 13 January, 1951
70		Stattegger Str. 18 A-8045 Graz [Austria]
70	CM	Mag. Manfred Kandler, born 04 May, 1963
70		Stattegger Str. 18 A-8045 Graz [Austria]
70	CO	Mag. Alexander Krause, born on 25 November, 1967
70		Stattegger Str. 18 A-8045 Graz [Austria]
70	CP	Dr. Thomas Harbort, born on 02 August, 1965
91		Eibesbrunnnergasse 20 A-1120 Vienna [Austria]
70	CR	Dipl.Ing. Helmut Friedl, born on 30 January, 1961
91		Eibesbrunnnergasse 20 A-1120 Vienna [Austria]
70	CT	Dipl.Ing. Friedrich Papst, born on 06 November, 1952
70		Stattegger Str. 18 A-8045 Graz-Andritz [Austria]
70	CU	Dr. Wolfgang Leitner, born on 27 March, 1953
70		Stattegger Str. 18 A-8045 Graz-Andritz [Austria]
73	CW	Dr. Andreas Starzer, born on 21 December, 1962
73		Lunzerstrasse 78, A-4031 Linz [Austria]
75	CX	DI Gerhard Steiner, born on 23 October, 1954
75		Elingasse 3

Register of Companies Extract as on 02 April, 2013

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		A-8160 Weiz [Austria]
77	CY	Dr. Harald Heber, born 24 October, 1961
77		Stattegger Str. 18
		A-8045 Graz-Andritz [Austria]
78	CZ	Ole-Christian Wolff, born 05 October, 1955
91		Eibesbrunnnergasse 20
		A-1120 Vienna [Austria]
80	DA	DI Dr. Christian Jagob, born on 27 December, 1954
91		Eibesbrunnnergasse 20
		A-1120 Vienna [Austria]
80	DB	DI Karl-Heinz Schlögelbauer, born on 15 February, 1964
91		Eibesbrunnnergasse 20
		A-1120 Vienna [Austria]
80	DC	Mag. Martin Schöberl, born on 06 October, 1968
91		Eibesbrunnnergasse 20
		A-1120 Vienna [Austria]
80	DD	Mag. Wolfgang Köhldorfer, born on 08 March, 1959
80		Lunzerstrasse 78
		A-4031 Linz [Austria]
80	DE	Ing. Mag. Jürgen Holzer, born on 16 November, 1970
80		Elingasse 3
		A-8160 Weiz [Austria]
83	DF	Mag. Janin Baumgartner, born on 12 June, 1967
91		Eibesbrunnnergasse 20
		A-1120 Vienna [Austria]

IMPLEMENTATION

Vienna Commercial Court

- 1 first entry completed on 18 November, 1993
Transaction 920 Fr 781/93 f
first input pursuant to Art. XXIII sub-s. 4 Register of
Companies Act
- 8 entered on 21 June, 1994, Transaction 701 Fr 7914/94 v
application for change received on 17 June, 1994
- 11 entered on 31 October, 1995, Transaction 702 Fr 11529/95 a
application for change received on 23 October, 1995
- 26 entered on 12 January, 1999, Transaction 72 Fr 631/99 b
application for change received on 05 January, 1999
- 29 entered on 11 August, 1999, Transaction 72 Fr 9144/99 x
application for change received on 21 June, 1999
- 30 entered on 17 August, 1999, Transaction 72 Fr 9758/99 z
application for change received on 03 August, 1999
- 31 entered on 10 November, 1999, Transaction 72 Fr 13731/99 t
application for change received on 03 November, 1999
- 33 entered on 21 January, 2000 Transaction 72 Fr 749/00 b
application for change received on 18 January, 2000
- 34 entered on 26 January, 2000 Transaction 72 Fr 847/00 x
application for change received on 18 January, 2000
- 40 entered on 24 June, 2000 Transaction 72 Fr 7523/00 p
application for change received on 20 June, 2000
- 41 entered on 19 July, 2000 Transaction 75 Fr 356/00 x
application for change received on 14 July, 2000
- 42 entered on 22 September, 2000 Transaction 75 Fr 1446/00 z
application for change received on 31 August, 2000
- 43 entered on 24 October, 2000 Transaction 75 Fr 3095/00 z

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application for change received on 10 October, 2000
44 entered on 10 November, 2000 Transaction 75 Fr 3938/00 p
application for change received on 31 October, 2000
45 entered on 05 January, 2001 Transaction 75 Fr 101/01 f
application for change received on 29 December, 2000
46 entered on 02 February, 2001 Transaction 75 Fr 920/01 i
application for change received on 31 January, 2001
56 entered on 18 October, 2003 Transaction 75 Fr 12808/03 i
application for change received on 15 October, 2003
57 entered on 05 December, 2003 Transaction 75 Fr 14807/03 z
application for change received on 03 December, 2003
66 entered on 06 May, 2006 Transaction 75 Fr 4974/06 s
application for change received on 03 May, 2006
67 entered on 17 May, 2006 Transaction 75 Fr 5375/06 f
application for change received on 11 May, 2006
69 entered on 08 June, 2006 Transaction 75 Fr 6277/06 g
application for change received on 01 June, 2006
70 entered on 12 July, 2006 Transaction 75 Fr 7156/06 z
application for change received on 26 June, 2006
73 entered on 30 January, 2007 Transaction 74 Fr 1058/07 h
application for change received on 23 January, 2007
75 entered on 18 September, 2007 Transaction 74 Fr 9846/07 g
application for change received on 12 September, 2007
77 entered on 09 November, 2007 Transaction 74 Fr 12198/07 s
application for change received on 24 October, 2007
78 entered on 29 July, 2008 Transaction 73 Fr 8046/08 k
application for change received on 02 July, 2008
80 entered on 20 September, 2008 Transaction 73 Fr 11339/08 d
application for change received on 18 September, 2008
82 entered on 31 December, 2008 Transaction 73 Fr 16442/08 h
application for change received on 12 December, 2008
83 entered on 15 April, 2009 Transaction 71 Fr 4192/09 m
application for change received on 01 April, 2009
88 entered on 01 June, 2012 Transaction 71 Fr 5500/12 m
application for change received on 23 May, 2012
89 entered on 29 August, 2012 Transaction 71 Fr 13665/12 w
annual financial statement received on 27 August, 2012
90 entered on 09 November, 2012 Transaction 71 Fr 19445/12 w
application for change received on 23 October, 2012
91 entered on 16 January, 2013 Transaction 71 Fr 351/13 z
application for change received on 10 January, 2013

INFORMATION FROM THE AUSTRIAN NATIONAL BANK

IdentNumber valid as at 02 April, 2013: 717320

Prepared via WENT clearing agency ***** HA221

Register of Companies

Extracted 02 April, 2013, at 09:41:23 CET

Register of Companies Extract as on 02 April, 2013

Reg.No. FN 61833 g

LS.
Mag. Johannes DIWALD
NOTARY PUBLIC
VIENNA - PENZING
[AUSTRIA]

(sgd.)
Notary Public
as Commissioner for the Court

a tergo:

LS.
Mag. Johannes DIWALD
NOTARY PUBLIC
VIENNA - PENZING
[AUSTRIA]

*Die genaue Übereinstimmung der vorstehenden Übersetzung mit der beigehefteten bzw. ihm vorgewiesenen deutschen Urkunde bestätigt unter Berufung auf seinen Eid der gefertigte allgemein beeidete gerichtliche Dolmetscher für die englische Sprache.
Wien, am 5. April 2013*

*Certified a true translation of the German document hereto attached and/or produced to me, Adelheid CASFORD, a translator in German and English sworn to Austrian courts.
Vienna, 5th April, 2013*

Adelheid Casford



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HIDROELECTRICA S.A.

Societate in reorganizare judiciara, in judicial reorganisation, en redressement judiciaire
15-17 Ion Mihalache Avenue
RO-011171 Bucharest, 1st district, ROMANIA
Working hours: 8:00 – 16:00.

Correspondence Entry/Information Desk

Phone no: +4 021.303.25.00

General Manager Cabinet

Phone no: +4 021.30.32.578

Fax no: 021.30.32.564

E-mail: secretariat.general@hidroelectrica.ro

International Relations and PR Office

Phone no: +4 021.30.74.657

Fax no: 021.30.32.539

E-mail: birou.presa@hidroelectrica.ro

Human Resources Division

Phone no: +4 021.30.32.509

Fax no: 021.30.74.670

Utilities Management Department/Procurement Division

Phone no: +4 021.30.32.582

Fax no: 021.30.74.690

Trading Supply Division/Financial Division

Phone no: +4 021.30.32.513

Fax no: 021.30.32.572

Power Generation Division

Phone no: +4 021.30.32.598

Fax no: +4 021.30.32.539

Investment Division

Phone no: +4 021.30.32.541

Fax no: +4 021.30.32.573

VAT: RO13267213

Registration number with the Trade Registry under the number of: J40/7426/2000

Share capital: 4,481,482,240 LEI

Public information

- [Reorganization Plan](#)

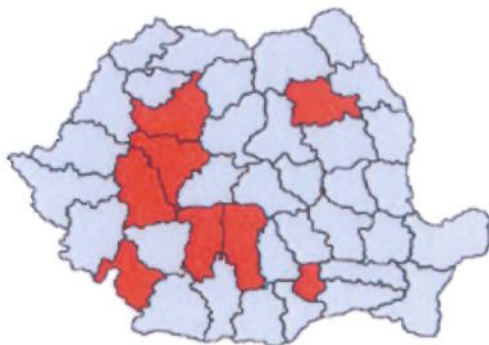
- [Judicial Administrator's report on causes of insolvency](#)
- [Judicial Administrator's montly report](#)
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Hidroelectrica Branches

For the time being Hidroelectrica has 7 branches all over the country.



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15-17 Ion Mihalache Blvd, RO-011171 , District 1, Bucharest, ROMANIA

Tel: +4021 3032500; Fax: +4021 3032564; Mail: secretariat.general@hidroelectrica.ro

Commercial register of canton Luzern

Identification number	Legal status	Entry	Cancelled	Carried CH-100.3.004.604-2 from: on:	1
CHE-105.801.686	Limited or Corporation	04.08.1894			



All data

In	Ca	Business name	Ref	Legal seat
0		Aktiengesellschaft der Maschinenfabrik von Theodor Bell & Cie.	1	Kriens
0		Bell-Maschinenfabrik AG Kriens		
0	1	Bell-Escher-Wyss AG		
1	3	Sulzer-Hydro AG		
1	3	(Sulzer-Hydro SA) (Sulzer-Hydro Ltd)		
3	7	VA TECH ESCHER-WYSS AG		
3	7	(VA TECH ESCHER-WYSS SA) (VA TECH ESCHER-WYSS LTD) (VA TECH ESCHER-WYSS S.A.)		
7	23	VA TECH HYDRO AG		
7	23	(VA TECH HYDRO SA) (VA TECH HYDRO Ltd.) (VA TECH HYDRO S.A.)		
23		ANDRITZ HYDRO AG		
23		(ANDRITZ HYDRO SA) (ANDRITZ HYDRO Ltd.) (ANDRITZ HYDRO S.A.)		

In	Ca	Share capital (CHF)	Paid in (CHF)	Shares	In	Ca	Company address
1		10'000'000.00	10'000'000.00	20'000 Namenaktien zu CHF 500.00	1		Obernauerstrasse 4 6010 Kriens

In	Ca	Purpose	In	Ca	Other addresses
1	7	Forschung, Entwicklung, Planung, Herstellung, Unterhalt sowie Erbringung von Dienstleistungen und Handel auf dem Gebiet des Maschinen- und Anlagenbaus; Vergabe von Lizenzen; Übernahme von Vertretungen; Erwerb von Grundeigentum im In- und Ausland.			
7		Forschung, Entwicklung, Planung, Herstellung, Unterhalt, Erbringung von Dienstleistungen und Handel auf dem Gebiet des Maschinen- und Anlagenbaus, insbesondere im Bereich der elektrischen Energieerzeugung mittels Wasserkraft; Beteiligungen; Vergabe von Lizenzen; Übernahme von Vertretungen; Erwerb von Grundeigentum.			

In	Ca	Remarks	Ref	Date of the acts
1		Mitteilungen erfolgen brieflich.	1	02.08.1894
1		Die Namenaktien sind vinkuliert.	1	17.05.1995
			3	21.01.2000
			7	13.06.2001
			23	10.12.2008

In	Ca	Qualified facts	Ref	Official publication
1	23	Gemäss Sacheinlagevertrag vom 17.05.1995, Abspaltungsbilanz per 01.01.1995 und Bilanzkontenbescheid vom 17.05.1995 übernahm die Gesellschaft von der "Sulzer-Escher-Wyss AG", in Zürich, den Bereich "Hydro" mit Aktiven von CHF 60'629'168.-- und Passiven von CHF 55'629'168.-- zum Nettoübernahmepreis von CHF 5'000'000.-- Als Gegenleistung erhielt die Sacheinlegerin 10'000 Namenaktien zu CHF 500.--	1	SHAB.
7		Gemäss Fusionsvertrag vom 05.06.2001 und Bilanz per 31.12.2000 übernimmt die Gesellschaft nach Massgabe von Art. 748 OR die VA TECH Hydro Vevey S.A., in Vevey, mit sämtlichen Aktiven von CHF 70'042'549.-- unter welchen Aktien der übernehmenden Gesellschaft enthalten sind - und dem gesamten Fremdkapital von CHF 57'537'633.-- zum Nettoübernahmepreis von CHF 12'504'916.-- Es findet keine Kapitalerhöhung statt, da die Aktionäre der übernommenen Gesellschaft aus den durch die Fusion erworbenen eigenen Aktien der übernehmenden Gesellschaft vollständig abgefunden werden.		

In	Ca	Branch offices	In	Ca	Branch offices
1	38	Zürich (CH-020.9.000.556-4)			
9	38	Vevey (CH-550.1026870-0)			
38		Vevey (CHE-326.484.724)			

CHE-105.801.686	ANDRITZ HYDRO AG	Kriens	2
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All data

Vis	Ref	Journal	Date	SOGC	Date SOGC	Page / Id	Vis	Ref	Journal	Date	SOGC	Date SOGC	Page / Id
LU	0	(Transfer)			(Transfer)		LU	22	5840	17.10.2008	206	23.10.2008	9 / 4703394
LU	1			178	14.09.1999	6298	LU	23	7439	12.12.2008	246	18.12.2008	16 / 4788568
LU	2	285	18.01.2000	16	24.01.2000	507	LU	24	1515	17.02.2009	36	23.02.2009	13 / 4893018
LU	3	419	26.01.2000	22	01.02.2000	696	LU	25	7359	26.08.2009	168	01.09.2009	12 / 5224424
LU	4	1464	06.04.2000	73	12.04.2000	2460	LU	26	9066	17.11.2009	227	23.11.2009	12 / 5354620
LU	5	3094	13.07.2000	139	19.07.2000	4928	LU	27	2409	25.03.2010	63	31.03.2010	11 / 5567586
LU	6	2541	01.06.2001	109	08.06.2001	4315	LU	28	4105	28.05.2010	105	03.06.2010	13 / 5658800
LU	7	2779	18.06.2001	119	22.06.2001	4697	LU	29	1307	25.02.2011	43	02.03.2011	6057908
LU	8	4186	30.08.2001	171	05.09.2001	6892	LU	30	4575	25.07.2011	145	28.07.2011	6276370
LU	9	5749	10.12.2001	243	14.12.2001	9850	LU	31	1500	02.03.2012	47	07.03.2012	6582952
LU	10	4712	14.10.2002	202	18.10.2002	8 / 691710	LU	32	4746	05.07.2012	132	10.07.2012	6761368
LU	11	1651	01.04.2003	66	07.04.2003	11 / 938280	LU	33	1458	04.03.2013	46	07.03.2013	7095130
LU	12	4185	01.09.2003	170	05.09.2003	9 / 1158884	LU	34	3757	06.06.2013	110	11.06.2013	911393
LU	13	5682	05.12.2003	239	11.12.2003	8 / 2024014	LU	35	4602	03.07.2013	129	08.07.2013	962733
LU	14	73	03.01.2005	5	07.01.2005	11 / 2631284	LU	36	6500	25.09.2013	188	30.09.2013	1100611
LU	15	4074	25.07.2005	146	29.07.2005	7 / 2955546	LU	37	6343	18.09.2014	183	23.09.2014	1728181
LU	16	38	03.01.2006	5	09.01.2006	10 / 3182930	LU	38	7936	19.11.2014	227	24.11.2014	1838375
LU	17	1584	07.03.2006	50	13.03.2006	9 / 3284044	LU	39	1120	11.02.2015	31	16.02.2015	1990871
LU	18	1095	21.02.2007	40	27.02.2007	10 / 3798688	LU	40	3347	06.05.2015	89	11.05.2015	2145747
LU	19	2349	02.05.2007	88	08.05.2007	8 / 3920040	LU	41	2983	22.04.2016	81	27.04.2016	/ 2802653
LU	20	6160	29.11.2007	236	05.12.2007	9 / 4231388	LU	42	3978	06.06.2016	110	09.06.2016	/ 2879643
LU	21	3618	02.07.2008	130	08.07.2008	12 / 4563118							

In	Mo	Ca	Personal Data	Function	Signature
1		2	Walser, Bruno, von Quarten, in Winterthur	president	joint signature at two
1		2	Hauser, Jürg, von Winterthur und Wädenswil, in Winterthur	member	joint signature at two
1		2m	Habegger, Christian, von Trub, in Seon	director	joint signature at two
1		10	Grein, Dr. Herbert, von Greifensee, in Greifensee	assistant director	joint signature at two
1		2m	Bosshard, Urs, von Oberembrach und Untersiggenthal, in Aarwangen	vice-director	joint signature at two
1		29m	Binggeli, Hans-Peter, von Wahlern, in Opfikon	vice-director	joint signature at two
1		6m	Kalberer, Albert, von Mels und Zürich, in Hergiswil NW	vice-director	joint signature at two
1		6	Britschgi, Otto, von Kriens und Sarnen, in Kriens		joint agent signature at two according to art.459 al.2 CO
1		31	Dekumbis, Dr. Roger, von Zürich und Leuk, in Kriens		joint agent signature at two
1			Emler, Jürg, von Zürich, in Bülach		joint agent signature at two
1		9	Fischer, Felix, von Wädenswil und Merenschwand, in Wädenswil		joint agent signature at two
1		10	Gisi, Franz Josef genannt Josef, von Niedergösgen, in Berikon		joint agent signature at two
1		19	Ganz, Erwin, von Zürich, in Buochs		joint agent signature at two
1		20m	Grünenfelder, Rudolf, von Vilters/Wangs, in Kriens		joint agent signature at two
1		2	Huonder, Martin, von Disentis/Mustér, in Kriens		joint agent signature at two
1		16	Jufer, Renzo, von Melchnau, in Rothenburg		joint agent signature at two
1		6	Kopp, Oliver, von Zürich, in Kriens		joint agent signature at two according to art.459 al.2 CO
1		9	Lienhard, Heinz, von Dielsdorf und Stadel, in Bergdietikon		joint agent signature at two
1		30	Meier, Bruno, von Kriens und Wettingen, in Kriens		joint agent signature at two
1		2	Meister, Walter, von Merishausen und Winterthur, in Horw		joint agent signature at two
1		9	Müller, Beat, von Luzern, in Luzern		joint agent signature at two
1		2	Müller, Jean, von Schaffhausen und Gächlingen, in Schaffhausen		joint agent signature at two
1		4m	Peter, Heinz, von Trüllikon, in Illnau-Effretikon		joint agent signature at two
1		5m	Rothenfluh, Markus, von Rain, in Rain		joint agent signature at two
1		25	Schröder, Georg, von Zürich und Starrkirch-Wil, in Zürich		joint agent signature at two
1		9	Wüthrich, Urs, von Trub, in Hasliberg		joint agent signature at two

CHE-105.801.686	ANDRITZ HYDRO AG	Kriens	3
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All data

In	Mo	Ca	Personal Data	Function	Signature
1		5	PricewaterhouseCoopers AG, in Luzern	auditor	
2	11m		Habegger, Christian, von Trub, in Seon	president	joint signature at two
2		5	Lutzenberger, Hermann, österreichischer Staatsangehöriger, in Anif (A)	vicepresident	joint signature at two
	2	4m	Bosshard, Urs, von Oberembrach und Untersiggenthal, in Aarwangen	member	joint signature at two
	4	11	Bosshard, Urs, von Oberembrach und Untersiggenthal, in Aarwangen	member + director	joint signature at two
	4	11	Peter, Heinz, von Trüllikon, in Illnau-Effretikon	director	joint signature at two
4		31	Balmer, Frank, von Thun und Wilderswil, in Kriens		joint agent signature at two
5		11	Friedinger, Dr. Alfred, österreichischer Staatsangehöriger, in Wien (A)	member	joint signature at two
	5		Rothenfluh, Markus, von Rain, in Kriens		joint agent signature at two
5		14	KPMG Fides Peat, in Luzern	auditor	
6		11	Klopfenstein, Peter, von Frutigen, in Vevey	director	joint signature at two
6	10m		Kalberer, Albert, von Mels und Zürich, in Minusio	vice-director	joint signature at two
6		13m	Guénod, Roland, von Vevey und Corsier-sur-Vevey, in Baar		joint agent signature at two
6		16	Weingartner, Herbert, von Adligenswil und Littau, in Hünenberg		joint agent signature at two
8		22m	Dubois, Christian, von Saint-Maurice, in Olon		joint agent signature at two
8		15	Hemmeler, Jean-Jacques, von Genf, in Pully		joint agent signature at two
8		25	Kaufmann, Jean-Pierre, von Biberist, in Jongny		joint agent signature at two
8		11	Moritz, Ernst, österreichischer Staatsangehöriger, in Gorseaux		joint agent signature at two
8		25	Vullioud, Gérard, von Vufflens-la-Ville, in Founex		joint agent signature at two
9		10m	Nieszner, Lothar, österreichischer Staatsangehöriger, in Luzern		joint agent signature at two
10		13m	Kalberer, Albert, von Mels und Zürich, in Minusio	director	joint signature at two
10		12	Nieszner, Lothar, österreichischer Staatsangehöriger, in Luzern	director	joint signature at two
10		16	Bonvin, Dr. Guy, von Arbaz, in Renens VD		joint agent signature at two
11		13m	Habegger, Christian, von Trub, in Seon	member	single signature
12		36	Hauser, Hans Peter, von Luzern und Schaffhausen, in Luzern		joint agent signature at two
12		13m	Thomann, Peter, von Brienz BE, in Kriens		joint agent signature at two
13		16	Habegger, Christian, von Trub, in Seon	president	joint signature at two
13		16m	Friedinger, Dr. Alfred, österreichischer Staatsangehöriger, in Wien (A)	vicepresident	joint signature at two
	13	16m	Kalberer, Albert, von Mels und Zürich, in Minusio	member	joint signature at two
	13	25m	Guénod, Roland, von Vevey und Corsier-sur-Vevey, in Montreux		joint agent signature at two
	13	30m	Thomann, Peter, von Brienz BE, in Kriens		joint agent signature at two according to art.459 al.2 CO
14		16	Ernst & Young AG, in Luzern	auditor	
15		16m	Pauli, Markus, von Guggisberg, in Untersiggenthal	director	joint signature at two
	16	18m	Friedinger, Dr. Alfred, österreichischer Staatsangehöriger, in Wien (A)	president	joint signature at two
	16	36	Kalberer, Albert, von Mels und Zürich, in Minusio	vicepresident	joint signature at two
	16	17m	Pauli, Markus, von Guggisberg, in Untersiggenthal	member	joint signature at two
16		18m	KPMG Fides Peat, in Root	auditor	
	17	20m	Pauli, Markus, von Guggisberg, in Untersiggenthal	member + director	joint signature at two
	18	19	Friedinger, Dr. Alfred, österreichischer Staatsangehöriger, in Wien (AT)	president	joint signature at two
	18	19	KPMG AG, in Root	auditor	
19		21	Strohmer, Dr. Franz, österreichischer Staatsangehöriger, in Wien (AT)	president	joint signature at two
19		22	Weingartner, Herbert, von Adligenswil und Littau, in Hünenberg		joint agent signature at two
19		20	Deloitte AG, in Zürich	auditor	
20		26	Pauli, Markus, von Guggisberg, in Kriens	member + director	joint signature at two

CHE-105.801.686

ANDRITZ HYDRO AG

Kriens

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All data

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20	20	25	Grünenfelder, Rudolf, von Vilters-Wangs, in Kriens		joint agent signature at two
20	21m		KPMG AG, in Root	auditor	
21	41		Komböck, Michael, österreichischer Staatsangehöriger, in Wien (AT)	president	joint signature at two
21	32		Martelli, Sandro, italienischer Staatsangehöriger, in Baden		joint agent signature at two
21	30		Richard, Paul, französischer Staatsangehöriger, in Maxilly (FR)		joint agent signature at two
21	33m		KPMG AG, in Root (CH-100.9.015.012-9)	auditor	
22	26m		Dubois, Christian, von Saint-Maurice, in Ollon	vice-director	joint agent signature at two
24	37		Keck, Helmut, österreichischer Staatsangehöriger, in Illnau-Effretikon	vice-director	joint signature at two
25	37m		Cuénod, Roland, von Vevey und Corsier-sur-Vevey, in La Tour-de-Peilz	vice-director	joint signature at two
25			Tricard, Manuel, französischer Staatsangehöriger, in Saint Gingolph (FR)		joint agent signature at two
26	36m		Heber, Harald, österreichischer Staatsangehöriger, in Graz (AT)	member	joint signature at two
26	28m		Dubois, Christian, von Saint-Maurice, in Ollon	director	joint agent signature at two
27			Duner, Heinz, von Emmen, in Buochs	director	joint signature at two
27	30m		Beuth, Clara, französische Staatsangehörige, in Lausanne		joint agent signature at two
28	37m		Dubois, Christian, von Saint-Maurice, in Ollon	director	joint signature at two
29	40		Binggeli, Hans-Peter, von Schwarzenburg, in Opfikon	vice-director	joint signature at two
29	40		Krause, Matthias, deutscher Staatsangehöriger, in Avry		joint agent signature at two
29	41m		Michaud, Christophe, von Les Montets, in Attalens		joint agent signature at two
30	41		Thomann, Peter, von Brienz BE, in Kriens	vice-director	joint signature at two
30	36		Beuth, Clara, französische Staatsangehörige, in Genf (Genève)		joint agent signature at two
31			Jerg, Olaf Hermann, von Zürich und Onsernone, in Stansstad		joint agent signature at two
33	37m		KPMG AG (CH-100.9.015.012-9), in Luzern	auditor	
34	35m		Fernandez Lopez, José, spanischer Staatsangehöriger, in Lausanne		joint agent signature at two
34	40		Purtschert, Reto, von Neuenkirch, Luzern und Ballwil, in Neuenkirch		joint agent signature at two
35			Fernandez Lopez, José Manuel, spanischer Staatsangehöriger, in Lausanne		joint agent signature at two
36	41m		Heber, Harald, österreichischer Staatsangehöriger, in Graz (AT)	vicepresident	joint signature at two
36			Haas, Martin, deutscher Staatsangehöriger, in Obersiggenthal		joint agent signature at two
37	42		Dubois, Christian, von Saint-Maurice, in Ollon	member	joint signature at two
37			Cuénod, Roland, von Vevey und Corsier-sur-Vevey, in La Tour-de-Peilz	director	joint signature at two
37			KPMG AG (CHE-253.502.577), in Luzern	auditor	
39			Sick, Mirjam, von Zürich, in Zürich		joint agent signature at two
40			Fournier, Alexandre, von Nendaz, in Luzern		joint agent signature at two
41			Petitjean, Guy, von Chermignon, in Bulle		joint agent signature at two according to art.459 al.2 CO
41			Jacob, Christian, österreichischer Staatsangehöriger, in Wien (AT)	vicepresident of the board of directors	joint signature at two
41			Heber, Harald, österreichischer Staatsangehöriger, in Graz (AT)	president of the board of directors	joint signature at two
41			Michaud, Christophe, von Les Montets, in Attalens	vice-director	joint signature at two

Luzern, 14.12.2016 18:47

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[PULP & PAPER](#)[METALS](#)[SEPARATION](#)[About ANDRITZ](#)[Jobs and careers](#)[Investor Relations](#)[News and media](#)[Suppliers](#)[ANDRITZ worldwide](#)[Contact](#)**ANDRITZ HYDRO – a leading supplier for hydraulic power generation**

ANDRITZ HYDRO is a global supplier of electromechanical systems and services ("from water-to-wire") for hydropower plants and one of the leaders in the world market for hydraulic power generation.

Hydropower is the most economical form of renewable energy. In close cooperation with its customers, ANDRITZ HYDRO elaborates long-living, environmentally friendly and economically efficient solutions for hydraulic power generation. Maintaining the natural environment, mankind, and technology in perfect harmony is an important part of ANDRITZ HYDRO's corporate culture.

Thus [sustainability](#) and conservative use of resources are given top priority.

ANDRITZ HYDRO Highlights:

- ▲ More than 175 years of accumulated experience in turbine design
- ▲ Over 30,000 turbines (more than 420,000 MW) installed globally
- ▲ Over 120 years of experience in electrical equipment
- ▲ The complete range up to more than 800 MW

ANDRITZ HYDRO is a leading supplier in the service and rehabilitation market and a world market leader for small hydropower solutions.

The organization

ANDRITZ HYDRO is headquartered in Vienna, Austria and has more than 50 locations in more than 25 countries worldwide. The company is organized in five main divisions.

- ▲ [Large Hydro](#)
- ▲ [Service & Rehab](#)
- ▲ [Compact Hydro](#)
- ▲ [Turbo Generators](#)
- ▲ [Pumps](#)

The history of ANDRITZ HYDRO

Today ANDRITZ HYDRO is the legal successor of many former pioneers and leading companies in the hydropower market. All the know-how from these companies and more than 175 years of experience are available from one single source.

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ANDRITZ HYDRO GmbH

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Company profile

Established in 2000, Hidroelectrica managed to occupy a key position on the Romanian Energy Market owing to its experience, credibility and flexibility and is now the leading energy generator and supplier in Romania and the main provider of ancillary services.

With an average output of more than 17 TWh in an average hydrological year, generated in its subsidiaries strategically located throughout the country, Hidroelectrica provides approx. 30% of the country's total production, depending on the hydrology of the year. Also, Hidroelectrica provides approx. 90% of the ancillary services needed for the operation of the National Power System.

With a powerful organizational culture, Hidroelectrica aims to consolidate its leading position on the Romanian energy market through an optimal development of its generation capacities, and, as a future opportunity, to become an important player on the regional energy market.

[Background](#)

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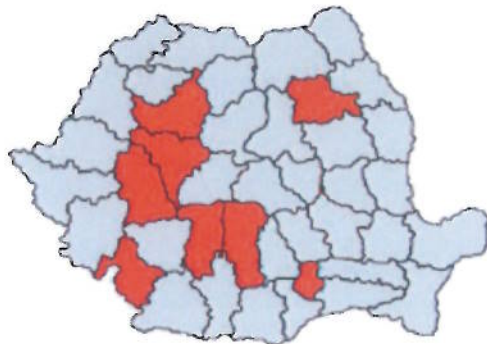
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Hidroelectrica Branches

For the time being Hidroelectrica has 7 branches all over the country.



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Tel: +4021 3032500; Fax: +4021 3032564; Mail: secretariat.general@hidroelectrica.ro



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Shareholders

In accordance with the Articles of Incorporation of the company, the object of business of Hidroelectrica S.A. is power generation and sale by performing related trading acts in line with the laws in force.

According to the CAEN codes, revision 2 (Classification of National Economic Activities) approved by Order no. 337/2007, the object of business of Hidroelectrica S.A is as follows:

Main field of activity: 351 - "Power generation, transmission and distribution"

Principal economic activity: 3511 - "Power generation" and other secondary activities.

Regarding the share capital of Hidroelectrica S.A., the Romanian State through the Ministry of Energy owns 80,056099782% of the total and „Fondul Proprietatea” S.A. owns 19,943900218%.

Supervisory Board:

Craita Ana BUCHERU	- president	- Resume
Elena VOICU	- member	- Resume
Nicu Romeo SUSANU	- member	- Resume
Ionut PURICA	- member	- Resume
Robert Cosmin PANA	- member	- Resume
Mihai – Daniel ANITEI	- member	- Resume
Oana Valentina TRUTA	- member	- Resume

Management Board Hidroelectrica S.A.:

Ovidiu AGLICERU - President of the Management Board - [Resume](#)
Iulian TUDOR - Member of the Management Board - [Resume](#)
Petronel CHIRIAC - Member of the Management Board - [Resume](#)

Division Directors

Department Managers

Organizational structure

Hidroserv

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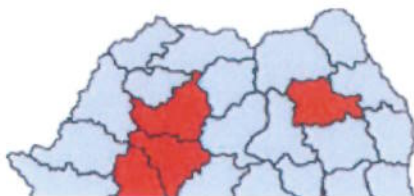
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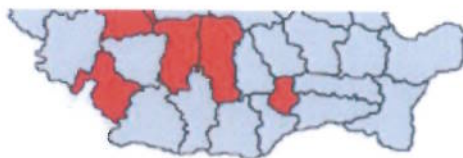
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Hidroelectrica Branches

For the time being Hidroelectrica has 7 branches all over the country.





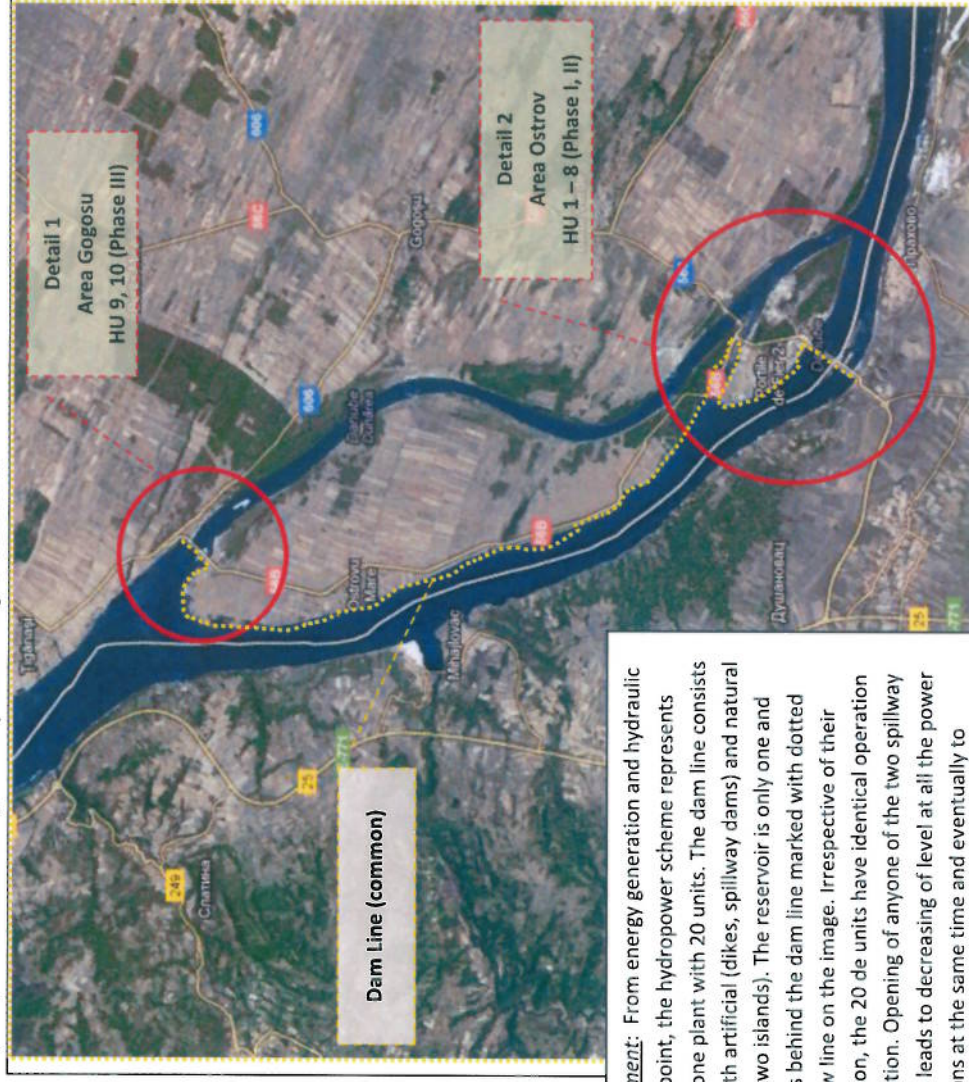
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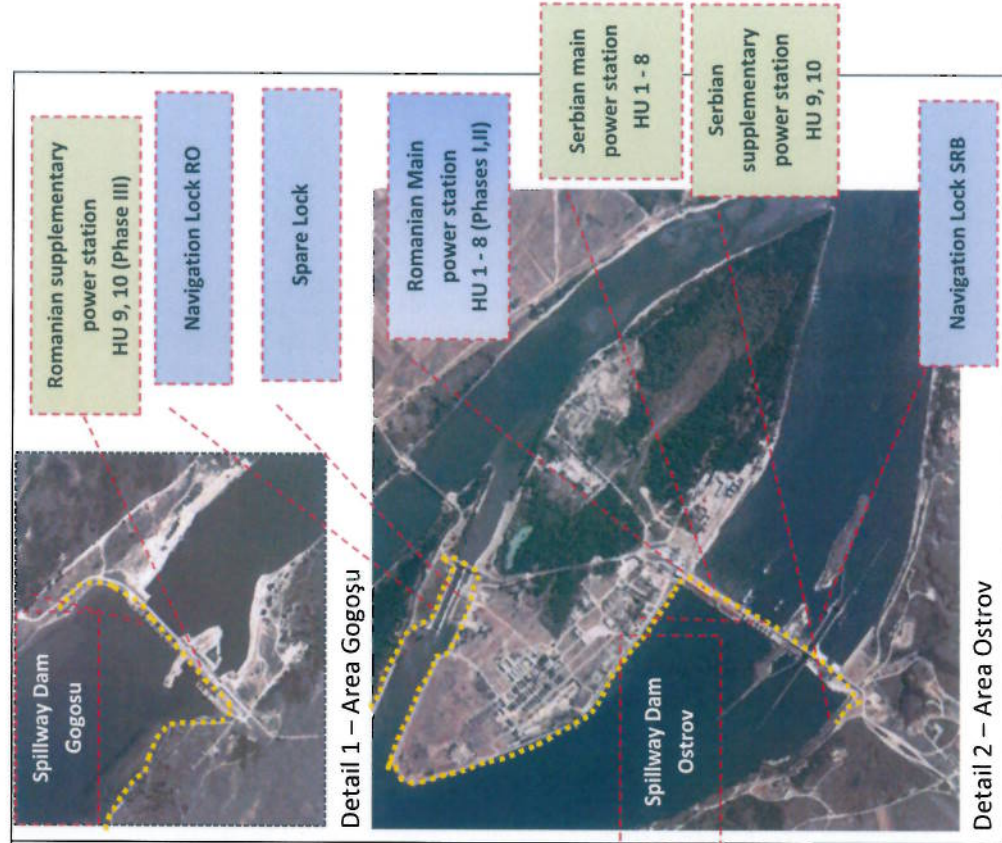
Tel: +4021 3032500; Fax: +4021 3032564; Mail: secretariat.general@hidroelectrica.ro

Hydropower and Navigation System Portile de Fier II



Comment: From energy generation and hydraulic viewpoint, the hydropower scheme represents only one plant with 20 units. The dam line consists of both artificial (dikes, spillway dams) and natural (the two islands). The reservoir is only one and forms behind the dam line marked with dotted yellow line on the image. Irrespective of their location, the 20 de units have identical operation condition. Opening of anyone of the two spillway dams leads to decreasing of level at all the power stations at the same time and eventually to emptying of the entire reservoir.

Note: this document is a presentation image, not a technical drawing.



CONTRACT AGREEMENT
No.2 I / 50765

This Contract Agreement is made the 9th day of November, 2001

Between

HIDROELECTRICA S.A. a Commercial Company incorporated under the laws of ROMANIA and having its principal place of business at Bucharest, Str. Constantin Nacu No.3 (hereinafter called "the Employer")

and

VA TECH HYDRO Ltd., a Corporation incorporated under the laws of SWITZERLAND and having its principal place of business at Kriens, Obernauerstrasse 4, (hereinafter called "the Contractor")

WHEREAS the Employer desires to engage the Contractor for the overhaul and modernisation of the HPP Portile de Fier II ("the Works") and the Contractor has agreed to such engagement upon and subject to the terms and conditions hereinafter appearing.

NOW IT IS HEREBY AGREED as follows:

Article 1. Contract Documents

Contract Documents 1.1
(Reference GC2)

The following documents shall constitute the Contract between the Employer and the Contractor, and each shall be read and construed as an integral part of the Contract:

1. This Contract Agreement and the Appendices hereto
2. Special Conditions of Contract
3. General Conditions of Contract
4. Technical Documents Folder 3 Chapter 1, 2 and 3, in the Order of Clarifications, Technical Specifications and Tender No. 85629
5. Price Schedules
6. General Technical Conditions Folder 2, drawings
7. Forms and Procedures

Order of Precedence 1.2
(Reference GC2)

In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.1 (Contract Documents) above.

All previous documents, plans and information in whatsoever form, which do not form part of this Agreement are not longer

valid and will not to be applied.

Definitions
(Reference GC1)

1.3

Capitalised words and phrases used herein shall have the same meanings as are ascribed to them in the General Conditions of Contract.

Article 2. Contract Price and Terms of Payment

Contract Price

2.1

The Employer hereby agrees to pay to the Contractor the Contract Price in consideration of the performance by the Contractor of its obligations hereunder. (Reference GC11 and SC 11). The Contract Price divided into Offshore and Onshore Portion in accordance with the Price Schedule shall be the aggregate of:

One hundred twenty two millions one hundred fifty thousand EURO
(amount of foreign currency in words)

EURO 122.150.000
(amount in figures)

or such other sums as may be determined in accordance with the terms and conditions of the Contract.

Terms of Payment
(Reference GC12)

2.2

The terms and procedures of payment according to which the Employer will reimburse the Contractor are given in Appendix 1 (Terms and Procedures of Payment) hereto.

Article 3. Effective Date of Contract

Effective Date

- 3.1** The date for coming into force of the Contract shall be the date when all of the following conditions have been fulfilled:
- 1) this Contract Agreement has been duly signed for and on behalf of the Employer and the Contractor;
 - 2) the Contract is approved by the Board of the Administration and State Ownership represented 100% by the Ministry of Industries and Resources of the Employer and approved by the Board of VA TECH HYDRO;
 - 3) the Contractor has submitted to the Employer the Performance Security for Unit 1 and the Advance Payment Guarantee (with respective coming into force clause);
 - 4) the Advance Payment specified in the Terms of Payment has been received by the Contractor.
 - 5) The Escrow Agreement between the Employer, the Contractor and a first class bank in the EU or Switzerland to be mutually agreed upon by the Parties has to be signed, come into force and the Escrow Account has been opened and pledged irrevocably in favour of the Contractor. In addition, the Employer has to be in possession of any permissions and authorisations required for the opening of the Escrow Account.

Each party shall use its best efforts to fulfil the above conditions for which it is responsible as soon as practicable.

Article 4. Appendices

The Appendices listed here below shall be deemed to form an integral part of this Contract Agreement.

Reference in the Contract to any Appendix shall mean the Appendices attached hereto, and the Contract shall be read and construed accordingly.

APPENDICES to the Contract Agreement

Appendix 1	Terms and Procedures of Payment
Appendix 2	Price Adjustment
Appendix 3	Insurance Requirements
Appendix 4	Time Schedule
Appendix 5	List of Subcontractors
Appendix 6	Scope of Works and Supply by the Employer
Appendix 7	List of Documents to be exchanged
Appendix 8	Bank Guarantee for Advance Payment

IN WITNESS WHEREOF the Employer and the Contractor have caused this Agreement to be duly executed by their duly authorised representatives the day and year first above written.

Signed by for and
on behalf of the Employer

Name
Eugen Pena

Signed by for and
on behalf of the Contractor

Name
Jean Claude Riesterer

Name
Hans Peter Binggeli

Title
General Manager

Title
**Senior Vice President
Business Division Large Hydro**

Title
**Senior Vice President
Marketing & Global Sales**

INTELEGERE CONTRACTUALA

Această Înțelegere Contractuală s-a încheiat astăzi 9 noiembrie 2001.

Între:

HIDROELECTRICA S.A. o Societate Comercială înregistrată în conformitate cu legislația din ROMÂNIA și care are sediul principal la București Str. Constantin Nacu Nr.3 (numită în continuare "Beneficiarul")

și

VA TECH HYDRO Ltd. o Corporație înregistrată în conformitate cu legislația din ELVEȚIA și care are sediul principal la Kriens, Obernauerstrasse 4 (numită în continuare "Contractantul")

AVÂND ÎN VEDERE că Beneficiarul dorește să angajeze Contractantul pentru reparația capitală cu modernizare la Centrala Hidroelectrică Porțile de Fier II ("Lucrarile") și Contractantul este de acord cu un asemenea angajament în termenii și în condițiile prezentate în continuare.

ACUM SE CONVINE PRIN PREZENTA după cum urmează:

Articolul 1. Documentele Contractului

Documentele Contractului
(Referință CG 2)

1.1 Următoarele documente vor constitui Contractul dintre Beneficiar și Contractant, și fiecare va fi citit și interpretat ca parte integrantă a Contractului:

1. Această Înțelegere Contractuală și Anexele la aceasta
2. Condiții Speciale ale Contractului
3. Condiții Generale ale Contractului
4. Documentație Tehnică Folder 3, Capitolele 1, 2 și 3 în ordinea Clarificări, Specificații Tehnice și Oferta Nr. 85629
5. Liste de Prețuri
6. Condiții Tehnice Generale Folder 2, Desene
7. Formulare și Proceduri

Ordinea de prioritate
(Referință CG 2)

1.2 În cazul oricărei ambiguități sau neconcordanțe între Documentele Contractului listate mai sus, ordinea de prioritate va fi ordinea în care sunt listate Documentele Contractului în Art.1.1 (Documentele Contractului) de mai sus.

Toate documentele anterioare, desenele și informațiile anterioare sub orice formă, care nu fac parte din prezenta Înțelegere nu mai sunt valabile și nu se vor aplica.

Definiii

(Referință CG 1)

- 1.3 Cuvintele și expresiile scrise cu majuscule în prezentul vor avea aceleași înțelesuri ca cele atribuite lor în Condițiile Generale ale Contractului.

Articolul 2. Prețul Contractului și Condiții de plată

Prețul Contractului

- 2.1 Beneficiarul se angajează prin prezenta să plătească Contractantului Prețul Contractului pentru executarea de către Contractant a obligațiilor sale din prezentul (Referință CG 11 și CS 11). Prețul Contractului defalcat în Porțiunea de pe piața externă și Porțiunea de pe piața internă în conformitate cu Listele de Prețuri este compus din:

Una sută douăzeci și două milioane una sută cincizeci de mii EURO.
(suma monedei străine în cuvinte)

EURO 122.150.000
(suma în cifre)

sau oricare alte asemenea sume care se pot determina în conformitate cu prevederile și condițiile Contractului.

Condiții de plată

(Referință CG 12)

- 2.2 Condițiile și modalitățile de plată în conformitate cu care Beneficiarul va face plățile către Contractant sunt prezentate în Anexa 1 (Condiții și Modalități de plată) la prezentul.

Articolul 3. Data Efectivă a Contractului

Data Efectivă

3.1 Data intrării în vigoare a Contractului va fi data la care au fost îndeplinite toate condițiile următoare:

- 1) această Înțelegere Contractuală a fost semnată valabil pentru și în numele Beneficiarului și Contractantului;
- 2) Contractul este aprobat de către Consiliul de Administrație și Adunarea Generală a Acționarilor Beneficiarului reprezentată 100% de către Ministerul Industriilor și Resurselor și aprobat de către Consiliul Director al VA TECH HYDRO.
- 3) Contractantul a prezentat Beneficiarului garanția de bună execuție aferentă Grupului 1 și garanția de returnare a avansului (cu clauza aferentă de intrare în vigoare);
- 4) Avansul specificat în Condiții și Modalități de Plată a fost primit de către Contractant;
- 5) Acordul Escrow dintre Beneficiar, Contractant și o bancă de primă clasă din Uniunea Europeană sau Elveția asupra căreia Părțile vor conveni de comun acord, trebuie semnat, să intre în vigoare și Contul Escrow trebuie să fie deschis și plasat irevocabil în favoarea Contractantului. În plus, Beneficiarul trebuie să fie în posesia oricăror permise și autorizații solicitate pentru deschiderea Contului Escrow.

Fiecare parte va depune toate eforturile pentru a îndeplini condițiile de mai sus pentru care este răspunzătoare, cât de curând posibil.

Articolul 4. Anexele

Anexele listate mai jos, fac parte integrantă din această Înțelegere Contractuală.

Referinta din Contract la oricare Anexă înseamnă Anexele atașate la prezentul, iar Contractul se va citi și interpreta ca atare.

ANEXELE la Înțelegerea Contractuală

Anexa 1	Condiții și Modalități de Plată
Anexa 2	Ajustarea Prețului
Anexa 3	Cerințe privind Asigurările
Anexa 4	Grafic de Execuție
Anexa 5	Lista Subcontractanților
Anexa 6	Volumul Lucrărilor și a Furniturii asigurate de Beneficiar
Anexa 7	Lista Documentelor schimbate între Părți
Anexa 8	Garanția Bancară pentru plata Avansului

DREPT PENTRU CARE Beneficiarul și Contractantul au hotărât ca acest Contract să fie semnat de reprezentanții lor împuterniciți, în ziua și anul scrise mai sus.

Semnat pentru și în
numele Beneficiarului

Semnat pentru și în
numele Contractantului

Eugen Pena

Jean Claude Riesterer

Hans Peter Binggeli

Director General

Senior Vice President

Senior Vice President

Business Division Large Hydro

Marketing & Global Sales

DRAFT CONTRACT

CONTRACT
for
**Overhaul and Modernisation Works of
HPP Portile de Fier II**

CONTRACT DOCUMENTS

General Conditions of Contract

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GENERAL CONDITIONS OF CONTRACT

PART 1 - CONTRACT AND INTERPRETATION

1. Definitions

1.1 The following words and expressions shall have the meanings hereby assigned to them:

- "Contract" means the Contract Agreement entered into between the Employer and the Contractor, together with the Contract Documents referred to therein; they shall constitute the Contract, and the term "the Contract" shall in all such documents be construed accordingly.
- "Contract documents" means the documents listed in Article 1.1 (Contract Documents) of the Contract Agreement (including any amendments thereto).
- "GC" means the General Conditions hereof.
- "SCC" means the Special Conditions of Contract.
- "Days" mean calendar days of the Gregorian calendar.
- "Month" means calendar month of the Gregorian Calendar.
- "Employer" means the person named as such in the SCC and includes the legal successors or permitted assigns of the Employer.
- "Project Manager" means the person appointed by the Employer in the manner provided in GC 17.1 (Project Manager) hereof and named as such in the SCC to perform the duties delegated by the Employer.
- "Contractor" means the person(s) whose offer was accepted by the Employer and named as such in the SCC and includes the legal successors or permitted assigns of the Contractor.
- "Contractor's representative" means any person nominated by the Contractor and named as such in the SCC and approved by the Employer in the manner provided in GC 17.2.1 (Contractor's Representative and Construction Manager) hereof to perform the duties delegated by the Contractor.

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- "Subcontractor," including vendors, means any person to whom execution of any part of the Works, including preparation of any design or supply of any Plant and Equipment is subcontracted directly or indirectly by the Contractor, and includes its legal successors or permitted assigns.
- "Adjudicator" means the person or persons named as such in the SCC appointed by agreement between the Employer and the Contractor to make a decision on or to settle any dispute or difference between the Employer and the Contractor referred to him or her by the parties pursuant to GC 6.2 (reference to Adjudicator) hereof.
- "Contract Price" means the sum specified in Article 2 (Contract Price) of the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom as may be made pursuant to the Contract.
- "Works" means the Plant and Equipment to be supplied and installed, as well as all the installation services to be carried out by the Contractor under the Contract.
- "Plant and Equipment" means permanent plant, equipment, machinery, apparatus, articles and things of all kinds to be provided and incorporated in the Works by the Contractor under the Contract (including the spare parts to be supplied by the Contractor under GC 7.3 hereof), but does not include Contractor's Equipment.
- "Unit" means Turbine, Generator and Unit related Auxiliaries as defined under Phase I. for one single Unit.
- "Phase I". means Turbine, Generator and Unit related Auxiliaries as defined in Folder 3, Chapter 1,2 and 3 excluding Emergency Roller Gate, Trash Rack, Drainage System for Dewatering of the hydraulic circuit, Cooling System of the block transformer and Fire-fighting system of the block transformer
- "Phase II" means all remaining equipment and not yet defined under Phase I
- "Installation Services" means all those services ancillary to the supply of the Plant and Equipment for the Works to be provided by the Contractor under the Contract, e.g. transportation and provision of marine or other similar insurance, inspection, expediting, site preparation Works (including the provision and use of Contractor's Equipment and the supply of all construction materials required), installation, testing, precommissioning, commissioning, operations, maintenance, the provision of operations and maintenance manuals, training, etc.
- "Contractor's Equipment" means all plant, Works, equipment, machinery, tools, apparatus, appliances or things of every kind required in or for installation, Completion and maintenance of Works and which are to be provided by the Contractor, but does not include plant and equipment, or other things intended to form or forming part of Works.

- "Site" means the land and other places upon which the Works are to be installed, and such other land or places as may be specified in the Contract as forming part of the Site.
- "Effective Date" means the date of fulfilment of all conditions stated in Article 3 of the Contract Agreement, for the purpose of determining the Time for Completion.
- "Time for Completion" means the time within which Completion of the Works as a whole (or of a part of the Works where a separate Time for Completion of such part has been prescribed) is to be attained in accordance with the specifications in the SCC and the relevant provisions of the Contract.
- "Completion" means that the Works (or a specific part thereof where specific parts are specified in the SCC) have been completed operationally and structurally and put in a tight and clean condition, and that all work in respect of Pre-Commissioning of the Works or such specific part thereof has been completed; in other words, that the Works or specific part thereof are ready for Pre-Commissioning as provided in GC 24 (Completion) hereof.
- "Precommissioning" means the testing, checking of the Works specified in the program for Pre-Commissioning tests (field checks and tests) to be submitted by the Contractor for approval. These are to be carried out by the Contractor in preparation for Commissioning as provided in GC 24 (Completion) hereof.
- "Commissioning" means testing, checking of the Works specified in the program for Commissioning Tests as well as operation of the Works or any part thereof by the Contractor following Pre-Commissioning, which operation is to be carried out by the Contractor as provided in GC 25.1.1 (Commissioning) hereof, for the purpose to achieve readiness for 72 hours test run.
- "Guarantee Test(s)" means the test(s) specified in the program for acceptance tests (guarantee tests) to be submitted by the Contractor for approval. These are to be carried out to ascertain whether the Works or a specified part thereof is able to attain the Functional Guarantees specified in the Technical Specifications in accordance with the provisions of GC 25.2.1 (Guarantee Test) hereof.
- "Provisional Acceptance" as defined in GC 25.3
- "Final Acceptance" as defined in GC 25.5
- "Defect Liability Period" means the period of validity of the warranties given by the Contractor commencing at Completion of the Works or a part thereof, during which

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the Contractor is responsible for defects with respect to the Works (or the relevant part thereof) as provided in GC 27 (Defect Liability) hereof.

- "Works executed" shall include all Work and work executed, Installation services provided, and all Plant and Equipment acquired (or subject to a legally binding obligation to purchase) by the Contractor and used or intended to be used for the purpose of the Works, up to and including the date of termination.

- "Turn Key" means that the Employer hands over to the Contractor functioning Units and Contractor hands back to the Employer functioning, refurbished and modernised Units.

The scope of supply as well as the services included in this Contract are defined in Technical Documents Folder 3, Chapter 1,2 and 3 whereas Technical Clarifications have precedence and all additional supplies to be made and services to be rendered will be subject to Change Orders.

2. Contract Documents

- 2.1 Subject to Article 1.2 (Order of Precedence) of the Contract Agreement, all documents forming part of the Contract (and all parts thereof) are intended to be correlative, complementary and mutually explanatory. The Contract shall be read as a whole.

3. Interpretation

3.1 Language

- 3.1.1 Unless the Contractor is a national of the Employer's country and the Employer and the Contractor agree to use the local language, all Contract Documents, all correspondence and communications to be given, and all other documentation to be prepared and supplied under the Contract shall be written in English, and the Contract shall be construed and interpreted in accordance with that language.

- 3.1.2 If any of the Contract Documents, correspondence or communications are prepared in any language other than the governing language under GC 3.1.1 above, the English translation of such documents, correspondence or communications shall prevail in matters of interpretation.

3.2 Singular and Plural

- 3.2.1 The singular shall include the plural and the plural the singular, except where the context otherwise requires.

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3.3 Headings

- 3.3.1 The headings and marginal notes in the General Conditions of Contract are included for ease of reference, and shall neither constitute a part of the Contract nor affect its interpretation.

3.4 Persons

- 3.4.1 Words importing persons or parties shall include firms, corporations and government entities.

3.5 Incoterms

- 3.5.1 Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by "Incoterms."
- 3.5.2 "Incoterms 2000" means international rules for interpreting trade terms published by the International Chamber of Commerce (latest edition), 38 Cours Albert 1ier, 75008 Paris, France.

3.6 Entire Agreement

- 3.6.1 Subject to GC 16.4 hereof, the Contract constitutes the entire agreement between the Employer and Contractor with respect to the subject matter of Contract and supersedes all communications, negotiations and agreements (whether written or oral) of parties with respect thereto made prior to the date of Contract.

3.7 Amendment

- 3.7.1 No amendment or other variation of the Contract shall be effective unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorised representative of each party hereto.

3.8 Independent Contractor

- 3.8.1 The Contractor shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture or other joint relationship between the parties hereto.

- 3.8.2 Subject to the provisions of the Contract, the Contractor shall be solely responsible for the manner in which the Contract is performed. All employees, representatives or Subcontractors engaged by the Contractor in connection with the performance of the Contract shall be under the complete control of the Contractor and shall not be deemed to be employees of the Employer, and nothing contained in the Contract or in any subcontract awarded by the Contractor shall be construed to create any contractual relationship between any such employees, representatives or Subcontractors and the Employer.

3.9 Joint Venture

- 3.9.1 If the Contractor is a joint venture of two or more persons, all such firms shall be jointly and severally bound to the Employer for the fulfilment of the provisions of the Contract and shall designate one of such persons to act as a leader with authority to bind the joint venture. The composition or the constitution of the joint venture shall not be altered without the prior consent of the Employer.

3.10 Non-Waiver

- 3.10.1 Subject to GC 3.10.2 below, no relaxation, forbearance, delay or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect or restrict the rights of that party under the Contract, nor shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

- 3.10.2 Any waiver of a party's rights, powers or remedies under the Contract must be in writing, must be dated and signed by an authorised representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

3.11 Severability

- 3.11.1 If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

3.12 Country of Origin

- 3.12 "Country of Origin" means the place where the materials, equipment and other supplies for the Works are mined, grown, produced or manufactured, and from which the services are provided.

4. Notices

4.1 Unless otherwise stated in the Contract, all notices to be given under the Contract shall be in writing, and shall be sent by personal delivery, airmail post, special courier, cable, telegraph, telex, facsimile or Electronic Data InterChange (EDI/e-mail) to the address of the relevant party set out in the SCC, with the following provisions.

4.1.1 Any notice of contractual importance sent by cable, telegraph, telex, facsimile or EDI shall be confirmed within two (2) days after dispatch by notice sent by airmail post or special courier, except as otherwise specified in the Contract.

4.1.2 Any notice sent by airmail post or special courier shall be deemed (in the absence of evidence of earlier receipt) to have been delivered ten (10) days after dispatch. In proving the fact of dispatch, it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped and conveyed to the postal authorities or courier service for transmission by airmail or special courier.

4.1.3 Any notice delivered personally or sent by cable, telegraph, telex, facsimile or EDI shall be deemed to have been delivered on date of its dispatch.

4.2 Either party may Change its postal, cable, telex, facsimile or EDI address or addressee for receipt of such notices by ten (10) days' notice to the other party in writing.

4.3 Notices shall be deemed to include any approvals, consents, instructions, orders and certificates to be given under the Contract.

5. Governing Law

5.1 The Contract shall be governed by and interpreted in accordance with laws of the country or state specified in the SCC.

6. Settlement of Disputes

6.1 Adjudicator

6.1.1 If any dispute of any kind whatsoever shall arise between the Employer and the Contractor in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing any question regarding its existence, validity or termination, or the execution of the Works, whether during the progress of

the Works or after their Completion and whether before or after the termination, abandonment or breach of the Contract, the parties shall seek to resolve any such dispute or difference by mutual consultation. If the parties fail to resolve such a dispute or difference by mutual consultation, then the dispute shall be referred to in writing by either party to the Adjudicator, with a copy of the other party.

- 6.1.2 The Adjudicator shall give its decision in writing to both parties within twenty-eight (28) days of being referred to a dispute. If neither party notifies the other of its disagreement with the Adjudicator's decision within twenty-eight (28) days of the decision, that decision shall be final and binding for both parties. If, within twenty-eight (28) days of the decision, either party notifies the other of its disagreement, the dispute shall be referred by either party to arbitration within twenty-eight (28) days. If the parties can not agree who shall be the Adjudicator, each Party shall be entitled to refer the dispute to arbitration pursuant GC 6.2
- 6.1.3 The Adjudicator shall be paid an hourly fee at the rate, which will be mutually agreed upon by the parties with the Adjudicator plus reasonable expenditures incurred in the execution of his duties as Adjudicator, and these costs shall be divided equally between the Employer and the Contractor.
- 6.1.4 Should the Adjudicator resign or die, or should the Employer and the Contractor agree that the Adjudicator is not fulfilling his duties in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by the Employer and the Contractor. Failing agreement between the two within twenty-eight (28) days, the new Adjudicator shall be designated by the Appointing Authority specified in the SCC at the request of either party and thereupon shall be jointly appointed by the Employer and the Contractor.

6.2 Arbitration

- 6.2.1 If the Adjudicator does not give its decision within twenty-eight (28) days of a referred dispute, or if either the Employer or the Contractor notifies the other in accordance with Sub-Clause GC 6.1. that it disagrees with the Adjudicator's decision, then either the Employer or the Contractor may give written notice, within twenty-eight (28) days, to the other party of its intention to refer the dispute to arbitration.
- 6.2.2 Any dispute submitted by a party to arbitration shall be heard by an arbitration panel composed of three arbitrators, in accordance with the provisions set forth below.
- 6.2.3 The Employer and the Contractor shall each appoint one arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the arbitrators named by the parties do not succeed in appointing a third

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arbitrator within twenty-eight (28) days after the latter of the two arbitrators named by the parties has been appointed, the third arbitrator shall, at the request of either party, be appointed by the Appointing Authority designated in the SCC.

- 6.2.4 If one party fails to appoint its arbitrator within twenty-eight (28) days after the other party has appointed its arbitrator, the party which has named an arbitrator may request the Appointing Authority to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the sole arbitrator for that dispute.
- 6.2.5 If for any reason an arbitrator is unable to perform its function, a substitute shall be appointed in the same manner as the original arbitrator.
- 6.2.6 Arbitration proceedings shall be conducted (i) in accordance with the rules of procedure designated in the SCC, (ii) in the place designated in the SCC, and (iii) in the language in which this Contract has been executed.
- 6.2.7 The decision of a majority of the arbitrators (or of the third arbitrator if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction. The parties thereby waive any objections to or claims of immunity from such enforcement.
- 6.3 Notwithstanding any reference to the Adjudicator or arbitration herein,
 - (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
 - (b) the Employer shall pay the Contractor any monies due to the Contractor.

PART II

SUBJECT MATTER OF CONTRACT

7. *Scope of Works*

- 7.1 Unless otherwise expressly limited the Contractor's obligations cover the provision of all Plant and Equipment and the performance of all Installation Services required for the design, the manufacture (including procurement, quality assurance, construction, installation, associated civil Works, precommissioning and delivery) of the Plant and Equipment and the installation, Completion and commissioning of the Works in accordance with the plans, procedures, specifications, drawings, codes and any other documents. Such works shall include, but are not limited to, the provision of supervision and engineering services; the supply of labour, materials, equipment, spare parts (as specified in GC 7.3 below) and accessories; Contractor's Equipment; construction utilities and supplies; temporary materials, structures and Works; transportation (including, without limitation, unloading and hauling to, from and at the Site); and storage, except for those supplies, Works and services which will be provided or performed by the Employer, as set forth in Appendix 6 (Scope of Works and Supply by the Employer) to the Contract agreement.
- 7.2 The Contractor shall unless specifically excluded in the Contract, perform all such work and/or supply all such items and materials not specifically mentioned in the Contract but which can be reasonably inferred from the Contract as being required for attaining Completion of the Works as if such work and/or items and materials were expressly mentioned in the Contract.
- 7.3 In addition to the supply of Mandatory Spare Parts included in the Contract, the Contractor agrees to supply spare parts required for the operation and maintenance of the Works for the period specified in the SCC. However, the identity, specifications and quantities of such spare parts and the terms and conditions relating to the supply thereof are to be agreed between the Employer and the Contractor and the price of such spare parts shall be that given in Price Schedules from the present volume. The price of such spare parts shall include the purchase price therefore and other costs and expenses (including the Contractor's fees) relating to the supply of the same.

8. Time for Commencement and Completion

- 8.1 The Contractor shall start with the work on the Works within the period specified in the special conditions of contract, SCC and without prejudice to GC 26.2 hereof, the Contractor shall thereafter proceed with the Works in accordance with the time schedule specified in Appendix 4 (Time Schedule) to the Contract agreement.
- 8.2 The Contractor shall attain Completion of the Works (or of a part where a separate Time for Completion of such part is specified in the Contract) within the time stated in the SCC or within such extended time to which the Contractor shall be entitled under GC 40 (Extension of Time for Completion) hereof.

9. Contractor's Responsibilities

- 9.1 The Contractor shall design, manufacture (including associated purchases and/or subcontracting), deliver, install and complete the Works with due care and diligence in accordance with the Contract.
- 9.2 The Contractor confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the Works provided by the Employer, and on the basis of information that it could have obtained from a visual inspection of the site, and other data readily available to it relating to the Works as at the date sixty (60) days prior to offer submission.. (to be specified in SCC)
- 9.3 The Contractor shall acquire and pay all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located, which such authorities or undertakings require the Contractor to obtain in its name and which are necessary for the performance of the Contract, including, without limitation, visas for the Contractor's and Subcontractor's personnel and entry permits for all temporary imported Contractor's Equipment. The Contractor shall acquire and pay all other permits, approvals and/or licenses which are not the responsibility of the Employer under GC 10.3 hereof and which are necessary for the performance of the Contract.
- 9.4 The Contractor shall comply with all laws in force in the country where the Works are installed and the Installation Services are carried out. The laws will include all national, provincial, municipal or other laws that affect the performance of the Contract and bind upon the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising out or resulting from the violation of such laws by the Contractor or its personnel, including the Subcontractors and their personnel, but without prejudice to GC 10.1 hereof.

- 9.5 Any Plant, Material and Services that will be incorporated in or be required for the Works and other supplies shall have their origin as specified under GC 3.12 (Country of Origin).

10. Employer's Responsibilities

- 10.1 The Employer shall ensure the accuracy of all information and/or data to be supplied by the Employer as described in Appendix 6 (Scope of Works and Supply by the Employer) to the Contract Agreement, except when otherwise expressly stated in the Contract.
- 10.2 The Employer shall be responsible for acquiring and providing legal and physical possession of the Site and access thereto, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract, including all requisite rights of way, as specified in Appendix 6 (Scope of Works and supply by the Employer) to the Contract Agreement. The Employer shall give full possession of and accord all rights of access thereto on or before the date(s) specified in Appendix 6.
- 10.3 The Employer shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the site is located, which are required to be obtained in the Employer's name and are necessary for the execution of the Contract as specified in Appendix 6 (Scope of Works and supply by the Employer) to the Contract agreement.
- 10.4 Except the Government Permits, which shall be obtained by the Employer and if requested by the Contractor, the Employer shall use its best endeavours to assist the Contractor in obtaining in a timely and expeditious manner all permits, approvals and/or licenses necessary for the execution of the Contract from all local, state or national government authorities or public service undertakings which such authorities or undertakings require the Contractor or Subcontractors or the personnel of the Contractor or Subcontractors, as the case may be, to obtain.

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- 10.5 Unless otherwise specified in the Contract or agreed upon by the Employer and the Contractor, the Employer shall provide sufficient properly qualified operating and maintenance personnel; shall supply and make available all raw materials, utilities, lubricants, chemicals, catalysts, other materials and Works; and shall perform all work and services of whatsoever nature, including those required by the Contractor to properly carry out Precommissioning, Commissioning and Guarantee Tests, all in accordance with the provisions of Appendix 6 (Scope of Works and supply by the Employer) to the Contract Agreement at or before the time specified in the program furnished by the Contractor under GC 18.2 (Program of performance) hereof and in the manner thereupon specified or as otherwise agreed upon by the Employer and the Contractor.
- 10.6 The Employer shall be responsible for the operation of the Works after Completion, in accordance with GC 24.8, and shall be responsible for facilitating the Guarantee Test(s) for the Works, in accordance with GC 25.2
- 10.7 All costs and expenses involved in the performance of the obligations under this GC 10 shall be the responsibility of the Employer, save those to be incurred by the Contractor with respect to the performance of Guarantee Tests, in accordance with GC. 25.2.

PART III

PAYMENT

11. Contract Price

- 11.1 The Contract Price shall be as specified in Article 2 (Contract Price) of the Contract Agreement.
- 11.2 Unless indicated otherwise in the SCC, the Contract Price shall be a firm lump sum not subject to any alteration, except in the event of a Change in the Works or as otherwise provided in the Contract.
- 11.3 Subject to GCs 9.2, 10.1 and 35 (Unforeseen Conditions) hereof, the Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.

12. Terms of Payment

- 12.1 The Contract Price shall be paid as specified in Appendix 1 (Terms of Payment) to the Contract Agreement. The procedures to be followed in making application for and processing payments shall be those outlined in the same Appendix 1.
- 12.2 No payment made by the Employer herein shall be deemed to constitute acceptance by the Employer of the Works or any part(s) thereof.
- 12.3 The currency or currencies in which payments are made to the Contractor under this Contract shall be specified in Appendix 1 (Terms of Payment) to the Contract agreement, subject to the general principle that payments will be made in the currency or currencies in which the Contract Price has been established.

13. Securities

13.1 Issuance of Securities

- 13.1.1 The Contractor shall provide the securities specified below in favour of the Employer at the times, and in the amount, manner and form specified below.

13.2 Advance Payment Security

13.2.1 The Contractor shall, ten (10) days before the date provided for the payment of the advance, provide a security in form and in an amount to be mutually agreed upon between the parties, with a validity of up to ninety (90) days beyond the date of Completion of the Works in accordance with GC 24.

13.2.2 The security shall be in the form as agreed and provided in the Contract. The amount of the security shall be reduced in proportion to the value of the Works executed by and paid to the Contractor from time to time, and shall automatically become null and void when the full amount of the agreed amount of the security has been recovered by the Employer. The security shall be returned to the Contractor immediately after its value expiration.

13.3 Performance Security

13.3.1 The Contractor shall, within ten (10) days of the notification of contract award, provide a security for the due performance of the Contract in the amount specified in the SCC.

13.3.2 The security shall be denominated in the currency or currencies of the Contract, or in a freely convertible currency acceptable to the Employer, and shall be in the form provided in the contract documents or in another form acceptable to the Employer.

13.3.3 The Security shall automatically become null and void, or shall be reduced pro rata to the Contract Price of a part of the Works for which a separate Time for Completion is provided, upon the issue of the Final Acceptance Certificate in accordance with GC 25.5. However if the Defects Liability Period has been extended for any other part of the Works pursuant to Sub-Clause GC 27.8 and/or 25.5 hereof, the Contractor shall extend the validity of the performance Security accordingly. The security shall be returned to the Contractor immediately after its expiration.

13.4.1 Claims under Security

13.4.1 If the Employer considers itself entitled to any claim under any security, it shall so notify the Contractor by registered airmail post, specifying the default of the Contractor upon which it bases its claim, and it shall require the Contractor to remedy the same. If the Contractor fails to remedy or to take steps to remedy the same within thirty (30) days of receipt of such notice, then the Employer shall be entitled to call the Security.

14. Taxes and Duties

- 14.1 Except as otherwise specifically provided in the Contract, the Contractor shall bear and pay all taxes, duties, levies and charges assessed on the Contractor, its Subcontractors or their employees by all municipal, state or national government authorities in connection with the Works in and outside of the country where the Site is located.
- 14.2 Notwithstanding GC 14.1 above, the Employer shall bear and promptly pay all customs and import duties including VAT imposed on the Plant and Equipment specified in Schedule No.1 of the Price Schedules and to be incorporated into the Works by the law of the country where the Site is located.
- 14.3 If any tax exemptions, reductions, allowances or privileges may be available to the Contractor in the country where the Site is located, the Employer shall use its best endeavours to enable the Contractor to benefit from any such tax savings to the maximum allowable extent.
- 14.4 For the purpose of the Contract, it is agreed that the Contract Price specified in Article 2.1 (Contract Price) of the Contract agreement is based on the taxes, duties, levies and charges prevailing at the date twenty-eight (28) days prior to the date of contract signature in the country where the Site is located (hereinafter called "Tax" in this GC 14.4). If any rates of Tax are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any Change in interpretation or application of any tax occurs in the course of the performance of the Contract, which was or will be assessed on the Contractor, Subcontractors or their employees in connection with performance of the Contract, an equitable adjustment of the Contract Price shall be made to fully take into account any such Change by addition to the Contract Price or deduction therefrom, as the case may be, in accordance with GC 36 (Change in Laws and Regulations) hereof.

PART IV

INTELLECTUAL PROPERTY

15. Copyright

- 15.1 The copyright in all drawings, documents and other materials containing data and information furnished to the Employer by the Contractor herein shall remain vested in the Contractor or, if they are furnished to the Employer directly or through the Contractor by any third party including suppliers of materials, the copyright in such materials shall remain vested in such third party.

16. Confidential Information

- 16.1 The Employer and the Contractor shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other party hereto in connection with the Contract. whether such information has been furnished prior to, during or following termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Subcontractor(s) such documents, data and other information it receives from the Employer to the extent required for the Subcontractor(s) to perform its Works under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this GC 16.
- 16.2 The Employer shall not use such documents, data and other information received from the Contractor for any purpose other than the operation and maintenance of the Works. Similarly, the Contractor shall not use such documents, data and other information received from the Employer for any purpose other than the design, procurement of Plant and Equipment, construction or such other work and services as are required for the performance of the Contract.
- 16.3 The obligation of a party under GCs 16.1 and 16.2 above, however, shall not apply to that information which:
- (a) now or hereafter enters the public domain through no fault of that party; or
 - (b) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party hereto; or
 - (c) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

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- 16.4 The above provisions of this GC 16 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Works or any part thereof.
- 16.5 The provisions of this GC 16 shall survive termination for whatever reason of the Contract.

PART V

WORK EXECUTION

17. Representatives

17.1.1 Project Manager

- 17.1 If the Project Manager is not named in the Contract, then within fourteen (14) days of the Effective Date, the Employer shall appoint and notify the Contractor in writing of the name of the Project Manager. The Employer may from time to time appoint some other person as the Project Manager in place of the person previously so appointed, and shall give a notice of the name of such other person to the Contractor without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of work on the Works. Such appointment shall only take effect upon receipt of such notice by the Contractor. The Project Manager shall represent and act for the Employer at all times during the lifetime of the Contract. All notices, instructions, orders, certificates, approvals and all other communications in compliance with the provisions of the Contract shall be given by the Project Manager, except as herein otherwise provided.

All notices, instructions, information and other communications given by the Contractor to the Employer in compliance with the provisions of the Contract shall be given to the Project Manager, except as herein otherwise provided.

17.2 Contractor's Representative & Site Manager

- 17.2.1 If the Contractor's Representative is not named in the Contract, then within fourteen (14) days of the Effective Date, the Contractor shall appoint the Contractor's Representative and shall request the Employer in writing to approve the person so appointed. If the Employer makes no objection to the appointment within fourteen (14) days, the Contractor's Representative shall be deemed to have been approved. If the Employer objects, which can be done only based on reasonable grounds, to the appointment within fourteen (14) days giving the reason therefore, then the Contractor shall appoint a replacement within fourteen (14) days of such objection, and the foregoing provisions of this GC 17.2.1 shall apply thereto.
- 17.2.2 The Contractor's Representative shall represent and act for the Contractor at all times during the lifetime of the Contract and shall give to the Project Manager all the Contractor's notices, instructions, information and all other communications under the Contract.

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All notices, instructions, information and all other communications given by the Employer or the Project Manager to the Contractor according to the provisions of the Contract shall be given to the Contractor's Representative or, in its absence, its Deputy, except as herein otherwise provided.

The Contractor shall not revoke the appointment of the Contractor's Representative without the Employer's prior written consent, which shall not be unreasonably withheld. If the Employer consents thereto, the Contractor shall appoint some other person as the Contractor's Representative, pursuant to the procedure set out in GC 17.2.1 above.

- 17.2.3 The Contractor's Representative may, subject to the approval of the Employer (which shall not be unreasonably withheld), at any time delegate to any person any of the powers, functions and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Contractor's Representative, and shall specify the powers, functions and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the Employer and the Project Manager.

Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this GC 17.2.3 shall be deemed to be an act or exercise by the Contractor's Representative.

- 17.2.4 From the commencement of installation of the Works at the Site until Completion, the Contractor's Representative shall appoint a suitable person as the site manager (hereinafter referred to as "the Site Manager"). The Site Manager shall supervise all work done at the Site by the Contractor and shall be present at the Site throughout normal working hours except when on leave, sick or absent for reasons connected with the proper performance of the Contract. Whenever the Site Manager is absent from the Site, a suitable person shall be appointed to act as his or her Deputy.

- 17.2.5 The Employer may by notice to the Contractor object to any representative or person employed by the Contractor in the execution of the Contract who, in the reasonable opinion of the Employer, may behave inappropriately, may be incompetent or negligent, or may commit a serious breach of the Site regulations provided under GC 22.3 hereof. The Employer shall provide evidence of the same, whereupon the Contractor shall remove such person from the Works.

- 17.2.6 If any representative or person employed by the Contractor is removed in accordance with GC 17.2.5 above, the Contractor shall where required promptly appoint a replacement.

18. Work Program

18.1 Contractor's Organisation

- 18.1.1 The Contractor shall supply to the Employer and the Project Manager a chart showing the proposed organisation to be established by the Contractor for carrying out work on the Works. The chart shall include the identities of the key personnel together with the curricula vitae of such key personnel to be employed within thirty (30) days of the Effective Date. The Contractor shall promptly inform the Employer and the Project Manager in writing of any revision or alteration of such organisation chart.

18.2 Program of Performance

- 18.2.1 Within forty (40) days after the date of signing the Contract Agreement, the Contractor shall prepare and submit to the Project Manager a detailed programme of performance of the Contract, made in the form specified in the SCC and showing the sequence in which it proposes to design, manufacture, supply, transport, assemble, install and precommission the Works, as well as the date by which the Contractor reasonably requires that the Employer shall have fulfilled its obligations under the Contract so as to enable the Contractor to execute the Contract in accordance with the programme and to achieve Completion, Commissioning and Acceptance of the Works in accordance with the Contract. The programme so submitted by the Contractor shall accord with the Time Schedule included in Appendix 4 (Time Schedule) to the Contract agreement and any other dates and periods specified in the Contract. The Contractor shall update and revise the programme as and when appropriate or when required by the Project Manager, but without modification in the Times for Completion given in the SCC and any extension granted in accordance with GC 40, and shall submit all such revisions to the Project Manager.

18.3 Progress Report

18.3.1 The Contractor shall monitor progress of all the activities specified in the programme referred to in GC 18.2 (Program of Performance) above, and supply a progress report to the Project Manager every month.

18.3.2 The progress report shall be in a form which is mutually agreed upon between the parties and shall indicate: (a) percentage of Completion achieved compared with the planned percentage Completion for each activity; and (b) where any activity is behind the programme, giving comments and likely consequences and stating the corrective action being taken.

18.4 Progress of Performance

18.4.1 If at any time the Contractor's actual progress falls behind the programme referred to in GC 18.2 (Programme of Performance) above, or it becomes apparent that it will so fall behind, the Contractor shall, at the request of the Employer or the Project Manager, prepare and submit to the Project Manager a revised programme, taking into account the prevailing circumstances, and shall notify the Project Manager of the steps being taken to expedite progress so as to attain Completion of the Works within the Time for Completion under GC 8.2 (Time for Completion) hereof, any extension thereof entitled under GC 40.1 hereof, or any extended period as may otherwise be agreed upon between the Employer and the Contractor.

18.5 Work Procedures

18.5.1 The Contract shall be executed in accordance with the Contract documents and the procedures given in Forms and procedures of the Contract Documents.

The Contractor may execute the Contract in accordance with its own standard project execution plans and procedures to the extent that they do not conflict with the provisions contained in the Contract.

19 Subcontracting

19.1 Appendix 5 (List of Subcontractors) to the Contract Agreement specifies major items of supply or services and a list of approved Subcontractors against each item, including vendors. Insofar as no Subcontractors are listed for each major item, the Contractor shall prepare a list of Subcontractors for such item to be included in such list. The Contractor may from time to time propose any addition to or deletion from any such list. The Contractor shall submit any such list or any modification thereto to the Employer for its approval in sufficient time so as not to impede the progress of work on the Works. Such approval by the Employer for any of the Subcontractors shall not relieve the Contractor from any of its obligations, duties or responsibilities under the Contract.

- 19.2 The Contractor shall select and employ its Subcontractors for such major items from those listed in the lists referred to in GC Sub-Clause 19.1.
- 19.3 For items or parts of the Works not specified in Appendix 5 (List of Subcontractors) to the Contract agreement, the Contractor may employ such Subcontractors as it may select, at its discretion.

20 Design and Engineering

20.1 Specifications and Drawings

- 20.1.1 The Contractor shall execute the basic and detailed design and the engineering work in compliance with the provisions of the Contract, or where not so specified, in accordance with good engineering practice.

The Contractor shall be responsible for any discrepancies, errors or omissions in the specifications, drawings and other technical documents that it has prepared, whether such specifications, drawings and other documents have been approved by the Project Manager or not, provided that such discrepancies, errors or omissions are not because of inaccurate information furnished in writing to the Contractor by or on behalf of the Employer.

- 20.1.2 The Contractor shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designated by or on behalf of the Employer, by giving a notice of such disclaimer to the Project Manager.

20.2 Codes and Standards

- 20.2 Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date twenty-eight (28) days prior to date of contract signature shall apply unless otherwise specified. During Contract execution, any Changes in such codes and standards shall be applied after approval by the Employer and shall be treated in accordance with GC 39. Employer's internal (plant) standards shall only apply as far as these have been submitted to and agreed upon by Contractor prior to the contract signature. Any changes of such internal (plant) standards during performance of contract shall be notified to the Contractor and shall be treated in accordance with GC 39.

20.3 Approval/Review of Technical Documents by Project Manager

- 20.3.1 The Contractor shall prepare (or cause its Subcontractors to prepare) and furnish to the Project Manager the documents listed in Appendix 7 to the Contract Agreement for its approval or review as specified and as in accordance with the requirements of GC 18.2 (Program of Performance).

Any part of the Works covered by or related to the documents to be approved by the Project Manager shall be executed only after the Project Manager's approval thereof.

The following GCs 20.3.2 to 20.3.7 (inclusive) shall apply to those documents requiring the Project Manager's approval, but not to those submitted to the Project Manager for its review only.

- 20.3.2 Within fourteen (14) days after receipt by the Project Manager of any document requiring the Project Manager's approval in accordance with GC 20.3.1 above, the Project Manager shall either return one copy thereof to the Contractor with its approval endorsed thereon or shall notify the Contractor in writing of its disapproval thereof and the reasons therefor and the modifications which the Project Manager proposes.

If the Project Manager fails to take such action within the said fourteen (14) days, then the said document shall be deemed to have been approved by the Project Manager.

- 20.3.3 The Project Manager shall not disapprove any document, except on the grounds that the document does not comply with some specified provision of the Contract or that it is contrary to good engineering practice.

- 20.3.4 If the Project Manager disapproves the document, the Contractor shall modify the document and re-submit it for the Project Manager's approval in accordance with GC 20.3.2 above. If the Project Manager approves the document subject to modification(s), the Contractor shall make the required modification(s), whereupon the document shall be deemed to have been approved.

- 20.3.5 If any dispute or difference occurs between the Employer and the Contractor in connection with or arising out of the disapproval by the Project Manager of any document and/or any modification(s) thereto which cannot be settled between the parties within a reasonable period, then such dispute or difference may be referred to an Adjudicator for determination in accordance with GC 6.1 (Reference to Adjudicator) hereof. If such dispute or difference is referred to an Adjudicator, the Project Manager shall give instructions as to whether and, if so, how performance of the Contract is to proceed. The Contractor shall proceed with the Contract in accordance with the Project Manager's instructions, provided that if the Adjudicator upholds the Contractor's view on the dispute and if the Employer has not given

notice under GC 6.1.2 hereof, then the Contractor shall be reimbursed by the Employer for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as the Adjudicator shall decide, and the Time for Completion shall be extended accordingly.

20.3.6 The Project Manager's approval, with or without modification of the document furnished by the Contractor, shall not relieve the Contractor of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager.

20.3.7 The Contractor shall not depart from any approved document unless the Contractor has first submitted to the Project Manager an amended document and obtained the Project Manager's approval thereof, pursuant to the provisions of this GC.20.3

If the Project Manager requests any Change in any already approved document and/or in any document based thereon, the provisions of GC 39 (Change in the Works) hereof shall apply to such request.

21. Procurement

21.1 Plant and equipment

21.1.1 The Contractor shall manufacture or procure and transport all the Plant and Equipment in an expeditious and orderly manner to the site.

21.2 Employer-supplied plant, equipment and materials

21.2.1 If Appendix 6 (Scope of Works and Supply by the Employer) to the Contract Agreement provides that the Employer shall furnish any specific items of machinery, equipment or materials to the Contractor, the following provisions shall apply:

21.2.2 The Employer shall, at its own risk and expense, transport each item to the place on or near the site as agreed upon by the parties and make such item available to the Contractor at the time specified in the programme furnished by the Contractor, pursuant to GC 18.2 (Programme of Performance) hereof unless otherwise mutually agreed.

21.2.3 Upon receipt of such item, the Contractor shall inspect the same visually and notify the Project Manager of any detected shortage, defect or default. The Employer shall immediately remedy any shortage, defect or default, or the Contractor shall, if practicable and possible, at the request of the Employer, remedy such shortage,

defect or default at the Employer's cost and expense. After inspection, such item shall fall under the care, custody and control of the Contractor.

21.2.4 The provision of this GC 21.2.3 shall apply to any item supplied to remedy any such shortage or default or to substitute for any defective item, or shall apply to defective items which have been repaired.

21.2.5 The foregoing responsibilities of the Contractor and its obligations of care, custody and control shall not relieve the Employer of liability for any undetected shortage, defect or default, nor place the Contractor under any liability for any such shortage, defect or default whether under GC 27 (Defect Liability) hereof or any other provision of Contract.

21.3 Transportation

21.3.1 The Contractor shall at its own risk and expense transport all the Plant and Equipment and the Contractor's Equipment to the Site by the mode of transport which the Contractor judges most suitable under all the circumstances.

21.3.2 Unless otherwise provided in the Contract, the Contractor shall be entitled to select any safe mode of transport operated by any person to carry the Plant and Equipment and the Contractor's Equipment.

21.3.3 Upon dispatch of each shipment of the Plant and Equipment and the Contractor's Equipment, the Contractor shall notify the Employer by telex, cable, facsimile or Electronic Data InterChange (EDI e-mail) of the description of the Plant and Equipment and of the Contractor's Equipment, the point of departure and means of dispatch, and the estimated time and point of arrival in the country where the Site is located, or place where the goods are further proceeded. The Contractor shall furnish the Employer with relevant shipping documents to be agreed upon between the parties.

21.3.4 The Contractor shall be responsible for obtaining, if necessary, approvals from the authorities for transportation of the Plant and Equipment and the Contractor's Equipment to the Site. The Employer shall use its best endeavours in a timely and expeditious manner to assist the Contractor in obtaining such approvals (in Romania), if requested by the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any claim for damage to roads, bridges or any other traffic Works that may be caused by the transport of the plant and equipment and the Contractor's Equipment to the site.

21.4 Customs Clearance

21.4.1 The Employer shall, at its own expense, handle all imported Plant and Equipment and Contractor's Equipment at the point(s) of import and shall handle any formalities for customs clearance, subject to the Employer's obligations under GC 14.2 hereof, provided that if applicable laws or regulations require any application or act to be made by or in the name of the Employer, the Employer shall take all necessary steps to comply with such laws or regulations. In the event of delays in customs clearance that are not the fault of the Contractor, the Contractor shall be entitled to an extension in the Time for Completion, pursuant to Clause GC 40 , and refund of actual costs incurred due to such delay.

22. Installation

22.1 Setting Out/Supervision/Labour

Bench Mark

22.1.1 The Contractor shall be responsible for the true and proper setting-out of the Works in relation to bench marks, reference marks and lines provided to it in writing by or on behalf of the Employer.

If, at any time during the progress of installation of the Works, any error shall appear in the position, level or alignment of the Works, the Contractor shall forthwith notify the Project Manager of such error and, at its own expense, immediately rectify such error to the reasonable satisfaction of the Project Manager. If such error is based on incorrect data provided in writing by or on behalf of the Employer, the expense of rectifying the same shall be borne by the Employer.

Supervision

22.1.2 The Contractor shall give or provide all necessary superintendence during the installation of the Works, and the Site Manager or its deputy shall be constantly on the Site to provide full-time superintendence of the installation. The Contractor shall provide and employ only technical personnel who are skilled and experienced in their respective callings and supervisory staff who are competent to give adequate supervision to the work at hand.

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Labour

- 22.1.3.1 The Contractor shall provide and employ on the Site in the installation of the Works such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution of the Contract. The Contractor is encouraged to use local labour that has the necessary skills.
- 22.1.3.2 Unless otherwise provided in the Contract, the Contractor shall be responsible for the recruitment, transportation, accommodation and catering of all labour, local or expatriate, required for the execution of the Contract and for all payments in connection therewith.
- 22.1.3.3 The Contractor shall be responsible for obtaining all necessary permit(s) and/or visa(s) from the appropriate authorities for the entry of all labour and personnel to be employed on the site into the country where the Site is located.
- 22.1.3.4 The Contractor shall at its own expense provide the means of repatriation to all of its and its Subcontractor's personnel employed on the Contract at the Site to their various home countries. It shall also provide suitable temporary care of all such persons from the cessation of their employment on the Contract to the date programmed for their departure. In the event that the Contractor defaults in providing such means of transportation and temporary care, the Employer may provide the same to such personnel and recover the cost of doing so from the Contractor.
- 22.1.3.5 The Contractor shall at all times during the progress of the Contract use its best endeavours to prevent any unlawful, riotous or disorderly conduct or behaviour by or amongst its employees and the labour of its Subcontractors.
- 22.1.3.6 The Contractor shall, in all dealings with its labour and the labour of its Subcontractors currently employed on or connected with the Contract, pay due regard to all recognised festivals, official holidays, religious or other customs and all local laws and regulations pertaining to the employment of labour.

22.2 Contractor's Equipment

- 22.2.1 All Contractor's Equipment brought by the Contractor onto the Site shall be deemed to be intended to be used exclusively for the execution of the Contract. The Contractor shall not remove the same from the Site without the Project Manager's consent that such Contractor's Equipment is no longer required for the execution of the Contract.

22.2.2 Unless otherwise specified in the Contract, upon Completion of the Works, the Contractor shall remove from the Site all Equipment brought by the Contractor onto the Site and any surplus materials remaining thereon.

22.2.3 The Employer will, if requested, use its best endeavours to assist the Contractor in obtaining any local, state or national government permission required by the Contractor for the export of the Contractor's Equipment imported by the Contractor for use in the execution of the Contract that is no longer required for the execution of the Contract.

22.3 Regulations and Safety

22.3.1 The Employer and the Contractor shall establish Site regulations setting out the rules to be observed in the execution of the Contract at the Site and shall comply therewith. The Contractor shall prepare and submit to the Employer, with a copy to the Project Manager, proposed Site regulations for the Employer's approval, which approval shall not be unreasonably withheld.

Such Site regulations shall include, but shall not be limited to, rules in respect of security, safety of the Works, gate control, sanitation, medical care, and fire prevention.

22.4 Opportunities for Other Contractors

22.4.1 The Contractor shall, upon written request from the Employer or the Project Manager, give all reasonable opportunities for carrying out the work to any other contractors (not part of this Contract) employed by the Employer on or near the Site.

22.4.2 If the Contractor, upon written request from the Employer or the Project Manager, makes available to other contractors any roads or ways the maintenance for which the Contractor is responsible, permits the use by such other contractors of the Contractor's Equipment, or provides any other service of whatsoever nature for such other contractors, the Employer shall fully compensate the Contractor for any loss or damage caused or occasioned by such other contractors in respect of any such use or service and shall pay to the Contractor reasonable remuneration for the use of such equipment or the rendering of such services.

22.4.3 The Contractor shall also arrange to perform its work so as to minimise, to the extent possible, interference with the work of other contractors. The Project Manager shall determine the resolution of any difference or conflict that may arise between the Contractor and other contractors and the workers of the Employer in regard to their work.

22.4.4 The Contractor shall notify the Project Manager promptly of any defects in the other contractors' work that could affect the Contractor's work. The Project Manager shall

determine the corrective measures, if any, required to rectify the situation after inspection of the Works. Decisions made by the Project Manager shall be on mutually agreed basis and then binding on the Contractor.

22.5 Emergency Work

22.5.1 If, by reason of an emergency arising in connection with and during the execution of the Contract, any protective or remedial work is necessary as a matter of urgency to prevent damage to the Works, the Contractor shall immediately carry out such work.

If the Contractor is unable or unwilling to do such work immediately, the Employer may do or cause to be done such work as the Employer may determine is necessary in order to prevent damage to the Works. In such event the Employer shall, as soon as practicable after the occurrence of any such emergency, notify the Contractor in writing of such emergency, the work done and the reasons therefore. If the work done or caused to be done by the Employer is work which the Contractor was liable to do at its own expense under the Contract, the reasonable costs incurred by the Employer in connection therewith shall be paid by the Contractor to the Employer. Otherwise, the cost of such remedial work shall be borne by the Employer.

22.6 Site Clearance

Site Clearance in Course of Performance

22.6.1 In the course of carrying out the Contract, the Contractor shall keep the Site reasonably free from all unnecessary obstruction, store or remove any surplus materials, clear away any wreckage, rubbish or temporary Works from the Site, and remove any Contractor's Equipment no longer required for execution of the Contract.

Clearance of Site after Completion

22.6.2 After Completion of all parts of the Works, the Contractor shall clear away and remove all wreckage, rubbish and debris of any kind from the Site, and shall leave the site and Works in a clean and safe condition.

22.7 Watching and Lighting

22.7.1 The Employer shall provide and maintain at its own expense all lighting, fencing, and watching when and where necessary for the proper execution and the protection

of the Works at Site, or for the safety of the owners and occupiers of adjacent property and for the safety of the public.

22.8 Work at Night and on Holidays

22.8.1 Unless otherwise provided in the Contract, no work shall be carried out during the night and on public holidays of the country where the Site is located without prior written consent of the Employer, except where work is necessary or required to ensure safety of the Works or for the protection of life, or to prevent loss or damage to property, when the Contractor shall immediately advise the Project Manager, provided that provisions of this GC 22.8.1 shall not apply to any work which is customarily carried out by rotary or double-shifts.

22.8.2 Notwithstanding GC 22.8.1 or GC 22.1.3 above, if and when the Contractor considers it necessary to carry out work at night or on public holidays so as to meet the Time for Completion and requests the Employer's consent thereto, the Employer shall not unreasonably withhold such consent.

23 Test, Inspection and Training

23.1 The Contractor shall at its own expense carry out at the place of manufacture and/or on the Site all such tests and/or inspections of the Plant and Equipment and any part of the Works as are specified in the Contract.

23.2 The Employer and the Project Manager or their designated representatives shall be entitled to attend the aforesaid test and/or inspection, provided that the Employer shall bear all costs and expenses incurred in connection with such attendance including, but not limited to, all travelling and board and lodging expenses.

23.3 Whenever the Contractor is ready to carry out any such test and/or inspection, the Contractor shall give a reasonable advance notice of such test and/or inspection and of the place and time thereof to the Project Manager. The Contractor shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Employer and the Project Manager (or their designated representatives) to attend the test and/or inspection.

23.4 The Contractor shall provide the Project Manager with a certified report of the results of any such test and/or inspection.

If the Employer or Project Manager (or their designated representatives) fails to attend the test and/or inspection, or if it is agreed between the parties that such persons shall not do so, then the Contractor may proceed with the test and/or inspection in the absence of such persons, and shall provide the Project Manager with a certified report of the results thereof.

- 23.5 The Project Manager may require the Contractor to carry out any test and/or inspection not required by the Contract, provided that the Contractor's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of work on the Works and/or the Contractor's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Completion and the other obligations so affected.
- 23.6 If any plant and equipment or any part of the Works fails to pass any test and/or inspection due to a default by the Contractor, the Contractor shall either rectify or replace such Plant and Equipment or part of the Works and shall repeat the test and/or inspection upon giving a notice under GC 23.3 above, without any supplementary costs nor allowance for time extension.
- 23.7 If any dispute or difference of opinion shall arise between the parties in connection with or arising out of the test and/or inspection of the Plant and Equipment or part of the Works which cannot be settled between the parties within a reasonable period of time, it may be referred to an Adjudicator for determination in accordance with GC 6.1 (Adjudicator) hereof.
- 23.8 The Contractor shall afford the Employer and the Project Manager, at the Employer's expense, access at any reasonable time to any place where the Plant and Equipment are being manufactured or the Works are being installed, in order to inspect the progress and the manner of manufacture or installation, provided that the Project Manager shall give the Contractor reasonable prior notice.
- 23.9 The Contractor agrees that neither the execution of a test and/or inspection of Plant and Equipment or any part of the Works, nor the attendance by the Employer or the Project Manager, nor the issue of any test certificate pursuant to GC 23.4 above, shall release the Contractor from any other responsibilities under the Contract.
- 23.10 No part of the Works or foundations shall be covered up on the Site without carrying out any test and/or inspection required under the Contract. The Contractor shall give a reasonable notice to the Project Manager whenever any such part of the Works or foundations are ready or about to be ready for test and/or inspection; such test and/or inspection and notice thereof shall be subject to the requirements of the Contract.
- 23.11 The Contractor shall uncover any part of the Works or foundations, or shall make openings in or through the same as the Project Manager may from time to time require at the site, and shall reinstate and make good such part or parts.

If any part of the Works or foundations have been covered up at the Site after compliance with the requirement of GC 23.10 above and are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating, and making good the same shall be borne by the Employer, and the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been delayed or impeded in the performance of any of its obligations under the Contract.

23.12 The Contractor shall carry out the training of the Employer's personnel for operation, maintenance and repair of the Plant and Equipment delivered by the Contractor or his Subcontractors as provided in the Program of Performance.

23.13 The Contractor shall give a reasonable advance notice of the place and time and subject of the training to the Project Manager. The Contractor shall obtain from his Subcontractors and/or authorities any necessary permission to enable the Employer's personnel to attend the training program.

24. Completion

24.1 As soon as the Works or any part thereof have, in the opinion of the Contractor, been completed mechanically and structurally and put in a tight and clean condition as specified in the Technical Specifications, excluding minor items not materially affecting the operation or safety of the Works, the Contractor shall so notify the Employer in writing.

24.2 Within seven (7) days of receipt of the notice from the Contractor under GC 24.1 above, the Employer shall supply the operating and maintenance personnel specified in Appendix 6 (Scope of Works and Supply by the Employer) to the Contract Agreement for precommissioning of the Works or any part thereof.

Pursuant to Appendix 6 (Scope of Works and Supply by the Employer) to the Contract Agreement, the Employer shall also provide, within the said seven (7) day period, the raw materials, utilities, lubricants, chemicals, catalysts, Works, services and other matters required for Precommissioning of the Works or any part thereof.

24.3 As soon as reasonably practicable after the operating and maintenance personnel have been supplied by the Employer and the raw materials, utilities, lubricants, chemicals, catalysts, Works, services and other matters have been provided by the Employer in accordance with GC 24.2 above, the Contractor shall commence Precommissioning of the Works or the relevant part thereof in preparation for Commissioning.

24.4 As soon as all Works in respect of Precommissioning are completed and, in the opinion of the Contractor, the Works or any part thereof are ready for Commissioning, the Contractor shall so notify the Project Manager in writing.

- 24.5 The Project Manager shall, within fourteen (14) days of receipt of the Contractor's notice under GC 24.4 above, either issue a Completion Certificate in the form specified in Contract "Forms and Procedures" stating that the Works or that part thereof have reached Completion as at the date of the Contractor's notice under GC 24.4 above, or notify the Contractor in writing of any defects and/or deficiencies.

If the Project Manager notifies the Contractor of any defects and/or deficiencies, the Contractor shall then correct such defects and/or deficiencies and shall repeat the procedure described in GC 24.4 above.

If the Works or that part thereof have reached Completion, the Project Manager shall, within seven (7) days of receipt of the Contractor's repeated notice, issue a Completion Certificate stating that the Works or that part thereof have reached Completion as at the date of the Contractor's repeated notice.

If the Works or that part have not reached Completion, the Project Manager shall notify the Contractor in writing of any defects and/or deficiencies within seven (7) days of receipt of the Contractor's repeated notice, and the above procedure shall be repeated.

- 24.6 If the Project Manager fails to issue the Completion Certificate and fails to inform the Contractor of any defects and/or deficiencies within fourteen (14) days of receipt of the Contractor's notice under GC 24.4 above or within seven (7) days of receipt of the Contractor's repeated notice under GC 24.5 above, or if the Employer makes use of the Works or part thereof, or completion cannot be achieved due to reasons not attributable to the Contractor, then the Works or that part thereof shall be deemed to have reached Completion as at the date of the Contractor's notice or repeated notice, or the Employer's use of the Works, as the case may be.

- 24.7 As soon as possible after Completion, the Contractor shall complete all outstanding minor items so that the Works are fully in accordance with the requirements of the Contract, failing which the Employer will undertake such Completion and deduct the costs thereof from any monies owing to the Contractor.

25. Commissioning and Acceptance

25.1 Commissioning

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- 25.1.1 Commissioning of the Works or any part thereof shall be commenced by the Contractor immediately after issue of the Completion Certificate by the Project Manager, pursuant to GC 24.5 hereof, or immediately after issue of the deemed Completion, under GC 24.6 hereof.

The Employer shall supply the operating and maintenance personnel and all raw materials, utilities, lubricants and oil (first filling per unit), chemicals, catalysts, Works, services and other matters required for Commissioning.

- 25.1.2 In accordance with the requirements of the Contract, the Contractor's advisory personnel shall attend Commissioning and advise and assist the Employer.

25.2 Guarantee Test

- 25.2.1 The Guarantee Test (and repeats thereof) shall be conducted by the Contractor during Commissioning of the Works or the relevant part thereof to ascertain whether the Works or that part can attain the Functional Guarantees specified in the appropriate annex to the Contract and clarified in SCC. The Contractor's and Project Manager's advisory personnel shall attend the Guarantee Test, and shall advise and assist the Employer. The Employer shall promptly provide to the Contractor such information as the Contractor may reasonably require in relation to the conduct and results of the Guarantee Test (and any repeats thereof).
- 25.2.2 If for reasons not attributable to the Contractor, the Guarantee Test of the Works or the relevant part thereof cannot be successfully completed within the period from the date of Completion specified in the SCC or any other period agreed upon by the Employer and the Contractor, the Contractor shall be deemed to have fulfilled its obligations with respect to the Functional Guarantees, and GCs 28.2 and 28.3 hereof shall not apply.

25.3 Provisional Acceptance

25.3.1 Subject to GC 25.4 (Partial Acceptance) below, Provisional Acceptance shall occur in respect of the Works or any part thereof when:

- (a) the Guarantee Test has been successfully completed and the Functional Guarantees are met; or
- (b) for reasons not attributable to the Contractor, the Guarantee Test cannot be successfully completed within the period from the date of Completion specified in the SCC or any other agreed upon period as specified in GC 25.2.2 above; or
- (c) the Contractor has paid the liquidated damages specified in GC 28.3 hereof.

25.3.2 At any time after any of the events set out in GC 25.3.1 above have occurred, the Contractor may give a notice to the Project Manager requesting the issue of an Provisional Acceptance Certificate in the form provided in the Contract Agreement or in another form acceptable to the Employer in respect of the Works or the part thereof specified in such notice as at the date of such notice.

25.3.3 The Project Manager shall, after consultation with the Employer, and within seven (7) days of receipt of the Contractor's notice, issue an Provisional Acceptance Certificate.

25.3.4 If within seven (7) days of receipt of the Contractor's notice, the Project Manager fails to issue the Provisional Acceptance Certificate or fails to inform the Contractor in writing of the justifiable reasons why the Project Manager has not issued the Provisional Acceptance Certificate, the Works or the relevant part thereof shall be deemed to have been accepted as at the date of the Contractor's said notice.

25.3.5 Upon issuance of the PAC, the Employer shall be responsible for the care and custody of the Works or the relevant part thereof, together with the risk of loss or damage thereto, and shall thereafter take over the Works or the relevant part thereof.

25.4 Partial Acceptance

25.4.1 If the Contract specifies that Completion and Commissioning shall be carried out in respect of parts of the Works, the provisions relating to Completion and Commissioning including the Guarantee Test shall apply to each such part of the Works individually, and the Provisional Acceptance Certificate shall be issued accordingly for each such part of the Works.

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25.4.2 If a part of the Works comprises Works such as buildings, for which no Commissioning or Guarantee Test is required, then the Project Manager shall issue the Operational Acceptance Certificate for such facility when it attains Completion, provided that the Contractor shall thereafter complete any outstanding minor items which are listed in the Operational Acceptance Certificate.

25.5 Final Acceptance

25.5.1 The Employer shall perform, seven (7) days before the expiry of the Defect Liability Period any extension as provided in GC 27.8, a general inspection of the Works or any part thereof and repeat the Guarantee Test provided under GC 25.2. The Employer shall give notice to the Contractor and the Project Manager fourteen (14) days in advance of his intention to perform the Final Acceptance Test as mentioned above. The Contractor may send his representative to participate at the Final Acceptance Test.

25.5.2 If the Final Acceptance Test have been successfully completed, the Project Manager shall, after Consultation with the Employer, and within seven (7) days after the performance of Final Acceptance Test, issue the Final Acceptance Certificate.

25.5.3 If the Final Acceptance Test has not been successfully completed, the Project Manager shall, upon the Employer's request, require the repair, replace or otherwise make good any defect found out and repeat the Final Acceptance Test all on his cost.

PART VI

GUARANTEES AND LIABILITIES

26. Completion Time Guarantee

26.1 The Contractor guarantees that it shall attain Completion of the Works (or a part for which a separate Time for Completion is specified in the SCC) within the Time for Completion specified in the SCC pursuant to GC 8.2, or within such extended time to which the Contractor shall be entitled under GC 40 (Extension of Time for Completion) hereof.

26.2 If the Contractor fails to attain Completion of the Works or any part thereof within the Time for Completion or any extension thereof under GC 40 (Extension of Time for Completion) hereof, the Contractor shall pay to the Employer liquidated damage in the amount specified in the SCC as a percentage rate of the Contract Price. The aggregate amount of such liquidated damages shall in no event exceed the amount specified as "Maximum" in the SCC.

Such payment shall completely satisfy the Contractor's obligation to attain Completion of the Works or the relevant part thereof within the Time for Completion or any extension thereof under GC 40 (Extension of Time for Completion) hereof. The Contractor shall have no further liability whatsoever to the Employer in respect thereof.

However, the payment of liquidated damages shall not in any way relieve the Contractor from any of its obligations to complete the Works or from any other obligations and liabilities of the Contractor under the Contract.

Save for liquidated damages payable under this GC

26.2 , the failure by the Contractor to attain any milestone or other act, matter or thing by any date specified in Appendix 4 (Time Schedule) to the Contract agreement and/or other programme of work prepared pursuant to GC 18 (Program of Performance) hereof shall not render the Contractor liable for any loss or damage thereby suffered by the Employer.

26.3 If the Contractor attains Completion of the Works or any part thereof before the Time for Completion or any extension thereof under GC 40 (Extension of Time for Completion) hereof, the Employer shall pay to the Contractor a bonus in the amount specified in the SCC. The aggregate amount of such bonus shall in no event exceed the amount specified as "Maximum" in the SCC.

27. Defect Liability

27.1 The Contractor warrants that the Works or any part thereof shall be free from defects in the design, engineering, materials and workmanship of the Plant and Equipment supplied and of the work executed.

27.2 The Defect Liability Period shall be eighteen (18) months from the date of Completion of the Works (or any part thereof) or twelve (12) months from the date of Provisional Acceptance of the Works (or any part thereof), whichever first occurs, unless specified otherwise in the SCC.

If during the Defect Liability Period any defect should be found in the design, engineering, materials and workmanship of the Plant and Equipment supplied or of the work executed by the Contractor, the Contractor shall promptly, in consultation and agreement with the Employer regarding appropriate remedying of the defects, and at its cost, repair, replace or otherwise make good (as the Contractor shall, at its discretion, determine) such defect as well as any damage to the Works caused by such defect. The Contractor shall not be responsible for the repair, replacement or making good of any defect or of any damage to the Works arising out of or resulting from any of the following causes:

- (a) improper operation or maintenance of the Works by the Employer;
- (b) operation of the Works outside specifications provided in the Contract; or
- (c) normal wear and tear.

27.3 The Contractor's obligations under this GC 27 shall not apply to:

- (a) any materials which are supplied by the Employer under GC 21.2 (Employer-supplied Plant, Equipment and Materials) hereof, are normally consumed in operation, or which have a normal life shorter than the Defect Liability Period stated herein.
- (b) any designs, specifications or other data designed, supplied or specified by or on behalf of the Employer, or any matters for which the Contractor has disclaimed responsibility herein; or
- (c) any other materials supplied or any other work executed by or on behalf of the Employer, except for the work executed by the Employer under GC 27.7 below.

- 27.4 The Employer shall give the Contractor a notice stating the nature of any such defect together with all available evidence thereof, promptly following the discovery thereof. The Employer shall afford all reasonable opportunity for the Contractor to inspect any such defect.
- 27.5 The Employer shall afford the Contractor all necessary access to the Works and the Site to enable the Contractor to perform its obligations under this GC 27.
- The Contractor may, with the consent of the Employer, remove from the Site any Plant and Equipment or any part of the Works which are defective if the nature of the defect, and/or any damage to the Works caused by the defect, is such that repairs cannot be expeditiously carried out at the site.
- 27.6 If the repair, replacement or making good is of such a character that it may affect the efficiency of the Works or any part thereof, the Employer may give to the Contractor a notice requiring that tests of the defective part of the Works shall be made by the Contractor immediately upon Completion of such remedial work, whereupon the Contractor shall carry out such tests.
- If such part fails the tests, the Contractor shall carry out further repair, replacement or making good (as the case may be) until that part of the Works passes such tests. The tests shall be agreed upon by the Employer and the Contractor.
- 27.7 If the Contractor fails to commence the work necessary to remedy such defect or any damage to the Works caused by such defect within a reasonable time (which shall in no event be considered to be less than fifteen [15] days), the Employer may, following notice to the Contractor, proceed to do such work, and the reasonable costs incurred by the Employer in connection therewith shall be paid to the Employer by the Contractor or may be deducted by the Employer from any monies due the Contractor or claimed under the Performance Security.
- 27.8 If the Works or any part thereof cannot be used by reason of such defect and/or making good such defect, the Defect Liability Period of the Works or such part, as the case may be, shall be extended by a period equal to the period during which the Works or such part cannot be used by the Employer because of any of the aforesaid reasons. In any event, all warranty and liability of the Contractor shall terminate (4) four years from the date of Provisional Acceptance of the part of Works giving rise to the claim.

27.9 Except as provided in this GC 27 and GC 33 (Loss or Damage to Property/Accident or Injury to Workers/Indemnification) hereof, the Contractor shall be under no liability whatsoever and howsoever arising, and whether under the Contract or at law, in respect of defects in the Works or any part thereof, the Plant and Equipment, design or engineering or work executed which appear after Completion of the Works or any part thereof, except where such defects are the result of the gross negligence, fraud, criminal or wilful action of the Contractor.

28. Functional Guarantees

- 28.1 The Contractor guarantees that during the Guarantee Test, the Works and all parts thereof shall attain the Functional Guarantees specified in the Contract subject to and upon the conditions therein specified.
- 28.2 If, for reasons attributable to the Contractor, the guaranteed level of the Functional Guarantees specified in the Contract are not met either in whole or in part, the Contractor shall at its cost and expense make such Changes, modifications and/or additions to the plant or any part thereof as may be necessary to meet at least the guaranteed level of such Guarantees. The Contractor shall notify the Employer upon Completion of the necessary Changes, modifications and/or additions, and shall request the Employer to repeat the Guarantee Test until the guaranteed level of the Guarantees has been met.
- 28.3 If, for reasons attributable to the Contractor, the Functional Guarantees specified in the Contract are not attained either in whole or in part, the Contractor shall, based on mutual agreement between the parties, either
- (a) make such Changes, modifications and/or additions to the Works or any part thereof that are necessary to attain the Functional Guarantees at its cost and expense, and shall request the Employer to repeat the Guarantee Test; or
 - (b) pay liquidated damages to the Employer in respect of the failure to meet the Functional Guarantees in accordance with the provisions in the SCC or elsewhere in the Contract, the Employer may consider the termination of the Contract under GC 42.2.2.
- 28.4 The payment of liquidated damages under GC 28.3 above up to the limitation of liability specified in the SCC shall completely satisfy the Contractor's guarantees under GC 28.1 above and any other corresponding or equivalent provision set out in the Contract, and the Contractor shall have no further liability whatsoever to the Employer in respect thereof. Upon the payment of such liquidated damages by the Contractor, the Project Manager shall issue the Provisional Acceptance Certificate for the Works or any part thereof in respect of which the liquidated damages have been so paid.

29. Patent Indemnity

29.1 The Contractor shall, subject to the Employer's compliance with GC 29.2 below, indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Employer may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract by reason of: (a) the installation of the Works by the Contractor or the use of the Works in the country where the site is located; and (b) the sale of the products produced by the Works in any country.

Such indemnity shall not cover any use of the Works or any part thereof other than for the purpose indicated by, or reasonably to be inferred from, the Contract, any infringement resulting from the use of the Works or any part thereof, or any products produced thereby in association or combination with any other equipment, plant or materials not supplied by the Contractor, pursuant to the Contract Agreement.

29.2 If any proceedings are brought or any claim is made against the Employer arising out of the matters referred to in GC 29.1 above, the Employer shall promptly give the Contractor a notice thereof, and the Contractor shall at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Contractor fails to notify the Employer within twenty-eight (28) days of receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Employer within the twenty-eight (28) day period, the Employer shall make no admission which may be prejudicial to the defence of any such proceedings or claim.

The Employer shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

29.3 The Employer shall indemnify and hold harmless the Contractor and its employees, officers and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Contractor may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Employer.

30. Limitation of Liability

30.1 Except in cases of criminal negligence or wilful misconduct,

- (a) the Contractor shall not be liable to the Employer, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, including but not limited to loss of profit, loss of use, loss of business opportunities, loss of interest etc., provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Employer; and
- (b) the aggregate liability of the Contractor to the Employer under the Contract shall not exceed the Contract Price, provided that this limitation shall not apply to any obligation of the Contractor to indemnify the Employer with respect to patent infringement.

PART VII

RISK DISTRIBUTION

31. Transfer of Ownership

- 31.1 Ownership of the Plant and Equipment (including spare parts) to be imported into the country where the Site is located shall be transferred to the Employer upon loading on to the mode of transport to be used to convey the Plant and Equipment from the country of origin to that country, and subject to full payment of the equipment supplied
- 31.2 Ownership of the Plant and Equipment (including spare parts) procured in the country where the Site is located shall be transferred to the Employer when the Plant and Equipment are brought on to the Site, and subject to full payment of the equipment supplied.
- 31.3 Ownership of the Contractor's Equipment used by the Contractor and its Subcontractors in connection with the Contract shall remain with the Contractor or its Subcontractors.
- 31.4 Ownership of any Plant and Equipment in excess of the requirements for the Works shall revert to the Contractor upon Completion of the Works or at such earlier time when the Employer and the Contractor agree that the Plant and Equipment in question are no longer required for the Works.
- 31.5 Notwithstanding the transfer of ownership of the Plant and Equipment, the responsibility for care and custody thereof together with the risk of loss or damage thereto shall remain with the Contractor pursuant to GC 32 (Care of Works) hereof until Completion of the Works or the part thereof in which such Plant and Equipment are incorporated.

32. Care of Works

32.1 The Contractor shall be responsible for the care and custody of the Works or any part thereof until the date of Completion of the Works pursuant to GC 24 (Completion) hereof or, where the Contract provides for Completion of the Works in parts, until the date of Completion of the relevant part, and shall make good at its own cost any loss or damage that may occur to the Works or the relevant part thereof from any cause whatsoever during such period. The Contractor shall also be responsible for any loss or damage to the Works caused by the Contractor or its Subcontractors in the course of any work carried out, pursuant to GC 27 (Defect Liability) hereof. Notwithstanding the foregoing, the Contractor shall not be liable for any loss, or damage to the Works or that part thereof caused by reason of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GC 32.2 below and GC 38.1 hereof.

32.2 If any loss or damage occurs to the Works or any part thereof or to the Contractor's temporary Works by reason of:

- (a) (insofar as they relate to the country where the Site is located) nuclear reaction, nuclear radiation, radioactive contamination, pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced contractor could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, insofar as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance, including War Risks and Political Risks, taken out under GC 34 (Insurance) hereof; or
- (b) any use or occupation by the Employer or any third party (other than a Subcontractor) authorised by the Employer of any part of the Works; or
- (c) any use of or reliance upon any design, data or specification provided or designated by or on behalf of the Employer, or any such matter for which the Contractor has disclaimed responsibility herein,

the Employer shall pay to the Contractor all sums payable in respect of the Works executed, notwithstanding that the same be lost, destroyed or damaged, and will pay to the Contractor the replacement value of all temporary Works and all parts thereof lost, destroyed or damaged. If the Employer requests the Contractor in writing to make good any loss or damage to the Works thereby occasioned, the Contractor shall make good the same at the cost of the Employer in accordance with GC 39 (Change in the Works) hereof. If the Employer does not request the Contractor in writing to make good any loss or damage to the Works thereby occasioned, the Employer shall either request a Change in accordance with GC 39 (Change in the Works) hereof, excluding the performance of that part of the Works thereby lost, destroyed or

damaged, or, where the loss or damage affects a substantial part of the Works, the Employer shall terminate the Contract pursuant to GC 42.1 (Termination for Employer's Convenience) hereof.

32.3 The Contractor shall be liable for any loss of or damage to any Contractor's Equipment, or any other property of the Contractor used or intended to be used for purposes of the Works, except (i) as mentioned in GC 32.2 above (with respect to the Contractor's temporary Works), and (ii) where such loss or damage arises by reason of any of the matters specified in GC 32.2(b) and (c) above and in GC 38.1 hereof.

32.4 With respect to any loss or damage caused to the Works or any part thereof or to the Contractor's Equipment by reason of any of the matters specified in GC 38.1 hereof, the provisions of GC 38.3 hereof shall apply.

33. Loss of or Damage to Property/Accident or Injury to Workers/Indemnification

33.1 Subject to GC 33.3 below, the Contractor shall indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property (other than the Works whether accepted or not), arising in connection with the supply and installation of the Works and by reason of the negligence of the Contractor or its Subcontractors, or their employees, officers or agents, except any injury, death or property damage caused by the negligence of the Employer, its contractors, employees, officers or agents.

33.2 If any proceedings are brought or any claim is made against the Employer that might subject the Contractor to liability under GC 33.1 above, the Employer shall promptly give the Contractor a notice thereof and the Contractor shall at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Contractor fails to notify the Employer within twenty-eight (28) days of receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Employer within the twenty-eight (28) day period, the Employer shall make no admission which may be prejudicial to the defence of any such proceedings or claim.

The Employer shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

33.3 The Employer shall indemnify and hold harmless the Contractor and its employees, officers and Subcontractors from any liability for loss of or damage to property of the Employer, other than the Works not yet taken over, that is caused by fire, explosion or any other perils, in excess of the amount recoverable from insurances procured under GC 34 (Insurances), provided that such fire, explosion or other perils were not caused by any act or failure of the Contractor.

33.4 The party entitled to the benefit of an indemnity under this GC 33 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the party fails to take such measures, the other party's liabilities shall be correspondingly reduced.

34. Insurance

34.1 To the extent specified in Appendix 3 (Insurance Requirements) to the Contract agreement, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified in the said Appendix. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, such approval not to be unreasonably withheld.

(a) Cargo Insurance During Transport

covering loss or damage occurring, while in transit from the supplier's or manufacturer's Works or stores until arrival at the Site, to the Plant and Equipment (including spare parts therefor) and to the Contractor's Equipment, to be provided by the Contractor or its Subcontractors.

(b) Installation All Risks Insurance

covering physical loss or damage to the Works at the Site, occurring prior to Completion of the Works, with an extended maintenance coverage for the Contractor's liability in respect of any loss or damage occurring during the Defect Liability Period while the Contractor is on the Site for the purpose of performing its obligations during the Defect Liability Period.

(c) Third Party Liability Insurance

covering bodily injury or death suffered by third parties (including the Employer's personnel) and loss of or damage to property occurring in connection with the supply and installation of the Works.

(d) Automobile Liability Insurance

covering use of all vehicles used by the Contractor or its Subcontractors (whether or not owned by them) in connection with the execution of the Contract.

(e) Workers' Compensation

in accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.

(f) Employer's Liability

in accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.

(g) Other Insurances

Such other insurances as may be specifically agreed upon by the parties hereto as listed in the said Appendix 3.

34.2 The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GC 34.1 above, except for the Third Party Liability, Workers' Compensation and Employer's Liability Insurances, and the Contractor's Subcontractors shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GC 34.1 above except for the Cargo Insurance During Transport, Workers' Compensation and Employer's Liability Insurances. All insurer's rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies.

34.3 The Contractor shall, in accordance with the provisions of Appendix 3 (Insurance Requirements) to the Contract Agreement, deliver to the Employer certificates of insurance (or copies of the insurance policies) as evidence that the required policies are in full force and effect. The certificates shall provide that not less than twenty-one (21) days' notice shall be given to the Employer by insurers prior to cancellation or material modification of a policy.

- 34.4 The Contractor shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Contractor.
- 34.5 The Employer shall at its expense take out and maintain in effect during the performance of the Contract those insurances specified in Appendix 3 (Insurance Requirements) to the Contract Agreement, in the sums and with the deductibles and other conditions specified in the said Appendix. The Contractor and the Contractor's Subcontractors shall be named as co-insured under all such policies. All insurers' rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies. The Employer shall deliver to the Contractor satisfactory evidence that the required insurances are in full force and effect. The policies shall provide that not less than twenty-one (21) days' notice shall be given to the Contractor by all insurers prior to any cancellation or material modification of the policies. If so requested by the Contractor, the Employer shall provide copies of the policies taken out by the Employer under this GC 34.5.
- 34.6 If the Contractor fails to take out and/or maintain in effect the insurances referred to in GC 34.1 above, the Employer may take out and maintain in effect any such insurances and may from time to time deduct from any amount due to the Contractor under the Contract any premium which the Employer shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Contractor. If the Employer fails to take out and/or maintain in effect the insurances referred to in GC 34.5, above, the Contractor may take out and maintain in effect any such insurances and may from time to time deduct from any amount due to the Employer under the Contract any premium which the Contractor shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Employer. If the Contractor fails to or is unable to take out and maintain in effect any such insurances, the Contractor shall nevertheless have no liability or responsibility towards the Employer, and the Contractor shall have full recourse against the Employer for any and all liabilities of the Employer herein.
- 34.7 Unless otherwise provided in the Contract, the Contractor shall prepare and conduct all and any claims made under the policies effected by it pursuant to this GC 34, and all monies payable by any insurers shall be paid to the Contractor. The Employer shall give to the Contractor all such reasonable assistance as may be required by the Contractor. With respect to insurance claims in which the Employer's interest is involved, the Contractor shall not give any release or make any compromise with the insurer without the prior written consent of the Employer. With respect to insurance claims in which the Contractor's interest is involved, the Employer shall not give any release or make any compromise with the insurer without the prior written consent of the Contractor.

35. Unforeseen Conditions

35.1 If, during the execution of the Contract, the Contractor shall encounter on the Site any physical conditions (other than climatic conditions) or artificial obstructions that could not have been reasonably foreseen prior to the date of the Contract Agreement by an experienced contractor on the basis of reasonable examination of the data relating to the Works (including any data as to boring tests) provided by the Employer, and on the basis of information that it could have obtained from a visual inspection of the Site (if access thereto was available) or other data readily available to it relating to the Works, and if the Contractor determines that it will in consequence of such conditions or obstructions incur additional cost and expense or require additional time to perform its obligations under the Contract that would not have been required if such physical conditions or artificial obstructions had not been encountered, the Contractor shall promptly, and before performing additional work or using additional Plant and Equipment or Contractor's Equipment, notify the Project Manager in writing of:

- (a) the physical conditions or artificial obstructions on the Site that could not have been reasonably foreseen; and
- (b) the additional work and/or Plant and Equipment and/or Contractor's Equipment required, including the steps which the Contractor will or proposes to take to overcome such conditions or obstructions; and
- (c) the extent of the anticipated delay; and
- (d) the additional cost and expense which the Contractor is likely to incur.

On receiving any notice from the Contractor under this GC 35.1, the Project Manager shall promptly consult with the Employer and Contractor and decide upon the actions to be taken to overcome the physical conditions or artificial obstructions encountered. Following such consultations, the Project Manager shall instruct the Contractor, with a copy to the Employer, of the actions to be taken.

35.2 Any reasonable additional cost and expense incurred by the Contractor in following the instructions from the Project Manager to overcome such physical conditions or artificial obstructions referred to in GC 35.1 above shall be paid by the Employer to the Contractor as an addition to the Contract Price.

35.3 If the Contractor is delayed or impeded in the performance of the Contract because of any such physical conditions or artificial obstructions referred to in GC 35.1 above, the Time for Completion shall be extended in accordance with GC 40 (Extension of Time for Completion) hereof.

- 36.1 If, after the date twenty-eight (28) days prior to the date of contract signature, in the country where the Site is located, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or Changed (which shall be deemed to include any Change in interpretation or application by the competent authorities) that subsequently affects the costs and expenses of the Contractor and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract.

Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with the SCC.

37. Force Majeure

- 37.1 "Force Majeure" shall mean any event beyond the reasonable control of the Employer or of the Contractor, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected, and shall include, without limitation, the following:
- (a) war, hostilities or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy, civil war;
 - (b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion, terrorist acts;
 - (c) confiscation, nationalisation, mobilisation, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler or any other act or failure to act of any local state or national government authority;
 - (d) strike, sabotage, lock-out, embargo, import restriction, port congestion, lack of usual means of transportation and communication, loss of a marine vessel, aircraft or other transport vehicle, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine, plague ;
 - (e) earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves, or other natural or physical disaster;
 - (f) shortage of labour, materials or utilities where caused by circumstances that are themselves Force Majeure.
- 37.2 If either party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within fourteen (14) days after having knowledge of the occurrence of such event.
- 37.3 The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered or delayed. The Time for Completion shall be extended in accordance with GC 40 (Extension of Time for Completion) hereof.
- 37.4 The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfil its or their obligations under the Contract, but without prejudice to either party's right to terminate the Contract under GC 37.6 below and GC 38.5 hereof.

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37.5 No delay or non-performance by either party hereto caused by the occurrence of any event of Force Majeure shall:

- (a) constitute a default or breach of the Contract; or
- (b) (subject to GCs 32.2, 38.3 and 38.4 hereof) give rise to any claim for damages or additional cost or expense occasioned thereby,

if and to the extent that such delay or non-performance is caused by the occurrence of an event of Force Majeure.

37.6 If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the lifetime of the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which either party may terminate the Contract by giving a notice to the other, but without prejudice to either party's right to terminate the Contract under GC 38.5 hereof.

37.7 In the event of termination pursuant to GC 37.6 above, the rights and obligations of the Employer and the Contractor shall be as specified in GCs 42.1.2 and 42.1.3 hereof.

37.8 Notwithstanding GC 37.5 above, Force Majeure shall not apply to any obligation of the Employer to make payments to the Contractor herein.

38. War Risks

38.1 "War Risks" shall mean any event specified in paragraphs (a) and (b) of GC 37.1 hereof and any explosion or impact of any mine, bomb, shell, grenade or other projectile, missile, munitions or explosive of war, occurring or existing in or near the country (or countries) where the Site is located.

38.2 Notwithstanding anything contained in the Contract, the Contractor shall have no liability whatsoever for or with respect to:

- (a) destruction of or damage to Works, Plant and Equipment, or any part thereof;
- (b) destruction of or damage to property of the Employer or any third party; or
- (c) injury or loss of life,

if such destruction, damage, injury or loss of life is caused by any War Risks, and the Employer shall indemnify and hold the Contractor harmless from and against any and all claims, liabilities, actions, lawsuits, damages, costs, charges or expenses arising in consequence of or in connection with the same.

38.3 If the Works or any Plant and Equipment or Contractor's Equipment or any other property of the Contractor used or intended to be used for the purposes of the Works shall sustain destruction or damage by reason of any War Risks, the Employer shall pay the Contractor for:

- (a) any part of the Works or the Plant and Equipment so destroyed or damaged (to the extent not already paid for by the Employer); and
- (b) replacing or making good any Contractor's Equipment or other property of the Contractor so destroyed or damaged;

so far as may be required by the Contractor, and as may be necessary for completion of the Works.

- (c) replacing or making good any such destruction or damage to the Works or the Plant and Equipment or any part thereof.

If the Employer does not require the Contractor to replace or make good any such destruction or damage to the Works, the Employer shall either request a Change in accordance with GC 39 (Change in the Works) hereof, excluding the performance of that part of the Works thereby destroyed or damaged or, where the loss, destruction or damage affects a substantial part of the Works, shall terminate the Contract pursuant to GC 42.1.1 (Termination for Employer's Convenience) hereof.

- 38.4 Notwithstanding anything contained in the Contract, the Employer shall pay the Contractor for any increased costs or incidentals to the execution of the Contract which are in any way attributable to, consequent on, resulting from, or in any way connected with, any War Risks, provided that the Contractor shall as soon as practicable notify the Employer in writing of any such increased cost.
- 38.5 If during the performance of the Contract any War Risks shall occur which financially or otherwise materially affect the execution of the Contract by the Contractor, the Contractor shall use its reasonable efforts to execute the Contract with due and proper consideration given to the safety of its and its Subcontractors' personnel engaged in the work on the Works, provided, however, that if the execution of the work on the Works becomes impossible or is substantially prevented for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of any War Risks, the parties will attempt to develop a mutually satisfactory solution, failing which either party may terminate the Contract by giving a notice to the other.
- 38.6 In the event of termination pursuant to GC 38.3 or GC 38.5 above, the rights and obligations of the Employer and the Contractor shall be specified in GCs 42.1.2 and 42.1.3 hereof.

PART VIII

CHANGE IN CONTRACT ELEMENTS

39 Change in the Works

39.1 Introducing a Change

- 39.1.1 Subject to GCs 39.2.5 and 39.2.7 below, the Employer shall have the right to propose, and subsequently require, that the Project Manager order the Contractor from time to time during the performance of the Contract to make any change, modification, addition or deletion to, in or from the Works (hereinafter called "Change"), provided that such Change falls within the general scope of the Works and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the Works and the technical compatibility of the Change envisaged with the nature of the Works as specified in the Contract.
- 39.1.2 The Contractor may from time to time during its performance of the Contract propose to the Employer (with a copy to the Project Manager) any Change which the Contractor considers necessary or desirable to improve the quality, efficiency or safety of the Works. The Employer may at its discretion approve or reject any Change proposed by the Contractor, provided that the Employer shall approve any Change proposed by the Contractor to ensure the safety of the Works.
- 39.1.3 Notwithstanding GCs 39.1.1 and 39.1.2 above, no change made necessary because of any default of the Contractor in the performance of its obligations under the Contract shall be deemed to be a Change, and such Change shall not result in any adjustment of the Contract Price or the Time for Completion .
- 39.1.4 The procedure on how to proceed with and execute Changes is specified in GC 39.2 and 39.3 below, and further details and sample forms are provided in Sample Forms and Procedures - Change Order Procedures.

39.2 Changes Originating from Employer

39.2.1 If the Employer proposes a Change pursuant to GC 39.1.1 above, it shall send to the Contractor a "Request for Change Proposal" requiring the Contractor to prepare and furnish to the Project Manager as soon as reasonably practicable a "Change Proposal," which shall include the following:

- (i) brief description of the Change
- (ii) effect on the Time for Completion
- (iii) estimated cost of the Change
- (iv) effect on Functional Guarantees, if any, and
- (v) effect on any other provisions of the Contract.

39.2.2 Prior to preparing and submitting the "Change Proposal," the Contractor shall submit to the Project Manager an "Estimate for Change Proposal," which shall be an estimate of the cost of preparing and submitting the Change Proposal.

Upon receipt of the Contractor's estimate for Change Proposal, the Employer shall either:

- (a) accept the Contractor's estimate with instructions to the Contractor to proceed with the preparation of the Change Proposal, or
- (b) advise the Contractor of any part of its Estimate for Change Proposal that is unacceptable with a request for the Contractor to review its estimate, or
- (c) advise the Contractor that the Employer does not intend to proceed with the Change.

39.2.3 Upon receipt of the Employer's instruction to proceed under GC 39.2.2(a) above, the Contractor shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with GC 39.2.1.

39.2.4 The pricing of any Change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If such rates and prices are inequitable, the parties thereto shall agree on specific rates for the valuation of the Change.

39.2.5 If before or during the preparation of the Change Proposal it becomes apparent that the aggregate effect of compliance therewith and with all other Change Orders that have already become binding upon the Contractor under this GC 39 would be to increase or decrease the Contract Price as originally set forth in Article 2 (Contract Price) of the Contract Agreement by more than fifteen (15) percent, the Contractor may give a written notice of objection thereto prior to furnishing the Change Proposal as aforesaid. If the Employer accepts the Contractor's objection, the Employer shall withdraw the proposed Change and shall notify the Contractor in writing thereof.

The Contractor's failure to so object shall neither affect its right to object to any subsequent requested Changes or Change orders herein, nor affect its right to take into account, when making such subsequent objection, the percentage increase or decrease in the Contract Price that any Change not objected to by the Contractor represents.

39.2.6 Upon receipt of the Change Proposal, the Employer and the Contractor shall mutually agree upon all matters therein contained. Within fourteen (14) days of such agreement, the Employer shall, if it intends to proceed with the Change, issue the Contractor with a Change Order.

If the Employer is unable to reach a decision within fourteen (14) days, it shall notify the Contractor with details of when the Contractor can expect a decision.

If the Employer decides not to proceed with the Change for whatever reason, it shall, within the said period of fourteen (14) days, notify the Contractor accordingly. Under such circumstances, the Contractor shall be entitled to reimbursement of all costs reasonably incurred by it in the preparation of the Change Proposal, provided that these do not exceed the amount given by the Contractor in its Estimate for Change Proposal submitted in accordance with GC 39.2.2 hereof.

39.2.7 If the Employer and the Contractor cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Completion, or any other matters identified in the Change Proposal, the Employer may nevertheless instruct the Contractor to proceed with the Change by issue of a "Pending Agreement Change Order."

Upon receipt of a Pending Agreement Change Order, the Contractor shall immediately proceed with effecting the Changes covered by such Order. The parties shall thereafter attempt to reach agreement on the outstanding issues under the Change Proposal.

If the parties cannot reach agreement within sixty (60) days from the date of issue of the Pending Agreement Change Order, then the matter may be referred to an Adjudicator in accordance with the provisions of GC 6.1.

39.3 Changes Originating from Contractor

- 39.3.1 If the Contractor proposes a Change pursuant to GC 39.1.2, the Contractor shall submit to the Project Manager a written "Application for Change Proposal," giving reasons for the proposed Change and including the information specified in GC 39.2.1.

Upon receipt of the Application for Change Proposal, the parties shall follow the procedures outlined in GCs 39.2.6 and 39.2.7. However, should the Employer choose not to proceed, the Contractor shall not be entitled to recover the costs of preparing the Application for Change Proposal.

40. Extension of Time for Completion

- 40.1 The Time(s) for Completion specified in the SCC shall be extended if the Contractor is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:

- (a) any Change in the Works as provided in GC 39 (Change in the Works) hereof; or
- (b) any occurrence of Force Majeure as provided in GC 37 (Force Majeure) hereof, unforeseen conditions as provided in GC 35 (Unforeseen Conditions) hereof, or other occurrence of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GC 32.2 hereof; or
- (c) any suspension order given by the Employer under GC 41 (Suspension) hereof or reduction in the rate of progress pursuant to GC 41.2 hereof; or
- (d) any Changes in laws and regulations as provided in GC 36 (Change in Laws and Regulations) hereof; or
- (e) any default or breach of the Contract by the Employer, specifically including failure to supply the items listed in Appendix 6 (Scope of Works and Supply by the Employer) in the Contract Agreement, or any activity, act or omission of any other contractors employed by the Employer; or

(f) any other matter specifically mentioned in the Contract;

by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Contractor.

40.2 Except where otherwise specifically provided elsewhere in the Contract, the Contractor shall submit to the Project Manager a notice of a claim for an extension of the Time for Completion, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Employer and the Contractor shall agree upon the period of such extension. In the event that the Contractor does not accept the Employer's estimate of a fair and reasonable time extension, the Contractor shall be entitled to refer the matter to an Adjudicator, pursuant to GC 6.2 (Reference to Adjudicator) hereof.

40.3 The Contractor shall at all times use its reasonable efforts to minimise any delay in the performance of its obligations under the Contract.

41. Suspension

41.1 The Employer may request the Project Manager, by notice to the Contractor, to order the Contractor to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons therefore. The Contractor shall thereupon suspend performance of such obligation (except those obligations necessary for the care or preservation of the Works) until ordered in writing to resume such performance by the Project Manager.

If, by virtue of a suspension order given by the Project Manager, other than by reason of the Contractor's default or breach of the Contract, the Contractor's performance of any of its obligations is suspended for an aggregate period of more than ninety (90) days, then at any time thereafter and provided that at that time such performance is still suspended, the Contractor may give a notice to the Project Manager requiring that the Employer shall, within twenty-eight (28) days of receipt of the notice, order the resumption of such performance or request and subsequently order a change in accordance with GC 39 (Change in the Works) hereof, excluding the performance of the suspended obligations from the Contract.

If the Employer fails to do so within such period, the Contractor may, by a further notice to the Project Manager, elect to treat the suspension, where it affects a part only of the Works, as a deletion of such part in accordance with GC 39 (Change in the Works) hereof or, where it affects the whole of the Works, as termination of the Contract under GC 42.1 (Termination for Employer's Convenience) hereof.

41.2 If

- (a) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to Appendix 1 (Terms of Payment) of the Contract Agreement, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, or fails to remedy the breach or take steps to remedy the breach within fourteen (14) days of receipt of the Contractor's notice; or
- (b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site or other areas in accordance with GC 10.2, or failure to obtain any governmental permit necessary for the execution and/or Completion of the Works;

then the Contractor may by fourteen (14) days' notice to the Employer suspend performance of all or any of its obligations under the Contract, or reduce the rate of progress.

- 41.3 If the Contractor's performance of its obligations is suspended or the rate of progress is reduced pursuant to this GC 41, then the Time for Completion shall be extended in accordance with GC 40.1 hereof, and any and all additional costs or expenses incurred by the Contractor as a result of such suspension or reduction shall be paid by the Employer to the Contractor in addition to the Contract Price, except in the case of suspension order or reduction in the rate of progress by reason of the Contractor's default or breach of the Contract.
- 41.4 During the period of suspension, the Contractor shall not remove from the Site any Plant and Equipment, any part of the Works or any Contractor's Equipment, without the prior written consent of the Employer.

42. Termination

42.1 Termination for Employer's Convenience

42.1.1 The Employer may at any time terminate the Contract for any reason by giving the Contractor a notice of termination that refers to this GC.42.1.

42.1.2 Upon receipt of the notice of termination under GC 42.1.1 above, the Contractor shall either immediately or upon the date specified in the notice of termination:

- (a) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Works already executed, or any work required to leave the Site in a clean and safe condition; and
- (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d)(ii) below; and
- (c) remove all Contractor's Equipment from the Site, repatriate the Contractor's and its Subcontractors' personnel from the Site, remove from the Site any wreckage, rubbish and debris of any kind, and leave the whole of the Site in a clean and safe condition; and
- (d) subject to the payment specified in GC 42.1.3 below:
 - (i) deliver to the Employer the parts of the Works executed by the Contractor up to the date of termination; and
 - (ii) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Works and to the Plant and Equipment as at the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors; and
 - (iii) deliver to the Employer all non-proprietary drawings, specifications and other documents prepared by the Contractor or its Subcontractors as at the date of termination in connection with the Works.

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42.1.3 In the event of termination of the Contract under GC 42.1.1 above, the Employer shall pay to the Contractor the following amounts:

- (a) Any sums attributable to the parts of the works executed or in progress by the Contractor up to the time of termination and not paid. To avoid any doubt it is agreed that the costs for the works done by the Contractor prior to signing of the Contract, in particular necessary long term technical assessments and studies, provisional hydraulic lay out, hydro mechanical calculations, stress and strain calculations, external advisors and experts, control of turbine behaviour, investigations in alternative solutions (technical and financial alternatives) compensation for human capacities specially invested and trained for this project etc., costs related to the Sales Energy Contract and however, including but not limited to loss of profit, loss of business, loss of interest etc. corresponding to those (hereinafter called the "Work Executed") shall be deemed as works.

It is agreed, as a compensation all payments made to the Contractor up to the time of termination will not be refunded.

- (b) the costs reasonably incurred by the Contractor in the removal of the Contractor's Equipment from the Site and in the repatriation of the Contractor's and its Subcontractors' personnel; and
- (c) any amounts to be paid by the Contractor to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges; and
- (d) costs incurred by the Contractor in protecting the Works and leaving the Site in a clean and safe condition pursuant to paragraph (a) of GC 42.1.2 above; and
- (e) the cost of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken with third parties in connection with the Contract and that are not covered by paragraphs (a) through (d) above.

The Employer and the Contractor shall mutually agree, in writing, on the computation of points b) to e) and out of a) the payments due of Works performed and Works in progress described above and the manner in which any sums shall be paid.

42.2 Termination for Contractor's Default

42.2.1 The Employer, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a notice of termination and its reasons therefore to the Contractor, referring to this GC.42.2:

- (a) if the Contractor becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Contractor takes or suffers any other analogous action in consequence of debt; or
- (b) if the Contractor assigns or transfers the Contract or any right or interest therein in violation of the provision of GC 43 (Assignment) hereof.

42.2.2 If the Contractor:

- (a) has abandoned or repudiated the Contract; or
- (b) has without valid reason failed to commence work on the Works promptly or has suspended (other than pursuant to GC 41.2 hereof) the progress of Contract performance for more than twenty-eight (28) days of receiving a written instruction from the Employer to proceed; or
- (c) persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause; or
- (d) refuses or is unable to provide sufficient materials, services or labour to execute and complete the Works in the manner specified in the programme furnished under GC 18 (Program of Performance) hereof at rates of progress that give reasonable assurance to the Employer that the Contractor can attain Completion of the Works by the Time for Completion as extended;
- (e) cannot pay the liquidated damages as per 28.3

then the Employer may, without prejudice to any other rights it may possess under the Contract, give a notice to the Contractor stating the nature of the default and requiring the Contractor to remedy the same. If the Contractor fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then the Employer may terminate the Contract forthwith by giving a notice of termination to the Contractor which refers to this GC.42.2.

42.2.3 Upon receipt of the notice of termination under GC 42.2.1 or GC 42.2.2 above, the Contractor shall either immediately or upon such date as is specified in the notice of termination:

- (a) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Works already executed, or any work required to leave the Site in a clean and safe condition; and
- (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) below; and
- (c) deliver to the Employer the parts of the Works executed by the Contractor up to the date of termination; and
- (d) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Works and to the Plant and Equipment as at the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors; and
- (e) deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as at the date of termination in connection with the Works.

42.2.4 The Employer may enter upon the Site, expel the Contractor, and complete the Works itself or by employing any third party. The Employer may, to the exclusion of any right of the Contractor over the same, take over and use with the payment of a fair rental rate to the Contractor, with all maintenance costs to the account of the Employer and with an indemnification by the Employer for all liability including damage or injury to persons arising out of the Employer's use of such equipment, any Contractor's Equipment owned by the Contractor and on the Site in connection with the Works for such reasonable period as the Employer considers expedient for the supply and installation of the Works.

Upon Completion of the Works or at such earlier date as the Employer thinks appropriate, the Employer shall give a notice to the Contractor that such Contractor's Equipment will be returned to the Contractor at or near the Site and shall return such Contractor's Equipment to the Contractor in accordance with such notice. The Contractor shall thereafter without delay and at its cost remove or arrange removal of the same from the Site.

42.2.5 Subject to GC 42.2.6 below, the Contractor shall be entitled to be paid the Contract Price attributable to the Works executed (GC 42.1.3 shall apply accordingly) as at the date of termination, the value of any unused or partially used Plant and Equipment on the Site, and the costs, if any, incurred in protecting the Works and in leaving the Site

in a clean and safe condition pursuant to paragraph (a) of GC 42.2.3 above. Any sums due to the Employer from the Contractor accruing prior to the date of termination shall be deducted from the amount to be paid to the Contractor under this Contract.

- 42.2.6 If the Employer completes the Works, the cost of completing the Works by the Employer shall be determined.

If the sum which the Contractor is entitled to be paid pursuant to GC 42.2.5 above, plus the reasonable costs incurred by the Employer in completing the Works, exceeds the Contract Price, the Contractor shall be liable for such excess.

If such excess is greater than the sums due to the Contractor under GC 42.2.5 above, the Contractor shall pay the balance to the Employer, and if such excess is less than the sums due to the Contractor under the said GC 42.2.5, the Employer shall pay the balance to the Contractor.

The Employer and the Contractor shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.

42.3 Termination by Contractor

42.3.1 If:

- (a) the Employer has failed to provide sufficient funds to be freely available for the purpose of payment security for the Contractor on the Escrow Account or has failed to issue the confirmed Letter of Credit with sufficient funds as per Terms of Payment, has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to Appendix 1 (Terms of Payment) of the Contract Agreement, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice; or
- (b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site or other areas or failure to obtain any governmental permit necessary for the execution and/or Completion of the Works;

then the Contractor may give a notice to the Employer thereof, and if the Employer has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach within twenty-eight (28) days of such notice, or if the Contractor is still unable to carry out any of its obligations under the Contract for any reason attributable to the Employer within twenty-eight (28) days of the said notice, the Contractor may by a further notice to the Employer referring to this GC 42.3.1, forthwith terminate the Contract.

42.3.2 The Contractor may terminate the Contract forthwith by giving a notice to the Employer to that effect, referring to this GC 42.3.2, if the Employer becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, if a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Employer takes or suffers any other analogous action in consequence of debt.

42.3.3 If the Contract is terminated under GC 42.3.1 or GC 42.3.2 above, then the Contractor shall immediately:

- (a) cease all further work, except for such work as may be necessary for the purpose of protecting that part of the Works already executed, or any work required to leave the Site in a clean and safe condition; and
- (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d)(ii) below; and
- (c) remove all Contractor's Equipment from the Site and repatriate the Contractor's and its Subcontractor's personnel from the Site; and
- (d) subject to the payment specified in GC 42.3.4
 - (i) deliver to the Employer the parts of the Works executed by the Contractor up to the date of termination; and
 - (ii) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Works and to the Plant and Equipment as at the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors; and
 - (iii) deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as at the date of termination in connection with the Works.

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- 42.3.4 If the Contract is terminated under GC 42.3.1 or GC 42.3.2 above, the Employer shall pay to the Contractor all payments specified in GC 42.1.3 above, and reasonable compensation for all loss or damage sustained by the Contractor arising out of, in connection with or in consequence of such termination.
- 42.3.5 Termination by the Contractor pursuant to GC.42.3 is without prejudice to any other rights or remedies of the Contractor which may be exercised in lieu of or in addition to rights conferred by GC 42.3.1.
- 42.4 In this GC 42, in calculating any monies due from the Employer to the Contractor, account shall be taken of any sum previously paid by the Employer to the Contractor under the Contract, including any advance payment paid pursuant to Appendix 3 (Terms of payment) to the Contract Agreement.
43. **Assignment**
- 43.1 Neither the Employer nor the Contractor shall, without the express prior written consent of the other (which consent shall not be unreasonably withheld), assign to any third party the Contract or any part thereof, or any right, benefit, obligation or interest therein or thereunder, except that the Contractor shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or which may become due and payable to it under the Contract.

Contract: Portile de Fier II

CONTRACT
for
**Overhaul and Modernisation Works of
HPP Portile de Fier II**

CONTRACT DOCUMENTS

Special Conditions of Contract

SPECIAL CONDITIONS OF CONTRACT

TABLE OF CLAUSES

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SPECIAL CONDITIONS OF CONTRACT

The following Special Conditions of Contract (SC) shall supplement the General Conditions of Contract (GC). Whenever there is a conflict, the provisions herein shall prevail over those in the GC. The corresponding clause number of the GC is indicated in parentheses.

(Clause 1) Definitions

SC 1

The Employer is:

HIDROELECTRICA S.A.

Str.Constantin Nacu No 3
RO 70219 Bucharest 2 , Romania
Tel : 0040-1- 31 124 74
0040-1- 303 2561
Fax : 0040-1- 31 1 1174

Represented by :

Mr. Eugen Pena
General Manager

The Project Manager is:

to be nominated within 60 days from the Effective
Date of the Contract

The Contractor is:

VA TECH HYDRO Ltd.
Oberrnauerstrasse 4
CH-6010 Kriens
Tel.: 0041-41- 329 - 5111
Fax: 0041- 41- 329 - 5152

The Contractor's Representative is: to be nominated within 60 days from the Effective
Date of the Contract

The Adjudicator is:

to be nominated by the contracting parties as per GC
6.1

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Country of Origin: Switzerland, EU Countries , Canada, Czech Republic,
Japan, Romania and others

Time for completion for parts of the Works:

Description	Time for Completion in months from the Effective Date of Contract (coming into force of the Contract)
(1) Programmes for: a) Model acceptance tests b) Workshop checks and tests c) Field checks and tests (pre-commissioning tests) d) Commissioning tests (Provisional acceptance tests) e) Final acceptance tests (Guarantee tests)	3 10 26 29 31
(2) Reports for model tests a) Preliminary report on the results b) Final report on the results	10 13
(3) Project for modernisation and upgrading of the units up to 31.5 MW (Refurbishment solution)	10-12
(4) Technical documentation for the works organisation, dismantling and erection	18
(5) Execution documentation	14 to 18
(6) Preliminary operation and maintenance manual	29
(7) Final operation and maintenance manual	3 month after PAC
(8) Execution schedule	5 months (HU1 O) 12 months before out of operation of each unit (for HU2 O to HU8 O)
(9) Refurbishment documentation	21-23 months (HU1 O)

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in the 3 months period of dismantling of
each unit (for HU2 O to HU8 O)

(10) As built documentation	35 months(HU1 O) 3 months after PAC (for HU2 O to HU8 O)
(11) Out of operation of HU1 O	20 months
(12) PAC First Refurbished Unit (HU1 O)	32
(13) PAC HU2 O	44
(14) PAC HU3 O	55
(15) PAC HU4 O	66
(16) PAC HU5 O	77
(17) PAC HU6 O	88
(18) PAC HU7 O	99
(19) PAC HU8 O	110

- Note: PAC means Provisional Acceptance Certificate
The Sequences of the Rehabilitation of the Units will be mutually defined and agreed upon the parties and HU1 O means first Unit to be overhauled.

(Clause 3) Language

SC 3.1.1 The Contract shall be concluded in English and Romania. In case of discrepancies the English Version will prevail.

(Clause 4) Notices

SC 4.1 Employer's address for notice purposes:

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Str. Constantin Nacu 3
RO 70219 Bucharest 2
Tel : 0040-1-31 124 74 - 0040-1-303 2561
Fax : 0040-1-31 1 1174

A copy of the notices shall be sent to the Project Manager and to the Contractor's Representative to the address as per SC 1.

Contractor's address for notice purposes:

VA TECH HYDRO Ltd.
Obernauerstrasse 4
CH-6010 Kriens
Tel.: 0041-41- 329 - 5111
Fax: 0041- 41- 329 - 5152

- SC4.1.1 Applies only to documents or correspondences which according to Contract Conditions have to be submitted in original version, e.g., shipping documents. A copy of the messages shall be sent to the Project Manager and to the Contractor's Representative to the addresses indicated under Clause 1.

(Clause 5) Governing Law

- SC 5.1 The Contract shall be interpreted in accordance with the laws of Romania.

(Clause 6) Settlement of Disputes

- SC 6.1 Adjudicator: the adjudicator will be appointed for technical disputes only. He shall be a neutral consulting engineer. Adjudicator's procedure on mediation is optional for the two parties and cannot be carried out without previous written agreement between the two parties.
- All and only technical aspects arising in connection with the interpretation and/or performance of this Contract can be the object of such adjudicator's procedure (e.g., the results of expertise or tests for PAC/FAC).
- SC 6.1.3 The fees for this adjudicator will be shared equally between both partners.
- SC 6.1.4 The Project Manager for Employer and Contractor's Representative shall within three months agree on the consulting company to be appointed as Adjudicator.
- SC 6.2.3 Appointing Authority for the third Arbitrator: according to ICC rules, Paris / France.
- SC 6.2.6 (i) Rules of procedure for arbitration proceedings: ICC, Paris / France.
- SC 6.2.6 (ii) The place of arbitration shall be: Bucharest / Geneva as per the plaintiff's choice.

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(Clause 7) Scope of Works
General

Clause 7.1 and 7.2 apply only in the limits of the agreed interfaces and the Scope of Works according to Technical Documents Folder 3, Chapter 1, 2 and 3. The basis is the technical information (documentation) received from the Employer by the Contractor. The Contractor is not liable for additional work and costs due to defects or damages on any existing equipment/plant of the Employer which were not detectable prior to Contract signature by the Contractor through reasonable measures/investigation methods and has consequently not been included in the Offer

SC 7.1 In accordance with the provisions of clause GC 7.1 the Contractor shall perform the works with the supply of the equipment on CIP Portile de Fier II Power Plant MEHEDINTI District, Romania as per Incoterms 2000.

The Contractor takes the responsibility of the risk during transportation to the site and storage at site, provided that the Employer makes available adequate covered storage spaces in time free of charge to the Contractor.

The Contractor refrains from his right to claim time extension for Employer's fault up to a maximum delay at customs of 10 days.

The Contractor shall submit to the Employer the Maintenance and Operation Manuals and as built documentation according to Appendix 7 to Contract.

SC 7.3 Specification of spare parts (description, unit prices, quantity etc.) will be according to Folder 1 of 3 – Commercial Part, Part 1.4 Price Schedules Annexe 6,7 and 8.

Prices for spare parts to be ordered additionally during Contract execution or after ending of Defects Liability Period shall be mutually agreed upon between the parties.

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The Contractor agrees to supply spare parts or compatible interchangeable substitutes after the Defects Liability Period during the lifetime of the supplied equipment.

SC 7.4 The Contractor shall carry sufficient inventories to ensure an ex-stock supply of consumable spares for the Plant and Equipment. Other spare parts and components except long lead time items shall be supplied as promptly as possible from the date of coming in to force of the order. In addition, in the event of termination of the production of spare parts, advance notification will be made to the Employer of the pending termination, with sufficient time to permit the Employer to procure the needed requirement. Following such termination, the Contractor will permit to the extent possible and at no cost to the Employer the blueprints, drawings and specifications of the spare parts, if requested.

(Clause 8) Time for Commencement and Completion

SC 8.1 The Contractor shall commence the Works from the Effective Date as specified in the Contract Agreement for determining Time for Completion. A delay in opening of the letter(s) of credit or non-availability of sufficient funds at time when payments are due, will postpone and extend the times for completion accordingly.

SC 8.2 The Completion of the Works shall be attained as per SC 1.

(Clause 10) Employer's Responsibilities

SC 10.1 Additionally the Employer has to put at the Contractor's disposal the valid existing documents (detailed drawings, assembly drawings, civil drawings, calculation, tests information's, operation, maintenance and commissioning manuals and other general documentation) of the equipment, and the Employer will support the Contractor respectively use his legal rights to enable the Contractor to receive any further documentation in due time from original manufacturers and engineering sources, such as UCM Resita, ISPH Bucharest, Electroputere Craiova, Energomontaj Bucharest etc.

It is agreed that under Appendix 7 point "List of Documents to be Exchanged", if within 30 days the Employer will not communicate his written approval to the Contractor, the Approval is deemed to be given by the Employer.

It was agreed to add under Page 8/17

(Clause7)

the following new clause

SC 7.5

Employer is aware that refurbishment of certain parts of a plant might have an impact on the functioning of other parts of the plant (and vice versa), research and remedy of which is not part of this Contract. Therefore, Contractor warrants for correct performance of the maintenance and/or repair work, but shall have no warranty or liability whatsoever for parts and components not subject to repair work performed, adverse impact of other parts of the Project on the works, damages occurred during transportation, and diagnosis of causes of defects.

The Contractor shall not be liable for any failures, subject to condition, which could not have been foreseen based on the data received during the pre-disassembly inspection before start of the works.

The warranties, liabilities and obligations of Contractor do not extend to any repairs, adjustments, alterations, replacements or maintenance which may be required as a result of normal wear and tear in the operation of the Equipment, normal degradation in the performance of Equipment, or as a result of Manager's failure to operate or maintain the Equipment in accordance with the manufacturer's recommendations.

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(Clause 11) Contract Price

SC 11.2 The Contract price shall be a total firm price. For Unit 1 the price shall be fixed and for Units 2 to 8 the price will be adjusted in accordance with the provisions of Appendix 2 (Price Adjustment) to the Contract Agreement. It is furthermore agreed that the base date for escalation shall be the Effective Date of the Contract, or 31st of December 2001 in case the Contract will not be effective by that date.

SC 11.1 The Contract price as specified in Article 2 of the Contract Agreement is subdivided into Offshore and Onshore Supplies and Services in accordance with the detailed Price Schedules.

(Clause 13) Securities

SC 13.2 The Advanced Payment Security shall be in the form as described under the respective Appendix No. 8 of the Contract Agreement Document.

SC13.2.1 The validity of the Advanced Payment Security will be up to 30 days beyond PAC date per Unit.

SC 13.2.2 The Advanced Payment Security shall be reduced pro rata deliveries and services per Unit.

SC 13.3.1 The amount of performance security, as a percentage of each unit Price, shall be: 10% from the Unit Price.
The security shall be provided at coming into force of contract covering the first unit and the subsequent securities (for units 2 to 8) shall be issued individually at the time when the respective unit starts to be dismantled.

SC 13.3.3 The validity of the Performance Security will become null and void and will be released up to 30 days beyond FAC date per Unit.

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(Clause 14) Taxes and Duties

SC 14.1 Except stamp duty on Contract registration, if applicable.

SC 14.2 Change to read:

Notwithstanding GC 14.1 above, the Employer shall bear and promptly pay all customs and import duties and VAT, imposed on the Plant and Equipment specified in the Price Schedules and to be incorporated into the Works by the law of the country where the Site is located, Employer will try to obtain a Government Ordinance for exemption of duties, excise taxes and VAT. Therefore no duties, nor VAT and excise taxes, including also those applicable for the Romanian sub-contractors, are to be included in the Contract Price.

In the event that Employer does not get the exemption, it is agreed that Employer pays such duties, excise taxes and VAT to the related authorities.

(Clause 16) Confidential Information

SC 16.1 Add: Both parties agree, for themselves, their agents and employees, not to sell or divulge to third parties any commercial or technical information designated by the Contractor or Employer as proprietary or confidential belonging to this project.

(Clause 18) Work Programme

SC 18.2 The form of the Programme of Performance of the Contract shall be under Gant form. This programme shall observe the Time for Completion as per SC1.

For the site activities, the Contractor will supply 6 months before start of the site activities a PERT Chart for these activities. This PERT Chart will be issued once and will not be actualized. GC 18.2 is applicable for Phase I of the Contract only.

SC 18.3 Progress Report
The Progress Report shall be supplied quarterly until stopping of the machine and on monthly basis afterwards.

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(Clause 20) Design and Engineering

- SC 20.1. The technical documentation items 1,2,3,4,5,6, 7, 8, 9, 10 as per SC1 shall be delivered in 6 copies in English. The final operation and maintenance manuals (item 7) shall be delivered additionally in 6 copies in Romanian language.
- SC 20.3.2. The documents provided in appendix 7 under A will be approved within 20 days.

(Clause 21) Procurement

- SC 21.1.1 The Contractor shall submit to the Employer the programme of performance of delivery of each unit (masterlist) latest 60 days before start of the deliveries for each Unit.
- SC 21.3.3 On each delivery the Contractor shall submit to the Employer a copy of each delivery document, i.e.:
- invoice
 - complete set of packing list
 - insurance certificate
 - copy of forwarding agent's receipt or CMR, confirming dispatch of the respective consignment
 - EUR1 certificate or origin declaration on invoice
 - Certificate of conformity if applicable.

(Clause 22) Installation

- SC 22.8 Work at Night and on Holidays
- Work at Night and on Holidays, in accordance with the work schedule, is allowed.

(Clause 23) Tests, Inspection and Training

- SC 23.12 All the related expenses for Employers personnel at site (such as accommodation, food , transport, daily allowance etc.) shall be for account of the Employer.

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(Clause 24;25;27)

General Remark

the following procedure shall apply:

Step 1	Completion	Works completed, operationally and structurally for Pre-Commissioning
	Pre-Commissioning	Testing, checking and other requirements including dry test and functional test for parts or sub-assemblies and ends by issuing of the release for commissioning protocol
Step 2	Commissioning	Means function test, wet test/test with current/voltage
	including	72 h Test Run
	Commissioning Report	To be submitted by the Contractor to Employer
	PAC	To be issued in maximum 7 days after end of the 72h test run and submission of commissioning report. It is understood that in case the duration of commissioning is extended for reasons not attributable to the contractor, then the PAC shall be deemed to be given by Employer at such date as previously foreseen in the Contractual Time Schedule.
Step 3	Defect Liability Period	Starting with the PAC Date the contractual defined Defect Liability Period will start. Within this period the Guarantee Test shall be executed.
	Final Acceptance Certificate (FAC)	Will be performed at the end of the Defect Liability Period and the FAC will be issued by the Employer.
Step 4	End of Defect Liability Period	The Defect Liability Period for the Works shall be 24 months from the PAC Date of the respective unit.

(Clause 24)

SC 24.1 The wording as soon as the Works" is to be replaced by "5 days prior that Works"

SC 24.2 7 days shall be reduced to 5 days

Contract: Portile de Fier II

(Clause 25) Commissioning and Acceptance

SC 25.1.1 The Employer shall supply the operating and maintenance personnel and works, services and utilities as per Appendix 6.

SC 25.1.2 and

SC 25.2.1. In accordance with the requirements of the Contract, Commissioning and Guarantee Tests are to be done by the Contractor and the Employer's personnel shall attend commissioning and assist the Contractor.

SC 25.2.2 The Guarantee Test of the Works shall be successfully completed within the Defect Liability Period of each unit as per SC 27.2.

SC 25.3.4 The expression "deemed" shall mean "the deemed PAC Date"

SC 25.5.1 The final acceptance test shall be made under IEC standards only.

(Clause 26) Completion Time Guarantee

SC 26.2 Applicable rate for Liquidated Damages: 0.1 % per day of the respective Unit.
Maximum deduction for Liquidated Damages: 10 % of the Contract Price of the respective Unit.

The above rate and maximum apply to the price of the Unit, as quoted in the Price Schedule, for the Unit for which the Contractor fails to achieve PAC within the particular time over as specified in SC 1 [item (12) - (19)].

The Liquidated Damages mentioned in this clause shall be paid to cover the possible damages incurred by the Employer due to such delays in deliveries and shall represent the sole remedy to be paid by the Contractor for such delays.

SC 26.3 A bonus of 0.1% per day will be given for earlier Completion of the Works or part thereof for maximum of four weeks for each unit.

Contract: Portile de Fier II

(Clause 27) Defect Liability

SC 27.2 The Defect Liability Period for the Works shall be 24 months from the date of PAC of the respective unit.

Notwithstanding anything to the contrary, if the Defect Liability Period can not start due to reasons not attributable to the Contractor, then the Defect Liability Period shall expire not later than twenty-seven (27) months after the deemed PAC Date.

SC 27.8

In case of a stoppage of a unit due to physical damage to the delivered equipment for which the contractor is responsible the contractor shall pay to the employer liquidated damages of 0.15 % of the contract price of such unit for each full day of stoppage starting from the 56 day, from the receipt of the employer's notification about the stoppage, related to all 8 units (7days per unit). This clause applies for stoppages during the defects liability period for each unit and is cumulative limited up to 7 % of the unit price. Furthermore this clause is subject to the availability of all major spare parts on site purchased in time by the employer and delivered by the contractor according to the proposal of the contractor."

(Clause 28) Functional Guarantees

SC 28.1 The functional guarantee tests are defined and measurement procedures are laid down in the Technical Specification Folder 3, Chapter 1C, List of technical performance and guarantees annex A and chapter 2C annex B.

SC 28.3(b) If the guaranteed level of the Functional Guarantees specified as per Technical Specification is not attained, the Employer shall proceed as follows:

- (1) If the average of the measured weighted increases of hydraulic efficiencies (for seven heads) is different to the average of the guaranteed weighted increases of hydraulic efficiencies as defined in Folder 3, Chapter 1C, Annex 1 "Technical Data Sheet for Turbine and Turbine Appurtenances", item 6.2 it shall be proceeded as follows:

with

$$\Delta\eta = \Delta\eta_G - \Delta\eta_M$$

$\Delta\eta_G$ (%) Average of the seven guaranteed weighted efficiencies

$\Delta\eta_M$ (%) Average of the seven measured weighted efficiencies

If after the test of the first developed new runner model $\Delta\eta$ is more than 0.5 % the model runner blades shall be redesigned.

If after the measurements performed on the second improved model, this requirement is not achieved, the Scope of Supply for the runner blades will be renegotiated.

if $\Delta\eta$ is 0.5 % or less the penalty shall be calculated as follows:

$$P_1 = \Delta\eta \cdot 4\% \cdot P_0$$

in which :

P_1 = Penalty for deviation on efficiency improvement

P_0 = Contract Price

- (2) For the output of the turbine, defined in Folder 3, Chapter 1C, Annex 1 "Technical Data Sheet for Turbine and Turbine Appurtenances", item 5.2 price adjustment of the Contract Price will be calculated as follows:

- **A) For maximum output**

$$P_2 = \frac{\Delta P_2}{P_{g2}} * 100 * 1\% \cdot P_0$$

P_2 = Penalty for maximum output

P_0 = Contract price

$$\Delta P_2 = P_{m2} - P_{g2}$$

P_{g2} = Guaranteed maximum output at a net head of 12.75 m

P_{m2} = Measured (in model test) output at a net head of 12.75 m
in accordance with the "Technical Data Sheet for Turbine and Turbine
Appurtenances" Annex 1 item 5.2.a.

B) For rated output

$$P_3 = \frac{\Delta P_3}{P_{g3}} * 100 * 1\% \cdot P_0$$

P_3 = Price adjustment for output

P_0 = Contract price

$$\Delta P_3 = P_{m3} - P_{g3}$$

P_{g3} = Guaranteed rated output at a net head of 7.45 m

P_{m3} = Measured (model) output at a net head of 7.45 m
in accordance with the "Technical Data Sheet for Turbine and Turbine
Appurtenances" Annex 1 item 5.2.

P_{res} = Resulting Price adjustment for output

The total resulting price adjustment P_{res} for output is determined from the
higher value of price adjustment P_2 for maximum output or price adjustment
 P_3 for rated output.

The calculation of the total price adjustment P_4 for efficiency and output as
defined under (1) and (2) above is as follows:

$$P_4 = + P_1 + P_{res}$$

Rated output of the refurbished generator

The increased output of the refurbished generator shall be guaranteed in
accordance with Annex B of Folder 3, Chapter 2C.

If, due to the fault of the Contractor, the measured output power is lower than
the guaranteed value specified in the above mentioned Annex B, the

Contractor shall have the right to take improvement measures to reach the guaranteed output power. If these improvement measures are not successful, the Contractor shall pay penalties to the Employer as follows:

EUR 2.000.- for each completed 0,1% of missing output, but not more than EUR 50.000.- for one generator.

The generator shall be considered unsatisfactory if the measured output power is under the guaranteed value with more than 2%. If the Contractor does not succeed in making the necessary improvements within a time period, which shall be commonly agreed with the Employer, this one is entitled to refuse the payment for the refurbishment of the generator.

Efficiency of the refurbished Generator

The efficiency of the refurbished generator shall be guaranteed in accordance with Annex B of Folder 3, Chapter 2C .

If, due to the fault of the Contractor, the measured efficiency is lower than the guaranteed value specified in the above mentioned Annex B taking into account the tolerances acc. to IEC Standard, the Contractor shall have the right to take improvement measures to reach the guaranteed efficiency. If these improvement measures are not successful, the Contractor shall pay penalties to the Employer as follows:

EUR 2.000.- for each completed 0,1% of missing efficiency, but not more than EUR 50.000.- for one generator.

The generator shall be considered unsatisfactory if the measured value of efficiency is under the guaranteed value with more than 2%. If the Contractor does not succeed in making the necessary improvements within a time period, which shall be commonly agreed with the Employer, this one is entitled to refuse the payment for the refurbishment of the generator.

The penalties for the rated output and for the rated efficiency are to be calculated separately. Total penalties represents the amount of the two penalties.

- (4) The maximum amount of Price adjustments and penalties, calculated as mentioned above, is 15% of the price of the respective part of the Works. If this amount is reached, the Employer shall consider the termination of the Contract under GC42.2.2. The penalties mentioned in this clause shall be paid to cover all possible damages incurred by the Employer for not reaching of the guaranteed parameters and shall represent the sole remedy to be paid by the Contractor for such deficiencies.

Contract: Portile de Fier II

(Clause 33) Loss of or Damage to Property/Accident or Injury to Workers/Indemnification

SC33.1 Applies only to the extend that such person would have a direct claim against Contractor based on compulsory applicable law.

(Clause 37) Force Majeure

SC 37.1 (d) Strikes and lock-outs in Contractor's own factories, which are not related to a general strike or other organised strikes by Unions with a similar effect, are excluded.

SC 37.2 change to read: ... within fourteen (14) days after having knowledge of the occurrence of such event.

Clause 43 Assignment

SC 43 Contractor shall fully comply with the General Conditions of the Contract. However, the Contractor has only the right to assign the Contract or parts thereof to the Major Members of the VA Tech HYDRO Group i.e. VA TECH ESCHER WYSS GmbH, Ravensburg, Germany and/or VA TECH HYDRO GmbH & Co., Vienna, Austria. This assignment can take place before the Effective Date of the Contract upon notification.

VA TECH HYDRO

VA TECH

CMS von Erlach Poncet Ltd.
Exhibit No. C-12

ASSIGNMENT AGREEMENT

made on the 29th day of November 2001

by and between

VA TECH HYDRO Ltd., a Corporation incorporated under the laws of Switzerland and having its principal place of business at Kriens, Obemauerstrasse 4,

and

a Consortium consisting of:

VA TECH ESCHER WYSS GmbH

a company organized and existing under the laws of Germany,
whose principal office is at Escher Wyss Str. 26, D-88212 Ravensburg, Germany,

and

VA TECH HYDRO GmbH & Co

a company organized and existing under the laws of Austria,
whose principal office is at Penzinger Straße 76, A -1141 Vienna, Austria.

WHEREAS VA TECH HYDRO Ltd. has been entered into the CONTRACT AGREEMENT No. 2 I/50765 with HIDROELECTRICA S.A. a Commercial Company incorporated under the laws of ROMANIA and having its principal place of business at Bucharest, Str. Constantin Nacu No. 3, concerning the overhaul and modernisation of the HPP Portile de Fier II as of the 9th day of November, 2001.

**VA TECH HYDRO**

WHEREAS according to the Special Conditions of Contract (Clause 43) which are an integral part of the Contract concluded by way of the a.m. CONTRACT AGREEMENT, VA TECH HYDRO Ltd. has the right to assign the Contract or parts thereof to VA TECH ESCHER WYSS GmbH, Ravensburg and VA TECH HYDRO GmbH & Co, Vienna.

The parties hereby agree as follows:

1. VA TECH HYDRO Ltd. herewith assigns all rights and obligations under the Contract between VA TECH HYDRO Ltd. and HIDROELECTRICA S.A. laid down in the a.m. CONTRACT AGREEMENT and further Contract Documents and APPENDICES concerning the overhaul and modernisation of the HPP Portile de Fier II to the Consortium consisting of VA TECH ESCHER WYSS GmbH and VA TECH HYDRO GmbH & Co.
2. VA TECH ESCHER WYSS GmbH and VA TECH HYDRO GmbH & Co herewith accept the assignment and agree to take over all rights and obligations under the Contract with HIDROELECTRICA S.A. as of today.
3. This Agreement shall be drawn up in three originals, one for each party and one for HIDROELECTRICA S.A.

VA TECH HYDRO Ltd.

VA TECH ESCHER WYSS GmbH
VA TECH HYDRO GmbH & Co

Urs Bosshard
Senior Vice President
Business Unit Service & Rehab

Heinz Peter
Vice Director

Dr.-Ing. Wolfgang Wührer
President

ppa. Jean-Claude Riesterer
Senior Vice President
Business Division Large Hydro


VA TECH HYDRO

November 29, 2001 / UB

CMS von Erlach Poncet Ltd.
Exhibit No. C-13HIDROELECTRICA S.A.
Str. Constantin Nacu No. 3
Bucharest**Assignment Agreement**

Dear Sirs

With respect to Clause 43 Special Conditions of Contract we herewith notify the Assignment of all rights and obligations under the Contract with HIDROELECTRICA S.A. laid down in the CONTRACT AGREEMENT No No. 2 /50766 as of November 9th, 2001 and the Contract Documents to VA TECH ESCHER WYSS GmbH, Ravensburg, Germany and VA TECH HYDRO GmbH & Co, Vienna, Austria.

Please find enclosed the resp. ASSIGNMENT AGREEMENT, in case any further documents are required by the authorities in connection with the establishment of this ASSIGNMENT AGREEMENT assignor and assignee will provide you with all documents necessary.

Urs Bosshard
Senior Vice PresidentHeinz Peter
Vice Director

VA TECH HYDRO LTD
Oberrautenstrasse 4
CH-6010 Kriens
Telephone (+41) 41 329 51 11
Fax (+41) 41 329 51 52
E-Mail contact@vatech-hydro.ch
Web www.vatech-hydro.com

VA TECH HYDRO LTD
Rue des Deux-Gares 6
CH-1800 Vevey
Telephone (+41) 21 925 77 00
Fax (+41) 21 925 77 03

VA TECH HYDRO LTD
Hardstrasse 319/Postfach
CH-8023 Zurich
Telephone (+41) 1 278 23 23
Fax (+41) 1 278 26 19

Contract: Portile de Fier II – Phase III/ Stage 1 Overhaul and Modernisation Works of HPP Gogosu

Amendment No. 4
for Phase I , Phase II and Phase III / Stage 1

To

CONTRACT Agreement No 2I/50765 dd. 9th November 2001

This Amendment No 4 to Contract Agreement is made the 5th day of December, 2002

between

HIDROELECTRICA S.A. a Commercial Company incorporated under the laws of ROMANIA and having its principal place of business at Bucharest, Str. Constantin Nacu No.3 (hereinafter called "the Employer")

and

VA TECH ESCHER WYSS GmbH a company organized and existing under the laws of Germany, whose principal office is at Escher Wyss Str. 25, D-88212 Ravensburg, Germany

together with

VA TECH Hydro GmbH & Co a company organized and existing under the laws of Austria, whose principal office is at Penzinger Straße 76, A -1141 Vienna, Austria

forming an external Consortium (hereinafter called "the Contractor")

WHEREAS the Employer engaged the Contractor with Contract Agreement No. 2I/50765 dd. 9th day of November, 2001 for the overhaul and modernisation of the HPP Portile de Fier II – considered to be Phase I, whereas the Employer additionally engaged the Contractor with Amendment No 2 dd. 22nd of March 2002 – considered to be Phase II ("Phase I + Phase II called "the Works") and the Contractor has agreed to such engagement upon and subject to the terms and conditions of the Contract.

With this Amendment No. 4 the Employer in addition engages the Contractor for Portile de Fier II – Phase III / Stage 1 Overhaul and Modernisation of the HPP Gogosu – considered to be Phase III / Stage 1 (Phase III / Stage 1 called "the Works for Gogosu").

NOW IT IS HEREBY AGREED as follows:

Article 1. Contract Documents

Contract Documents (Reference GC2)

- 1.1 The following documents shall constitute the Contract for Phase I, II and Phase III / Stage 1 between the Employer and the Contractor, and each shall be read and construed as an integral part of the Contract:
1. Contract Agreement No. 21/50765 dd. 9th day of November, 2001
 2. Amendment No. 1 to the Contract Agreement dd. 12th December 2001, applicable to Phase I, II and III
 3. Amendment No. 2 to the Contract Agreement dd. 22nd March 2002, applicable to Phase I and II
 4. Amendment No. 3 to the Contract Agreement dd. 12th September 2002, applicable to Phase I, II and III
 5. Amendment No. 4 to the Contract Agreement dd. 5th December 2002, applicable to Phase I, II and III / Stage 1
 6. Special Conditions of Contract applicable to Phase I and II
 7. Amendment No. 1 to Special Conditions of Contract, applicable to Phase I and II
 8. Amendment No. 2 to Special Conditions of Contract, applicable to Phase III / Stage 1
 9. General Conditions of Contract applicable to Phase I, II and III
 10. Amendment No. 1 to General Conditions of Contract, applicable to Phase I and II
 11. Amendment No. 2 to General Conditions of Contract, applicable to Phase III / Stage 1
 12. Corrections to the Contract Documents of Technical Documents Folder 3 Chapter 2 – Generator & Excitation System Chapter 2B – Technical Specifications, Vol. III, Chapter 2, applicable to Phase I and of Folder 6 – Chapter 4 Vol. IV of Technical Specification and Tender Specifications, applicable for Phase II
 13. Technical Documents Folder 3 Chapter 1, 2, 3 , in the Order of Clarifications, Technical Specifications and Tender No.85629, applicable for Phase I
 14. Technical Documents Folder 5 Chapter 1, 2, 3 and 4, in the Order of Clarifications, Technical Specifications and Tender No.85666, applicable for Phase II
 15. Technical Documents Folder 6 Chapter 1,2,3,4,5,6,7 and 8 in the in the Order of Clarifications, Technical Specifications and Tender No 85666 applicable for Phase II
 16. Technical Documents Folder 9 Chapter 1,2,3,4,5 and 6, in the Order of Clarifications, Technical Specifications and Tender No 85707 applicable for Phase III / Stage 1

17. Price Schedule Summary for Phase I and II
18. Price Schedule Summary for Phase III / Stage 1
19. Price Schedules for Phase I
20. Price Schedules for Phase II
21. Price Schedules for Phase III / Stage 1
22. Folder 2 Chapter 1 (General Technical Conditions) – in the order 1A and 1B, Chapter 2(drawings), Chapter 3 (Informations regarding the Project); applicable for Phase I and Phase II
23. Folder 8 Chapter 1 (General Technical Conditions) – in the order 1A and 1B, Chapter 2(drawings), Chapter 3 (Informations regarding the Project); applicable for Phase III / Stage 1
24. Forms and Procedures, applicable for Phase I and II
25. Forms and Procedures, applicable for Phase III/Stage 1

**Order of
Precedence
(Reference GC2)**

- 1.2** In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.1 (Contract Documents) above.

All previous documents, plans and Information in whatsoever form, which do not form part of this Agreement are not longer valid and will not to be applied.

**Definitions
(Reference GC1)**

- 1.3** Capitalised words and phrases used herein shall have the same meanings as are ascribed to them in the General Conditions of Contract.

Article 2. Contract Price and Terms of Payment

**Contract Price
for Phase I + II**

- 2.1.1** The Employer already agreed to pay to the Contractor the Contract Price for Phase I and Phase II in consideration of the performance by the Contractor of its obligations hereunder. (Reference GC 11 and SC 11). The Contract Price for Phase I and Phase II divided into Offshore and Onshore Portion in accordance with the Price Schedule is agreed to be the aggregate of:

**Two hundred millions three hundred fifty thousand EURO
(amount of foreign currency in words)**

**EURO 200.350.000,-
(amount in figures)**

**Contract Price
for Phase III/Stage 1**

2.1.2 The Employer hereby agrees to pay to the Contractor the Contract Price in consideration of the performance by the Contractor of its obligations hereunder. (Reference GC11 and SC 11) for Phase III / Stage 1. The Contract Price for Phase III / Stage 1 divided into Offshore and Onshore Portion in accordance with the Price Schedule shall be the aggregate of:

Thirty three millions six hundred forty seven thousand five hundred thirty EURO (amount of foreign currency in words)

EURO 33.647.530,-(amount in figures)

**Total Contract Price
for Phase I, II and
Phase III/Stage 1**

2.1.3 The Employer hereby agrees to pay to the Contractor the Contract Price in consideration of the performance by the Contractor of its obligations hereunder. (Reference GC11 and SC 11) for Phase I, Phase II and Phase III / Stage 1. The Summary of Contract Price for Phase I, Phase II and Phase III / Stage 1 divided into Offshore and Onshore Portion in accordance with the Price Schedule shall be the aggregate of

Two hundred thirty three millions nine hundred ninety seven thousand five hundred thirty EURO (amount of foreign currency in words)

EURO 233 997.530,-(amount in figures)

**Terms of Payment
(Reference GC12)**

2.2 The terms and procedures of payment according to which the Employer will reimburse the Contractor are given in the Appendix 1 applicable for Phase I, II and III / Stage 1 (Terms and Procedures of Payment) hereto.

**Contract Price
for Phase III/Stage 1**

2.1.2 The Employer hereby agrees to pay to the Contractor the Contract Price in consideration of the performance by the Contractor of its obligations hereunder. (Reference GC11 and SC 11) for Phase III / Stage 1. The Contract Price for Phase III / Stage 1 divided into Offshore and Onshore Portion in accordance with the Price Schedule shall be the aggregate of:

Thirty nine millions four hundred forty eight thousand one hundred eighty three EURO **(amount of foreign currency in words)**

EURO 39.448.183,-(amount in figures)

**Total Contract Price
for Phase I, II and
Phase III/Stage 1**

2.1.3 The Employer hereby agrees to pay to the Contractor the Contract Price in consideration of the performance by the Contractor of its obligations hereunder. (Reference GC11 and SC 11) for Phase I, Phase II and Phase III / Stage 1. The Summary of Contract Price for Phase I, Phase II and Phase III / Stage 1 divided into Offshore and Onshore Portion in accordance with the Price Schedule shall be the aggregate of

Two hundred thirty nine millions seven hundred ninety eight thousand one hundred eighty three EURO **(amount of foreign currency in words)**

EURO 239.798.183,-(amount in figures)

**Terms of Payment
(Reference GC12)**

2.2 The terms and procedures of payment according to which the Employer will reimburse the Contractor are given in the Appendix 1 applicable for Phase I, II and III / Stage 1 (Terms and Procedures of Payment) hereto.

Article 3. Effective Date of Contract

- | | | |
|---|------------|--|
| Effective Date for Phase I | 3.1 | The Effective Date of the Contract for Phase I is the 21 st of December 2001. |
| Effective Date for Phase II | 3.2 | The Effective Date of the Amendment No. 2 to Contract Agreement No. 2 I/50765 is the 22 nd of October 2002. |
| Effective Date for Phase III / Stage 1 | 3.3 | <p>The date for coming into force of Amendment No. 4 to Contract Agreement No. 2 I/50765 i.e. the Effective Date for Phase III / Stage 1, shall be the date when all of the following conditions have been fulfilled:</p> <ol style="list-style-type: none">1) this Amendment No. 4 to Contract Agreement has been duly signed for and on behalf of the Employer and the Contractor;2) the Amendment No. 4 to the Contract is approved by the Board of the Administration and State Ownership represented 100% by the Ministry of Industries and Resources of the Employer and approved by the Board of VA TECH HYDRO;3) the Contractor has submitted to the Employer the Advance Payment Guarantee for the Amendment No. 4 (with respective coming into force clause) in accordance with clause 13 of SC.4) the Advance Payment as defined in the Terms and Procedures of Payment applicable for Phase I, Phase II and Phase III, has been received by the Contractor. |

Article 4. Appendices

The Appendices listed here below shall be deemed to form an integral part of this Contract Agreement. Reference in the Contract to any Appendix shall mean the Appendices attached hereto, and the Contract shall be read and construed accordingly.

APPENDICES to the Contract Agreement;

related to Phase I and Phase II

- Appendix 1 Terms and Procedures of Payment applicable for Phase I and II
- Appendix 2 Price Adjustment / Amendment 1 to Price Adjustment
- Appendix 3 Insurance Requirements applicable for Phase I and II
- Appendix 4 Time Schedule applicable for Phase I and II
- Appendix 5 List of Potential Sub-Suppliers applicable for Phase I and II
- Appendix 6 Scope of Works and Supply by the Employer applicable for Phase I and II
- Appendix 7 List of Documents to be exchanged applicable for Phase I and II
- Appendix 8 Bank Guarantee Form for Advance Payment / Form of Bank Guarantee for Advance Payment applicable for Phase II
- Appendix 9 Form of Performance Bank Guarantee applicable for Phase I and II

related to Phase III / Stage 1

- Appendix 1 Terms and Procedures of Payment applicable for Phase I, II and III / Stage 1
- Appendix 2 Price Adjustment applicable for Phase III / Stage 1
- Appendix 3 Insurance Requirements applicable for Phase III / Stage 1
- Appendix 4 Time Schedule applicable for Phase III / Stage 1
- Appendix 5 List of Potential Sub-Suppliers applicable for Phase III / Stage 1
- Appendix 6 Scope of Works and Supply by the Employer applicable for Phase III / Stage 1
- Appendix 7 List of Documents to be exchanged applicable for Phase III / Stage 1
- Appendix 8 Form of Bank Guarantee for Advance Payment applicable for Phase III / Stage 1
- Appendix 9 Form of Performance Security applicable for Phase III / Stage 1

IN WITNESS WHEREOF the Employer and the Contractor have caused this Agreement to be duly executed by their duly authorised representatives the day and year first above written.

Signed by for and
on behalf of the Employer

Name

Eugen Pena

Signed by for and
on behalf of the Contractor

Name

Hans Peter Binggeli

Name

Giuseppe Catalfamo

Title
General Manager

Title
Senior Vice President
Marketing & Global Sales

Title
Head of Commercial
Department

Letter of Understanding

regarding

Amendment No. 4 to
CONTRACT AGREEMENT No. 2 I / 50765 dd. 9th November 2001

This Letter of Understanding is made the 6th day of December 2002

between

HIDROELECTRICA S.A. a Commercial Company Incorporated under the laws of ROMANIA and having its principal place of business at Bucharest, Str. Constantin Nacu No.3 (hereinafter called "the Employer")

and

VA TECH ESCHER WYSS GmbH a company organised and existing under the laws of Germany,
whose principal office is at Escher Wyss Str. 25, D-88212 Ravensburg, Germany

together with

VA TECH Hydro GmbH & Co a company organised and existing under the laws of Austria,
whose principal office is at Penzinger Straße 76, A -1141 Vienna, Austria

forming an external Consortium (hereinafter called "the Contractor")

WHEREAS the Employer and the Contractor are parties to a Contract Agreement, No. 2 I / 50765 dated November 9, 2001 for the overhaul and modernisation of the HPP Portile de Fier II:

NOW IT IS HEREBY AGREED as follows:

Contract: Portile de Fier II – Phase I + II + III

Clause 1

It is agreed that the Contract Agreement, No. 2 I / 50765 dated November 9, 2001 for the overhaul and modernisation of the HPP Portile de Fier II is consisting of the following Phases:

Phase I: negotiated with Contract Agreement No. 2 I / 50765, dd. 9th day November, 2001
Phase II: negotiated with Amendment No. 2 to Contract Agreement, dd. 22nd March, 2002
Phase III: negotiated for Stage 1 with Amendment No. 4 to Contract Agreement, dd. 5th December 2002

It is foreseen to negotiate and to conclude an Contract Agreement for the remaining Stage 2 of Phase III during the first quarter of 2003.

With Contract Agreement for Phase III / Stage 2 the parties shall regard the Contract for HPP Portile de Fier II (including Gogosu) as a package to be concluded.

Clause 2

It is therefore agreed to foresee the entire Phase III to be concluded with signature of the Contract Agreement for the remaining Stage 2. Contractor will than be allowed to receive the related advance payment for the entire Phase III however, in no case later than 31st March 2003.

IN WITNESS WHEREOF the Employer and the Contractor have caused this Letter of Understanding to be duly executed by their duly authorised representatives the day and year first above written.

Signed by for and
on behalf of the Employer

Name

Eugen Pena 

Name

Carmen Marin

Signed by for and
on behalf of the Contractor

Name

Gluseppe Catalfamo

Name

Edgar Croenert

Title
General Manager

**Director of
International
Affairs and
Privatisation
Division**

Title
Head of Commercial
Department

Title
Project Manager

Contract: Portile de Fier II – Phase III/ Stage 1 and Stage 2 Overhaul and Modernisation Works of HPP Gogosu

Amendment No. 6
for Phase I , Phase II and Phase III

To

CONTRACT Agreement No 21/50765 dd. 9th November 2001

This Amendment No 6 to Contract Agreement is made the 26th day of March, 2003

between

HIDROELECTRICA S.A. a Commercial Company incorporated under the laws of ROMANIA and having its principal place of business at Bucharest, Str. Constantin Nacu No.3 (hereinafter called "the Employer")

and

VA TECH ESCHER WYSS GmbH a company organized and existing under the laws of Germany, whose principal office is at Escher Wyss Str. 25, D-88212 Ravensburg, Germany

together with

VA TECH Hydro GmbH & Co a company organized and existing under the laws of Austria, whose principal office is at Penzinger Straße 76, A -1141 Vienna, Austria

forming an external Consortium (hereinafter called "the Contractor")

WHEREAS the Employer engaged the Contractor with Contract Agreement No. 21/50765 dd. 9th day of November, 2001 for the overhaul and modernisation of the HPP Portile de Fier II – considered to be Phase I, whereas the Employer additionally engaged the Contractor with Amendment No. 2 dd. 22nd of March 2002 – considered to be Phase II ("Phase I + Phase II called "the Works for HPP Portile de Fier II") and the Contractor has agreed to such engagement upon and subject to the terms and conditions of the Contract.

Whereas the Employer engaged the Contractor for the overhaul and modernization of the HPP Gogosu – considered to be Phase III. Phase III is consisting of two stages, Stage 1 has been concluded with Amendment No. 4 dd. 5th December 2002.

With this Amendment No. 6 the Employer engages the Contractor for Portile de Fier II – Phase III / Stage 2 for HPP Gogosu – (Phase III / Stage 1 and 2 are considered to be "the Works for HPP Gogosu").

With Amendment No. 6 to Contract Agreement for Phase III/Stage 2 the parties regard the Contract for Portile de Fier II (including Gogosu) as a package.

NOW IT IS HEREBY AGREED as follows:

Article 1. Contract Documents

**Contract Documents
(Reference GC2)**

- 1.1** The following documents shall constitute the Contract for Phase I, II and Phase III between the Employer and the Contractor, and each shall be read and construed as an integral part of the Contract:
1. Contract Agreement No. 2I/50765 dd. 9th day of November, 2001
 2. Amendment No. 1 to the Contract Agreement dd. 12th December 2001, applicable to Phase I, II and III
 3. Amendment No. 2 to the Contract Agreement dd. 22nd March 2002, applicable to Phase I and II
 4. Amendment No. 3 to the Contract Agreement dd. 12th September 2002, applicable to Phase I, II and III/Stage1
 5. Amendment No. 4 to the Contract Agreement dd. 5th December 2002, applicable to Phase I,II and III / Stage1
 6. Amendment No. 5 to the Contract Agreement dd. 5th December 2002, applicable to Phase I,II and III.
 7. Amendment No. 6 to the Contract Agreement dd. 26th March 2003, applicable to Phase I, II and III.
 8. Special Conditions of Contract applicable to Phase I and II
 9. Amendment No. 1 to Special Conditions of Contract, applicable to Phase I and II
 10. Amendment No. 2 to Special Conditions of Contract, applicable to Phase III / Stage 1 (replaced by Amendment No.3 below)
 11. Amendment No. 3 to Special Conditions of Contract, applicable to Phase III
 12. General Conditions of Contract applicable to Phase I, II and III
 13. Amendment No. 1 to General Conditions of Contract, applicable to Phase I and II
 14. Amendment No. 2 to General Conditions of Contract, applicable to Phase III / Stage 1 (replaced by Amendment No.3 below)
 15. Amendment No. 3 to General Conditions of Contract, applicable to Phase III
 16. Corrections to the Contract Documents of Technical Documents Folder 3 Chapter 2 – Generator & Excitation System Chapter 2B – Technical Specifications, Vol. III, Chapter 2, applicable to Phase I and of Folder 6 – Chapter 4 Vol. IV of Technical Specification and Tender Specifications, applicable for Phase II

17. Technical Documents Folder 3 Chapter 1, 2, 3 , in the Order of Clarifications, Technical Specifications and Tender No.85629, applicable for Phase I
18. Technical Documents Folder 5 Chapter 1, 2, 3 and 4, in the Order of Clarifications, Technical Specifications and Tender No.85666, applicable for Phase II
19. Technical Documents Folder 6 Chapter 1,2,3,4,5,6,7 and 8 in the Order of Clarifications, Technical Specifications and Tender No 85666 applicable for Phase II
20. Technical Documents Folder 9 Chapter 1,2,3,4,5 and 6, in the Order of Clarifications, Technical Specifications and Tender No 85707 applicable for Phase III / Stage 1
21. Technical Documents Folder 11-1,11-2 and 11-3 applicable for Phase III / Stage 2
22. Price Schedule Summary for Phase I and II
23. Price Schedule Summary for Phase III
24. Price Schedules for Phase I
25. Price Schedules for Phase II
26. Price Schedules for Phase III / Stage 1
27. Price Schedules for Phase III / Stage 2
28. Folder 2 Chapter 1 (General Technical Conditions) – in the order 1A and 1B, Chapter 2(drawings), Chapter 3 (Informations regarding the Project); applicable for Phase I and Phase II
29. Folder 8 Chapter 1 (General Technical Conditions) – in the order 1A and 1B, Chapter 2(drawings), Chapter 3 (Informations regarding the Project); applicable for Phase III / Stage 1
30. Folder 11-1 Part 1 – General, Chapter 1, Chapter 2 and Chapter 3, applicable for Phase III / Stage 2
31. Forms and Procedures, applicable for Phase I and II
32. Forms and Procedures, applicable for Phase III

**Order of
Precedence
(Reference GC2)**

- 1.2** In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.1 (Contract Documents) above.

All previous documents, plans and information in whatsoever form, which do not form part of this Amendment No.6 to Contract Agreement No. 21/50765 and are not listed in Article 1.1 above are not longer valid and will not to be applied, unless mutually agreed by the Parties.

**Definitions
(Reference GC1)**

- 1.3** Capitalised words and phrases used herein shall have the same meanings as are ascribed to them in the General Conditions of Contract.

Article 2. Contract Price and Terms of Payment

- Contract Price for Phase I + II** **2.1.1** The Employer already agreed to pay to the Contractor the Contract Price for Phase I and Phase II in consideration of the performance by the Contractor of its obligations hereunder. (Reference GC 11 and SC 11). The Contract Price for Phase I and Phase II divided into Offshore and Onshore Portion in accordance with the Price Schedule is agreed to be the aggregate of:
- Two hundred millions three hundred fifty thousand EURO
(amount of foreign currency in words)
- EURO 200.350.000,-
(amount in figures)
-
- Contract Price for Phase III** **2.1.2** The Employer hereby agrees to pay to the Contractor the Contract Price in consideration of the performance by the Contractor of its obligations hereunder. (Reference GC11 and SC 11) for Phase III Stage 1 and Stage 2. The Summary of Contract Price for Phase III - Stage 1 and Stage 2 divided into Offshore and Onshore Portion in accordance with the Price Schedule shall be the aggregate of:
- Fifty four millions five hundred thousand EURO (amount of foreign currency in words)
- EURO 54.500.000,-
(amount in figures)
-
- The Contractor agrees that within the above mentioned prices to participate to the building of a new covered sport place according to a design provided by the Employer and approved by the Contractor.
-
- Terms of Payment (Reference GC12)** **2.2** The terms and procedures of payment according to which the Employer will reimburse the Contractor are given in the Appendix 1 applicable for Phase I, II and III (Terms and Procedures of Payment) hereto.

Article 3. Effective Date of Contract

- | | | |
|---|------------|--|
| Effective Date
for Phase I | 3.1 | The Effective Date of the Contract for Phase I is the 21 st of December 2001. |
| Effective Date
for Phase II | 3.2 | The Effective Date of the Amendment No. 2 to Contract Agreement No. 2 I/50765 is the 22 nd of October 2002. |
| Effective Date
for Phase III / Stage 1
and Stage 2 | 3.3 | <p>The date for coming into force of Amendment No. 4 and No. 6 to Contract Agreement No. 2 I/50765 i.e. the Effective Date for Phase III Stage - 1 and Stage 2, shall be the date when all of the following conditions have been fulfilled:</p> <ol style="list-style-type: none">1) the Amendment No. 4 and No. 6 to Contract Agreement have been duly signed for and on behalf of the Employer and the Contractor;2) the Amendment No. 4 and No. 6 to the Contract are approved by the Board of the Administration and State Ownership represented 100% by the Ministry of Industries and Resources of the Employer and approved by the Board of VA TECH HYDRO;3) the Contractor has submitted to the Employer the Advance Payment Guarantees for the Amendment No. 4 and No. 6 (with respective coming into force clause) in accordance with clause 13 of SC.4) the Advance Payment for Phase III as defined in the Terms and Procedures of Payment applicable for Phase I, Phase II and Phase III, has been received by the Contractor. |

Article 4. Appendices

The Appendices listed here below shall be deemed to form an integral part of this Contract Agreement. Reference in the Contract to any Appendix shall mean the Appendices attached hereto, and the Contract shall be read and construed accordingly.

APPENDICES to the Contract Agreement;

related to Phase I and Phase II

- Appendix 1 Terms and Procedures of Payment applicable for Phase I and II
- Appendix 2 Price Adjustment / Amendment 1 to Price Adjustment
- Appendix 3 Insurance Requirements applicable for Phase I and II
- Appendix 4 Time Schedule applicable for Phase I and II
- Appendix 5 List of Potential Sub-Suppliers applicable for Phase I and II
- Appendix 6 Scope of Works and Supply by the Employer applicable for Phase I and II
- Appendix 7 List of Documents to be exchanged applicable for Phase I and II
- Appendix 8 Bank Guarantee Form for Advance Payment / Form of Bank Guarantee for Advance Payment applicable for Phase II
- Appendix 9 Form of Performance Bank Guarantee applicable for Phase I and II

related to Phase III / Stage 1

- Appendix 8 Form of Bank Guarantee for Advance Payment applicable for Phase III / Stage 1

related to Phase III / Stage 2

- Appendix 8 Form of Bank Guarantee for Advance Payment applicable for Phase III / Stage 2

Related to Phase III Stage 1 and Stage 2

- Appendix 1 Terms and Procedures of Payment applicable for Phase I, II and III
(replaces Appendix 1 of Phase I and II)
- Appendix 2 Price Adjustment applicable for Phase III
(replaces the existing Appendix for Phase III/Stage 1)
- Appendix 3 Insurance Requirements applicable for Phase III
(replaces the existing Appendix for Phase III/Stage 1)
- Appendix 4 Time Schedule applicable for Phase III
(replaces the existing Appendix for Phase III/Stage 1)
- Appendix 5 List of Potential Sub-Suppliers applicable for Phase III
(replaces the existing Appendix for Phase III/Stage 1)
- Appendix 6 Scope of Works and Supply by the Employer applicable for Phase III
(replaces the existing Appendix for Phase III/Stage 1)
- Appendix 7 List of Documents to be exchanged applicable for Phase III
(replaces the existing Appendix for Phase III/Stage 1)
- Appendix 9 Form of Performance Security applicable for Phase III
(replaces the existing Appendix for Phase III/Stage 1)

IN WITNESS WHEREOF the Employer and the Contractor have caused this Agreement to be duly executed by their duly authorised representatives the day and year first above written.

Signed by for and
on behalf of the Employer

Name

Eugen Pena

Signed by for and
on behalf of the Contractor

Name

Hans Peter Binggeli

Name

Giuseppe Catalfamo

Title
General Manager

Title
Senior Vice President
Marketing & Global Sales

Title
Head of Commercial
Department



VA TECH HYDRO

HPP Gogosu Stage 2
Tender no. 85 720

Volume V Chapter 1
Folder 11-3 / 3b Chapter 6C

20.03.03

3. Scope of supply

3.1. HPP PDF I

The new equipment of HPP Portile de Fier I control room consists of

- 1 pc. separating wall, length 18m, height 3m, free standing, carrier construction, panels and doors, integration of the video wall, erection works
- 350 m2 artificial floor consisting of conductive plates, load bearing for max. 200kg/m2, carrier construction, frames for desk and cubicles as necessary, erection work
- 350 m2 hanging ceiling, carrier construction
- 32 pcs. light elements
- switches, cables, cable channels, erection works
- 10 m long shaped desk for 16 monitors with drawers and computer locations, erection works. No telephone system integration in the desk
- 6 pcs. chairs,
- 2 pcs. table for printers, each 1,80m long
- Air condition system, 16.000m3 air volume, split cooling compressor unit with external air handling units. Air duct system as necessary
- Paintings of the walls
- New windows at a front of 48m (4*12m) length

3.2. HPP PDF II

The new equipment of HPP Portile de Fier II control room consists of

- 1 pc. separating wall, length 15m, height 3m, free standing, carrier construction, panels and doors, erection works
- 210 m2 hanging ceiling, carrier construction
- 30 pcs. light elements
- switches, cables, cable channels, erection works

20.03.03



VA TECH HYDRO

HPP Gogosu Stage 2
Tender no. 85 720

Volume V Chapter 1
Folder 11-3 / 3b Chapter 6C

20.03.03

- 6,5 m long shaped desk for monitors, printers with drawers and computer locations, erection works. No telephone system integration.
- 4 pcs. chairs
- Air condition system, 8.000m³ air volume, split cooling compressor unit with heat exchanger situated underneath windows.
- Paintings of the walls

3.3. HPP GOGOSU

The new equipment of **HPP GOGOSU** operator room consists of

- 1 pc. separating wall, length 15m, height 3m, free standing, carrier construction, panels and doors, erection works
- 120 m² artificial floor consisting of conductive plates, load bearing for max. 200kg/m², carrier construction, frames for desk and cubicles as necessary, erection work
- 120 m² hanging ceiling, carrier construction
- 20 pcs. light elements
- switches, cables, cable channels, erection works
- 4 m long shaped desk for monitors, printers with drawers and computer locations, erection works. No telephone system integration in the desk.
- 2 pcs. chairs
- Air condition system, 4.500m³ air volume, split cooling compressor unit with heat exchanger situated underneath windows.
- Paintings of the walls

20.03.03

Amendment No 17

AMENDMENT No 17

To

**CONTRACT AGREEMENT
No 2I/50765 dd. 9TH NOVEMBER 2001**

This Amendment No 17 to Contract Agreement is made the 1st day of March, 2012

between

HIDROELECTRICA S.A. a Commercial Company incorporated under the laws of ROMANIA and having its principal place of business at Bucharest, Str. Constantin Nacu No.3 (hereinafter called "the Employer")

and

ANDRITZ HYDRO GmbH a company organized and existing under the laws of Germany, whose principal office is at Escher Wyss Weg 1, D-88212 Ravensburg, Germany

together with

ANDRITZ HYDRO GmbH a company organized and existing under the laws of Austria, whose principal office is at Penzinger Straße 76, A -1141 Vienna, Austria

forming an external Consortium (hereinafter called "the Contractor")

WHEREAS the Employer engaged the Contractor with Contract Agreement No. 2I/50765 dd. November 9th 2001 and its related Amendments for the overhaul and modernisation of the HPP Portile de Fier II, Phase I, II and III.

WHEREAS the parties have held a technical meeting regarding repair of wicket gates Unit#6 and conducted the respective MoM_212 dd. October 12th 2011.

WHEREAS in October 2011 it was scheduled that the additional repair works would lead to a time impact resulting in a postponement of the PAC date of Unit#6 from 29.04.2012 to 04.09.2012 but final time impact to the PAC date shall be evaluated after the last set of wicket gates Unit#6 have been redelivered to site and agreed between the parties in a new contract amendment.

NOW IT IS HEREBY AGREED to amend the Contract Agreement No 2I/50765 according to the situation stated above and under consideration of the legal and financial and contractual impacts as follows:

3 Changes in Electrical Part Phase II.

3.1 Control Room PDF II

The rehabilitation of the Control Rooms PDFII/Gogosu shall be handled as agreed in MoM_213 dd. 17.10.2011.

Shifts between Gogosu and PDF II will be implemented into the Phase III Gogosu price schedules in terms of a separate Contract Amendment.

Notwithstanding clause 1 of this Amendment the allocated price for the Control Room PDFII has not been integrated in the respective Price Schedules of PDFII Phase II, but shall be handled as per separate payment conditions stated in Attachment 5 to this Amendment 17.

4 Appendix 4 Time Schedule for Phase I, II and III

The signed Time Schedules, Attachment 6 to this Amendment will prevail over all past Time Schedules (Appendix 4 to Contract Agreement).

5 Appendix 1. Terms and Procedures for Payment (applicable for Phase I, Phase II and Phase III)

It is agreed that the updated execution period shall be reflected in the Terms and Procedures of Payment.

The new Appendix 1. Terms and Procedures for Payment, applicable for Phase I, Phase II and Phase III Attachment 7 to this Amendment shall prevail over all past documents (Appendix 1 to Contract Agreement).

6 Amendment to Special Conditions of Contract

It is agreed that the changes as given in the amendment to Special Conditions, i.e. Attachment 8 to this Amendment shall apply to the Special Conditions respectively to the Amendment to Special Conditions of Contract.

Enclosure 1 to MoM 2.13 / 17. 10. 2014

Proposal for price splitting Control Room PDFII / Control Room Gogosu

Existing situation - after changes

agreed in MoM 174 /CO ELV 011

	Unit No. 9				Unit No. 10			
	Total CIP Price	Imported Equipment	Local Supplies	Local Services	Total CIP Price	Imported Equipment	Local Supplies	Local Services
TOTAL PRICES - Electrical Part/Phase III/Stage 2					4.896.696	4.285.692	254.800	356.204
- Control Rooms PDFII + Gogosu					472.307	210.000	220.000	42.307 * (included in the above)
• Calculation basis = Total New Equipment Unit No. 10		=	(220000+210000)*356204/(3400381+220000)					

II. Proposed Changes	Unit#1 (8th Refurbished Unit PDFII)				Unit No. 9 (Gogosu)				
	Ref. area [sqm]	Total CIP Price	Imported Equipment	Local Supplies	Local Services	Total CIP Price	Imported Equipment	Local Supplies	Local Services
Refurbishment Control Room PDF II	210	300.559	133.636	140.000	26.923				
Refurbishment Control Room Gogosu	120					171.748	76.364	80.000	15.384
Payment terms:									
- Advance Payment (Already paid):	25%	75.140				42.937			
- Pro Rata Payment:	65%	195.363				111.636			
- Payment PAC	10%	30.056				17.175			
Applicable escalation									
Base Date:	Gogosu								
Start point:	HU#1 (Unit No. 8)								
	Unit No. 9								
			05.06.2003 (Commencement date Stage II)						
			18.07.2011 assumed						
			21.05.2012 assumed						

Appendix 1. Terms and Procedures of Payment **(applicable for Phase I, Phase II and Phase III)**

In accordance with the provisions of GC 12 (Terms of Payment), the Employer shall pay the Contractor according to the below mentioned Terms of Payment in the following manner and at the following dates, based on the price breakdown given in the Price Schedules. All payments will be made in EURO. Applications for payments in respect of part deliveries may be made by the Contractor as Works proceed in accordance with the following Terms of Payment:

1. TERMS OF PAYMENT

The payments will be made by the Employer to the Contractor as follows:

25% of the Contract Price for Phase I, Phase II and Phase III as an Advance Payment against invoice and Advance Payment Guarantee according to Contract.

Related to Phase I

10% of the Contract Price for Phase I upon issuance of the Final Test Report of the Turbine Model Test against copy of such report and invoice.

5% of the Contract Price for Phase I after 40 months from the Effective Date(21.12.2001) of the Contract after completion of the 72hr Test Run of Unit No.1, payable against invoice and test run completion certificate, latest however the Date of PAC, respectively deemed PAC of Unit 1.

5% of the Contract Price for Phase I after 52 months from the Effective Date(21.12.2001) of the Contract after completion of the 72hr Test Run of Unit No.2, payable against invoice and test run completion certificate, latest however the Date of PAC, respectively deemed PAC of Unit 2.

Related to Phase II

15% of the Contract price for Phase II shall be paid as follows:

- **5% of the Contract Price for Phase II** after 33,5 months from the Effective Date (21.12.2001) of the Contract namely the date of successful re-commissioning of block 1 equipment (with unit 2 switch over outage) payable against invoice, latest however 2 months after the scheduled date according to Time Schedule Appendix 4 for Phase I and II, in case successful re-commissioning can not be done due to reasons not attributable to Contractor.

- 5% of the Contract Price for Phase II after 35 months from the Effective Date (21.12.2001) of the Contract namely the date of successful Factory Acceptance Test (FAT) of the block transformer for block 1, payable against invoice, latest however after 37 months, in case a successful FAT can not be done due to reasons not attributable to Contractor.
 - 5% of the Contract Price for Phase II after 40 months from the Effective Date (21.12.2001) of the Contract after completion of the 72hr Test Run of Unit No.1, payable against invoice and test run completion certificate, latest however the Date of PAC, respectively deemed PAC of Unit 1.
- 5% of the Contract Price for Phase II** after 70 months from the Effective Date (21.12.2001) of the Contract namely the date of successful re-commissioning of transformer block 2, payable against invoice, latest however 2 months after the scheduled date according to Time Schedule Appendix 4, for Phase I and II in case successful re-commissioning can not be done due to reasons not attributable to Contractor.

Related to Phase III

- 10% of the Contract Price for Phase III** after 129 months from the Effective Date of the Contract, i.e. the time when the basic design documents as defined under General Technical Conditions, Folder 8, Chapter 1B, Item 2.4.2 -a1 to a4 and b1 to b5- have been submitted by Contractor and approved by Employer, payable against invoice and Contractor's written confirmation having submitted the required documents.
- 5% of the Contract Price for Phase III** after 148 months from the Effective Date of the Contract, namely the date of completion of the 72hr Test Run of Unit No. 9 as defined under Item 11 of Appendix 4 "Time Schedule" for PDF II, Phase III, payable against invoice and test run completion certificate, latest however at the Date of PAC, respectively deemed PAC of Unit No.9.
- 5% of the Contract Price for Phase III** after 159 months from the Effective Date of the Contract, namely the date of completion of the 72hr Test Run of Unit No.10 as defined under Item 22 of Appendix 4 "Time Schedule" for PDF II, Phase III, payable against invoice and test run completion certificate, latest however at the Date of PAC, respectively deemed PAC of Unit No.10.

Related to Phase I, Phase II and Phase III

45% of the related Contract Price for each Unit, Blocks, Sections and/or Powerhouse Equipment shall be paid upon each shipment/delivery of equipment or services or documentation rendered as follows:

a) Plant and Equipment/Documentation:

immediately upon each partial shipment against presentation of invoice and relevant shipping documents according to SC 21.3.3. or against readiness of dispatch certificate for reasons delivery can not be effected due to reasons not attributable to Contractor.

b) Services

immediately after rendering the Services to be performed by the Contractor against invoice and Monthly Progress Report approved by Employer's Project Manager.

10% of the related Contract Price for each Unit; Blocks, Sections and/or Powerhouse Equipment upon issuance of the Provisional Acceptance Certificate (PAC) or against copy of such Certificate and against invoice.

2. PAYMENT PROCEDURE

25% Advance Payment of the Contract Price for Phase I and II and Phase III will be made by direct bank money transfer to the Contractor's Account.

Related to Phase I

10% milestone payment of the Contract Price for Phase I will be released from the Escrow Account after issuance of the Final Test Report of the Turbine Model Test issued by an independent, neutral laboratory and against invoice.

5% of the Contract Price for Phase I will be released from the Escrow Account after 40 months from the Effective Date (21.12.2001) of the Contract after completion of the 72hr Test Run of Unit No.1, payable against invoice and test run completion certificate, latest however the Date of PAC, respectively deemed PAC of Unit No.1.

5% of the Contract Price for Phase I will be released from the Escrow Account after 52 months from the Effective Date (21.12.2001) of the Contract after completion of the 72hr Test Run of Unit No.2, payable against invoice and test run completion certificate, latest however the Date of PAC, respectively deemed PAC of Unit No. 2

Related to Phase II

15% of the Contract price for Phase II shall be paid as follows:

- 5% of the Contract Price for Phase II will be released from the Escrow Account after 33.5 months from the Effective Date (21.12.2001) of the Contract namely the date of successful re-commissioning of block 1 equipment (with unit 2 switch over outage) payable against invoice, latest however 2 months after the scheduled date according to Time Schedule Appendix 4 for Phase I and II, in case successful re-commissioning can not be done due to reasons not attributable to Contractor.
 - 5% of the Contract Price for Phase II will be released from the Escrow Account after 35 months from the Effective Date (21.12.2001) of the Contract namely the date of successful Factory Acceptance Test (FAT) of the block transformer for block 1, payable against invoice, latest however after 37 months, in case a successful FAT can not be done due to reasons not attributable to Contractor.
 - 5% of the Contract Price for Phase II will be released from the Escrow Account after 40 months from the Effective Date (21.12.2001) of the Contract after completion of the 72hr Test Run of Unit No.1, payable against invoice and test run completion certificate, latest however the Date of PAC, respectively deemed PAC of Unit 1.
- 5% of the Contract Price for Phase II will be released after 70 months from the Effective Date (21.12.2001) of the Contract namely the date of successful re-commissioning of transformer block 2, payable against invoice, latest however 2 months after the scheduled date according to Time Schedule Appendix 4, for Phase I and II in case successful re-commissioning can not be done due to reasons not attributable to Contractor.

Related to Phase III

- 10% milestone payment of the Contract Price for Phase III will be released from the Escrow Account after 129 months from the Effective Date of Contract, i.e. the time when the basic design documents as defined under General Technical Conditions, Folder 8, Chapter 1B, Clause 2.4.2 -a1 to a4 and b1 to b5- have been submitted by Contractor and approved by Employer, payable against invoice and Contractors written confirmation having submitted the required documents.
- 5% milestone payment of the Contract Price for Phase III will be released from the Escrow Account after 148 months from the Effective Date of Contract, namely the date of completion of the 72hr Test Run of Unit No. 9 as defined under Item 11 of Appendix 4 "Time Schedule for Phase III", payable against invoice and test run completion certificate, latest however at the Date of PAC, respectively deemed PAC of Unit No. 9.

5% milestone payment of the Contract Price for Phase III will be released from the Escrow Account after 159 months from the Effective Date of Contract, namely the date of completion of the 72hr Test Run of Unit No. 10 as defined under Item 22 of Appendix 4 "Time Schedule for Phase III", payable against invoice and test run completion certificate, latest however at the Date of PAC, respectively deemed PAC of Unit No.10.

Related to Phase I, Phase II and Phase III

55% of the value of each Unit, Blocks, Sections and/or Powerhouse Equipment shall be paid from the Escrow Account to the Contractor against presentation of the required documents.

3. Delayed Payment

The Contractor shall be entitled to suspend performance of the Contract according to GC 41 in the event payment is not made at the agreed dates. For the first three months delay no interests will be charged and thereafter an interest rate of 6% p.a. will be applied.

4. PAYMENT SECURITY

Securities

In order to secure the payments to the Contractor the Employer will open an Escrow Account (the "Account") with a first class bank in the EU or Switzerland (Bank) to be mutually agreed upon by the Parties, denominated in Euro. This Account shall secure the payments and the progress of the Work and shall consequently bear at any time the balance as indicated in the Account Balance Curve.

The Account is owned by the Employer and shall be irrevocably pledged in favour of the Contractor. All costs and charges of opening and holding the Account shall be borne by the Employer. Terms and Conditions for the use of the Account shall be agreed and specified in a separate "Escrow Agreement" to be concluded between the Employer, the Contractor and the Bank.

The Employer shall be responsible for obtaining necessary permissions and authorisations, if any, for the opening and maintaining during the complete project duration for such an Account.

The payments due to the Contractor as per payment conditions above shall be made out of this Account directly to the Contractor against presentation of the specified documents according to the relevant Clauses of the Contract and/or Contract Agreement or as per conditions specified in the Escrow Agreement.

It is furthermore agreed that:

- a) The Escrow Agreement between the Employer, the Contractor and a first class bank in the EU or Switzerland to be mutually agreed upon by the Parties has to be signed, come into force and the Escrow Account has been opened and pledged irrevocably in favour of the Contractor. In addition, the Employer has to be in possession of any permissions and authorisations required for the opening of the Escrow Account.

Related to Phase I and Phase II

- b) In case the Escrow Agreement for Phase I and Phase II described above shall not be concluded and the respective Escrow Account will therefore not be opened and pledged irrevocably in favour of the Contractor and the Employer is not in the possession of any permissions and authorizations required for the opening of the Escrow Account, within a period of 2 months from the date of signature of the Amendment 2 to Contract Agreement, the Employer and the Contractor shall meet immediately and within a period of 2 weeks decide on a possible extension of the above mentioned due date.

Related to Phase III

- c) In case the Escrow Agreement for Phase III described above shall not be concluded and the respective Escrow Account will therefore not be opened, respectively the Escrow Agreement for Phase I and II can not be used for the same purposes, and pledged irrevocably in favour of the Contractor and the Employer is not in the possession of any permissions and authorisations required for the opening of a new, respectively extension of the existing Escrow Account, within a period of 12 months before the Starting point of Unit 9 as defined under item 3 of Appendix 4 "Time Schedule" for Phase III, the Employer and the Contractor shall meet immediately and within a period of 2 weeks decide on a possible extension of the above mentioned due date.
- d) If the Parties do not agree on a continuation of the Project as stated in the sentence(a, b and c) immediately above, the Employer shall be deemed to have terminated the Contract for Convenience according to article GC 42.1 of the General Conditions of Contract and such Termination shall become effective upon the expiration of the above mentioned 2 weeks period
- e) Each party shall use its best efforts to fulfil the above conditions for which it is responsible as soon as practicable

Employer's Default

If the Employer is not able to maintain the required permission or authorisation during the complete project duration, the Contractor has the right to proceed with the Works until all remaining funds on the Account are used up and thereafter the Contractor has the right to terminate the Contract according to GC 42.3.1.

In case the Employer fails to provide sufficient funds into the Account and therefore consequently the balance falls below the Account Balance Curve for a period longer than 28 days the Contractor shall give the Employer a written notice to this effect requiring him to transfer the necessary funds within 28 days from the date of Contractor's notice.

If the Account has not reached the specified balance within 60 days after the 1st day of falling below the Account Balance Curve, the Contractor has the right to terminate the Contract according GC 42.3.1 within 28 days after having given a 14 days notice to the Employer.

Furthermore, in case the Employer fails to provide sufficient funds into the Account and therefore consequently the balance falls below the Account Balance Curve for a period longer than 28 days the Contractor has the right for an Extension of Time according to GC 40 under the Contract, for a period exceeding an initial 28 days grace period until the date the balance of the Account has again reached the required funds as per Account Balance Curve.

In addition to the above it is agreed that in case the Employer repeatedly fails to provide sufficient funds into the Account and therefore consequently the balance falls below the agreed specified amounts for an accumulated period of 120 days during the total Contract execution, the Contractor has the right to terminate the Contract according GC 42.3.1 within 28 days after giving a 14 days notice to the Employer.



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The Energy of Change

Hidroelectrica is a leader in power generation and also the main provider of ancillary services for the National Power System, a vital company for a strategic sector, with involvements in the national safety. In 2012 it has been included on the 7th place in the top of the most valuable 100 companies in Romania.

On June 20th 2012, the company has entered into an insolvency process in order to be re-organized, and EURO INSOL SPRL has since been appointed as the Judicial Administrator and represented by Ph. D. Attorney at Law Remus Borza.

Having had a total installed capacity of over 6,400 MW but an output of only 11.8 TWh in 2012 due to a second deficit year from the hydrological point of view, the company aims at improving rapidly its economic-financial indicators in order to exit from the insolvency process and at sorting the investments according to the company's strategic priorities and to their financing possibilities.

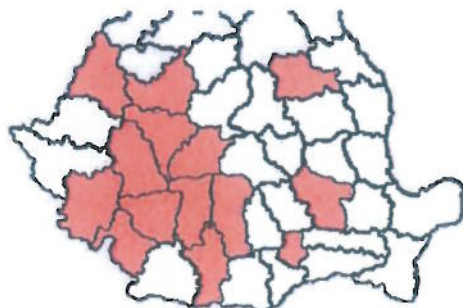
Living in a world where energy is the driving power of development, Hidroelectrica, an enduring quality and innovation oriented company, a professionally managed company as well as a company with a diversification of shareholders, is preparing itself for the challenges that will come as a result of the opening of both the regional and EU markets.

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3 Constantin Nacu Street, RO-020995, District 2, Bucharest, ROMANIA

Tel: +4021 3032500; Fax: +4021 3032564; Mail: secretariat.general@hidroelectrica.ro

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Daily News



MÖVENPICK

Added on June 18, 2012 12:29 pm

Largest Romanian energy producer Hidroelectrica files for insolvency

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Hidroelectrica, Romania's largest energy producer, owned by the Romanian state, has filed for insolvency. The court will decide based on its request on June 20. Media reports suggest insolvency could be a way of canceling contracts with 'smart guys', contracts at low energy prices.

The company ended 2010 with a turnover of EUR 778 million and a net profit of EUR 70 million. With over 5,000 employees, Hidroelectrica lowered its net profit by 18 times in 2011.

Earlier this year, the Competition Council in Romania started an investigation into the contracts signed by state-owned electricity producer Hidroelectrica with the so-called 'smart guys' in energy. The Council is currently working with the European Council to investigate the legality of these agreements, as the EC is also analyzing the possibility of state aid for contracts between Hidroelectrica, the largest electricity producer in Romania, and energy traders outside the market.

The nickname 'smart guys', earned by firms that signed direct contracts with Hidroelectrica at below market prices, was first used by Romanian president Traian Basescu two years ago. He recently said he was in favor of publicizing the contracts between Hidroelectrica and these companies.

The International Monetary Fund (IMF) asked for the renegotiation of these contracts, a process that started end-2011 and should have ended in March this year.

Some of the beneficiaries of the direct contracts in 2010 were Alro Slatina, Luxten Lightning, Energy Holding, Europec, Electromagnetica, Electrocarbon, ArcelorMittal Galati, among others.

These come before a planned initial public offering for 10 percent in Hidroelectrica. A consortium led by French lender BRD Societe Generale will intermediate the sale of 10 percent in Romania's energy producer Hidroelectrica on the Bucharest Stock Exchange. Citigroup and Intercapital Invest are part of the consortium that will broker the Initial Public Offering.

Hidroelectrica will be listed through a social capital raise. The company will issue a 12.49 percent share stake, of which 2.49 percent can be subscribed by Fondul Proprietatea and 10 percent sold on the Bucharest Stock Exchange. Fondul Proprietatea already owns 19.94 percent in the company.

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Hidroelectrica insolvency is "shocking" and "historic," but poses no risk

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Vulpescu went on by saying that the judicial administrator must come with an explanation about why Hidroelectrica reached this situation. Lawyer Remus Borza, who controls Euro Insol – the firm appointed as judicial administrator of the energy company – explained that the decision of running insolvent should have been made by the previous management of the company, and that the judicial administrator will present, in July, its report on why the company is now facing this situation. Asked about the risks posed by insolvency for Hidroelectrica, both Vulpescu and Borza assured that there is no risk. "There is no risk, only benefits," Borza clearly stated. Lawyer Remus Vulpescu, head of the Office for State Interests and Industrial Privatization (OPSPI) and special administrator of Hidroelectrica, added that as long as the energy producer is in insolvency, no other state company will be put in a similar situation. Vulpescu recently resigned as administrator of Transelectrica and invoked a supposed link between another manager of the company and a

company that receives energy from Hidroelectrica under a direct contract. In his turn, Remus Borza mentioned that each state-run companies should undergo an insolvency process. Vulpescu went on saying that, as chief of OPSPI, he informed the minister of Economy, Daniel Chitoiu about the "potential" state of insolvency present not just in Hidroelectrica, but also in other state companies. He added that he did not consult PM Victor Ponta when he decided to seek the insolvency of Hidroelectrica, and the premier did not reprimand him for doing so. The judicial administrator of Hidroelectrica, Euro Insol announced that it will seek amicable solutions regarding the energy direct sale contracts, during talks it will initiate in July, but if the beneficiaries of these contracts will not accept the new conditions, the contracts will be denounced. Friday, in an interview with Money Channel, Remus Borza said that these bilateral contracts with the "smart guys" are not the only burden of Hidroelectrica.

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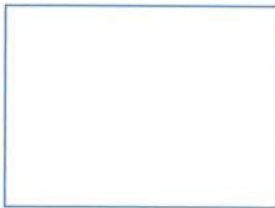
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Jul 5, 2012

Hidroelectrica contracts with 'smart guys' to be terminated unless renegotiation meets our terms

The contracts we have with the 'smart guys' will be terminated unless they meet the terms dictated by Hidroelectrica, the company legal administrator Remus Borza told private TV channel Pro TV on Sunday.

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Jul 1, 2012

Hidroelectrica insolvency is "shocking" and "historic," but poses no risk

The insolvency of Hidroelectrica is a "shocking" and "historic" decision, considering its effects on the company, and a report on the reasons that brought the company in this situation will be presented in July, judicial administrator Remus Borza and special administrator Remus Vulpescu said on TV.

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Asmita Gardens' creditors count their losses

Insolvent Asmita Gardens hopes to get around EUR 45 million for the last batch of 561 apartments delivered last week, after lowering its expectations to EUR 900-950 per sqm. The company's debts, however, amount to EUR 110 million and there is no positive sign for the market on the horizon.

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Hydroelectrica contracts with 'smart guys' to be terminated unless renegotiation meets our terms

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As legal administrator, we declared open to find an amicable solution, I invited them for talks next week. Most of these companies who are still partners of Hidroelectrica showed they were open to attend talks. Of course, we will not be in the situation to accept negotiation conditions, such as reducing the power amount only by 5 percent. Unless the contracts to be signed meet the terms wanted by Hidroelectrica, they will obviously share the same fate [as the contract with Euro-P.E.C., i.e. they will be terminated - editor's note], said Remus Borza, Euro Insol partner, Hidroelectrica administrator after the company went into insolvency.

Earlier last week, Remus Borza announced the renegotiation of Hidroelectrica bilateral contracts would be concluded in July 2012 and the first contracts, with Euro-P.E.C., had already been terminated.

'We have terminated the first assessed contract, Euro-P.E.C. The others will follow. All of them will be renegotiated, everything will be concluded in three days in July,' said Remus Borza.

The damage incurred by Hidroelectrica following its contract with Euro-P.E.C. amounts to 118 million lei, according to the legal administrator, as the company also owes overdue payments to Hidroelectrica.

'The difference between the reference price and the contract price stands at 118 million lei. Euro-P.E.C. failed to pay for the power they got since the beginning of 2012,' said Borza.

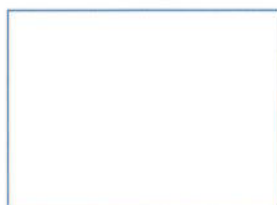
Bucharest Tribunal granted Hidroelectrica permission to go into insolvency. The company lodged an application for insolvency on June 15 and, according to chairman of the board Remus Vulpesu, this operation does not aim at bankruptcy or at turning the company public, but at the reorganisation of a company devoid of liquid assets.

Hidroelectrica shareholders are the Romanian state by way of the Ministry of Economy which has 80.0561 percent of the capital, and Proprietatea Fund.

The company supplies a third of the total electrical power produced in Romania.

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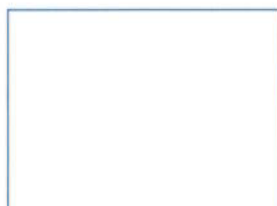
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Hidroelectrica is a leader in the electric energy generation and the main supplier of ancillary services needed within the National Energy System, being a vital company for a strategic sector with implications in the national safety.

The company is undergoing a judicial reorganization procedure and is managed by the Judicial Administrator, EURO INSOL SPRL, through the coordinating practitioner Ph.D. Attorney at Law, and the Special Administrator, Ph.D. Bogdan Stanescu.

Hidroelectrica has concluded the financial year 2014 with the highest turnover from the company's history, of 3.4 billion lei, with the highest profit ever registered of 1.2 billion lei and with the lowest production price from the last 5 years.

Although the output of 2010 was higher than the output of 2014, namely of 19.8 TWh, in 2010 a profit of only 292 million lei was obtained. In 2014 the output was 18.4 TWh, namely lower by almost 1.4 TWh, but the profit was 4 times higher. The outcomes are due to a proactive, corporate, loyal, visionary, creative and responsible management.

If we report ourselves to another financial indicator – EBITDA, we can affirm without any exaggeration that in 2014 Hidroelectrica was the most profitable company from Romania. Last year, Hidroelectrica registered an EBITDA of 65% as reported to the turnover. In order to enhance quickly the economic-financial indicators, the company sells energy under conditions of maximum profitability; it has a very strict control over the production costs, having also an investment plan for the next 5 years of 1.3 billion EUR.

The semester I of the year 2015 continues the series of the brilliant outcomes of the previous year. Therefore in the first 6 months of the year 2015, Hidroelectrica accomplished a record profit of 726 million lei, by approximately 42% higher than the profit obtained in the first 6 months of the year 2014 and a turnover of 1,851 million lei, higher by 297 million lei as compared with the same period of the year 2014, when the turnover was 1,554 million lei. The increase of the turnover was due to an output higher by 1.1 TWh, the total output of 9.6 TWh being obtained from the 212 hydropower plants under operation and 5 pumping stations with an energy function, having an installed capacity of 6,441.25 MW on the date of June 30th 2015.

Hidroelectrica is the sole company under insolvency from Romania, which paid its debts at the nominal value, the last installment part of the 24 related to the statement of affairs having been paid on June 20th 2015.

Also in June 2015 Hidroelectrica registered a historical moment, when the amounts cashed from interests exceed the amounts paid as interests. So for the first time, the ratio of the two interests is positive, in June 2015 the company registering a profit of almost 200,000 lei, after that in the year 2012 Hidroelectrica had a loss from interests of over 114 million lei.

In a world where the energy is the major engine of development, Hidroelectrica meets the challenges, which the interconnection of the markets at the regional and European levels presupposes, through its everlasting orientation towards quality and innovation, through the optimization of the company's management and through the arrangements for the stock listing of a package of 15% of the company's shares.

Interviul domnului Remus Borza

PUBLIC ANNOUNCEMENT for THE OFFER OF ASSETS SALE

Borza, condamnat la închisoare cu suspendare, rămâne administrator judiciar la Hidroelectrica

Remus Borza, condamnat definitiv de Înalta Curte de Casație și Justiție la un an de închisoare cu suspendare pentru conflict de interese, va rămâne administrator judiciar la Hidroelectrica.



"Îmi pare rău că trebuie să dezamăgesc pe unii dintre dumneavoastră. Borza rămâne la Hidroelectrica", a afirmat Borza la conferința ZF Power Summit.

Administratorul judiciar al Hidroelectrica, Remus Borza, a fost condamnat definitiv de Înalta Curte de Casație și Justiție, pentru conflict de interese, după ce, în primă instanță, el a fost achitat.



Citește și: **Administratorul judiciar al Hidroelectrica Remus Borza, condamnat definitiv la un an de închisoare cu suspendare pentru conflict de interese**

Instanța supremă a dispus aplicarea unui termen de încercare de trei ani în cazul lui Remus Borza.

La aceeași pedeapsă a fost condamnată și Nicoleta Munteanu, în calitate de reprezentant legal al Euro Insol SPRL, cea care, de altfel, a fost și ea achitată în primă instanță, de Curtea de Apel București.

Avocatul Remus Borza a fost găsit vinovat de conflict de interese pentru că firma de insolvență deținută de el, Euro Insol, administratorul judiciar al Hidroelectrica, a încheiat contracte de asistență juridică cu casa de avocatură la care Borza era asociat.

Parchetul Curții de Apel București a înregistrat în 25 februarie 2013 dosarul în care Remus Borza și Nicoleta Munteanu, avocați în Baroul București, sunt suspectați de conflict de interese, iar în 8 iulie a început urmărirea penală în cazul acestora. Cei doi au fost trimiși în judecată în octombrie 2013.

Procurorii au stabilit, în urma verificărilor, că Nicoleta Munteanu, în calitate de reprezentant legal al Euro Insol SPRL, desemnată administrator judiciar al companiei Hidroelectrica, în perioada noiembrie 2012 - februarie 2013, a încheiat 34 de contracte de asistență juridică între firma de insolvență și Societatea Civilă Profesională de Avocați "Borza și Asociații". Asistența juridică a constat în reprezentare, redactare, semnare și depunere a actelor în

mai multe procese civile aflate pe rolul Tribunalului București, în care SC Hidroelectrica avea calitate de parte. Munteanu era asociat și la SCP "Borza și Asociații".


În cazul lui Remus Borza, procurorii au stabilit că, în calitate de reprezentant al Euro Insol, administrator judiciar al Hidroelectrica, în perioada noiembrie 2012-februarie 2013, a făcut 34 de plăți către firma sa de avocatură, în baza contractelor încheiate de Munteanu.

Procurorii au arătat că Borza este asociat atât în firma de insolvență Euro Insol, cât și la SCP "Borza și Asociații", "realizând astfel, în mod direct, un folos material atât pentru sine, cât și pentru asociatul său, Munteanu Nicoleta".

Hidroelectrica este controlată de stat, prin Ministerul Energiei. Compania a intrat în insolvență în februarie 2014, pentru a doua oară în mai puțin un an, prima procedură fiind deschisă în perioada iunie 2012 - iunie 2013.

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În episodul de față ne vom referi la activitatea avocatului și practicianului în insolvență, Remus Adrian Borza, condamnat la un an de închisoare cu suspendare de instanța supremă, dar menținut, totuși, administrator judiciar al SC Hidroelectrica SA pe care a prejudiciat-o, prin intermediul firmei sale Euro Insol SPRL. Acest personaj intenționează să administreze și Televiziunea Română, în cazul în care guvernul va da o derogare de la lege, astfel încât instituția să poată intra în insolvență, pentru a se reorganiza.

Înalta Curte de Casație și Justiție l-a condamnat pe Borza și pe colaboratoarea acestuia, Nicoleta Munteanu, în februarie anul trecut, la câte un an de închisoare cu suspendare, termenul de încercare curgând până la data de 15 februarie 2018. Asta după ce în primă instanță - Curtea de Apel București - cei doi fuseseră achitați.

Cum s-a înfruptat Borza din banii Hidroelectrica

Numit administrator judiciar al Hidroelectrica în iunie 2012, când societatea intrase în insolvență, având pierderi de aproape 700 de milioane de lei, acesta a redresat societatea, scăpând-o de datorii, prin trei metode. În primul rând, a concediat circa 1.000 de salariați. În al doilea, a vândut o mulțime de terenuri și clădiri aparținând societății, aflate în intravilanul mai multor localități. Iar în al treilea rând, a denunțat câteva sute de contracte ale Hidroelectrica SA cu terți, care au generat circa 75 de contestații în instanță. În perioada noiembrie 2012 - februarie 2013, firma Euro Insol SPRL a lui Borza a încheiat cu SCP Avocat Borza și Asociații (unde este asociat cu Nicoleta Munteanu 50% - 50%) un număr de 34 de contracte de asistență juridică, în sumă de peste 220.000 de euro, în ciuda faptului că Hidroelectrica dispunea de suficienți consilieri juridici angajați, care ar fi putut susține cu succes respectivele procese.

Persoană publică sadea

Pentru a se disculpa, administratorul judiciar Borza a invocat faptul că el n-ar fi o persoană publică, ci una privată, care exercită profesii liberale, cum sunt cele de avocat și practician în insolvență. Dar procurorii de caz i-au dat în cap cu cu vechiul Codul penal al României, în vigoare la acea dată, care la art. 147 stipula: „Prin <<funcționar public>> se înțelege orice persoană care exercită permanent sau temporar, cu orice titlu, indiferent cum a fost investită, o însărcinare de orice natură, retribuită sau nu, în serviciul unei unități dintre cele la care se referă art. 145". Deci, ca administrator judiciar al Hidroelectrica, Remus Borza este persoană publică, iar nu asociat al cine știe cărui butic.

Și alte firme au mai fost prejudiciate

În anul 2011, același practician în insolvență s-a înfruptat din conturile SC Lemtrans International Prod Com SA București pe care o administra, cu suma de aproape 200.000 de lei, atunci când s-a reușit recuperarea unei creanțe. Borza și-a stabilit cu de la sine putere, fără acordul Comitetului creditorilor, o remunerație lunară de 5.000 de lei net, precum și un comision de 6% din sumele recuperate. Patrimoniul firmei fiind grav prejudiciat, administratorului judiciar i s-a cerut să prezinte facturile prin care a încasat onorariul de 186.386,88 lei, din data de 18.04.2011 și 6.200 lei, din data de 15.06.2011, precum și dovada că a vărsat procentul de 2% din profit, cuvenit Uniunii Naționale a Practicienilor în Insolvență din România. Cum Borza nu s-a sinchisit de această solicitare legitimă a Comitetului creditorilor, a urmat o serie-ntreagă de plângeri la diverse parchete, inclusiv la DNA și la UNPIR. De la sine înțeles că toate aceste sesizări au fost mușamalizate, peste ele așternându-se praful.

O ofertă cu cântec

Luna aceasta, Hidroelectrica, administrată în continuare de Remus Borza, a organizat o licitație pentru achiziționarea unui sistem informatic de tip ERP (Enterprise Resource Planning), dotat cu instrumente de analiză managerială. Pentru această achiziție publică s-a stabilit o cheltuială maximă de 4.361.505 euro, inclusiv TVA, câștigătoare fiind desemnată SC Information Business Consulting SA, care a oferit un preț de 2.044.731 euro. Diferența ofertei de 2.316.774 euro în minus, raportat la estimarea inițială, naște două mari semne de întrebare. Ori specialiștii Hidroelectrica au umflat intenționat nota de plată inițială, pentru a-i induce în eroare pe ceilalți zece ofertanți, ori IBC SA a oferit atât de puțin, având garanția că suma va putea fi majorată ulterior prin contracte adiționale.

Ce legături există între Mardarasevici și Borza?

IBC SA, condusă de Gabriel Iulius Mardarasevici este o veche colaboratoare a Grupului UTI, condus de Tiberiu Urdăreanu, ambele fiind favorite ale contractelor cu statul. Alături de Urdăreanu, Mardarasevici este implicat în scandalul de la Iași, în care primarul Gheorghe Nichita urma să primească o mită de 6,9 milioane de lei (10% din valoarea contractului), pentru atribuirea pe sub mână a unui „Sistem de Management de Trafic în Municipiul Iași”. Interesant este faptul că toți trei știau că afacerea se afla în atenția procurorilor DNA, sprijiniți tehnic și logistic de SRI, dar cu toate acestea puțin le-a păsat, discuții ample despre șpagă fiind interceptate ambiantal de către serviciul secret coordonat din umbră de generalul Florian Coldea. Procurorii au reținut în sarcina făptuitorilor:

„Din probele existente la dosarul cauzei rezultă că suma de 6,9 milioane lei, reprezentând 10% din valoarea contractului de lucrări, urma a fi remis în raport cu cota de participare a asociaților UTI și IBC la contract, adică 80% reprezentând contribuția UTI, iar 20% reprezenta contribuția IBC la banii colectați cu titlu de mită pentru Nichita, parte din aceasta fiind colectată deja în contul IBC”.

Ce se ascunde - în condițiile expuse până aici - în spatele atribuirii dubioase tocmai IBC a licitației organizată de SC Hidroelectrica SA, administrată judiciar de Remus Borza, rămâne ca procurorii anticorupție să stabilească în cele din urmă. Precum și eventualele legături ale acestuia cu Gabriel Iulius Mardarasevici, respectiv Tiberiu Urdăreanu, bineînțeles.

Dan Coste

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DIRECTOR GENERAL
Nr. _____

S.C. HIDROELECTRICA S.A.
DIRECTIA RETEHNOLGIZARE
Nr. 48318/25.07.2012

CMS von Erlach Poncet Ltd.
Exhibit No. C-25

S.C. Hidroelectrica S.A.

J40/7426/2000

RO 13267213

Capital social: 4.440.967.650 lei

Certificat ISO 9001/14001/OHSAS 18001

SRAC Nr. 325/3; 95/2; 250/1 - 2009

To: Mr. Jean Claude Riesterer – Managing Director
Company: Andritz Hydro GmbH, Ravensburg
Fax/ E-mail: +49 0751 29511-104/ jean-claude.riesterer@andritz.com

From: Aurel Cocioran – Refurbishment Director

Company: S.C. Hidroelectrica S.A.

Fax: +4 021. 30. 32. 573

E-mail: aurel.cocioran@hidroelectrica.ro

To: Mr. Catalfamo Giuseppe – Head of Commercial Department
Company: Andritz Hydro GmbH, Ravensburg
Fax/ E-mail: +49 0751 29511-219/ giuseppe.catalfamo@andritz.com

Cc: Remus Vulpesu – Special Administrator
Company: Hidroelectrica
Fax/ E-mail: +40 213 111 174/ remus@vulpescu.ro

Project: Refurbishment of Pdf II

Letter: HEB – AHR – 006 | 24.07.2012

Cc: Dragos Pantelimon – Manager Proiect
Company: Hidroelectrica- SH Portile de Fier
Fax/ E-mail: +40.252.308.607/ dragos.pantelimon@hidroelectrica.ro



Subject: Renegotiate the payment condition for Gogosu Contract

Dear Sirs,

We make reference to MoM no. 219 from 26.04.2012 and Contractor's letter no. PDF_II EWR-F1080-HEB from 29.05.2012 .

During the respective meeting we had discussions to the situation of HPP Gogosu Contract, namely basic design, price adaptation, shifts of some works, payment schedule and other issues concerning technical part of this contract.

According to item 4, of the above mentioned MoM, the Contractor shall reply until end of May 2012, after internal discussions with AH Management. In the same time it was mentioned that the parties shall reach an agreement until end of June 2012.

We want to point out that Contractor's reply with the letter no. PDF_II EWR-F1080-HEB from 29.05.2012 could not provide a clear position due to the complexity of the issues and the discussions were postponed in order to discuss with the Employer and to reach an agreeable solution.

Taking into consideration that up to this moment the parties did not find a common understanding and the fact that starting point for HU#9 Gogosu is 26.07.2012, please be informed that the Employer is open to discuss and to find solutions to continue and to finalize the Contract for Gogosu HPP, therefore we ask the Contractor to take into consideration the followings:

- Postponing of starting date of HU#9 Gogosu with 3 months without affecting the out of operation and PAC dates and without incurring any costs or penalties nor for the Contractor nor for the Employer;

- Postponing with the same period of time the preparation and handing over of Basic Design;
- Preparing to renegotiate the prices, costs and the payment conditions for Gogosu Contract and accordingly any other related contractual clauses;
- Establishing a common meeting agenda with the issues needed to be discussed in order to find an agreement and to continue the Contract.

With kind regards,

Remus BORZA
Judiciary Administrator
EURO-Insol SPR




Stefan GHEORGHE
General Manager

Dragos ZACHIA-ZLATEA
Deputy General Manager

Eugeniu TANASE

Refurbishment Director
Aurel COCIORAN

Pdf II + Gogosu Refurbishment Project	MINUTES OF MEETING NO. 224		
Meeting type:	Top Management - Commercial	Date:	13.09.2013
		Location:	Hidroelectrica
Employer's Participants:	Remus BORZA Eugeniu TANASE Aurel COCIORAN	Contractor's: Participants	Jean Claude RI Rudi ROESCH Giuseppe CATA Cristina SALAJA
Agenda			
<ul style="list-style-type: none"> • Item 1: Required Commercial reduction for amounts recorded in the list of receivables – insolvency procedure • Item 2: Required Commercial reduction with 10-15% for invoices issued after 01.07.2012 • Item 3: Renegotiation of payment conditions for PDF II - Phase III (HPP Gogosu) • Item 4: Status of Escrow account curve • Item 5: Approval of Change Proposals issued by the Contractor for Unit #1 (8th refurbished unit) • Item 6: Approval of Invoices versus Hidroelectrica's investment plan • Item 7: New Shaft (ref. Unit#6 (commercial Unit 7; Draft Amendment. 18)) 			
Results			
<ul style="list-style-type: none"> • Introduction: Judiciary Administrator has mentioned that up to this moment Hidroelectrica has renegotiated 382 Contracts for which the commercial reduction was between 7 % - 33%. In the same time was mentioned that for the Contracts where the parties could not find a common understanding the contracts have been denounced (12 contracts). It was mentioned that Andritz AG in the recent as well as past years has gained profits in the amount of only 4% to 5%. Proving data is freely available in the Internet. Andritz Hydro mentioned that for the Contract signed with contract agreement HPP Portile de Fier II – Phase I, II and III (HPP Gogosu) and related amendments they assured an availability of refurbished units of 99%, meaning that quality of materials is very high, therefore the prices of the equipment fitting to this requirements, must be higher compared to low cost competition. Judiciary Administrator mentioned that Hidroelectrica appreciate the quality of equipment and confirmed that for Hidroelectrica all the equipment shall be of high quality but requires lower prices. Andritz Hydro stated that as general policy to be followed, all advance payments are considered in every bid calculation as a reduction in the overall cost. • Item 1: Required Commercial reduction for amounts recorded in the list of receivables – insolvency procedure The Judiciary Administrator has requested to the Contractor to propose a commercial reduction for the amounts recorded in the list of receivables, taking into consideration the insolvency procedure. The Contractor has asked the Judiciary Administrator whether he can already confirm, that in case Contractor proposes a solution, the quota of 100% can be assured, which was positively answered by the Judiciary Administrator. Contractor mentioned that after needed internal discussions and detailed calculation, he will propose a solution. 			

• **Item 2: Required Commercial reduction with 10-15% for invoices issued after 01.07.2012**

The Judiciary Administrator has requested also the Contractor to offer a commercial reduction between 10%-15% for all invoices issued after 01.07.2012 during the governance of insolvency procedure on Hidroelectrica.

The Contractor mentioned that such an amount of reduction is too high to be accepted by Andritz Hydro, taking into consideration the above mentioned favorable price level reached during negotiations by Hidroelectrica, moreover the fact, also proven by the annual reports of Andritz Hydro, showing a margin in the region of only 4% to 5%, a reduction of 10%-15%, will cause losses for the Contractor, which will not be accepted. The Contractor, after being invited in a partnership minded way, agreed to analyze as far as reasonable the request of Judiciary Administrator and to propose solutions. This shall refer mainly to the Works executed or to be executed for Unit #1 (commercial Unit 8) the last unit under refurbishment for HPP Portile de Fier II – Phase I & II.

• **Item 3: Renegotiation of payment conditions for HPP Portile de Fier II - Phase III (HPP Gogosu)**

The Judiciary Administrator has requested to the Contractor to renegotiate the prices and payment conditions for the refurbishment of PDF II – Phase III (HPP Gogosu). He has mentioned also that Hidroelectrica has paid in advance an amount of 25% of contract price and 20% at different contract times as milestone payments for the first 8 units and 25% advance of contract price for the last 2 units, according to the contract provisions. In regard of the contractual treatment of advance payment and price adjustment the standpoints were exchanged, were in the cause of the discussions and exchanged arguments by Contractor, it became obvious that the parties have different contractual standpoints.

The Judiciary Administrator mentioned also that the Contractor shall take into consideration that the price adjustment for the advance payments shall be in the favor of the Beneficiary and the price adjustment for the rest of the contract price shall be in the favor of the Contractor.

Andritz Hydro mentioned also in this context that the entire contract for HPP Portile de Fier II – Phase I, II and III (HPP Gogosu), especially for phase III, has been very tough negotiated by Hidroelectrica. It was proven that a high discount was given in the final phase of negotiation. The Contractor emphasized that, as a general rule, all advance and milestone payments were considered in the relevant calculation during bid stage and furthermore heavily negotiated enabling Hidroelectrica to obtain additional price reductions during the final contract negotiation.

Andritz Hydro as already mentioned, will analyze in detail the request of Judiciary Administrator and will propose reasonable solutions, such as transfer of part of local subcontracts under the administration of Hidroelectrica, for PDF II – Phase III (Gogosu HPP).

• **Item 4: Status of Escrow account curve**

Andritz Hydro mentioned that through the letter PDF_II EWR-F0006-Euroinsol from 12.09.2012, they have informed the Judiciary Administrator that on 10.08.2012 the Employer was informed about the escrow account curve for the time frame July 2012-November 2013). The Contractor request to the Employer to feed the escrow account with 674.162 Euro according to the presented curve in order to cover the invoices with due date in October 2012.

Judiciary Administrator mentioned that the investment plan of Hidroelectrica for third quarter 2012 was approved by the Ministry only on 13.09.2012, therefore, HE could not execute any payment without this approval. Taking into consideration the approval of investment plan for the third quarter 2012, the Judiciary Administrator mentioned that Hidroelectrica will place the order to feed the escrow account with the requested amount for September 2012 on Monday 17.09.2012.

Judiciary Administrator agreed that in the absence of any contractual payment securities such as Letter of Credit, ECA Coverage, timely feeding the Escrow Account is of essence. He promised that Hidroelectrica will in future execute all payments in due time without any delay if solutions for commercial reduction will be found and agreed.

- **Item 5: Approval of Change Proposals issued by the Contractor for Unit #1 (8th refurbished unit)**

Andritz Hydro mentioned that they received the PACOs for the supplementary works requested for guide bearings and turbine runner hub. In any case Andritz Hydro does not understand why for the guide bearing the Beneficiary has issued a pending change order and not a fixed one, as the works were approved by the Employer since 2003 for all the units and the amounts were established.

Judiciary Administrator mentioned that Hidroelectrica considers that the Contractor shall make a reduction of price for at least the equivalent of the adjusted price and the price for design related to this change proposal. The Contractor will analyze this issue and the item will be discussed during the next meeting. If the parties will find a common understanding than the Beneficiary will issue an agreed fixed change order.

Andritz Hydro requested an advance payment for guide bearings change proposal. This issue will be decided during next meeting according to the proposal for price reduction for this CP.

Judiciary Administrator confirmed that the Employers Project Manager received the power of attorney to submit the PACOs.

- **Item 6: Approval of invoices versus Hidroelectrica's investment plan**

Andritz Hydro mentioned that all the invoices issued for the third quarter of 2012 were not approved by the Employer.

Judiciary Administrator mentioned that the investment plan of Hidroelectrica for third quarter 2012 was approved by the Ministry only on 13.09.2012. Therefore, the invoices for the third quarter 2012 can be approved for payment starting with 17.09.2012. The Beneficiary asks the Contractor to issue all these invoices with the date of September 2012 in order to be registered in accounting and then to be paid under correct conditions.

Judiciary Administrator also confirmed that all not yet signed progress reports (July & August 2012) and all future reports will be signed without any further delay.

Andritz Hydro mentioned that still and in accordance with the details given to Hidroelectrica and thru latest letter PDF_II EWR-F0006-Euroinsol from 12.09.2012, still payment delay is existent.

- **Item 7: New Shaft (Issue related to Unit #6 (commercial Unit 7 & Draft Amendment 18))**

Andritz Hydro stated again its strong technical concerns and pointed once more out, that the Shaft from Unit#6, cannot be further used.

Andritz Hydro, even so according to the contractual basis and Draft Amendment No 18 a price of 804.000€ is to be invoiced, offered 790.000€. Judiciary Administrator required further discount and accepted finally the amount of 750.000€. Hidroelectrica **decision to order a new shaft will be taken during next negotiated meeting.**

- **Miscellaneous:**

Judiciary Administrator mentioned that he and representatives of Hidroelectrica wants to make a visit in Andritz Hydro Ravensburg in order to inspect the production capacities of the Andritz Hydro company and their general organization. This visit shall take place in around 2-3 calendar weeks.

Andritz Hydro mentioned that they will be pleased to organize such a visit.

To do list - Activity name	Responsible	Due date
Placing the order to feed the Escrow Account for September 2012 with 674.162 Euro	HE	17.09.2012
Proposal to the solution related to the amounts recorded on the list of receivables – insolvency procedure	AH	28.09.2012
Proposal for a solution related to the invoices issued after 01.07.2012 – for Unit #1 (8 th refurbished unit)	AH	28.09.2012
Proposal for HPP Portile de Fier II - Phase III (HPP Gogosu)	AH	28.09.2012
Realization PACOs for guide bearings & Turbine runner hub	AH/HE	21.09.2012
Information about the exact date of the visit of HE in Andritz Hydro Ravensburg	HE	28.09.2012
Appendixes		
• N/A		
Author: Aurel COCIORAN		

Buhr, Axel

Von: Cezara Constantinescu <cezara.constantinescu@bpv-grigorescu.com>
Gesendet: Montag, 17. Dezember 2012 15:28
An: Kugler Ulrich; Moerth Christine
Cc: Alexandru Rusu; Ioan Roman; Daniel Stefanica
Betreff: PDF2_121217_bpv-HDE_RE: Romania / Hidroelectrica
Anlagen: 121213_addendum_1.pdf; OLT Contract Amendment 12 presigned.pdf

Dear Uli,
Dear Christine,

Please find below a summary of the main topics and issues of the December 13, 2012 meeting regarding the Extension of Time claim for the Lower Olt project.

First part of the meeting (Andritz, Voith, Steinberg Consulting, Hidroelectrica) - 9:00 a.m. – 12:00 p.m. We were present starting with 10:00 a.m., as requested by Christine.

- HE (Mr. Aurel Cocioran) stated that it is necessary for Andritz and Voith to submit justifying documents for the EoT claim. Nevertheless, HE refused to discuss details in order to reach an agreement about the justifying documents, stating that Andritz and Voith should know what these documents must be, and that when the documents shall be submitted to HE, the latter shall take a decision regarding the claim;
- On the other hand, HE expressed its reluctance about the substantiation of the EoT claim and its belief that this claim is covered by the price escalation. In this context, HE expressed its doubts about the EoT claim, given that its initially claimed amount was of EUR 19 million, whereas now Andritz and Voith have recalculated the amount to a cumulated EUR 10 million.
- At the same time, HE mentioned that Andritz' and Voith's calculation methods regarding the EoT claim are very different, and that Andritz' approach is however preferable. HE said that Andritz and Voith should agree on a common calculation method.
- HE stated that it is entitled to claim delay penalties which will amount to EUR 25 million - 7% of the contract value, for Andritz and Voith delays as regards the installation of the rotating and blocking devices for all units and also the Slatina dispatch center.
- HE stated that it would be willing to pay EUR 1 million (for the consortium) for the EoT claim.
- HE emphasized that the past weeks it has made payments of EUR 3 million to the consortium, and that "if all goes well, HE will make another EUR 3 million payment in the next period".
- HE also mentioned that it has resumed the tender procedure for the refurbishment of HPP Stejaru and Nehoiasu.

Second part of the meeting (Andritz, Voith, Hidroelectrica, Euro Insol) – 12:00 p.m. – 17:00 p.m. This second part of the meeting involved the participation of Mr. Borza (who however did not stay more than 1 hour) and later of one of his lawyers (Dana Ionescu, who was also the one representing Euro Insol in court for the PDF II challenge against the preliminary receivables' table)

- Mr. Borza expressed his disapproval of the EoT amounts claimed by Andritz and Voith, stating that he would be willing to only pay EUR 1 million for this claim to the consortium. He also claimed that HE is entitled to penalties which will amount to EUR 25 million.
- Mr. Borza also made some remarks on how the Lower Olt contract has become exceedingly onerous for HE, and how Voith and Andritz "enriched" on this contract. Here he mainly referred to the price adjustments, which he found "inequitable" – we reminded him however that this is a contractual mechanism, to which HE agreed, and which is justly based on materials etc. price variations over the time.
- Mr Borza further mentioned the 12.12.2012 meeting with Andritz regarding the PDF II contract, how "unreasonable" Andritz was, that he will send on Monday (December 17, 2012) a notification for termination for PDF II and Gogosu Units 8, 9, 10 to Andritz Ravensburg, and threatened that he could do the same for the Lower Olt contract. We replied to Mr. Borza that he is not entitled to terminate Lower Olt, as this is a substantially completed contract that is actually close to finalization, and that the PDF II contract is also substantially completed. To this Mr. Borza responded that

Hidroelectrica is a State-owned company, that the syndic judge is also a "representative" of the State, and that this is a matter of which party shall be more "convincing" in front of the syndic judge. At that point, we asked Mr. Borza if he is saying that the syndic judge is not impartial, to which he responded that the syndic judge is "very partial".

- Further, Mr. Borza stated that he is willing to approve payment of EUR 1 million for the EoT claim to the consortium, and waiver of HE's EUR 25 million penalty claims, in exchange for a 10% discount from Andritz and Voith from the current receivables (he emphasized that his offer has improved from the previous meeting, when he had asked also for a 10% reduction of the registered receivables).

- Mr. Borza also stated that Andritz and Voith should take into consideration the fact that they are the only creditors to which HE has made (EUR 12 million) payments for the registered receivables (this idea was reaffirmed later by Ms. Ionescu, who stated that these payments should not have been normally done). He also mentioned that Voith and Andritz may be interested in future HE refurbishment projects. After this, Mr. Borza left the meeting (stating that he had another meeting to attend to and then a flight to catch).

- After internal discussions, Voith asked HE whether they could have something in writing from HE/Borza with respect to Mr. Borza's offer. After a while, Mr. Cocioran and Ms. Ionescu returned with a draft amendment (*attached*). After reading and discussing the amendment, we asked Mr. Cocioran and Ms. Ionescu to make a series of modifications thereto (i.e. Preamble paragraphs 4 and 5, clauses 3 and 4). Following discussions and repeated requests from our side, the last form of the amendment resulted (*attached*). Throughout the discussions, we strongly advised that Andritz and Voith should not sign the amendment that day, as further revision is still required given the amendment's object; we also emphasized that taking into consideration that Mr. Borza would have only signed it on Monday (after having returned in the country, as Mr. Cocioran informed us), there are no reasons for Andritz and Voith to sign earlier. We also stressed that this amendment does not offer any guarantees that the receivables shall not be further reduced by the reorganization plan. Nevertheless, Voith finally signed. Further, Mr. Taubenschmid told Mr. Cocioran and Ms. Ionescu that he must obtain Andritz management approval for the signing of this amendment.

We shall revert as soon as possible with an opinion on the risks issue Christine raised in the previous e-mail.

Should you have any further questions, please do not hesitate to contact us.

Kind regards,

Cezara

Cezara Constantinescu
Avocat

bpv GRIGORESCU ȘTEFĂNICĂ
33, Dionisie Lupu Street
RO-020021 Bucharest
Phone +40 21 264 16 50
Fax +40 21 264 16 60
Email cezara.constantinescu@bpv-grigorescu.com
Web www.bpv-grigorescu.com



"(.....) the group is 'responsive, attentive to detail and very efficient'. " (Chambers and Partners, 2011 edition)

"Sources say the firm delivers workable solutions, takes clients' individual needs into account and has a flexible pricing policy." (Chambers and Partners, 2011 edition)



Please consider your environmental responsibility before printing this e-mail.

Brief Report

No.: **PDF II** Date: **12.12.2012**
HE Headquarter Bucharest
Dept.

Subject: Meetings 12.12.2012
1st Meeting 11 a.m. – 1.30 p.m.
2nd Meeting 03.00 p.m. – 3.45 p.m.

MEETING 11 A.M – 1.30 P.M

PARTICIPANTS:

Hidroelectrica: A. Cocioran; D. Pantelimon; D. Novac; M. Saftoiu
Andritz Hydro: R. Eckert; G. Catalfamo

The Meeting was held with the aim to prepare acceptable solutions mainly related to the finalisation of Unit#1 (last Unit Phase I + II) and existent open issues. Mr. Cocioran stated that finalization of Unit#1 in good condition, but with limitation of cost, is of highest importance for HE. He stated further that 2013 will be still a very critical year, due to the fact that only 30% of the original Investment budget has been released (or "approved"). Any funds available for additional works are very limited, as out of these funds in the first instance also the creditors are to be paid. Reflecting this situation and to be in line with the strong approach of Mr. Borza as implied by the HE participants, the parties worked out the following solutions as described below:

a) New Shaft Unit'1

Hidroelectrica will order a new shaft from an experienced third party supplier for around 360.000€. The representatives jointly stated that the usage of the old shaft of Unit'6 is definitively not an option due to uncontrollable technical reasons. It was agreed that contractually the parties need to make sure that AH will not be under the responsibility to take over any warranty obligations but will support HE in the best possible manner.

The same decision was made in regard to CP'1 PG-03, Servomotors as here HE seems to be in a position to order the same for approx. 160.000€.

b) Pending Change Orders / PACOs

Either HE will order the works/supplies on their own or place the same in form of PACO to AH. After reflecting the possibilities of payment conditions and financial securities it was agreed to propose to Mr. Borza the following concept:

Payment Conditions 50% after rendering the Works/Services + 50% after Financial Closure i.e. PAC Unit'1

Security:

Escrow Account will be debited with monthly instalments during the execution of the Works until 50% of the Value of the PACO has been paid in and the first instalment is invoiced.

c) 3 Month EOT Cost free issue

As the new shaft will lead to an EOT of approx. 10 months (major critical path) it was agreed to work out a scenario to stop the execution of the works at site in form of a demobilisation. The parties agreed to come together in January 2013 to work out a solution together with SAEM (Erection Company) to keep the cost impact on both sides to zero respectively as low as possible. During that meeting also a final decision on the Change orders /PACO's will be made.

d) Responsibility/Warranty

HE stated that in their opinion all works shall be executed under the responsibility of AH and that AH has to take over the contractual warranty obligations even in case supply/rehabilitation of components will be purchased by HE. HE approach was that all execution shall be done by use of drawings/quality documents/quality inspection/supervision by AH also in case of purchasing by HE.

AH stated that AH will not take over responsibility or take over any warranty obligations.

Also here it was agreed that a final solution shall be found at the January 2013 meeting.

e) PDF II – Phase III (Gogosu)

Unofficially Mr. Dragos Novac asked whether we could consider executing Phase III as E&M Supplier with a separate Supervision Contract. Other Subcontracts & Erection shall be handled by HE. AH answered that we have a contract but will think this over.

Conclusion:

It was agreed that basically the solutions found are feasible and that details shall be worked out/clarified in the January 2013 meeting. Both parties agreed to present the solutions to their management before starting of the high-level meeting in the afternoon.

Meeting 3.00 p.m. – 3.45 p.m.

PARTICIPANTS:

Hidroelectrica (HE) : D. Zlatea Zachia (ZZ); A. Cocioran; D. Pantelimon; D. Novac
EuroInsol: R. Borza (RB); Dana Radulescu (DR, EuroInsol lawyer)
Andritz Hydro (AH): J.C. Riesterer (JCR); R. Eckert; G. Catalfamo (GC)
German Embassy Bukarest: Dr. S. Kreibich – Head of Economic Affairs
Steinberg: C. Salajan

- a) Before arrival of RB, D.R and Z.Z, Mr. Riesterer introduced Dr. Kreibich explaining the irritation of AH being treated in a very rude way after 10 years of good performance in the PDF2 contract and moreover facing several times the threat being informed that the Contract might be terminated and AH will be excluded for future projects with Hidroelectrica in Romania.
- b) Mr. Cocioran answered that he cannot judge in the name of Mr. Borza for eventual misbehaviour. However HE is in a very bad financial situation and needs to save money. He stated that Mr. Borza has the feeling that the Contract and especially Gogosu is much too expensive. Nevertheless the performance of AH and quality of the equipment is not taken into doubt. He also stated that in the morning meeting both parties have found solutions.
- c) Mr. Borza, Mrs. Radulescu and Mr. Zlatea entered at 3.15 p.m. R.B welcomed, apologised for his delayed arrival and for his ability to stay only short time. He explained that a parallel meeting with 22 union leaders is on-going which he interrupted for this meeting and he has to go back to the same.
- d) Mr. Riesterer introduced Dr. Kreibich as an advisor in order to help to find solutions in this difficult negotiation also under consideration of the important economic relations between Germany and Romania
- e) RB stated: HE has no hard feeling against AH, or any other company. HE is a commercial company which wants to have business relationship. HE is fully satisfied with the technical performance of AH in PDF II which RB expressed also at previous occasions before. RB also pointed out that the overdue payments have been released including payments which will be due until end of the year. JCR thanked RB for this improvement.
- f) RB stated that AH is welcome and invited to bid for Stejaru beginning next year. EBRD credit was unblocked and the bid will be restarted. World Bank expressed opening to finance other projects of HE and discussions will be initiated, HPP Nehoiasu will also come soon, some other projects where HE will be pleased to have AH participation, but all these for a fair price for HE.
- g) Worsening of the contractual relationship is not generated by the insolvency but by the unfavourable price of the contract for HE and we are here to find such solutions to this unbalanced burden for HE.

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- h) RB asked for the solution found by the teams in the morning session. Aurel Cocioran presented the solution; continuation of the works on Unit #1 is not anymore possible without having on site the scope of the additional works (new shaft, servomotor), therefore an interruption by AH without generation of additional costs is required, and the works can be resumed when the new equipment is available on site.
- i) JCR: welcomed in general the approach, nevertheless some aspects and details have to be analysed by the parties together, such as SAEM (erection subcontractor) demobilization /remobilization and the related costs and legal impact.
- j) GC stated that a joint meeting HE-AH-SAEM was agreed in the morning to be held in January 2013 for a 3 parties clarification of these aspects.
- k) RB stated; that in his estimation 50-100TEUR for the subcontractor can be easily covered by AH from the 8 Mio. EUR price adjustment of this unit, which is a pure profit for AH.

Remark: The Meeting started to turn negative!!

- l) RB stated unfairness of the contract. By price adjustment the price of a unit (Unit '1) of 16 Mio. EUR becomes 25 Mio. EUR and moreover even though this is according to the contract the adjustment is being made not when the supply is delivered but 3 years afterwards while the 61 Mio. EUR down payment made 10 years ago is not considered in interest or any other financial updating form which is against any normal commercial practice, without speaking of the total price adjustment for PDF II.
- m) JCR answered back that the 8 Mio. EUR price escalation is definitively not a profit and even the price escalation on the local currency part was not sufficient to cover the price increases in Rumania. He also explained in an extended way the tough contractual price negotiation on the PDF II Project more than 10 years ago and that the effective profit on this project is lower than the usual profit targets of AH not leaving room and margin to big reductions. This was already explained during the first Highlevel Meeting in Bucharest in September 2012.
- n) RB: until ½ h ago I was thinking to the unilateral termination of the contract; of the last 2 Units in Gogosu. We will than make a new tender call next year in order to get lower prices and AH can participate in the new bid. Mrs. Radulescu stated that there is no approval for the amendment of this part of the Contract by the Board.
- o) RB stated, but now are you ready that we conclude a deed of amendment for mutual termination of Gogosu?

- p) JCR and GC answered: we have always fulfilled the contract (which started in 2001) and will follow the contract in all respects. If you want a termination you have to terminate for your convenience. We will not agree to a mutual termination. GC added that AH standpoint related to this issue (that termination of the last 2 units will lead to a termination of the whole Contract) was expressed in a letter addressed to HE mid of November and HE is invited to express their statements in written form. JCR added that this is a legal topic we cannot make further statements right now.

Note from C. Salajan, as not translated to us:

RB stated in Romanian: we reach into court with this, but no court in Romania will decide against HE.

- q) Closure of meeting without concrete result and further actions agreed.

HDE 13.12.2012



EURO Insol

Professional company specialized in judicial
reorganization and liquidation proceedings

Bucharest, Opera Center Building
1-5 Costache Negri St. 3rd Floor, 5th District
021/3354509; 021/3354431; 021/3350416
office@euroinsol.eu
www.euroinsol.eu

TO: **ANDRITZ HYDRO GmbH** (formerly VA TECH ESCHER WYSS GmbH)
Headquarters: Escher-Wyss-Weg 1, D-88212, Ravensburg, Germany
Place of Incorporation: Ravensburg
Company Register Ulm HRB 55 1539

ANDRITZ HYDRO GmbH (formerly VA TECH HYDRO GmbH)
Headquarters: Eibesbrunnengasse 20 1120 Vienna, Austria
Legal form: Corporation
Registered seat: Wien
Court of registry: Handelsgericht Wien
Company registration: FN 61833 g
DVR: 0605077
UID-Nr.: ATU14756806

In attn: **Dipl. Ing. Jean –Claude Riesterer - Managing Director**
Rudi Roesch - Managing Director (Fax: +49.751.29511-104)

Ref: **Amendment no.4 dated 05.12.2002 and Amendment no. 6 dated 26.03.2003**
to Contract Agreement no. 21/50765 dated 9 November 2001

The undersigned, Euro Insol SPRL, in its capacity as judicial administrator of the debtor **Societatea Comerciala de Producere a Energiei Electrice in Hidrocentrale „Hidroelectrica” S.A. (“Hidroelectrica”)**, a joint stock company organized and existing under the Romanian laws, having its headquarters in Bucharest, no.3 Constantin Nacu Street, sector 2, registered with the Trade Registry under no. J40/7426/2000, unique registration code 13267213, *Subscrisa, Euro Insol SPRL, administrator judiciar al debitoarei Societatea Comerciala de Producere a Energiei Electrice in Hidrocentrale „Hidroelectrica” S.A. (“Hidroelectrica”), societate organizata in conformitate cu legea romana ca si societate pe actiuni, cu sediul in Bucuresti, Str Constantin Nacu nr.3, sector 2, inregistrata la Registrul Comertului Bucuresti sub nr. J40/7426/2000, Cod Unic de Inregistrare 13267213*

WHEREAS:

Avand in vedere ca

A. Hidroelectrica, in its capacity as Employer hired the consortium comprising ANDRITZ HYDRO GmbH – Germany and ANDRITZ HYDRO GmbH- Austria in its capacity as

Contractor, under Contract Agreement no. 21/50765 dated 09.11.2001, as further amended and supplemented (the "Contract") for the overhaul and modernization of hydro-units from HPP Portile de Fier II considered to be Phase I while the Employer also contracted the Contractor under Amendment no. 2 dated 22 March 2002 the works for auxiliaries instalations hydro-units and power plant considered to be Phase II and the Contractor agreed to perform such works (Phase I and Phase II collectively referred to as the "Works for HPP Portile de Fier II");

Hidroelectrica, in calitate de Beneficiar a angajat consortiu format din ANDRITZ HYDRO GmbH- Germania si ANDRITZ HYDRO GmbH- Austria in calitate de Contractor, in baza Contractului nr. 21/50765 din data de 09.11.2001 ("Contractul") astfel cum a fost modificat si completat pentru reabilitarea si modernizarea hidroagregatelor din CHE Portile de Fier II considerata a fi Faza I; deasemenea Beneficiarul a contractat lucrarile pentru instalatiile auxiliare ale hidroagregatelor si ale hidrocentralei in baza Amendamentului nr. 2 la Contract din data de 22 martie 2002 considerate a fi Faza II si Contractorul a fost de acord sa execute aceste lucrari (Faza I si Faza II fiind denumite in mod colectiv "Lucrarile pentru CHE Portile de Fier II")

- B. Further to the conclusion of the Contract, the Contractor agreed to perform works for overhaul and modernization of HPP Gogosu under the terms and conditions of the Contract which were considered by the parties to be PdF II, Phase III - Overhaul and Modernization of the HPP Gogosu, reffered to as "Works for HPP Gogosu";
Ulterior incheierii Contractului, Contractorul a agreeat sa execute lucrari de reabilitare si modernizare pentru CHE Gogosu in termenii si conditiile Contractului, lucrari ce au fost considerate a fi PdF II, Faza III a - Retehnologizarea si Modernizarea CHE Gogosu, fiind denumite in mod colectiv "Lucrarile pentru CHE Gogosu";

- C. Due to the fact that Phase III of the Works for HPP Gogosu consisted in two stages and the parties wished to have these works executed under the terms and conditions of the Contract for PdF II although HPP Gogosu is a separate and distinct HPP, for celerity and efficiency reasons, the parties have agreed that Stage I of Phase III will be treated under Amendment no. 4 to the Contract dated 05.12.2002 and Stage II of Phase III will be treated under Amendment no. 6 to the Contract dated 26.03.2003;

Dat fiind faptul ca Faza III a Lucrarilor pentru CHE Gogosu cuprindea doua stadii si ca partile au dorit ca aceste lucrari sa fie executate in termenii si conditiile din Contractul pentru PdF II desi CHE Gogosu reprezinta o CHE separata si distincta, pentru ratiuni de celeritate si eficienta, partile au agreeat ca Stadiul I al Fazei III sa fie reglementat prin Amendamentul nr. 4 la Contractul incheiat in data de 05.12.2002 si, respective, Stadiul II al Fazei III sa fie reglementat prin Amendamentul nr. 6 la Contract din data de 26.03.2003;

- D. Therefore, the parties have agreed, amongst others, under Amendment no.4 dated 05.12.2002 that the aggregate purchase price for Stage I of Phase III (HPP Gogosu) is EUR 33,647,530 respectively that under Amendment no. 6 dated 26.03.2003 the

aggregate purchase price for Stage II of Phase III is EUR 20,852,470 resulting the price for Phase III (HPP Gogosu) in total amount of EUR 54,500,000;

In consecinta, partile au agreeat, printre altele, in Amendamentul nr.4 din data de 05.12.2002 ca pretul lucrarilor din Stadiul I al Fazei III (CHE Gogosu) este 33.647.530 Euro respectiv in Amendamentul nr. 6 din data de 26.03.2003 ca pretul total al lucrarilor din Stadiul II al Fazei III este 20.852.470 Euro rezultand un pret pentru Faza III (CHE Gogosu) in valoare totala de 54,500,000 Euro.

- E. HPP Gogosu is an independent and separate plant and as at the date of this notice, no works have been executed by the Contractor neither for Stage I nor for Stage II of the Phase III (HPP Gogosu) while the Employer paid an advance payment of 25% of the total value of the works amounting to EUR 13,625,000;
CHE Gogosu este o centrala independenta si separata iar la data prezentei notificari nu au fost executate lucrari de catre Contractor nici pentru Stadiul I nici pentru Stadiul II al Fazei III (CHE Gogosu) in timp ce Beneficiarul a achitat un avans, de 25% din valoarea totala a lucrarilor, in cuantum de 13.625.000 Euro;
- F. On June 20, 2012, through court resolution no. 7222 rendered by the Bucharest Court VII Civil Section in the court file no. 22456/3/2012 the insolvency proceedings have been opened against Hidroelectrica and Euro Insol SPRL has been appointed as judicial administrator.
In data de 20 iunie 2012, prin hotararea 7222 pronuntata de catre Tribunalul Bucuresti-Sectia a VII-a Civila in Dosarul nr. 22456/3/2012 s-a dispus deschiderea procedurii insolventei impotriva debitoarei Hidroelectrica si a fost desemnat Euro Insol SPRL in calitate de administrator judiciar;
- G. The provisions of article 86(1) of Law 85/2006 on the insolvency procedure state that "For the purposes of maximizing the debtor's estate, the judicial administrator/the liquidator may unilaterally terminate any agreement, unexpired rent agreements or any other long term agreements provided that such agreements have not been fully or substantially performed by the parties involved".
Dispozitiile art. 86(1) din Legea 85/2006 privind procedura insolventei prevad ca "In vederea cresterii la maximum a valorii averii debitorului, administratorul judiciar/lichidatorul poate sa denunte orice contract, inchirierile neexpirate sau alte contracte pe termen lung, atat timp cat aceste contracte nu vor fi fost executate in totalitate ori substantial de catre toate partile implicate",
- H. Due to the fact that Hidroelectrica is undergoing a special procedure, namely the insolvency proceedings, which requires the maximizing of the debtor's estate for the purposes of reaching positive values of the financial indicators and that the parties did not reach an agreement on the mutual termination of Phase III, for a successful reorganization, payment of the outstanding receivables and the company's reinsertion in the commercial circuit it is necessary to unilaterally terminate the Amendment no. 4 and no.6 to the Contract;

In conditiile in care Hidroelectrica se afla intr-o procedura speciala, respectiv procedura insolventei, in aceasta etapa urmarindu-se cu prioritate maximizarea averii debitoarei, in vederea obtinerii unor indicatori financiari-contabili pozitivi si data fiind imprejurarea ca partile nu au ajuns la un acord in ceea ce priveste incetarea de comun acord a lucrarilor Fazei III, pentru reusita unui plan de reorganizare, avand ca scop plata creantelor si reinsertia societatii in circuitul comercial se impune denuntarea Amendamentelor 4 si 6 la Contract;

- I. Hidroelectrica expressed its intention to reorganize its activity and, consequently, one looks towards the creation of the conditions for the successful implementation of a reorganization plan including by decreasing the costs and the budget for maintenance and investment works until the company's activity is restructured;
Hidroelectrica si-a manifestat intentia de reorganizare si, in consecinta, se urmareste crearea premiselor pentru implementarea cu succes a unui plan de reorganizare inclusiv prin scaderea costurilor si a bugetului pentru lucrari de investitii si mentenanta pana cand activitatea societatii va fi reorganizata;

Therefore:

According to the provisions of article 86 (1) of Law 85/2006 regarding the insolvency procedure, the judicial administrator Euro Insol SPRL hereby
Astfel:

In temeiul dispozitiilor art. 86 (1) din Legea 85/2006 privind procedura insolventei, administratorul judiciar Euro Insol SPRL

UNILATERALLY TERMINATES DENUNTA

Amendment no.4 dated 05.12.2002 and Amendment no.6 dated 26.03.2003 to the Contract Agreement no. 21/50765 dated 09.11.2001. As a consequence, as of the date of this notice the parties shall be in the same position they would have been if Amendment no. 4 dated 05.12.2001 and Amendment no.6 dated 26.03.2003 had not been executed by the parties and the Contractor will immediately reimburse the Employer the amount of the advance payment of EUR 13,625,000.

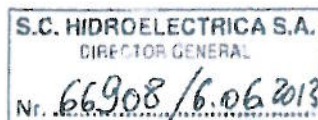
Amendamentul nr.4 din data de 05.12.2002 si Amendamentul nr.6 din data de 26.03.2003 la Contractul nr. 21/50765 din data de 09.11.2001. Drept consecinta, de la data prezentei notificari, partile vor fi repuse in situatia anterioara incheierii Amendamentului nr. 4 din data de 05.12.2002 si Amendamentului nr.6 din data de 26.03.2003 iar Contractorul va returna imediat suma achitata de catre Beneficiar cu titlu de avans in cuantum de 13.625.000 Euro.

Note: This Notice of unilateral termination has been drafted and served to you both in English and Romanian. In case of discrepancy between the two versions, the Romanian version shall prevail.

Nota: Prezenta Notificare de denuntare unilaterala a fost redactata si in limba romana si in limba engleza. In caz de discrepante intre cele doua versiuni, versiunea in limba romana va prevala.

EURO INSOL SPRL
Managing partner
Ph.D. Remus Borza





CMS von Erlach Poncet Ltd.
Exhibit No. C-30

S.C. Hidroelectrica S.A.

J40/7426/2000
RC 13267213
Capital social: 4.475.643.070 Lei
Certificat ISO 9001/14001/ONCEAS 18001
SRAC Nr. 325/4.95/3.250/2 - 2012

TO: **ANDRITZ HYDRO GmbH** (formerly VA TECH ESCHER WYSS GmbH)
Headquarters: Escher-Wyss-Weg 1, D-88212, Ravensburg, Germany
Place of Incorporation: Ravensburg
Company Register Ulm HRB 55 1539

ANDRITZ HYDRO GmbH (formerly VA TECH HYDRO GmbH)
Headquarters: Eibesbrunnengasse 20 1120 Vienna, Austria
Legal form: Corporation
Registered seat: Wien
Court of registry: Handelsgericht Wien
Company registration: FN 61833 g
DVR: 0605077
UID-Nr.: ATU14756806

In attn: **Dipl. Ing. Jean -Claude Riesterer - Managing Director**
Rudi Roesch - Managing Director (Fax: +49.751.29511-104)

Ref: **Contract Agreement no. 21/50765 dated 9 November 2001**

The undersigned **Societatea Comerciala de Producere a Energiei Electrice in Hidrocentrale „Hidroelectrica” S.A. (“Hidroelectrica”)**, a joint stock company organized and existing under the Romanian laws and undergoing insolvency, having its headquarters in Bucharest, no.3 Constantin Nacu Street, sector 2, registered with the Trade Registry under no. J40/7426/2000, unique registration code 13267213, duly represented by **Euro Insol SPRL**, in its capacity as **Judicial Administrator** appointed by Court Resolution no. 7222 dated 20 June 2012 rendered by Bucharest Court, duly represented by **Mr. Remus BORZA** and by **Special Administrator- Mr. Remus VULPESCU**,

Subscrisa Societatea Comerciala de Producere a Energiei Electrice in Hidrocentrale „Hidroelectrica” S.A. (“Hidroelectrica”), societate organizata in conformitate cu legea romana ca si societate pe actiuni in insolventa, cu sediul in Bucuresti, Str Constantin Nacu nr.3, sector 2, inregistrata la Registrul Comertului Bucuresti sub nr. J40/7426/2000, Cod Unic de Inregistrare 13267213, legal reprezentata prin Euro Insol SPRL, in calitate de Administrator Judiciar desemnat prin Sentinta civila nr. 7222 din data de 20 iunie 2012 pronuntata de Tribunalul Bucuresti, legal reprezentata de dl. Remus BORZA si prin Administrator Special- Dl. Remus VULPESCU,

WHEREAS:

Avand in vedere ca:

- A. Hidroelectrica, in its capacity as Employer hired the consortium comprising ANDRITZ HYDRO GmbH – Germany and ANDRITZ HYDRO GmbH- Austria in its capacity as Contractor, under Contract Agreement no. 21/50765 dated 09.11.2001, as further amended and supplemented (the “Contract”) for the overhaul and modernization of hydro-units from HPP Portile de Fier II considered to be Phase I while the Employer also contracted the Contractor under Amendment no. 2 dated 22 March 2002 the works for auxiliaries instalations hydro-units and power plant considered to be Phase II and the Contractor agreed to perform such works (Phase I and Phase II collectively referred to as the “Works for HPP Portile de Fier II”).

Hidroelectrica, in calitate de Beneficiar a angajat consortiu format din ANDRITZ HYDRO GmbH- Germania si ANDRITZ HYDRO GmbH- Austria in calitate de Contractor, in baza Contractului nr. 21/50765 din data de 09.11.2001 (“Contractul”) astfel cum a fost modificat si completat pentru reabilitarea si modernizarea hidroagregatelor din CHE Portile de Fier II considerata a fi Faza I; deasemenea Beneficiarul a contractat lucrarile pentru instalatiile auxiliare ale hidroagregatelor si ale hidrocentralei in baza Amendamentului nr. 2 la Contract din data de 22 martie 2002 considerate a fi Faza II si Contractorul a fost de acord sa execute aceste lucrari (Faza I si Faza II fiind denumite in mod colectiv “Lucrarile pentru CHE Portile de Fier II”).

- B. Further to the conclusion of the Contract, the Contractor agreed to perform works for overhaul and modernization of HPP Gogosu under the terms and conditions of the Amendment no. 4 to the Contract dated 05.12.2002 and Amendment no. 6 to the Contract dated 26.03.2003 which were considered by the parties to be Pdf II, Phase III - Overhaul and Modernization of the HPP Gogosu, reffered to as “Works for HPP Gogosu”.

Ulterior incheierii Contractului, Contractorul a agreeat sa execute lucrari de reabilitare si modernizare pentru CHE Gogosu in termenii si conditiile Amendamentului nr. 4 la Contract din data de 05.12.2002 si Amendamentului nr. 6 la Contract din data de 26.03.2003, lucrari ce au fost considerate a fi Pdf II, Faza III a – Retehnologizarea si Modernizarea CHE Gogosu, fiind denumite in mod colectiv “Lucrarile pentru CHE Gogosu”.

- C. For the purposes of maximizing the debtor’s estate and in accordance with the provisions of article 86(1) of Law 85/2006 the judicial administrator Euro Insol has unilaterally terminated the Amendment no. 4 to the Contract dated 05.12.2002 and Amendment no. 6 to the Contract dated 26.03.2003 (the Works for HPP Gogosu) through Notice registered under no. 177/31.01.2013 and the Bucharest Court confirmed the validity of such unilateral termination through court resolution dated 5th of June 2013 rendered in the court file 4697/3/2013.

Pentru scopul maximizarii averii debitoarei si in conformitate cu prevederile art. 86(1) din Legea 85/2006 administratorul judiciar Euro Insol a denuntat Amendamentul nr. 4 la Contract din data de 05.12.2002 si Amendamentul nr. 6 la Contract din data de 26.03.2003 (Lucrarile pentru CHE Gogosu) prin Notificarea inregistrata sub nr. 177/31.01.2013 si Tribunalul Bucuresti a confirmat validitatea masurii de denuntare prin sentinta civila din data de 05.06.2013 pronuntata in dosarul nr. 4697/3/2013.

- D. Without prejudice to the unilateral termination of the contract for the Works for CHE Gogosu (a separate project not included in the Works for HPP Portile de Fier II), due to the fact that Hidroelectrica is undergoing the insolvency proceedings which require the maximizing of the debtor's estate for the purposes of the successful implementation of a reorganization plan, the judicial administrator reassessed the status of the Works for HPP Portile de Fier II and informed the Contractor that the costs and expenses for the execution of the additional works of Unit#1 need to be significantly decreased.

Fara a aduce atingere masurii de denuntare unilaterala a Lucrarilor pentru CHE Gogosu (proiect separat si care nu este inclus in Lucrarile pentru CHE Portile de Fier II), avand in vedere faptul ca Hidroelectrica se afla in procedura de insolventa care impune maximizarea averii debitoarei pentru implementarea cu succes a unui plan de reorganizare, administratorul judiciar a evaluat situatia Lucrarilor pentru CHE Portile de Fier II si a informat Contractorul ca cheltuielile si costurile pentru lucrarile suplimentare la Grupul#1 trebuie reduse semnificativ.

- E. Pursuant to the Employer's proposal above, through letter PDFII_EWR-F0990 HPF dated 02.04.2013 the Contractor required the Employer to also execute the remaining works for the 8th unit while the Employer through its letter PDFII_HP-F0986-EWR dated 12.04.2013 proposed a meeting to discuss the details of such proposal and clearly define the responsibilities.

Urmare a propunerii Beneficiarului mentionate mai sus, prin Adresa PDFII_EWR-F0990-HPF din data de 02.04.2013 Contractorul a solicitat Beneficiarului sa execute si celelalte lucrari ramase de executat la cel de al optulea grup, iar Beneficiarul a propus prin Adresa de raspuns nr. PDFII_HP-F0986-EWR din data de 12.04.2013 organizarea unei intalniri pentru discutarea detaliilor unei astfel de propuneri si definirea clara a responsabilitatilor.

- F. While the Contractor initially highly appreciated the Employer's proposal to have a meeting as per the above, then through letter PDFII_EWR-F1001-HPF dated 03.05.2013 the Contractor changed its views and argued that the actual situation between the parties is a termination of the Contract at the Employer's convenience.

Cu toate ca initial Contractorul a apreciat propunerea Beneficiarului de a avea o intalnire conform celor de mai sus, ulterior prin Adresa PDFII_EWR-F1001-HPF din data de 03.05.2013, Contractorul si-a schimbat punctul de vedere si a considerat ca situatia existenta intre parti reprezinta o incetare a Contractului din initiativa Beneficiarului.

- G. Under the circumstances, the repeated requests of the Beneficiary to amicably solve the existing situation remained unanswered and showed an evident lack of interest and willingness from the Contractor's side to collaborate and find constructive solutions to continue the Contract.

In aceste circumstante, solicitarile repetate ale Beneficiarului de a rezolva in mod amiabil aceasta situatie au ramas fara raspuns si demonstreaza o evidenta lipsa de interes si disponibilitate din partea Contractorului de a colabora si a gasi solutii constructive pentru continuarea Contractului.

In consideration of the foregoing and in accordance with the provisions of clause 42 of the General Conditions of the Contract, the Employer hereby notifies you the termination of the Contract with immediate effect as of the date of issuing of this notice. The Employer reserves any and all legal and contractual rights and remedies to recover any and all direct or indirect damages caused to the Employer as result of the termination of the Contract.

In considerarea celor de mai sus si in conformitate cu prevederile clauzei 42 din Conditile Generale din Contract, Beneficiarul notifica, prin prezenta, incetarea Contractului cu efect imediat de la data transmiterii prezentei notificari. Beneficiarul isi rezerva toate remediile legale si contractuale in vederea recuperarii oricaror si tuturor prejudiciilor directe sau indirecte cauzate Beneficiarului de incetarea Contractului.

HIDROELECTRICA S.A.

By: Judicial Administrator
Euro Insol SPRL
By: Ph.D. Remus BORZA

By: Special Administrator
Remus VULPESCU

Press Summary – 20.05.2014

Blue font – official release of DNA; Black font – in various media related to the topic

4 judges of Bucharest Court are subject of an investigation of DNA (*National Anticorruption Department*)

The judges are investigated for allegedly committed acts of corruption in relation to the resolution of some litigation in cases of insolvency, in the sense that would have had arrangements with trustees and judicial administrators.

The four judges of the Bucharest Court, suspected of corruption, demanded not only money for the favourable resolution of the case files. According to the prosecutors of DNA, the judges also claimed various goods.

In a release of DNA is stated that **Mircea Moldovan, Ion Stanciu, Elena Roventa and Ciprian Sorin Viziru**, all judges within the Bucharest Court – Civil Section VII, claimed and received from the insolvency practitioners, trustees or judicial administrators, amounts of money of RON 10.000 – 15.000 / monthly or lump sums of RON 3.000 – 4.000.

The 4 received also goods in order to fulfil /to not fulfil or to delay a deed regarding to their work duties, or to exercise their influence towards judges from various courts of Bucharest or from the country, by using information which they had through exercise of their duties related to the case files, information which they have provided to the trustees and judicial administrators involved or interested in the insolvency proceedings of some commercial companies.

Thus for the 4 judges the allegations are the followings:

Mircea Moldovan - five criminal offenses of bribery taking, out of which one in a continuous form (four material acts) and abuse in exercise of his duties, if the judge obtained for him or for somebody else an undue advantage.

Elena Roventa - bribery taking,

Ion Stanciu - bribery taking in a continuous form (seven material acts)

Ciprian Sorin Vizir - bribery taking.

According to the proofs administrated in this case until this moment, the judges, directly or through intermediaries, claimed and received amounts of money or goods with the purpose:

- to fulfil /to not fulfil or to delay a deed regarding to their work duties related to the challenges to the preliminary table of receivables
- the way of registering amounts related to the receivables of the secured creditors
- the preferential nomination of some judicial administrators
- the preferential assigning of some insolvency files
- for exercising their influence towards judges from various courts of Bucharest or from the country, using information which they hold through exercise of their duties as judges

On 19 May 2014 taking into consideration the fact that the 4 persons are being judges, the anticorruption prosecutors requested to the Supreme Council of Magistrates the acceptance for the remand and preventive arresting of all the 4 accused. The prosecutors had for this file the specialised support from SRI and the management of Bucharest Court.

The judge Mircea Moldovan, from Bucharest Court, who is being prosecuted for corruption was excluded in 2002 from the magistracy for "deeds which affect the professional deontology", being subsequently reaccepted in the guild of magistrates following to an appeal made at the Supreme Court of Justice.

Mircea Moldovan is a bankruptcy/ syndic judge, i.e. he has duties within bankruptcy and insolvency proceedings. He was involved in resolving of the case files regarding the insolvency of Rodipet, insolvency of Metro and insolvency of Hidroelectrica, he was the one who admitted the application for entry into insolvency of Hidroelectrica.

On Monday evening the investigators didn't bring Mircea Moldovan to the hearings together with his other 3 judges colleagues; he was seen on the cameras of a neighbouring company jumping the fence of his house and running away and later on when he arrived at the premises of DNA, accompanied by his lawyers, Mircea Moldovan said that he did not knew that he was looked for and that he had a walk during this time.

Borza's comments to the above:

"Let's be objective. The malevolent association of **Moldovan** with Hidroelectrica (HE) prejudice the image of the company. Mircea Moldovan was appointed as syndic judge following HE's voluntary request for opening of insolvency procedure. This decision was taken by HE's shareholders in order to protect the company. The alleged corruption facts attributed to **Mircea Moldovan** have no connection to HE"

"In procedural terms, if he will be arrested, Bucharest Court will appoint another syndic judge to handle HE insolvency. If not, I see no reason why Moldovan should not continue to handle the insolvency proceedings, unless he will be recused"

Sources: mass media 19th / 20 of May, 2014



PAPER CHASE

Romania judge sentenced for accepting bribes

Monday 2 February 2015 at 1:32 PM ET

by Addison Morris

[JURIST] Romania's Bucharest Appeals Court [official website, in Romanian] on Monday sentenced Judge Mircea Moldovan to 22 years in prison for several instances of taking bribes from wealthy Romanian businessman in exchange for ruling in their favor in court. Though the ruling is not yet final, the court also confiscated a luxury car and seized money from Moldovan's estate. The court additionally sentenced three other judges to prison, along with businessman Dan Adamescu, who was convicted of instructing his lawyer to bribe the judges in his case.



Romania is one of the most corrupt nations in the EU, ranking [TI profile] 69 out of the 177 nations globally according the watchdog group Transparency International [advocacy website]. In January 2014 the European Commission released [JURIST report] its semi-annual Cooperation and Verification Mechanism (CVM) report on Romania, warning the nation to end political pressure on the judiciary amid continuing concerns over corruption. In September 2013 Romanian prosecutors charged [JURIST report] Communist-era prison commander Alexander Visinescu with genocide. Visinescu, the former chief of the Ramnicu Sarat prison under Communist dictator Nicolae Ceausescu [Telegraph profile] faces genocide charges for beating and starving political prisoners between 1956 and 1963, the height of Communist repression against dissidents. In January the Bucharest Appeals Court ruled [JURIST report] that a former Romanian defense ministry official can be extradited to the US on charges of trying to illegally export military equipment to Iran.

Posted in Paper Chase

The New York Times | <http://nyti.ms/1CpbAd4>

EUROPE

Romanian Court Sentences Judge to 22 Years in Bribe Case

By THE ASSOCIATED PRESS FEB. 2, 2015, 6:15 A.M. E.S.T.

BUCHAREST, Romania — A court has sentenced a judge to 22 years in prison on charges that he took bribes to rule favorably in several cases involving one of Romania's richest businessmen.

The Bucharest Appeals Court also confiscated a luxury car and money from Mircea Moldovan. The ruling is not yet final.

Businessman Dan Adamescu was also sentenced to four years and four months while judge Elena Roventa received five years and 10 months. Two other judges were also sentenced to prison.

Adamescu was convicted of instructing his lawyer — who threw himself under a train after the judges were arrested — to bribe the judges 20,000 euros (\$17,700) in December 2013 to rule in his favor in several insolvency cases involving his companies. Adamescu denies wrongdoing.

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