



EPC+ MODULAR MODEL CONTRACT

BETWEEN

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.....
.....

WHICH IS REPRESENTED BY

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.....
.....

HEREINAFTER REFERRED TO AS CLIENT (EMPLOYER)

AND THE COMPANY

.....
.....
.....

WHICH IS REPRESENTED BY

.....
.....
.....

HEREINAFTER REFERRED TO AS CONTRACTOR (CONTRACTOR)

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§ 1 PREAMBLE – CONTRACT OBJECTIVE AND CONTRACT’S SUBJECT

§ 1 - 1 SUBJECT

The objective of this contract is to reduce energy consumption, energy costs and emissions and to increase the user comfort in the contract object.

The CONTRACTOR has investigated with help of the CLIENT and standardized and simplified processes potential savings in terms of energy consumption and energy costs (hereinafter the potential savings) in the contract object. These savings can be achieved through technical and other measures to improve the energy management and building, plant, technical equipment and properties. The CONTRACTOR has investigated the necessary investment to implement the proposed and agreed on measures.

The reduction of energy cost of the CLIENT is done by an independent guarantee-promise, in which the CONTRACTOR commits to use energy-saving measures the energy cost in the contract object of the CLIENT during the contract period in the guaranteed extend and take over the risk for the economic success of the energy saving measures. The verification of the achieved energy savings can go on by a simplified and standardized process depending on the accomplished measures e.g. measurement before and after implementation in addition with defined quality standards.

All performances must meet the generally accepted rules, being state of the art, the principle of economy and the national legislation. The performance requirements for the CONTRACTOR shall not be diminished by the expertise of the CLIENT.

The CONTRACTOR complies with the European Code of Conduct for EPC (developed within the Transparensse-project) that ensures transparency and quality for the contractual subject, whereas, if this contract and Code of Conduct are conflicting, the contract takes precedence over the Code of Conduct.

§ 1 - 2 CONTRACT’S OBJECT

Short building description:

“name”, address, use, building age, conditioned area, ...

....With reference to existing documents (plans, scheme, ...)

Italic: replace by short facility decscription

§ 2 PROJECT MANAGERS AND DISPATCHES

Project managers of the CLIENT and the CONTRACTOR for all matters concerning this contract are:

For the CLIENT:

1st Name:

Phone (direct):

E-mail:

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2nd Name:
Phone (direct):
E-mail:

For the CONTRACTOR :

1st Name:
Phone (direct):
E-mail:
2nd Name:
Phone (direct):
E-mail:

The project managers are empowered, to represent the CLIENT and respectively the CONTRACTOR in keeping with the legal regulations of representation in all business transactions, which must be in writing. The authorization includes the right to amend or supplement the contract.

It is agreed that legally effective notifications may only be delivered to the addresses hereafter. Deliveries through other addresses of the parties are not legally binding. CONTRACTOR and CLIENT arrange the following delivery addresses:

CLIENT:

Office:
Street Address:
ZIP / Town:
Phone (direct):
Direct fax:
E-mail:

CONTRACTOR:

Company:
Street Address:
ZIP / Town:
Phone (direct):
Direct fax:
E-mail:

§ 3 ASSISTANTS TO FULFILL THIS CONTRACT

The Contractor is generally entitled and free at his discretion to appoint appropriate third parties respectively partners as subcontractors and agents for the implementation of individual performances. He must inform the CLIENT in writing prior to the signature to this contract about the subcontractors. The CLIENT can refuse CONTRACTOR's subcontractors or agents for serious factual reasons and has to do so also prior to the signature to this contract.

§ 4 ANALYSIS AND PERFORMANCES OF THE CONTRACTOR

The overall performance of the CONTRACTOR is divided into preparatory services, and in the main performance. The preparatory services have already been performed prior to the signature of this contract, however they are integral part of it.

Preparatory Services: The CONTRACTOR initially created analysis for the contract object for

- 4-1 Determination of the Baseline
- 4-2 Analysis of energy savings and planning of energy measures (saving prognosis)
- 4-3 Determination of investment costs, possible foundations and saving guarantee, time schedule of implantation

Main Performance: In the frame of this contract the Contractor will perform the following duties:

- 4-4 Implementation of the planned energy measures according time schedule
- 4-5 Saving Guarantee
- 4-6. *Financing of the Investment*
- 4- 7. Proof of Savings
- 4-8. *Service and Maintenance*

§ 4 - 1 BASELINE

Basis of CONTRACTOR's analysis are surveys to define energy consumption and costs.

Depending on the planned energy measure, the total energy consumption or just concerned parts can be baseline for further energy savings (eg. lighting – just energy consumption for lighting is reference for savings and not the whole electricity consumption of the building). The reference is clearly defined through _____ (*e.g. by meterings, consumption according energy bill or other suitable bases*). *Additional associated comfort conditions, terms of use and outside conditions (heating degree days) have to be declared in detail. The relevant energy costs have to be calculated with the current energy rates according to relevant energy bills within the reference period – normally the calendar year.*

Italic: to be adapted individually

The present calculation rules for determining the baseline of energy costs (related to calendar year/accounting period, inside and outside conditions) are part of this contract and can be found in Appendix Fine Analysis – Baseline. In this appendix there is also the exact procedure for calculation of baseline energy costs (demarcation, weather-adjustment of heat energy consumption etc.) provided.

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On the basis of collected data (Appendix Fine Analysis - Baseline) the parties agree to the *year/the metering/...* as reference (*year*) and set a benchmark for the guaranteed savings of the CONTRACTOR an energy cost value expressed in amounting

Italic: to be adapted individually

to net € without VAT

§ 4-2 SAVINGS PROGNOSIS

The CONTRACTOR, respectively a professionally qualified subcontractor authorized by him, determines the savings potential, and based on this determination as a final and binding savings prognosis in terms of energy consumption and energy costs provides values his final savings prognosis. This binding savings prognosis is stated in Appendix Fine Analysis – Baseline.

§ 4-3 AMOUNT AND STRUCTURE OF THE TOTAL INVESTMENT/ TIME SCHEDULE

The investment costs include:

- **Planning / Engineering / optimization of existing equipment:**
All performances of the CONTRACTOR, which should be considered engineering or architectural services, including the commissioning or necessary default investigations.
- **Technical equipment / facilities / plant and implementation:**
All physical objects, which the CONTRACTOR brings to the contract object, as an energy-saving measure, regardless whether they are essential elements or accessories, including software, but except imaginary elements

In accordance with the CLIENT the CONTRACTOR has to generate a timetable for implementation of the measure.

§ 4-4 IMPLEMENTATION

The CONTRACTOR is obliged to implement energy saving measures for the purpose of realization of the savings potential regarding the contract object according to time schedule.

Energy costs in terms of this contract are the ones of the reference period. The statutory VAT remains generally sidelined.

All energy-saving measures of the CONTRACTOR need the acceptance by the CLIENT. After competition a formal acceptance / take over by the CLIENT must occur (c.f. §7).

§ 4-5 SAVING GURANTEE

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The CONTRACTOR guarantees to reduce the above-defined energy costs per billing period to a savings amount of _____€ according to the tariffs in the table below. The statutory VAT will remain outside the budget.

The saving is budgeted as follows:

Consumed media	Cost Savings €/a	Consumption Reduction	tariff	Performance reduction	tariff
Heat energy medium 1	€/a	MWh/a	€/MWh	kW	€/kW
Heat energy medium 2	€/a	MWh/a	€/MWh	kW	€/kW
Electrical Power	€/a	MWh/a	€/MWh	kW	€/kW
Water / Waste Water	€/a	m ³	€/m ³		
Sums	€/a				

§ 4-6 PROOF OF SAVINGS (FORMAL ACCEPTANCE)

After implementation of the measure the CONTRACTOR has to proof the achieved savings according to the M&V-concept (c.f. Appendix 1 Fine Analysis). Furthermore the CONTRACTOR has to commit the energy measure complete and without any faults for a formal acceptance by the CLIENT.

The verification of the achieved saving is depending on the measure implemented and can occur in a simplified M&V-mode or in accordance with IPMVP (International Performance Measurement and Verification Protocol, option A-D (c.f. Appendix Fine Analysis),

e.g. by metering before and after implementation, comparison of energy consumption according to energy bills or by other suitable instruments fixed in the fine analysis as part of this contract

Italic: to be adapted individually

§ 4-7 SERVICE AND MAINTENANCE OF SUPPLIED CONSTRUCTION,

Italic: Service and Maintenance is normally not part of the EPC+Contract.... If maintenance of the supplied constructions should be part of the contract this paragraph can be inserted....]

The CONTRACTOR takes over service and maintenance of the parts built by him for three years after implementation and commissioning of the investive measures. The CLIENT can cancel Service and Maintenance by the end of each year.

Maintenance for the purposes of this contract covers all measures for the establishment and determination of the real value by current technical means of a system (inspection), all measures for the restoration of the desirable technical status a system (maintenance) and measures to restore the status of technical desires through a system (maintenance) in

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the sense of (*insert a national standard, e.g. for Germany DIN 31051, for Spain Código Civil y demás normas de aplicación*) at all energy-saving measures provided by the CONTRACTOR, and also at construction works respectively in the landed property introduced or delivered systems / equipment / and plant.

Italic: to be adapted to national standards

Maintenance refers explicitly to construction services provided by the CONTRACTOR. The CONTRACTOR does not owe the maintenance (maintenance, inspection, and repair) of existing plants and plant components (old plants).

The remuneration of Service and Maintenance is defined in § 6.

§ 5 INVOLVEMENT OF THE CLIENT

The CLIENT supports the CONTRACTOR, or its subcontractors to the best of his abilities in the creation of analysis and implementation. He particularly

- ensures that the CONTRACTOR or its agents have access to the contract subject within the normal working hours,
- provides energy relevant data like energy bills, technical descriptions and schemes, data from BMS
- informs the CONTRACTOR about any change in use of the building

§ 6 REMUNERATION OF CONTRACTOR AND FINANCING

§ 6-1-V1 BASIC REMUNERATION INVESTMENT – FINANCING BY CLIENT

As basic compensation for his services, the CONTRACTOR receives the full investment at the amount of €_____ plus VAT right after formal acceptance with full proof of energy saving.

Payment conditions:

Depending on the chosen financing method the appropriate paragraph shall be kept and the inapt erased from the text

§ 6-1-V2 FINANCING BY CONTRACTOR

The CONTRACTOR is billing the whole investment right after formal acceptance with full proof of energy saving and receives installments according to the payment plan in Appendix “Payment Plan”.

§ 6-2 MODULE FORFAITING

The CONTRACTOR is allowed to sell a fixed percentage of these payments (to meet with this contract incurred investment costs connected with its execution to a finance company.

Italic: optional, only if applicable

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This percentage of the basic salary is a maximum %. The finance company will inform the CLIENT of the assignment. The CONTRACTOR shall provide the financing company with the requested authorization to announce the assignment. Until revocation of the finance company the CLIENT remains obliged to perform the assigned claims of the financing company to the CONTRACTOR, who so far is authorized collect. The CONTRACTOR will in regard to the sold claims give a renunciation of rights to object including the renunciation to the finance company of objection to account set off and withholding. The CLIENT shall make claims to reduction because of shortfall of the savings warranty under § 6 6.2's of the guaranteed success contract, exclusively towards the CONTRACTOR, but not the financing companies. The CLIENT shall upon request of the finance company allow it to inspect the approved budget, respectively it publication and make notice of the funding source available.

§ 6-3 FAILURE OF GUARANTEE PROMISE:

If the CONTRACTOR fail in the guarantee promise at the first time the CLIENT grant the CONTRACTOR an extension of *three months* to compensate the difference and proof the energy saving.

Italic: to be adapted individually

If the CONTRACTOR cannot fulfill his promise again, the CLIENT is entitled to a reduction in accordance of the failure of guarantee promise:

failure in energy saving - minus of investment

- < 10 % - minus 5 %*
- 11-30% - minus 25 %*
- 31-69% - minus 50 %*
- >70 % - minus 100 %*

This paragraph shall be adapted to the individual needs of the partnership. Attention: it represents the performance elements of the concept and should therefore not be weakened

If on the other hand, the guaranteed savings are exceeded, the CONTRACTOR participates in this result with 50%.

§ 6-4 SERVICE AND MAINTANANCE

The CLIENT pays to the CONTRACTOR the in § 6 mention remuneration for service and maintenance.

Italic: optional, only if applicable

§ 7 TAKE OVER, RISK AND OWNERSHIP TRANSFER

§ 7 - 1 TAKE OVER

All energy-saving measures of the CONTRACTOR, whether building works, other works or performances, need the acceptance by the CLIENT.

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After full and complete fault-free completion the CONTRACTOR has to seek for formal acceptance of the measures. The acceptance has to be documented.

§ 7-2 RISK TRANSFER

The risk of energy-saving measures provided by the CONTRACTOR transfers with his formal acceptance after the proof of savings (c.f. §4-6) to the CLIENT.

§ 7-3 TRANSFER OR OWNERSHIP

The ownership of technical plant / equipment / devices / that the CONTRACTOR by way of energy saving measures, either delivers or otherwise brings into the contract object transfers just with full payment of the remuneration declared in § 6 of this contract.

§ 8 CONTRACT BEGIN, BEGIN OF MAIN PERORMANCE

§ 8-1 CONTRACT BEGIN

This contract shall enter into force together with its attachments at the date of signing of the contract of both parties.

§ 8 - 2 END OF CONTRACT

The contract ends with full payment of the energy measures without requiring a notice.

*Italic: optional,
only if applicable*

The duration of the contract will be ____months, starting with the signature date of the CLIENT.

If any of the parties (CONTRACTOR OR CLIENT) needs to finish the contract before that date, this can be done upon agreement of both parties.

§ 9 LIABILITY QUESTIONS

The liability of the CONTRACTORS from or in connection with this contract is limited to damages caused by intent or gross negligence (except personal injury), the liability for pure economic loss, loss of profit and consequential damage is excluded.

The liability of the CONTRACTOR for slight negligence - except for personal injuries – is limited with 5% of the net contract sum, maximum but with EUR

§ 10 INSURANCE OF CONTRACTOR (optional)

The CONTRACTOR takes out adequate insurance against risks, which can arise in connection with this contract, and presents the insurance policies to the CLIENT. The Contractor commits to take out third party plant liability insurance, which for each casualty envisages the following compensation:

- A) package for personal injury and property damage €
- B) damage caused through environmental influences €
- C) for key losses €
- D) for pecuniary damage €

Before the proof of insurance the Contractor is not entitled to benefits from the CLIENT. The CLIENT may make payments conditional to proof of the continued existence of the insurance cover.

The CONTRACTOR is obliged to maintain liability insurance in the confirmed amount during the entire contract period. He has to evidence this to the CLIENT at his request at any time.

The CONTRACTOR is obliged to immediately give written notice when and to what extent coverage in the agreed amount does no longer exist.

§ 11 TERMINATION AND CONTRACT TERMINATION

§ 11-1 ORDINARY TERMINATION

The ordinary termination prior to the end is excluded for both sides.

§ 11-2 EXTRAORDINARY TERMINATION FOR WEIGHTY REASONS

The right to immediate termination for just cause remains unaffected for both parties.

An important reason for the CLIENT among others is given if the CONTRACTOR

- is in default and in spite of pertinent reminder with delay and threat to termination conducts himself in such coarse manner contrary to the principles supporting the total contract, that the CLIENT cannot be expected to remain bound to the contract in good faith.

An important reason for the CONTRACTOR is among others, if the CLIENT culpably

- contractually owed compensation even after the expiry of a notice threatening to terminate has not paid, or
- the use of contract object or partially or entirely abandons . A sale pursuant to section 9 is not abandonment of use in this sense, or

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- despite relevant warning with setting a deadline and threat of termination or by his other conduct so grossly violates the entire principles supporting the contract work, that the CONTRACTOR in good faith be required to adherence to this contract.

§ 11-3 WRITTEN FORM

Termination statements and setting a delay require to be in writing and addressed only to the respective delivery address (§ 2).

§ 12 SECURITIES

Because of the peculiarities of the success-guaranteed contract, the parties mutually agreed that no securities are to be provided.

§ 13 CONFIDENTIALITY

§ 13-1 CONFIDENTIALITY OBLIGATIONS.

The Parties shall hold all Confidential Information in confidence in accordance with the terms of this agreement.

§ 13-2 USE ONLY FOR THE PURPOSE.

The Parties shall use Confidential Information solely for the purpose of the implementation of the measures

.

§ 13-3 DEFINITION OF CONFIDENTIAL INFORMATION.

The term "Confidential Information" includes all information, written or oral, disclosed or made available to either party through any means of communication.

§ 14 JURISDICTION, LEGAL STATUS

The exclusive jurisdiction for any disputes arising from this contract and its attachments and resulting subsequent claims is The law of the >>COUNTRY<< applies.

Italic: to be adapted individually

§ 15 FINAL REGULATIONS

§ 15-1 PARTIAL INEFFECTIVENESS

If one clause of this contract including its attachments is or becomes ineffective, the other clauses remain effective.

§ 15-2 SALVATION CLAUSE

If one clause of this contract including its attachments is ineffective or subsequently a legal loophole is discovered, the partners shall put in place of the ineffective or missing regulation put such a clause, which economically comes closest to the loophole, considering the sense and purpose of the overall contract, which was concluded in good face, if they had known about the loophole previously.

§ 15 - 3 PUBLICATION

The CONTRACTOR is permitted to publicize this project as reference project and thereby also use photographs of the contract object and performed services.

§ 15-4 ADDITIONAL AGREEMENTS

No additional agreements besides this contract and its attachments have been entered.

§ 16 ADENDA AND CONTENTS OF CONTRACT

All of this contract and annexes and attachments

- **Appendix 1 Fine Analysis** which following content:
 - Short description of the object (building)
 - Description of the energy measure (type and scope, time schedule)
 - Baseline with refer to the bases (metering, bills,..)
 - consumption, price, period, indoor and outdoor contitions
 - Description proof of energy savings
 - M&V-concept (Incl baseline adaptions:change in usage of facilities (conditions, area, time,...), degree-day method)

• **Appendix 2 Payment Plan**

• **Appendix 3**

Attention – Limitation of Authorization!

The concluding representative of the CLIENT and the CONTRACTOR and in § 2 above mentioned project managers are not authorized to divert from the content of this approved contract together with its attachments by additional verbal agreements. Only written agreements are legally binding for the CLIENT or the CONTRACTOR.

.....,

Date

.....,

For and on Behalf of the CLIENT

.....,

For and on Behalf of the CONTRACTOR

Stamp, official seal and legally binding signature

Company Stamp and legally binding signatur