

# SAVING GUARANTEE CONTRACT

for the lighting of streets, roads and places

between

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-hereinafter: the Client or CL

legally represented by

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represented by

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and

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-hereinafter: the Contractor or CN

represented by

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The Saving Guarantee Contract has been developed with support of the Intelligent Energy Europe programme.

## **PREAMBLE**

- (1) Based on this Saving Guarantee Contract, the CL sees a possibility for lowering operating costs (energy costs, maintenance and cleaning) for street lighting without himself providing all investment or raise funds. As a result of refurbishments energy will be saved, running costs reduced and therefore valuable resources and environment conserved. Simultaneously an improvement of lumen efficiency and a better road safety will be a result of the refurbishment.
- (2) A key obligation of the CN is that, by means of an independent promise to the CL in accordance with this Contract, he undertakes to lower the CL's operating costs for the contractual object by the amount guaranteed by implementing saving measures within the contract period and in so far to assume the full risk for the commercial success of the cost-cutting measures.

In that respect, assumption of the commercial risk by the CN means he guarantees that his investments (saving measures) will fully be repaid by his contractually agreed share in the saving, and therefore the CL needs not make any investment or raise funds. If the guaranteed reduction of costs is not achieved, the CN will pay the CL a monetary compensation equal to the amount which would have been saved, had the cost reduction actually materialised.

- (3) The CN was given the opportunity to thoroughly examine the contractual object, to acquire or verify the data concerning all parts of the contractual object and to perform a draft analysis (**Annex 1**) on his own responsibility to get a clear idea of whether or not energy could be saved in the contractual object by implementing technical and other measures, and the CN affirms that this is the case taking account of the technical and commercial risks revealed. On the basis of these preliminary investigations, the CN accepts the obligations stipulated in this Contract. The CL agrees on the implementation of the saving measures specified in the draft analysis by signing the contract.
- (4) This preamble forms an integral part of the Contract and is an essential basis of the transactions set forth in the individual provisions contractually agreed hereunder.

## **§ 1 CONTRACTUAL OBJECT**

This Contract applies to the streets, roads and places listed in **Annex 2**.

## **§ 2 SUBJECT MATTER OF THE CONTRACT**

- (1) The subject matter of the contract is the installation of saving measures in the contractual object to reduce energy consumption and operating costs and the assumption of the economic risk that the target is actually achieved.

- (2) The CN represents and warrants that the CL from the commencement of his main obligation to perform (§ 17.2.) until the end of the Contract will reduce the operating costs in the contractual object to the extent guaranteed.

Operating costs within the meaning of this contract are the costs of all cost units included in the calculation of the operating costs baseline on the basis of the price in the reference year (see § 5.1.).

The CN's guarantee is undertaken subject to the reservation that the data basis specified in **Annex 3** and determined and/or verified by the CN on its own responsibility will not change.

### **§ 3 AUTHORIZED PROJECT REPRESENTATIVES AND DELIVERY**

- (1) The CL's and the CN's authorised project representative with regard to all matters concerning this Contract, and his deputy, together with delivery addresses are listed in **Annex 4** of this Contract.

The authorised project representative and his deputy are authorised to represent the CL and the CN respectively with regard to all legal transactions concerning this Contract, subject to the statutory provisions regarding representation and a written form requirement. The authority includes the right to modify or amend this Contract.

- (2) To become effective in law and be served on time, legal statements of any kind may only be delivered to the address of an authorised project representative. Delivery to any other address of a partner shall have no legal effect whatsoever, unless the sender can prove that, and, if any time limits are to be complied with, when the document has been received by the authorised project representative of the other party.

### **§ 4 SAVING MEASURES BY THE CN**

#### **§ 4.1. Definition**

Saving measures within the meaning of this Contract are all planning, technical, procedural and other services provided by the CN in connection with the contractual object to fulfil his independent guarantee (§ 5). Thus the term includes preparatory services, but also those services which the CN provides subsequently after the commencement of his main performance to optimise or safeguard the savings.

Furthermore, saving measures include all services which the CN needs to provide according to § 4.3 till § 4.5.

#### **§ 4.2. Preparatory Services by the CN**

- (1) The CN shall perform services in preparation of his main performance for the contractual object which have to be successively arranged with the CL under the terms and conditions stipulated in **Annex 5 / Performance Sheet**. If those services are construction work, VOB/B [Construction Contract Procedures] shall apply to them, taking account of the ranking pursuant to § 1 no. 2 VOB/B. In particular cases, in which saving measures are other services within the meaning of § 1 VOL/A [Conditions Concerning Contracts for Supplies and Services Part A], the VOL/B shall apply taking account of the ranking pursuant to § 1 no. 2 VOL/B.
- (2) Upon the signing of each performance sheet the CL agrees to its contents including its appendices. With regard to the performance specifications this also means that the CL consents to the execution of the saving measure and finds that the prices fixed in the appendices are reasonable, unless an examination from the point of view of the law concerning controlled prices shows something else.
- (3) Preparatory services by the CN are deemed to be performed in conformity with the Contract only if they are conforming to the savings targets and apart from that the quality criteria specified in **Annex 6** and the minimum standards described in **Annex 3** are complied with.

#### **§ 4.3. Maintenance, Cleaning and Replacement of Lighting Systems**

- (1) In order to ensure functioning in accordance with the guaranteed targets, the CN, during the duration of the Contract, shall take care of maintenance as defined in DIN 31 051 of all lighting systems. Therefore, the CN is obliged to carry out any technical, administrative and management measures during the life cycle of any item to maintain or restore its operative condition, so that the item is capable of fulfilling its function.
- (2) In addition to the functionality of his saving measures as such, the CN shall also guarantee that upon handing over his saving measures are in a condition which within the meaning of § 20.1. can be regarded as suitable for traffic taking account of normal wear. The condition of the street lighting system shall be comparable to the condition which is generally to be expected in the case of comparable services, comparable service lives and proper maintenance in accordance with DIN 31 051.
- (3) The CL is obliged to contribute expenditures on plant replacements . The differentiation between maintenance which the CN is obliged to and expenditures on plant replacements results from the subject matters documented in **Annex 7**.

#### **§ 4.4. Data Collection and Documentation / Controlling**

The data necessary for the determination of the guarantee according to § 7.5. shall be collected and documented by the CN. This also includes, if implemented, data from necessary measurements.

If according to the specifications in **Annex 3** operating and monitoring systems or electric meter respectively for the collection of illumination data including operating status of the subject matters or energy consumption exist, they shall be used for the collection of necessary data. The CN has to warrant the compatibility if additional systems or components are installed. The interfaces have to be defined by the CL in **Annex 3** and, if necessary, provide a separate Annex for further specifications to the systems or components.

#### **§ 4.5. Disposal of Shut-down and/or Removed Installations, Components of Installations and Objects**

Unless the CL expresses an interest in the utilisation of installations, components of installations or other objects and materials of any kind which the CN shuts down or removes in the course of preparatory services and/or maintenance measures, the CN shall at his own expense dispose of such installations etc. in accordance with the regulations and the relevant waste disposal provisions.

### **§ 5 MAIN PERFORMANCE OF THE CN (SAVING GUARANTEE)**

#### **§ 5.1. Reference Quantities**

##### **§ 5.1.1. Settlement and Reference Periods**

Based on the data acquired in **Annex 2** and **3** the parties hereto agree the **reference period** to be the period from \_\_\_\_\_ until \_\_\_\_\_.

##### **§ 5.1.2. Operating costs - Baseline**

The operating costs baseline has been determined on the basis of the calculation instructions set out in **Annex 8**.

As allocation base and assessment base for the fulfilment of the saving guarantee provided by the CN referred to the entire contractual object the parties hereto determine an overall cost value expressed in terms of money, net excluding turnover tax, (**operating costs baseline**) based on the calculation regulations and the aforementioned reference period as follows:

	Reference costs net / Reference period
Energy:	0,00 €
Maintenance and Cleaning:	0,00 €

<b>Operating costs - Baseline:</b>	<b>0,00 €</b>
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### § 5.1.3. Reference price

The operating costs baseline in the reference period is based on the relevant prices (net) and miscellaneous costs, taxes, duties and shares applicable to the relevant period in accordance with **Annex 9**. The CL shall be under an obligation to let the CN look at the calculation documents which form the basis of **Annex 9** and make copies of the documents at the CN's expense at any time upon first request.

### § 5.2. Saving Guarantee and Coverage of the Guarantee

- (1) As his main performance the CN represents and warrants that his saving measures from the beginning of the main obligation to perform until the end of the Contract will reduce the above-mentioned operating costs baseline per settlement period (§ 6) by an **amount of**

€ \_\_\_\_\_

net excluding turnover tax, in accordance with the calculation principles agreed in § 7.

- (2) The CN's liability under his contractual saving guarantee shall be limited to the securing of the guaranteed saving amount and the limitation of the content according to § 7.5. including sub-clauses. The CL shall not be entitled to any further claims with regard to the contractual saving guarantee.

## § 6 SETTLEMENT PERIOD AND PART PERIODS

All calculations under this Contract shall as a rule be referred to the settlement period of 12 months. Where the beginning or end of any term of this Contract are not identical with a settlement period of 12 months, the settlement for such part period shall be effected pro rata of the number of contract months attributable to the settlement period.

## § 7 CALCULATION OF THE AMOUNT OF SAVINGS

### § 7.1. Calculation Bases

- (1) The CN shall calculate the saved amount after finishing of the preparatory services one time per settlement period (§ 6) excluding the statutory turnover tax subject supplemented by the principles and calculation modes set forth in **Annex 8**. Moreover, the CN shall use the settlement pattern attached as **Annex 10** and break down in an appendix the individual calculation steps and reference variables/data.

- (2) For the purpose of drawing up the settlement, the CL shall without being asked on an ongoing basis submit to the CN as a basis for assessment all relevant documents.

## § 7.2. Determination of the guarantee

### § 7.2.1. Determination Basis

The fulfilment of the guarantee and thus the assessment of the question whether the CL is entitled to a compensation claim or the CN is entitled to a payment shall be determined on the basis of the settlement documents as shown below:

		operation costs baseline in € (§ 5.1.2.)
less.	./.	adjusted annual cost value in € (§7.4)
	=	actual saving in €
less.	./.	guaranteed savings in € (§ 5.2.)
	=	<b>balance</b> of the settlement period in €

### § 7.2.2. Fulfilment of the Guarantee

If the balance equals € 0.00, then the CN has fulfilled his guarantee.

### § 7.2.3. Non-fulfilment of the Guarantee

If the balance is less than € 0.00, then the CN has missed his guaranteed targets by the amount of the negative balance and is obliged to pay the CL the negative balance as compensation for non-fulfilment of the guarantee. The compensation amount shall be set off against the relevant basic remuneration (§ 8.1.). If the negative balance exceeds the basic remuneration, then the CN shall pay the further amount to the CL.

## § 7.3. Recording of the Calculation Results

- (1) The result of the calculation will be the basis for the period of main performance.
- (2) If during a settlement period the operation costs of the CL differ from the basis of the reference prices by more than \_\_\_\_ %, the CN has to prove that the discrepancy is not based on a violation of his duties which are obliged to him according to this contract. If the CN is able to prove this, it is assumed that the discrepancy is based on a change of the data basis specified in Annex 3 including the illumination requirements.
- (3) Further optimisation measures of the CN after the commencement of the main obligation to perform will be registered by exemplary measurements and included in the calculation result for the future.

## § 8 REMUNERATION OF THE CN

The CN's claim to remuneration shall commence upon the creation of the main obligation to perform (§ 17.2.) and be composed of a basic remuneration and an additional bonus for the CN's services according to § 4.3. clause 1 as well as, if necessary, a one-time subsidy by the CL.

### § 8.1. Basic Remuneration

As a lump-sum final basic remuneration for all his services, i.e. in particular

- preparatory services altogether including additional services of any kind such as training and instruction of CL personnel, debt service etc. (§ 4.1.),
- risk assumption through liability under the guarantee (§ 5.2., § 7.5.),
- maintenance and cleaning according to measure in § 8.2.
- energy management system (§ 4.4.),
- disposal of objects (§ 4.4.) and
- obtainment of public permits and approvals (§ 10)

the CN, if targets are achieved (§ 7.5.2.), shall per settlement period during the duration of the Contract receive a share of

\_\_\_\_\_ per cent

of the amount resulting from the saving guarantee (§ 5.2.) plus the applicable statutory turnover tax. If the guarantee is fulfilled exactly, this corresponds to a net amount of

€ \_\_\_\_\_

plus the applicable statutory turnover tax excluding any subsequent claims.

### § 8.2. Maintenance and Cleaning

(1) The CN has calculated for his services according to § 4.3. clause 1 an amount of (net)

		€ _____
plus the statutory turnover tax, 19 %		€ _____
currently		_____
Basic amount gross:	_____	€ _____

per settlement period. This amount is part of the basic remuneration during the period of main obligation to perform

- (2) With expiry of the period of main obligation to perform the remuneration for the services according to § 4.3. clause 1 changes for the following settlement period and in the following every year according to the following sliding-price clause:

.....

- (3) Additionally to the basic remuneration the CN shall per settlement period receive the difference between the basic amount according to clause 1 and the higher amount resulting from the sliding-price clause

### § 8.3. Single Grant

The CN shall receive for his services a single grant of, net

		€	_____
<b>plus statutory turnover tax,</b>	<b>19 %</b>	€	_____
<b>currently</b>	_____		
<b>Grant gross:</b>		€	=====

## § 9 TERMS OF PAYMENT

### § 9.1. CN's Claims for Payment

- (1) Upon the commencement of his main obligation to perform, the CN shall receive a quarterly part payment on his expected claims for payment in advance.
- (2) If the CN is entitled to amounts according to § 8.2., such amounts shall be paid by the CL after issuing of invoice after expiry of the period covered.
- (3) The CL will be charged for the grant amount after acceptance of the preparatory services.

### § 9.2. Compensation Claims of the CL

If the CL is entitled to amounts based on the CN's settlement, such amounts shall be set off against subsequent part payments.

### **§ 9.3. Legal Consequences of Accepted Payments**

Acceptance of a payment by either party hereto shall not be deemed to be an acknowledgement or waiver by such party and also have no exclusion effect with regard to justified subsequent claims or other corrections.

## **§ 10 OFFICIAL PERMITS AND APPROVALS**

Unless otherwise provided in this Contract, it shall be the CN's exclusive responsibility to obtain any required official permits and approvals for any measures he intends to install. With regard to the CL's duties to cooperate see § 12.

## **§ 11 VICARIOUS AGENTS**

The CN shall be entitled to instruct any third party to perform individual services as his subcontractor or vicarious agent only with the CL's prior written consent. The CL shall withhold his consent only if serious reasons exist. A serious reason would be, for instance, if the major part of the services to be provided would no longer be performed by the CN's business.

## **§ 12 CL'S DUTIES TO COOPERATE**

The CL, in so far as necessary also with regard to the users of the contractual object, shall ensure in particular

- a) that the CN will be provided with all information and documents required to perform his services;
- b) that the lighting systems will be properly operated and
- c) that the settings and adjustments made by the CN to installations having a function relevant to energy will not be changed.
- d) The CL will moreover use his best efforts to support the CN with regard to obtaining any necessary public permits or approvals.

## **§ 13 LIABILITY**

### **§ 13.1. Liability Claims on the Part of the CL**

There shall be no limitations as to the claims for damages and warranty claims specified in VOB/B. The CL's rights of retention or set-off shall not be restricted.

### **§ 13.2. Non-observance of Duties to Cooperate**

If the CL culpably fails to meet his contractual (§ 12) or statutory duties to cooperate, he shall pay the CN damages for any loss resulting thereof.

### **§ 13.3. Damages in the Case of Anticompetitive Collusion in the Contract Award Process**

If the CN has participated in illegal anticompetitive collusion in the course of the contract award process, the CL shall be entitled to a lump-sum claim for damages as follows:

$$MG \times ML \times 0.03$$

MG = monthly value of guaranteed amount (§ 5.2.)

ML = period of liability in months (§ 17.2. to § 17.3.)

The CL reserves the right to prove and assert a higher amount of damages. The CN shall be free to prove that the CL has incurred a smaller loss.

## **§ 14 ACCEPTANCE PROCEDURES, PASSING OF RISK, WARRANTY CLAIMS, STATUTE OF LIMITATIONS, AVAILABILITY OF REPLACEMENT PARTS**

### **§ 14.1. Acceptance Procedures**

#### **§ 14.1.1. Acceptance of Preparatory Services (§ 4.2.)**

Preparatory services by the CN shall as a rule be inspected for acceptance by the CL only after complete and free-of-defects performance, however, no earlier than upon the commencement of the main obligation to perform (§ 17.2.). The performance contents defined in the respective Performance Sheets and their appendices (**Annex 5**) are relevant with regard to the scope of supplies and services. Prior partial acceptance is excluded in this respect.

#### **§ 14.1.2. Acceptance of Other Saving Measures**

Other saving measures which the CN provides in addition to preparatory services shall be inspected for acceptance by the CL one month after complete and free-of-defects delivery. The performance contents defined in the respective Performance Sheets and their appendices (**Annex 5**) are relevant with regard to the scope of services.

#### **§ 14.2. Passing of Risk**

With regard to saving measures installed by the CN the risk shall pass to the CL upon performance of the acceptance inspection.

#### **§ 14.3. Warranty Claims and Periods**

The CL shall be entitled to the statutory warranty claims without abatement. The statutory periods shall as a rule commence upon the acceptance of the respective saving measure even if such measure is not a work performance.

#### **§ 14.4. Establishing Readiness for Delivery After Termination of the Contract – Statutory Period of Limitation**

The period of limitation for the CN's obligations to establish readiness for delivery after termination of the Contract (§ 20.2.) shall be six months from the time the Contract is terminated.

For the limitations the statutory provisions shall apply.

#### **§ 14.5. Availability of Replacement Parts**

The CN shall vouch beyond termination of the Contract that replacement parts will be available for \_\_\_\_\_ years.

### **§ 15 PASSAGE OF TITLE**

The title to technical installations, devices and components which the CN in the course of the installation of saving measures either supplies or otherwise incorporates into the contractual object shall pass to the CL at the latest upon acceptance of the service, unless something else results from § 946 BGB.

## **§ 16 PASSAGE OF PLANT**

The partners are assuming that the implementation or inducement of saving measures on the part of the CN generally does not constitute a passage of plant in the sense of § 613a BGB. If in a particular case, nevertheless, a court recognises at appliance of § 613a BGB, the CN indemnifies the CL or a directly or indirectly connected company from all economic consequences via compensation which result from the changeover of the employment contract according to §613a BGB.

## **§ 17 COMMENCEMENT AND TERMINATION OF THE CONTRACTUAL RELATIONSHIP, COMMENCEMENT OF THE MAIN OBLIGATION TO PERFORM**

### **§ 17.1. Commencement of the Contractual Relationship**

With the exception of the special regulation concerning the main obligation to perform in § 17.2., this Contract and all its Annexes shall come into force on \_\_\_\_\_ .

### **§ 17.2. Commencement of the Main Obligation to Perform**

With regard to the main obligation to perform (§ 5.2. = saving guarantee) this Contract shall come into force upon the completion and commissioning of the preparatory services of the CN (§ 4.). In this respect, the time of acceptance shall not be relevant. The partners will determine the time of completion by mutual agreement. Notwithstanding the aforesaid, the Contract shall come into force also with regard to the main obligation to perform no later than on \_\_\_\_\_ .

### **§ 17.3. Termination of the Contractual Relationship**

This Contract shall end on \_\_\_\_\_. If the commencement of the main obligation to perform in accordance with § 6 VOB/B has been delayed and if the circumstances to which such delay can be attributed are not part of the CL's scope of risk within the meaning of § 6 no. 2. a) VOB/B, then the above-mentioned termination date shall be postponed by the period by which the commencement of the main obligation to perform has been delayed. Furthermore, the Contract shall continue to be in force with regard to settlements which the CN has not yet completed until such settlements are completed.

## **§ 18 PROVISION OF SECURITY**

### **§ 18.1. Purpose and Amount of the Collateral Security**

To secure the performance of the preparatory services and the fulfilment of the guarantee (§ 5.) and the CN's duties to compensate possibly resulting thereof, the CN shall provide a security amounting to 5% of the total value of the guarantee, subject, however, to the special provisions set out in § 19. The total value of the guarantee shall be calculated as:

$$MG \times ML$$

MG = monthly value of guaranteed amount (§ 5.2.)

ML = period of liability in months (§ 17.2. to § 17.3.)

The CN shall provide the security no later than 30 days after the signing of the Contract.

### **§ 18.2. Provision of Collateral Security by the CN**

The CN shall provide a security in the form of a security note by a bank or a credit insurance company. The bank or credit insurance company must be accredited in the European Community or in a member state of the Agreement on the European Economic Area or in a member state of the WTO Agreement on Government Procurement. The original of the suretyship instrument to be handed over to the CL must be in the CL's name, be unconditional and be valid for an indefinite period, and include a waiver of the benefit of discussion (§ 771 BGB) and of the right to deposit the suretyship amount, and include an agreement to the effect that the exclusive place of jurisdiction for disputes arising out of the suretyship relationship shall be the venue of the authority competent with regard to the CL's legal representation in court. If the suretyship is provided by a foreign bank, then additionally application of German law and exclusion of the UN Convention on Contracts for the International Sale of Goods and German as the contract and legal language must be stipulated and the suretyship instrument must be drawn up in German.

Any other kind of providing security is not permissible.

### **§ 18.3. Return of the Security**

Upon acceptance of the preparatory services and determination of the fulfilment of the guarantee (§ 7.5.), the amount of the security shall be returned to the CN.

## **§ 19 ASSIGNMENT OF CLAIMS**

The CN shall not be entitled to assign receivables under this Contract, § 399 BGB.

This prohibition shall not apply to the assignment of receivables to financial or credit institutions which the CN employs to prefinance his preparatory services. If in the process the CL is required

to waive any of his rights to a plea with regard to the receivables assigned, assignment shall only be permitted under the precondition that

- the amount of the receivables sold does not exceed 70% of the total of receivables which would become due over the term of this Contract on achieving the targets; and
- the CN consents to an increase of the security in accordance with § 18.1 to \_\_\_\_\_ % of the total value of the guarantee.

## **§ 20 HANDING OVER AND FINAL AUDIT**

### **§ 20.1. Handing Over of the Energy Saving Measures**

Upon termination of the Contract, the CN shall hand over all saving measures for further use by the CL in the CL's own responsibility. The CN shall warrant that on handing over the preparatory services are in the general condition as owed under his maintenance obligation (§ 4.3.) (**readiness for delivery**).

### **§ 20.2. Final Audit – Examination of Readiness for Delivery**

Forthwith upon termination of the Contract the partners shall perform a joint audit of all the preparatory services installed by the CN as shown in the Performance Sheets (**Annex 5**) to verify readiness for delivery of the same, and draw up and sign an audit certificate in order to be able to furnish proof of the audit results.

If the saving measures are not in a condition to allow handing over, the CN shall at his expense establish the proper condition by rectifying the defects without prejudice to any other existing statutory warranty claims which the CL may be entitled to.

## **§ 21 CRISIS MANAGEMENT**

### **§ 21.1. Consideration**

Both partners are aware that this Contract can only be successful if the other partner's interests and concerns are taken into consideration in an appropriate manner. This includes that disputes shall be settled amicably if possible.

### **§ 21.2. Crisis Management**

To avoid legal disputes, all possibilities of settling a dispute out of court shall first be exhausted. If agreement cannot be reached, and if the disagreement primarily relates to matters of fact,

technical issues or calculation procedures under this Contract, then the partners shall first employ a publicly appointed and sworn expert as arbitrator to settle the dispute. The expert must be proved to have expertise in the field of determining the operating and energy requirements of street lighting. Should the parties hereto be unable to agree on an expert, then each of them shall be entitled to ask the competent chamber of industry and commerce to appoint an expert taking account of the qualification criteria set forth herein. The expert's decision shall be final. Both partners already now submit to the expert's decision and acknowledge the decision as being binding also in any legal action which may be brought. The defeated party shall bear the cost of the expert opinion. Additionally, § 18 no. 3 VOB/B shall apply.

## **§ 22 NOTICE TO TERMINATE AND TERMINATION OF THE CONTRACT**

### **§ 22.1. Contractual Notice to Terminate**

Neither party shall be entitled to give notice to terminate the Contract prior to its expiration (§ 17.3.). The same goes for the CL's right of termination in accordance with § 649 BGB and the CN's right of termination in accordance with § 643 BGB. In particular, § 643 para 1 clause 2 BGB is excluded.

### **§ 22.2. Termination Without Notice for an Important Reason**

Either partner's right of termination without notice for an important reason shall not be affected. § 314 BGB applies, i.e. in particular if the important reason is the breach of a contractual duty, the Contract may only be terminated after an extension of time for remedy has been fixed and expired without remedy having been effected or after giving an unsuccessful warning notice. Important reasons for the CL include any case in which the CN persistently fails to meet the defined and agreed quality criteria (**Annex 6**) or standards **Annex 3**).

### **§ 22.3. Written Form**

Any notice to terminate, warning notice and fixing of extensions of time shall only be valid if provided in writing.

### **§ 22.4. Damages**

If the reason justifying termination without notice at the same time is a behaviour on the part of the other partner which is contrary to the Contract, the partner terminating the Contract shall be entitled to damages.

## **§ 23 PLACE OF JURISDICTION, LEGAL STATUTE AND CONTRACT LANGUAGE**

The exclusive place of jurisdiction for any disputes arising out of this Contract and its Annexes, for any resulting consequential claims and for any independent taking of evidence shall be the venue of the authority competent with regard to the CL's legal representation in court which shall be disclosed to the CN on first demand. The same goes for any disputes concerning the legal validity of this place of jurisdiction clause.

This Contract shall exclusively be governed by the laws of the Federal Republic of Germany. Application of the UN Convention on Contracts for the International Sale of Goods in accordance with Article 6 Clause 1 of the CISG is excluded.

The contract and legal language is German.

## **§ 24 FINAL PROVISIONS**

### **§ 24.1. Severability Clause**

Should any of the provisions of this Contract be or become invalid, the validity of the remaining provisions of this Contract and its Annexes shall not be affected thereby.

### **§ 24.2. Publication**

The CN shall be entitled within the bounds of applicable laws to publish this project as a reference project and for that purpose use photographs of the contractual object and/or his services provided to the contractual object, provided that no concerns of the CL or third parties which are legally protected or merit protection stand in the way of such publication.

### **§ 24.3. Subsidiary Agreements and Other General Terms and Conditions of Business**

Additional or deviating agreements to this Contract and its Annexes do not exist. Furthermore, any General Terms and Conditions of Business of the CN not expressly included in this Contract and its Annexes are not applicable. The CL expressly rejects such General Terms and Conditions of Business of the CN for the time being and for the future.

## **§ 25 ANNEXES**

All Annexes plus their appendices attached to this Contract form an essential part of this Contract. The Annexes are:

- Annex 1 (Draft Analysis)

- Annex 2 (Contractual Object)
- Annex 3 (Data Basis)
- Annex 4 (Authorised Project Representatives)
- Annex 5 (Performance Sheet)
- Annex 6 (Investment Structure, List of Products and Quality Criteria)
- Annex 7 (Subject Matter)
- Annex 8 (Calculation Instructions)
- Annex 9 (Reference Prices)
- Annex 10 (Calculation Model)

\_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_

**For the CL:**

**For the CN:**

\_\_\_\_\_

\_\_\_\_\_

(Official seal and legally binding signature)

(Official seal and legally binding signature)

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(Official seal and legally binding signature)

(Official seal and legally binding signature)