***Appendix no. 7 to ToR***

**DRAFT PROVISIONS OF THE AGREEMENT**

**§ 1**

**DECLARATIONS OF THE PARTIES**

1. The Contractor hereby declares and warrants that:

1) it has an unrestricted ownership title to fuel subject to the Agreement, free from any encumbrances or third parts’ rights, and it is not obliged to establish such encumbrances or third parties’ rights;

2) conclusion and implementation of the Agreement do not constitute a violation of any applicable legal regulations or the Contractor’s obligations, and the Contractor obtained any consents, permits and authorisations to conclude the Agreement;

3) it has a license for Trading in Liquid Fuels/Foreign Trade in Liquid Fuels no. …, valid until …. The Contractor shall notify the Contracting Authority of any change of the license held, especially in the case of its extension, expiry or loss, immediately, but no later than within seven days of such a change.

2. The Contracting Authority declares that fuel purchased by the Contracting Authority under the Agreement will be used for the performance of tasks referred to in Article 1 section 2 of the Act of 25 August 2006 on biocomponents and liquid biofuels (consolidated text: Journal of Laws of 2022, item 403), entrusted to the National Strategic Reserves Agency. Consequently, provisions of this Act shall not apply to the performance of the Agreement.

**§ 2**

**SUBJECT MATTER OF THE AGREEMENT**

1. The subject matter of the Agreement shall be sale and delivery (in the reference temperature of 15°C) of …… m3 of petrol of the quality consistent with PN-EN 228 standard and requirements set out in appendix no. 2 to Regulation of the Minister of the Economy of 9 October 2015 on the quality requirements for liquid fuels (Journal of Laws of 2015, item 1680, as amended), without biocomponents and from current manufacture – no more than 3 months before the delivery date, hereinafter referred to as “fuel.”

2. The Contractor declares that it understands that the delivery is aimed at the Contracting Authority establishing and maintaining reserves of petroleum and fuels referred to in Article 3 section 2 point 2 of the Act of 16 February 2007 on stocks of crude oil, petroleum products and natural gas, the principles of proceeding in circumstances of a threat to the fuel security of the State and disruption on the petroleum market (Journal of Laws of 2022, item 1537), hereinafter referred to as the “Act on stocks.”

3. The Contracting Authority allows that – in particular for logistics reasons – the amount of fuel delivered by the Contractor exceeds the amount specified in section 1, but by no more than 60 m3 for each Fuel Base.

4. Fuel shall be sold and delivered under the excise duty suspension procedure.

**§ 3**

**DELIVERY OF FUEL**

1. The Contractor shall deliver fuel to Fuel Bases by its own efforts, at its own expense and risk.

2. The fuel delivery shall take place from 1 October 2023 to 15 December 2023. The Contracting Authority allows the delivery of fuel in tank capacity, provided that the Contractor signs or has signed an agreement with a stock-keeper.

3. The Contractor undertakes to notify the stock-keeper acting based on an authorisation granted by the Contracting Authority, of the date and amount of the planned fuel delivery, not later than 7 days before the delivery start. Dates and amounts of planned fuel deliveries must comply with the fuel delivery schedule. The fuel delivery schedule, list of Fuel Bases to which deliveries shall be made and contact details of the stock-keeper acting based on an authorisation granted by the Contracting Authority are included in Appendix no. 1 to the Agreement. Deliveries can start not before the stock-keeper confirms, in writing, its readiness to receive fuel.

4. If the stock-keeper is not ready to receive fuel, the Contractor shall not be held liable for failure to make the delivery, and reserves the right to defer the delivery completion date by an equivalent period.

5. The Contractor declares that when calculating the prices, it was aware of the principles and procedures binding at the stock-keeper to whom fuel will be delivered, and when making fuel deliveries, it undertakes to update its own knowledge in this respect, and to follow these principles and procedures.

**§ 4**

**ACCEPTANCE OF FUEL**

1. Quality and quantity acceptance of fuel delivered by the Contractor to the Fuel Base of the stock-keeper, before accepting for storage, shall be carried out, on behalf of the Contracting Authority, by the stock-keeper (based on a separate agreement concluded by and between the Contracting Authority and the stock-keeper).

2. Quality acceptance of fuel shall be carried out by the stock-keeper (or a laboratory acting based on its order), subject to section 3 *et seq.*

3. The stock-keeper:

1) shall refuse to accept fuel for storage if:

a) quality parameters of delivered fuel differ from quality requirements set out in § 2 section 1;

b) fuel contains biocomponents;

c) fuel is from:

- manufacture carried out by an entity on which competent authorities of the European Union, in particular the Council of the European Union, imposed restrictive measures (sanctions) in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, or on which sanctions adopted by the UN Security Council are imposed; or

- production in the territory of a country on which such sanctions were imposed; or

- manufacture carried out by an entity having capital or personal relationships with another entity or a country on which such sanctions were imposed;

2) can refuse to accept fuel for storage if:

a) fuel is not from current manufacture, no more than 3 months before the delivery date;

b) quantity of fuel is inconsistent with the Agreement or the schedule.

4. In any of the instances referred to in section 3, the stock-keeper shall notify the Contractor thereof, while presenting its reservations, immediately, within 3 working days.

5. In case of the stock-keeper presenting the reservations referred to in section 3, the Contractor shall present its position on the matter within 3 working days of receiving the notification. In case of agreeing with the Contractor’s position, the stock-keeper shall accept fuel and the Contractor shall not be in delay with the delivery.

6. In case of disputes, especially if the stock-keeper does not agree with the Contractor’s position referred to in section 4, results of tests carried out by an independent accredited research laboratory accepted by both Parties shall be binding on the Parties. Shall the Parties fail to agree on the research laboratory within 3 days of the request of either Party, the Contracting Authority’s shall decide on selecting the laboratory. Until the Parties receive results of tests performed by the research laboratory, the position of the stock-keeper referred to in section 2 shall be binding. The stock-keeper or the Contracting Authority can request from the Contractor relevant statements, certificates or other documents confirming the Contractor’s position or proving that reservations of the stock-keeper or the Contracting Authority, presented to the Contractor by the stock-keeper on behalf of the Contracting Authority, are untrue.

7. Costs related to refusal to accept fuel, including costs of laboratory tests, shall be borne by the Contractor or the stock-keeper, depending on whose reservations or statements on the fuel quality prove unjustified.

8. In the case referred to in section 4, were at the same time:

1) there is no different position of the Contractor referred to in section 5;

2) there is a different position of the Contractor referred to in section 5 and, at the same time, the research laboratory confirms the stock-keeper’s position referred to in section 4;

- the Contractor shall collect delivered fuel by its own efforts, at its own expense and risk, within 3 days of the day of receiving the request to collect fuel from the Contracting Authority.

9. The Contracting Authority stipulates that the sole binding documents confirming quantity and quality acceptance, and thus the delivery of fuel by the Contractor, shall be: storage receipt together with relevant documents issued by the stock-keeper or the laboratory acting based on its order, confirming the quality of fuel.

10. In case of quantity differences in the delivery, the stock-keeper shall in each case notify the Contractor of the difference, while suspending fuel unlading until receiving the Contractor’s decision, and shall secure the documentation of acceptance of contested deliveries drawn up in accordance with the Act of 15 November 1984 – Transport Law (Journal of Laws of 2020, item 8). Costs related to keeping the fuel delivery for reasons referred to in the previous sentence shall be borne by the Contractor.

**§ 5**

**COSTS OF FUEL UNLOADING**

Costs of fuel unloading at the Fuel Base shall be borne by the Contracting Authority.

**§ 6**

**QUALITY CERTIFICATE**

The Contractor shall attach the manufacturer’s quality certificate to each batch of delivered fuel. The quality certificate shall include information on the level of parameter specified in § 2 section 1, as well as regulations and standards referred to therein.

**§ 7**

**MAXIMUM VALUE OF THE AGREEMENT**

The value of the Agreement cannot exceed PLN ……………net.

**§ 8**

**SALE PRICE OF FUEL**

1. For fuel together with delivery, the Contracting Authority shall pay the Contractor the net sale price in Polish zloty for 1 m3, in the reference temperature of 15°C (C), that will be a product of an arithmetic average of petrol quotes published in Platt’s European Marketscan cargoes CIF NWE/Basis ARA high gasoline 10 ppm for a week (calculated from Monday to Friday) preceding the week of the fuel delivery (Cw) and an average exchange rate of US Dollar (USD) to Polish zloty (PLN) (table A of average exchange rates of foreign currencies of the National Bank of Poland) for the week accepted for fuel quotes, increased/reduced by a fixed bonus/discount of PLN …… per 1 Mg (P) and multiplied by the standard density of fuel of 0.755 Mg/m3. The price shall be calculated in accordance with the following formula:

**C = (Cw x k +/- P) x 0.741**

where:

**C** – price in PLN per 1 m3, in the reference temperature of 15°C;

**Cw** – average (arithmetic) of fuel quotes published in Platt’s European Marketscan cargoes CIF NWE/Basis ARA high gasoline 10 ppm for a week (calculated from Monday to Friday) preceding the week of the delivery. The average will be rounded to two (2) decimal places in accordance with mathematical rules;

**P** – fixed bonus/discount of PLN …… per 1 Mg;

**k** – average exchange rate of US Dollar to Polish zloty based on table A of average exchange rates of foreign currencies of the National Bank of Poland on the announcement dates, for the period accepted for calculating an arithmetic average of 95 petrol quotes, rounded to four (4) decimal places in accordance with mathematical rules;

**0.741** – standard density of fuel in the reference temperature of 15°C.

2. The sale price shall include costs of fuel transport to unloading points of the stock-keeper.

3. The net sale price will be increased by tax on goods and services (VAT) calculated in accordance with regulations binding on the date of issuing an invoice, which will result in the gross sale price.

**§ 9**

**PAYMENT OF THE SALE PRICE**

1. The Contractor shall issue a VAT invoice after fuel is accepted for storage by the stock-keeper. The storage receipt shall provide a basis for issuing the invoice.

2. The Contractor declares that it is an active VAT payer assigned with Tax Identification Number (NIP) ……….

3. Payment for delivered fuel shall be made to the Contractor successively, for each delivery completed, to the Contractor’s bank account that in the case of the Contractor having its registered office in the territory of Poland shall be entered into the White List of VAT payers, account number: ………….

4. The Contractor reserves the right to change the bank account number referred to in section 3 during the term of the Agreement, by making the statement to the Contracting Authority, signed by persons authorised to represent the Contractor. This statement shall include information about the Contractor’s new bank account to which the Contracting Authority shall make payments under the Agreement.

5. Changing the bank account in accordance with provisions of section 4 shall not require amending provisions of the Agreement by concluding a written annex.

6. Invoices shall be submitted in paper form to the address: National Strategic Reserves Agency, ul. Grzybowska 45, 00-844 Warszawa, or in electronic form:

1) to e-mail address of the National Strategic Reserves Agency indicated for submission of electronic invoices: efakturacent@rars.gov.pl; or

2) on the PEF platform, in accordance with Article 4 section 1 of the Act of 9 November 2018 on electronic invoicing in public procurement, concessions for construction works or services and public-private partnership (Journal of Laws of 2020, item 1666).

7. The following documents, issued for each delivery, shall provide a basis for making the payment for fuel:

a) invoice issued by the Contractor;

b) storage receipt issued by the stock-keeper.

8. The period of payment for fuel shall be 14 calendar days calculated from the date of the Contracting Authority receiving a correctly issued invoice with a storage receipt. The date of debiting the Contracting Authority’s bank account shall be considered the payment date.

9. An incorrectly issued invoice shall result in the new payment period starting to run from the date of the Contracting Authority receiving the correctly issued invoice.

10. Payments under the Agreement can be made under the split payment mechanism referred to in Article 108a section 1 of the Act of 11 March 2004 on tax on goods and services (Journal of Laws of 2022, item 931, as amended).

11. The Contractor cannot assign its rights or obligations under the Agreement, including transferring its receivables, to third parties without consent of the Contracting Authority. The Contracting Authority’s consent to these actions must be granted in written form under the pain of invalidity. Documents issued by the Contractor, specifying the amounts of receivables, in particular, the invoice, shall include a note on the contractual reservation that receivables cannot be assigned without the consent of the Contracting Authority.

**§ 10**

**FINANCIAL SECURITY**

The Contractor shall be obliged to provide required security for excise duty and fuel fee for the period of transport of fuel to the stock-keeper’s bonded warehouse under the excise duty suspension procedure.

**§ 11**

**GUARANTEE**

1. Delivered fuel must be from current manufacture, no more than 3 months before the delivery date. Fuel manufacturing date shall be specified in the manufacturer’s quality certificate or shall be in each case (for each delivery batch) specified in the Contractor’s own statement.

2. The Contractor shall grant a quality guarantee for fuel delivered under the Agreement for 12 months of storage starting the date of completion of deliveries (the date of issuing the last storage receipt). The quality guarantee shall not cover fuel that was mixed with fuel not obtained from the Contractor.

3. If fuel is not manufactured by the Contractor, the Contractor shall be obliged to attached the manufacturer’s guarantee to delivered fuel.

4. If, during the guarantee period, it is detected that fuel does not meet the quality requirements set out in § 2 section 1, the Contractor shall be obliged, within 90 days of the date of receiving a written notification from the Contracting Authority, to replace defective fuel with fuel free of any defects, at its own expense and by its own endeavour, while covering all costs related to collecting defective fuel, as well as acceptance and unloading of fuel free from defects.

5. The Contracting Authority authorises the stock-keeper to conduct, on behalf of the Contracting Authority, complaint proceedings based on the guarantee granted by the Contractor, pertaining to the quality of fuel in case of which the deterioration of quality parameters has been detected, not due to fault of the stock-keeper.

6. The correspondence pertaining to complaints/guarantee shall be sent to the following e-mail address: ………@………. In case of a change of the e-mail address, the Contractor shall be obliged to immediately indicate a new (up-to-date) e-mail address. Failure to fulfil this duty shall justify considering the correspondence sent to the last e-mail address known to the Contracting Authority as delivered to the Contractor.

**§ 12**

**WITHDRAWAL FROM THE AGREEMENT**

1. In case of failure to deliver fuel within the time limit referred to in § 3 section 2, in the quantity referred to in § 2 section 1, the Contracting Authority can, without setting an additional time limit for the Contractor, withdraw from the Agreement in part pertaining to non-performed section of the Agreement. The Contracting Authority shall make a statement on withdrawal to the Contractor within 21 days of the day of failure to deliver fuel on the agreed date.

2. In case of the stock-keeper not accepting fuel due to its improper quality, biocomponent content or – subject to section 3 – being from manufacture more than 3 months before, the Contracting Authority reserves the right to withdraw from the Agreement in part pertaining to non-performed section of the Agreement. The Contracting Authority shall make a statement on withdrawal to the Contractor within 21 days of the day of refusal to accept fuel of improper quality.

3. The stock-keeper – in consultation with the Contracting Authority – can accept fuel from manufacture more than 3 months before the delivery date, while reducing the amount of the remuneration due to the Contractor in a way specified by the Contracting Authority. In case of lack of the Contractor’s consent, within 3 days of the date of submission of the notification from the Contracting Authority, to reduction – in a way specified by the Contracting Authority – of the amount of the Contractor’s remuneration for a given batch of fuel delivered, the stock-keeper shall refuse to accept this fuel. Provisions of § 4 section 7 shall apply accordingly. Costs related to the standstill shall be borne by the Contractor.

4. The Agreement shall be cancelled automatically, upon the Contractor loses the license referred to in § 1 section 1 point 3.

**§ 13**

**FORCE MAJEURE**

1. Either Party shall be exempt from liability for non-performance or improper performance of the Agreement if such non-performance or improper performance is due to force majeure.

2. Subject to application of general liability principles expressed in § 16 section 3 of the Agreement, the Parties shall not be responsible, in particular, for non-performance or improper performance of the Agreement due to circumstances resulting from force majeure.

3. A Party that is unable to fulfil its obligations due to force majeure shall be obliged to immediately notify the other Party thereof and to present reliable evidence, as well as to provide information about the expected duration and expected impact of force majeure. When force majeure ceases to exist, the other Party should be notified thereof immediately, under pain of inability to refer to force majeure resulting in a given event.

4. The Party affected by the aforementioned circumstances shall take all activities required by due diligence to minimise consequences and duration thereof.

**§ 14**

**CONTRACTUAL PENALTIES**

1. The Contracting Authority reserves the right to impose contractual penalties on the Contractor for non-performance or improper performance of the Agreement, in the following instances and amounts:

a) in case of a failure to meet the date of delivery of fuel specified in § 3 section 2, subject to § 3 section 4 and § 4 section 4 – 0.1% of the value of undelivered fuel for each started day of delay in the delivery of fuel, calculated as the fuel price for the period from 4 to 8 December 2023 computed in accordance with the formula specified in § 8 section 1 plus VAT added in compliance with applicable regulations, multiplied by the volume of fuel not delivered on this date;

b) in case of a failure to deliver fuel in the quantity specified in § 2 section 1 – 10% of the value calculated as the fuel price for the period from 4 to 8 December 2023 computed in accordance with the formula specified in § 8 section 1 plus VAT added in compliance with applicable regulations, multiplied by the volume of undelivered fuel;

c) in case of delivering fuel with parameters inferior to these specified in § 2 section 1, or containing biocomponents, while complying with the procedure specified in § 4 sections 3-5 – 10% of the maximum value of the Agreement specified in § 7 plus VAT added in compliance with applicable regulations;

d) in case of delivering fuel from manufacture more than 3 months before the delivery date – 10% of the Contractor’s remuneration for a given batch of delivered fuel, calculated as the fuel price for the week preceding the delivery of fuel computed in accordance with the formula specified in § 8 section 1 plus VAT added in compliance with applicable regulations, multiplied by the volume of delivered fuel from manufacture more than 3 months before the delivery day, for each started week exceeding the agreed manufacture period, provided that the Contracting Authority does not exercise its right arising from § 12 section 3 and, at the same time, the Contractor agrees to reduction as required by the Contracting Authority;

e) in case of failure to fulfil the obligation referred to in § 1 section 1 point 3 – 20% of the maximum value of the Agreement specified in § 7 plus VAT added in accordance with applicable regulations;

f) in case of failure to fulfil the obligation referred to in § 4 section 8 – 0.5% of the value of uncollected fuel, for each started day of delay in collecting fuel, calculated as the fuel price for the week preceding the request to collect fuel computed in accordance with the formula specified in § 8 section 1 plus VAT added in accordance with applicable regulations, multiplied by the volume of uncollected fuel;

g) in case of untimely fulfilment of the obligation referred to in § 4 section 8 – 0.5% of the value of uncollected fuel, for each started day of delay in collecting fuel, calculated as the fuel price for the week preceding the request to collect fuel computed in accordance with the formula specified in § 8 section 1 plus VAT added in accordance with applicable regulations, multiplied by the volume of uncollected fuel;

h) for withdrawing from the Agreement in whole by the Contracting Authority for reasons attributable to the Contractor – 10% of the maximum value of the Agreement specified in § 7 plus VAT added in accordance with applicable regulations;

i) for withdrawing from the Agreement in part by the Contracting Authority for reasons attributable to the Contractor – 10% of the value of fuel to which the withdrawal applies, calculated in accordance with the formula specified in § 8 section 1 plus VAT added in accordance with applicable regulations;

j) for a failure to provide the manufacturer’s quality certificate referred to in § 6, the manufacturer’s guarantee referred to in § 11 section 3 or the statement referred to in § 11 section 1 – PLN 10,000.00 for each instance detected by the Contracting Authority.

2. The total amount of contractual penalties cannot exceed 50% of the value of the Agreement.

3. The Contracting Authority reserves the right to claim damages exceeding the amount of contractual penalties, in accordance with general provisions of the Civil Code.

**§ 15**

**AMENDMENTS TO THE AGREEMENT**

1. The Parties shall allow for amendments to the Agreement in the following instances and within the following scope:

a) extension of the time limit for the delivery of fuel in case of the stock-keeper’s delay in preparing the storage capacity, which will hinder the delivery of fuel to designated Fuel Bases – by the period of delay;

b) change of the fuel price in case of the stock-keeper’s delay in preparing the storage capacity, which will hinder the delivery of fuel to designated Fuel Bases – adequately to the distance to the new location;

c) in order to adjust the performance of the Agreement, in particular fuel deliveries, in case of amendments to legal regulations providing a basis for the performance of the Agreement – within the scope and in a way adjusting the Agreement or fuel delivery manner to applicable regulations;

d) extension of the time limit for delivery at the request of the Contractor, upon the Contracting Authority’s consent – as a result of the occurrence of circumstances indicated by the Contractor, however by no more than 45 calendar days.

2. The following shall not constitute an amendment to the Agreement within the meaning of Article 455 of the Act – Public Procurement Law:

a) a change of the registration data of the Parties to the Agreement;

b) a change of contact details of the Parties;

- however, the occurrence of the aforementioned circumstances requires the immediate written notification to the other Party under pain of recognising the change as not binding on the other Party.

3. The Contracting Authority allows for changing the value of the Agreement if a sum of values of particular fuel deliveries calculated based on the formula specified in § 8 section 1 of the Agreement, exceeds the amount set in § 7, but by no more than 60%.

4. The Contracting Authority allows for reducing the number of deliveries in the case of non-availability of the storage capacity, by the volume of unavailable capacity, or to extend the time limit for deliveries until obtaining this capacity.

5. In case of the occurrence of circumstances providing a basis for amendments of provisions of the Agreement, the Parties undertake to notify – immediately, but no later than 3 working days after the day of identifying the basis – the other Party thereof and to file a request for amendments to the Agreement.

**§ 16**

**FINAL PROVISIONS**

1. Any amendments to the Agreement shall require written form, under pain of invalidity.

2. Disputes arising in relation to the performance of the Agreement shall be submitted by the Parties for resolution to a common court competent for the registered office of the Contracting Authority.

3. Matters not regulated herein shall be governed by provisions of the Civil Code, Act – Public Procurement Law and the Act on stocks.

4. The Agreement has been drawn up in electronic form in accordance with Article 781 of the Act – Civil Code, and shall enter into force as of the date its signing by the last of the Parties.

5. Contact persons in relation to the performance of the Agreement shall be:

a) on behalf of the Contracting Authority:

………………… tel.: ………, e-mail: ………

b) on behalf of the Contractor:

………………… tel.: ………, e-mail: ………

The Parties shall immediately notify each other of any change of contact persons, but the change of these persons shall not require drawing up an annex to the Agreement.

List of appendices:

Appendix no. 1 – list of Fuel Bases together with contact details of the stock-keeper and the schedule of fuel deliveries

 **CONTRACTING AUTHORITY CONTRACTOR**