# Sales Contract

made under section 2079 et seq. of Act no. 89/2012 Coll., Civil Code

Registered with the Buyer under no.: ……….

Registered with the Seller under no.: ……….

**ARTICLE I**

**Contracting Parties**

1. innogy Gas Storage, s.r.o.

Registered Office: Limuzská 3135/12, 108 00 Prague 10

Company ID (IČ): 27892077

Tax ID (DIČ): CZ27892077

listed in the Commercial Register administered by the Municipal Court in Prague, Section C, File 124711

Bank Details: Československá obchodní banka, a.s.

Account no. 17805243/0300

Represented by: Andreas Frohwein, Chairman Managing Director

Ing. Lubor Veleba, Managing Director

(the “**Buyer**”)

and

2. ……………………..

Registered Office:

Company ID (IČ):

Tax ID (DIČ):

listed in the Commercial Register administered by ….

Bank Details:

Account no.

Represented by:

(the “**Seller**”)

**Article II**

**Subject-Matter of the Contract**

1. Under this Contract, the Seller undertakes to surrender to the Buyer items specified in Annex no. 1 Price Quotation to This Contract (the "item"); the Seller further undertakes to enable the Buyer to acquire the property right to the item.
2. The Seller also undertakes to deliver to the Buyer all documents that are necessary for the Buyer to be able to dispose freely of the item under this Contract.
3. The Seller undertakes to put the supplied items into first operation.
4. The Seller undertakes to provide technical training to the operations and maintenance staff of the Buyer at Štramberk UGS, and, if suitable, for the employees of the contractor for the assembly or for arranging for the assembly by the manufacturer. Price of the technical training is part of the Sales Price of the items.
5. The Buyer undertakes to accept the item from the Seller within the meaning of paragraph 1 of this Article and to pay the Seller the agreed Sales Price.
6. The Seller further commits to provide to the Buyer other transactions referred to in Annex no. 3 thereof - Technical Specifications. The price for performance under this paragraph is included in the Sales Price of the items.
7. The Seller and the Buyer are aware of the fact that the rights and obligations shall be governed by the relevant provisions of this Contract. The rights and obligations not provided for in this Contract are governed by the Civil Code, regulating the Sales Contract.
8. Items and other performance under this Contract will be delivered by the Seller as described above and accepted by the Buyer on the basis of the delivery note/record or similar.

Article III

Dates and Place of Performance

1. The Contractor undertakes to deliver the items in the extent specified in Article II of this Contract on the following dates:

1.1 Delivery of regenerators to Štramberk UGS: by 20.11. 2017

1.2 Guarantee testing completion: by 31.12.2017

1. The place of performance is Štramberk UGS, district Nový Jičín, Moravian-Silesian Region.

**Article IV**

**Sales Price**

1. The price of the items under Article II of this Contract is:

TEG regeneration boilers according to the Technical Specifications (Annex no. 3 of this Contract) for Štramberk UGS:

……………….. CZK excl. VAT

(in words: ……………………….. CZK)

VAT at the rate specified by the applicable law will be added to the prize.

1. This price is fixed and includes all the costs and risks associated with the Seller's delivery of the items and the provision of performance under Article II, paragraph 4 of this Contract, under condition Štramberk DAP (Incoterms 2010). The Seller declares that he acquainted himself in detail with the subject-matter hereof. The Seller accepts the risk of a change in circumstances within the meaning of Section 1765 paragraph 2 of the Civil Code.
2. The Sales Price in the amount of 100% of the price pursuant to paragraph 1 of this Article, including potential VAT, shall be paid after the delivery of the items under Article II, paragraphs 1.1 and 1.2 on the basis of a tax document - invoice and a mutually signed delivery and acceptance report. The full price will be paid on condition of the delivery of complete and accurate documents.
3. The Seller is obliged to issue a tax document - invoice on date of the chargeable event at the earliest and in 15 days of that date at the latest.
4. A delivery and acceptance report signed by authorized representatives of both Parties will an appendix to a tax document - invoice. The maturity of the tax document – invoice is 60 days from the date of delivery to the Buyer's address.
5. The Buyer’s financial obligation will be paid by non-cash bank wire transfer. The tax document - invoice will be deemed paid on the date when the payment is debited from the Buyer’s account to the account of the Seller.
6. The tax document issued to innogy Gas Storage, s.r.o. must contain the particulars of the relevant generally binding legislation, especially of Act no. 235/2004 Coll., on Value Added Tax, as amended (“Act on VAT”), as well as:
7. The designation of the financial institution and the account number (published by the Ministry of Finance) to be credited;
8. The Buyer’s registration number of the Contract 271500xxx;
9. The Seller’s registration number of the proof of purchase 4300xx;
10. The tax document will include a copy of delivery note confirmed by the authorized persons of both Contracting Parties.
11. The tax document will be delivered to the following address: innogy Gas Storage, s.r.o., Limuzská 3135/12, 108 00 Prague 10; Electronic invoices will be sent via e-mail to: [el.faktury@innogy.com](mailto:el.faktury@innogy.com).
12. The Buyer is entitled to return before the due date an unpaid invoice - tax document which fails to contain any particular under the previous paragraph of this Article or which has other defects in the content. The Buyer must indicate the reason for the return in the returned invoice - tax document. Depending on the nature of the defect, the Seller is obliged to either correct the tax document or issue a new one. On justified return of the tax document, the original maturity period ceases to run. The entire period starts running again from the date of delivery (submission) of the corrected or newly issued tax document.
13. The tax document must include the bank details of the Seller published by the tax administrator and accessible remotely in the VAT payers register. A tax document lacking these details will not be paid and will be returned without payment before its due date back, while a new maturity period will start of the date of the corrected newly issued tax document.
14. If the conditions of the provision of Section 106 of the Act on VAT (unreliable payer) have been met on the part of the Contractor or if a bank account not published in a lawful manner under the provision of Section 109 paragraph 2 letter c) of the Act on VAT is indicated on the tax document, the Client is entitled to proceed according to the provision of Section 109a) the Act on VAT, i.e. securing tax in a specific way. In such an event, the Buyer is entitled to pay a part of the financial liability in the amount of the calculated value added tax not to the Contractor’s bank account, but directly to the bank account of the relevant tax administrator, while the financial obligation of the Client to the Seller will be considered as fully settled.
15. The tax document must be produced only in A4 format, and delivered in one original to the following address: innogy Gas Storage, s.r.o., Limuzská 3135/12, 108 00 Prague 10. If the tax document is sent in the electronic form, the electronic document must be issued in accordance with Act no. 235/2004 Coll., On Value Added Tax, as amended, in particular with the provisions of its sections 29 and 34. The Seller will email a tax document in electronic form to [el.faktury@innogy.com](mailto:el.faktury@innogy.com).
16. Guarantee for performing the Work:
    1. The Seller further agrees to provide the Buyer a bank guarantee for the delivery of the items (to the place of delivery, i.e. to Štramberk UGS, in the amount of 35% of the price of the items, in the extent and on the date according to Article III, paragraph 1.1 (Performance Bond) unless the Parties agree otherwise in writing.

In the bank guarantee, the bank must undertake to the Seller to pay to the Buyer any sum or sums specified by the Buyer, not exceeding in total 35% of the price of the items (Article III, paragraph 1 of this Contract) tied to the date 20. 11. 2017 (delivery of columns and exchangers to Štramberk UGS), on the basis of a written request of the Buyer, which will include a statement of the Buyer that the Seller (debtor) failed to honour his commitment arising from this Contract (to provide supply of columns and exchangers for UGS Štramberk by 20. 11. 2017. Performance provided from a bank guarantee is used to reimburse contractual penalties, damages and unjust enrichment arising due to the Seller’s delay in delivering the items according this Contract.

* 1. The Seller further agrees to provide the Buyer a bank guarantee in the amount of 30% of the price of the items for meeting the guaranteed performance parameters specified in Annex 3 of this Contract (Performance Bond), unless the Parties agree otherwise in writing.

In the bank guarantee, the bank must undertake to the Seller to pay the Buyer any sum or sums specified by the Buyer, not exceeding in total 30% of the items (Article III, paragraph 1 of this Contract) tied to the date 31.12.2017 (successful performance of guarantee tests), on the basis of a written request of the Buyer, which will include a statement of the Buyer that the Seller (debtor) failed to honour his commitment arising from this Contract (to provide all the transactions until 31.12.2017). Performance provided from a bank guarantee is used to reimburse contractual penalties, damages and unjust enrichment arising due to the failure to meet the performance parameters of the items within the deadline in violation of this Contract.

* 1. The Seller further agrees to provide the Buyer a bank guarantee in the amount of 5% for the fulfilment of the obligations arising from liability for defects. The funds from the bank guarantee will be used to pay Contractual penalties, damages or unjust enrichment if arising due to the failure to meet the obligations of the Seller in respect of the guarantee provided for the quality of the items.

1. The Seller must deliver to the Buyer the original of the bank guarantees issued by the bank in favour of the Buyer within 30 days after the conclusion of the Contract (or from signing a preliminary order - Letter of Intent), whichever occurs first. The Performance Bond must be valid for at least 60 days after the deadline agreed for the fulfilment of the obligation secured by a given bank guarantee.

The bank guarantee must be issued by a bank with at least an A- rating by Standard & Poors or a comparable rating by Moody’s or Fitch.

The bank guarantee must be irrevocable, unconditional, non-assignable and payable at first request.

Before being made out by the bank, the authorized representative of the Buyer must approve that the draft of the bank’s written declaration (contents of the warranty bond) conforms to the provisions of this Article. The Buyer is entitled to return a draft of the bank’s written declaration that does not fulfil the above parameters to the Seller for revision and the Seller undertakes to revise it so as to be able to meet the deadline agreed upon by the Parties for handing over this bank guarantee to the Buyer.

The Seller bears all costs in connection with the issue of the bank guarantee within the meaning of this paragraph and with the bank guarantee obtaining.

**Article V**

**Acquiring the Ownership Right**

1. The ownership right to the item in terms of this Contract goes to the Buyer on the day when the Buyer takes over the item (based on a delivery and acceptance report signed by the authorized representatives of both Parties). In the same way, the ownership of performance under Article II, paragraph 4 thereof is transferred. At that moment, also the risk of damage to the item or performance passes to the Buyer.

**Article VI**

**Dispatching Advice**

1. The Seller will send an advice of the items dispatching to the address innogy Gas Storage, s.r.o., Petr Zamrazil - email: [petr.zamrazil@innogy.com](mailto:petr.zamrazil@innogy.com) and Patrik Mour, e-mail: [patrik.mour@innogy.com](mailto:patrik.mour@innogy.com) at least 2 working days (48 hours) before dispatching the items. The advice will state the date of dispatch, date of delivery and the approximate time of delivery, as well as other information additionally required by the Buyer in writing.
2. Marking

Each packaging unit /crate, box, palette, etc./ will be marked as follows:

innogy Gas Storage, s.r.o.

project name, no. of item according to the list

No. of Contract, no. of purchase document

date of delivery

Seller

**Article VII**

Technical Inspection and verification of the performance parameters

1. During the production of the ordered items, the Buyer – through his representatives - is entitled to carry out technical inspection of production and quality control in the factory of the Seller during normal working hours and within reasonable limits. The Buyer is also entitled to entrust the inspection on third party.
2. The Seller shall provide access to representatives of the Buyer to the facility where the ordered items are manufactured, in order to perform the quality control and production process inspection. The control must not disrupt the production process.
3. The materials and laboratories necessary to carry out the inspection must be provided free of charge to the Buyer’s representatives.
4. The Seller is entitled to deliver the ordered items without prior technical inspection only with the written consent of the Buyer.
5. The material costs associated with the technical inspection shall be borne by the Seller.
6. The costs of the Buyer’s representatives who carry out the technical inspection incurred in connection with the inspection shall be borne by the Buyer.
7. The Seller shall invite the Buyer to carry out the technical inspection no later than 14 days before the scheduled inspection. If the Buyer fails to carry out the inspection on time or in full, although he had received timely notice of the possibility to carry out such technical inspection, the Seller is entitled to dispatch the items without the inspection.
8. Appropriate delivery and acceptance report will be drawn up of the supply acceptance in the place of delivery stated in Article III, paragraph 2 of this Contract.
9. If the Buyer's representative arrives following the invitation of the Seller to carry out the technical inspection on a fixed date, and the inspection cannot be carried out for reasons caused by the Seller, the Seller shall bear all costs associated with the technical inspection carried out on an alternative date (travel, accommodation, daily allowances).
10. Advice on the technical inspection will be e-mailed to: patrik.mour@innogy.com, [petr.zamrazil@innogy.com](mailto:petr.zamrazil@innogy.com).
11. The parameters of the regenerators will be verified through testing the guaranteed parameters of the regenerators (Guarantee Tests) listed in the technical specification.
12. Guarantee tests will be carried out in the range of the flow rates of the gas being withdrawn, pressures and temperatures, allowed at the specified time by the condition of UGS Štramberk facility.
13. During the guarantee tests, it will be measured natural gas consumption of regenerators and quantity CO2 and NOx emissions in flue gas. Simultaneously with this, TEG will be sampled at the inlet and outlet of the regenerators, which will be sent for water content analysis.
14. The measured values will be compared with the guaranteed parameters, respectively with regulatory requirements. If any measured value included in the evaluation is equal to or lower than the guaranteed value specified by the supplier, the regenerator will be accepted by the contracting body. If any of measured value included in the evaluation is higher than the supplier guaranteed value, performance bond according to this Contract will be applied and complaint concerning the work filed.

**Article VIII**

Guaranties

1. The Seller provides the Buyer quality guarantee for the supplied items and performance provided under Article II paragraph 4 of this Contract. The warranty period is 24 months from the commissioning, but no longer than 30 months from the delivery.
2. The Buyer undertakes to inform Seller of the defects in items or performance under the previous paragraph without undue delay after discovering them in writing (by registered mail) to the address of the Seller, or by phone (confirming by registered letter), i.e. no later than 7 working days of the date when the Buyer discovered the defect or could have discovered them on exerting reasonable care. The written notice will include the specification of defects and also the claim of the Buyer that the Buyer chose in connection with claiming the Seller's liability for defects in the items sold.
3. The Seller undertakes to remove the defects in items or performance covered by the guaranty without delay before the deadline set for each case separately by agreement between the representatives of both parties. If an agreement between the representatives of both parties was not reached, the Seller shall remain liable to remove without undue delay the defects in items or performance, adequately to the extent and nature of the claimed defects, however, no later than 14 calendar days of the date of the claim by a Buyer.
4. The Seller is not liable for defects covered by the warranty, if he proves that the defect was caused by a failure of maintenance, servicing, or failure to comply with other conditions caused by the Buyer, arising out of this Contract or any accompanying documentation.

**Article IX**

Contractual Penalties and Default Interest

1. In case of delay in payment for the delivered items, the Seller may charge the Buyer a default interest at the statutory rate. Legitimately claimed interest shall be payable within 15 calendar days of the Seller’s delivering the Buyer a notice for payment in way applicable to the payment of tax documents.
2. In case of default of the Seller with the delivery of the items or services pursuant to Article III, paragraph 1 of this Contract within the delivery period (the period in Article IV, paragraph 1 of this Contract), the Seller is obliged to pay the Contractual penalty of 0.2% of the purchase price (excl. VAT) of the undelivered items and/or performance for each day of delay, up to 10% of the price of the undelivered items and/or performance. If such delay lasts longer than 7 calendar days, starting with each eighth day, the penalty increases a further 0.1% of the price of the undelivered items and/or performance for each day of delay. The Contractual penalty is payable within 15 calendar days of the date when the Seller receives a notice for the payment.
3. In case of the delay of the Seller with the removal of obvious defects of the items and/or performance, or the delay in settlement of claims within the guaranty period, the Seller is obliged to pay the penalty in the amount of CZK 2.000 for each started day of delay and for each case of delay.
4. In the event of failure to provide information on the technical inspection in accordance with Article VII of this Contract, and in the event of the failure to send a dispatching advice in accordance with Article VI of this Contract, the Buyer pays the Seller a Contractual penalty in the amount of CZK 2.000. Furthermore, the Seller shall bear the costs associated with the failure to send the dispatching advice, regardless of the amount of the Contractual penalties paid.
5. The provision of the Contractual penalty does is without prejudice to the right of the Buyer to damages. At the same time, the Parties agreed that unless otherwise provided for in this Contract, even if a Contractual penalty has been paid, damages are paid in full, however, the paid penalty is set off the damages. The Contractual penalty is payable within 30 days from the date when the other party has been called to pay.
6. Should the a Party breach the confidentiality duty under Article X of this Contract, such Party is obliged to pay the other Party a Contractual fine amounting to CZK 100 000.
7. Should the Seller breach the obligation under Article XI paragraph 4 of the Contract that at the call of the Buyer fails to submit proof of Insurance Contract concluded with the parameters specified in this Contract, the Buyers agrees to pay a penalty of CZK 10 000 for each day of delay in complying with this obligation.

**Article X**

**Confidentiality**

* + - 1. The Parties agree to maintain confidentiality of the subject of this Contract and the negotiations leading to its conclusion. The Parties further agree to maintain confidentiality of information, documents and materials (the “Confidential Information”) supplied or received in any form or provided and made available by the other Party. For the purpose hereof, Confidential Information shall also include (a) information of a business, technical and financial nature concerning the customers the Buyer and (b) information about the operation and development of the gas storage system operated by innogy Gas Storage, s.r.o. and the and access to it.
      2. The Parties agree not to disclose or make available any Confidential Information that has been provided to them to any third persons or to use it for their own needs at variance with the purpose thereof. The confidentiality obligation with respect to the Confidential Information shall be applicable during the term of the Contractual relationship between the Parties and it shall survive its termination until the Confidential Information becomes publicly available without any breach of the Contractual obligations hereunder by the obliged party. The Parties’ claims for indemnification for damage caused by breach of the obligation stipulated in this Article shall be governed by the applicable provisions of the Civil Code.
      3. The Seller agrees enter with all his employees and members of his statutory body and supervisory board and his proxy holders who have received in order to discharge the subject-matter of this Contract

1. Confidential Information of a business, technical and financial nature concerning the customers of the Buyer, and
2. Confidential information on operation and development of the gas storage system operated by innogy Gas Storage, s.r.o. and the access to it into a confidentiality agreement concerning such Confidential Information towards third parties. The confidentiality obligation concerning the Confidential Information shall be agreed as applicable both during the term and beyond its termination of the relevant relationship between the employees, members of the statutory body, supervisory board and proxy holders and the Seller.

4. The above provisions and the obligations ensuing from them shall not apply to Confidential Information:

1. whose provision or disclosure has been previously approved in writing by the other Party;
2. which the entitled party has expressly designated as public;
3. which has become publicly available without any breach of the obligations hereunder by the obliged party,
4. whose disclosure is required from the obliged party under the law or by a decision of a court, governmental authority or similar body.

**Article XI**

**Other Arrangements**

1. The Seller undertakes to deliver to the Buyer when delivering the item all the documents relating thereto which are necessary for its use, including the original of the initial audit reports, pressure tests, certificates, production documents, declaration of conformity according to Act no. 22/1997Coll., on technical requirements for products, as amended, certificates of used materials (under the applicable laws of the Czech Republic).
2. The Seller undertakes to adhere in his activities to the principles and rules set forth in the current version of the innogy Code of Conduct that is available at: <https://www.innogy.cz/o-innogy/kodex-chovani-innogy/>([www.innogy.com/lieferanten](http://www.rwe.com/lieferanten)), and, at the same time, the Seller agrees to conduct its activities in conformity to the rules and principles promoted under the United Nations Global Compact project, which are available at [www.unglobalcompact.org](http://www.unglobalcompact.org). In particular, the Seller agrees to observe rules pertaining to the protection of human rights, employment matters, environmental protection, and corruption laws.
3. The Contracting Parties hereby agree that the Business Terms and Conditions for ensuring occupational safety and health (OSH), environmental protection (EP) and fire protection (FP) (hereinafter referred to as the “Business Terms and Conditions“) of 1.10.2016, published at <http://www.innogy.cz/o-innogy/kodex-chovani/> constitute inseparable part of the present Contract. The provisions of the Terms and Conditions shall apply mutatis mutandis to the activities carried out as stated in the conditions. The Seller declares that he made himself familiar with the Terms and Conditions before signing this Contract and agrees to abide by them.
4. The Seller claims to have valid liability insurance for damage caused by a third party (insurance contract) in the amount of CZK least: 15 000 000, - or adequately at least EUR 555 000. At the same time, the Seller claims, that above mentioned insurance contract with a specified amount of insurance cover, will be maintained valid and effective for the duration of its obligations under this Contract; and this fact can be proved to the Buyer after Buyer’s request anytime, by relevant document within 10 calendar days from receipt of the request from the Buyer. In the event of failure to comply with this obligation, the Seller agrees to pay the Buyer a contractual penalty in accordance with Article IX paragraph 7 of the Contract. In the case of late submission of proof of insurance contract more than 30 calendar days, Buyer may withdraw from this Contract.

**Article XII**

**Final Provisions**

1. The legal relations between the Parties established by the Contract and not particularly provided for shall be governed by the relevant provisions of the Civil Code.
2. Any amendments to this Contract may be made only by written amendment signed by the authorized representatives of both Parties, under the penalty of their ineffectiveness.
3. This Contract will become effective upon signing by representatives of both Parties.
4. The Contract has been drawn up in three copies, each of which has the force of the original. On its signature, the Buyer receives two copies and the Seller one copy.
5. This Contract, including this provision, can be changed and amended by written amendments only, numbered in order numbers and signed by the representatives of both parties, which become an integral part of the Contract on the day of their signing by the representatives of both parties.
6. The Contracting Parties enter into this Contract based on their free and serious will. By signing this Contract, the representatives of the Parties confirm that they thoroughly acquainted themselves with the contents of the Contract and its annexes, that they fully understand these documents, and are aware of the fact that they shall be bound thereby as of the moment of the Contract’s execution.
7. When any provision of this Contract is, or becomes, partially or completely legally invalid, ineffective or incomprehensible in part or in full, this does not prejudice the validity and effect of the other provisions of this Contract. The Parties agree to replace such a provision without undue delay, no later than 30 days after ascertaining the relevant fact, with another provision the purpose of which shall as much as possible correspond to the legal and business purpose of the original provision.
8. By express agreement between the Parties, who are entrepreneurs, the provisions of Sections 1799 and 1800 of the Civil Code on the ineffectiveness of clauses in Contracts concluded in adhesive manner shall not apply. The Parties further declare that the legal relationship established under this Agreement under Section 558 paragraph 2 of the Civil Code does not take account of commercial practices, and thus business practices do not override the provisions of the law that do not have a coercive effect.

Annexes: Annex no. 1 – Price Quotation

Annex no. 2 - Business Terms and Conditions for ensuring OSH, EP and FP of 1.10.2016



Annex no. 3 - Technical Specifications

In…………. on ………………………. In…………. on ……………………….

On behalf of the Buyer: On behalf of the Seller:

…………………………. ….……..…………………………

Andreas Frohwein

Chairman Managing Director

…………………………

Ing. Lubor Veleba

Managing Director