
Contract No. 02/17/167

The present Contract is signed by and between

State Joint Stock Company “Latvijas gaisa satiksme” (LGS), VAT No. LV40003038621, with the place of business in Muzeju iela 3, Lidosta Rīga, Mārupes novads, LV 1053, Latvia, hereinafter referred to as the **Buyer**, represented by Chairman of the Board Mr. Dāvids Tauriņš and Member of the Board Mr. Elmārs Švēde, from one side,

and

Terma A/S, VAT No. DK41881828 with the place of business at Hovmarken 4, DK-8520 Lystrup, Denmark, hereinafter referred to as the **Supplier**, represented by Jesper Fammé, from another side,

Whereas the Buyer desires to modernize surface movement radar (SMR) at Airport “Riga” (RIX) (hereinafter referred to as SMR) and

Whereas the Supplier has a long and distinguished history in upgrading and modernization of such systems.

The Buyer and the Supplier hereinafter individually referred to as “the Party” and collectively referred to as “the Parties”.

NOW THEREFORE the parties agree as follows:

1. SCOPE OF THE CONTRACT

- 1.1. Within the provisions and time schedule stipulated in the present Contract the Supplier undertakes to modernize (to upgrade) the existing SMR in accordance with the all appendices mentioned in clause 1.2.2 of the present Contract.

In the present contract word **goods** means necessary equipment and installation materials required to upgrade the existing SMR.

Parties agreed that in this Contract and Appendices the term “Turn-key delivery” is understood as follows:

“Installation, including work project development, supply of all equipment, cabling and materials, integration and Fine Tuning at Site, connection to existing circuits, radar optimization, SDAT testing, site commissioning and training.”

- 1.2. The Contract consists of the following documents:

- 1.2.1. These Terms and Conditions of Contract;

- 1.2.2. Appendices to these terms and conditions of Contract:

- Appendix 1 – List of Supply

- Appendix 2 – Contract Schedule

- Appendix 3 – Price Breakdown

- Appendix 4 – Technical specification with filled out Statement of Compliance Table

Appendix 5 – Payment terms

Appendix 6 – Responsibilities of Parties

Appendix 7 – List of options

In the event of any conflict or inconsistency between any Contract Documents or Appendices, they shall be interpreted in the order of precedence as set out above.

- 1.3. The Supplier shall be deemed in compliance with the contractual obligations stated hereunder insofar it performs in accordance with clause 1.1 and 1.2 of this Contract.

2. RIGHTS AND OBLIGATIONS OF THE CONTRACTING PARTIES

2.1. The Supplier's obligations according to this Contract consist of:

- 2.1.1. Turn-key delivery and installation of goods for upgrade of existing SMR sensor and integration of upgraded SMR in accordance with the agreed List of Supply (**Appendix 1**);
- 2.1.2. Turn-key delivery and installation of goods for upgrade of existing SMR sensor and integration of upgraded SMR within the agreed Contract Schedule and Price Breakdown (**Appendices 2 & 3**);
- 2.1.3. Turn-key delivery and installation of goods for upgrade of existing SMR sensor and integration of upgraded SMR in accordance with the Supplier's Technical proposal and Statement of Compliance Table (**Appendix 4**);
- 2.1.4. Activities under Supplier's responsibility are listed in **Appendix 6**;
- 2.1.5. Delivery and/or installation of any items against separate Purchase order issued by Buyer in accordance with the List of options (**Appendix 7**);
- 2.1.6. Training provision at factory and on-site in accordance with the Supplier's Technical proposal and Statement of Compliance Table (**Appendix 4**);
- 2.1.7. Provision of factory acceptance testing in accordance with the Supplier's Technical proposal and Statement of Compliance Table (**Appendix 4**);
- 2.1.8. Radar optimization and site commissioning activities;
- 2.1.9. Provision of site acceptance testing in accordance with the Supplier's Technical proposal and Statement of Compliance Table (**Appendix 4**);
- 2.1.10. 3 –year warranty and after-sales service.

2.2. The Buyer's obligations are as follows:

- 2.2.1. Render payment in accordance with the Payment Terms of **Appendix 3**.
- 2.2.2. Activities under Buyer's responsibility are listed in **Appendix 6**.

2.3. The Buyer's rights are as follows:

2.3.1 To order any item of Appendix 7 by means of separate Purchase Order.

3. PRICE AND PAYMENTS

- 3.1. The Total Contract Price included options for the modernization of existing SMR system is **EURO 550 000** (five hundred fifty thousand Euro) in accordance with Price Breakdown structure (**Appendix 3**).
- 3.2. Pricing in **Appendix 3** does not include any value-added taxes or customs duties (regarding the 6th directive No 77/388/EEC (The 17th of May, 1977) of Council of Europe), or any other duties or taxes levied by the Buyer's country, all of which are the responsibility of the Buyer.
- 3.3. All payments shall be made in EURO in accordance with the payment terms stipulated in **Appendix 5** to the Supplier's Bank account.
- 3.4. All taxes, duties and other fees levied by the Supplier in connection with the execution or performance of the Contract shall be borne by the Supplier.
- 3.5. All other taxes, duties and fees levied by any other Government on either the Buyer or the Supplier in connection with the execution or performance of the Contract shall be borne by the Buyer.
- 3.6. All payments would be paid against corresponding invoices according to **Appendix 5** within **30 days** for related payments counting from the day of the invoice receiving by Buyer.
- 3.7. If the Buyer fails to fulfil his obligations in proper way and within the agreed time schedule starting from the next day after the agreed day of payment (Clause 3.6) the Buyer shall pay the penalty fee **0,2%** (zero point two percent) of the outstanding amount per each day of delay. The penalties for delay in aggregate shall not exceed **10%** (ten percent) of the delayed payment. Payment of penalty fee shall be in full compensation of any claim from the Supplier with respect to Buyer's liability for delay and shall be exclusive of any other kind of damages of whatsoever nature.
- 3.8. The Parties agree that the invoice for any contractual payments could be made electronically as a scan from original invoice and would be sent as the standard mail to the e-mail address: lgs@lgs.lv. The original invoice would be sent by post service to the Buyer.

4. DELIVERY

- 4.1. The Supplier undertakes to deliver and install corresponding goods to upgrade SMR in accordance with Contract Terms and Conditions of all Appendices listed in clause 1.2.
- 4.2. The Supplier undertakes to deliver the goods according to the agreed Delivery Schedule of **Appendix 2**, which is an integral part of this contract.
- 4.3. The delivery and transfer of risk shall be according to DAP (INCOTERMS 2010). Supplier covers delivery costs and they include insurance from place of dispatch to the place of destination, transportation and other duties in accordance to the DAP rules.

4.4. Goods shall be delivered to the

SJSC "Latvijas gaisa satiksme"

Muzeju iela 3, Lidosta Rīga,

Mārupes novads,

LV-1053

Latvia

- 4.5. Transportation of goods shall be done by Supplier up to Riga SMR site by means of Buyer guidance within security area of Int. Airport "Riga".
- 4.6. The Supplier is responsible for goods transportation to the installation destination, as well as providing insurance for said goods.
- 4.7. All risks of accidental losses pass to the Buyer as soon as goods are delivered to the place of destination.
- 4.8. The Supplier shall inform the Buyer of the anticipated goods delivery date by fax at least three (3) working days before the dispatch. The delivery date is the day when the goods are received in Riga SMR site.
- 4.9. The Supplier shall specify the dimensions, weight and type of each package materials. Each package shall be supplied with detailed price breakdown for delivered goods.
- 4.10. If the Supplier fails to fulfil his obligations in proper way and within the agreed time schedule starting from the **30th day** after the agreed day of goods delivery (Clause 4.2 and 8.3) and SAT completion after stage 1 and stage 2 (**Appendix 2**), the Supplier shall pay the penalty fee **0,2 %** (zero point two percent) from the delayed deliverable price per each day of delay. The penalties for delay in aggregate shall not exceed **10 %** (ten percent) of the Contract price.
- 4.11. Delivery term could be adequately extended, and acceptance dates correspondingly postponed whenever a delay is due to late receipt of required governmental approvals and clearances, or to any act, omissions or delay on the part of the Buyer with regard to its obligations.
- 4.12. If such delay is due to reasons attributable to the Buyer, the Supplier shall have the right to claim reimbursement from the Buyer of costs incurred thereby, for which the Supplier must provide documentary evidence.

5. TRAINING

- 5.1. Supplier must provide training in accordance with **Appendix 4**. Dates and duration of those training sessions are defined in accordance with **Appendix 2 and Appendix 4**. The Buyer and Supplier shall agree training programs one month before respective training session commences.

6. FACTORY ACCEPTANCE TEST

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- 6.1. Tests for the purposes of Factory Acceptance Test (FAT) of the goods shall be carried out at the Supplier's facility where the goods are to be in operation for the purpose of testing functional and technical characteristics in real exploitation conditions, in accordance with the requirements of this Contract and the Technical Specification (**Appendix 4**). The Supplier agrees to cover all expenses related to FAT for three Buyer's specialists (excluding travelling and accommodation expenses).
 - 6.2. FAT shall be performed in accordance with FAT specification agreed by both of the parties. The Supplier shall transmit the FAT specification to the Buyer two months before FAT. The Buyer shall be allowed to carry out evaluation of FAT specification and introduce one month prior to the schedule commencement of FAT supplemental revisions to the final version of the FAT specification. If the Buyer does not make any revisions to the FAT specification at the end of the one month period, such FAT specification shall be deemed as accepted by the Buyer.
 - 6.3. In the event of a successful completion of FAT, a representative of the Buyer shall sign a Certificate of acceptance of successful FAT.
 - 6.4. An acceptance test would be rejected if the System does not successfully pass the testing in accordance with the FAT specification. A rejected FAT shall require repeated test covering the specific area where the upgraded system failed originally, or in whole, if so required by the Buyer. After remedial steps are taken and before announcing a repeated test, the Supplier will provide a written report of the steps taken and present the results of the repeated internal test.
 - 6.5. In the event that the first FAT is not successful in accordance with the FAT specification, the Supplier agrees to cover all expenses for any subsequent testing required to pass FAT, including accommodation and travel expenses of three Buyer's specialists to and from the place where FAT will be carried out, as well as accommodation expenses.
 - 6.6. Supplier undertakes to inform the Buyer of place and time of recurrent FAT in written form at least one month prior recurrent FAT.
 - 6.7. If the Buyer does not witness the FAT, the FAT shall be executed and upon successful completion, the Certificate of successful FAT will be signed by Supplier's Quality Department on behalf of the Buyer.

7. SITE ACCEPTANCE TEST

- 7.1. Testing for the purposes of Site Acceptance Test (SAT) of the upgraded equipment shall be carried out at the site(s) where the goods shall be installed for the purpose of testing functional and technical characteristics in real exploitation conditions, in accordance with the requirements of this Contract and the Technical Specification (**Appendix 4**).
- 7.2. SAT shall be performed in accordance with specification agreed by both parties. Drive Test is an integral component of SAT session. The Supplier shall transmit the SAT specification to the Buyer two months prior to the commencement of SAT. The Buyer shall be allowed to evaluate the SAT Specification and introduce revisions to the final version of the SAT specification one month prior to the commencement of SAT.

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- 7.3. In the event of a successful SAT a representative of the Buyer shall sign a Certificate of successful SAT.
 - 7.4. In the event that the SAT is not successful in accordance with the SAT specification, the Supplier agrees to cover all expenses for repeated test covering the specific area where the system failed originally
 - 7.5. An acceptance test will be rejected if the System does not successfully pass the testing in accordance with the SAT specification. A rejected SAT will require repeated test covering the specific area where the system failed originally, or in whole, if so required by the Buyer. After remedial steps are taken and before announcing a repeated test, the Supplier will provide a written report of the steps taken and also present the results of the repeated internal test.

8. WARRANTIES

- 8.1. The warranty period shall be 36 (thirty six) months from the date of signing (by both Parties) of Certificate of successful SAT session of SMR modernization according to **Appendix 4**.
- 8.2. For repairs performed and parts replaced the Supplier shall warrant to the same extent as for the original goods. Warranty period start from date of repair or replacing.
- 8.3. Defective units shall be returned to the Supplier in its original packing when an RMA (Returned Material Authorization) number has been issued. The Supplier shall organize the warranty repair and be responsible for delivery of the repaired unit to the Buyer (DAP Riga, Latvia (Muzeju iela 3, Lidosta Rīga, Mārupes novads, LV-1053, Latvia, Latvijas gaisa satiksme, VAS) within 30 (thirty) days from the day the faulty unit is received. All shipping and insurance costs shall be borne by the Supplier.
- 8.4. This warranty does not cover the repair or replacement of any part or parts, which fail due to normal wear and tear or as a result of improper handling or storage, excessive stress, unauthorized repair or negligent maintenance.
- 8.5. In the event that any parts are delivered with discrepancy to the agreed List of Supply according to **Appendix 1**, those parts shall be replaced with the proper ones by the Supplier.
- 8.6. All parts shall be delivered in separate cardboard packages to avoid damage.

9. OWNERSHIP

- 9.1. All rights transferred to the Buyer are included in the Total Contract Price.
- 9.2. Ownership of the hardware purchased under this Contract shall remain with the Supplier until the total purchase price is paid in full.
- 9.3. The Supplier guarantees that the products do not infringe any patent rights trade marks or other legally protected rights.

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- 9.4. The Supplier undertakes at his own expense to defend the Buyer and hold the Buyer harmless if claims are made or legal proceedings are instituted against the Buyer in case of infringements.

10. LIABILITIES

- 10.1. To the full extent permitted by law, and apart from the warranties expressly stated herein, the Supplier hereby disclaims all warranties, representations, and liabilities, whether express or implied, arising from contract or tort (except fraud), imposed by statute or otherwise, relating to the goods and services provided by the Supplier pursuant to the Contract.
- 10.2. In no event shall the sum total of liabilities incurred by any one Party to the Contract exceed a maximum cumulative amount equal to the Contract Price.
- 10.3. Neither Party shall be liable, in contract, tort (including negligence and strict liability) or otherwise howsoever, and whatever the cause thereof, (i) for any direct loss of profit, business, contracts, revenues, wasted expenditure, anticipated savings, loss of data including their re-establishment or loss of goodwill or (ii) for any special (including multiple or punitive), indirect or consequential losses or damages of any nature whatsoever.

11. INTELLECTUAL AND INDUSTRIAL PROPERTY

- 11.1. The Buyer is granted royalty-free, irrevocable, non-exclusive license to use the software supplied under this Contract. The Buyer may use the software on any and all of the Buyer's processing units of the system configurations whether owned, leased, rented or otherwise under the control of the Buyer relating to the system only. Such licence shall be effective from the date of coming into force of this Contract and shall cease when the Buyer discontinues the use of said software.
- 11.2. The Supplier shall remain the owner of the software. Title of the hardware shall pass to the Buyer at the time when complete payment of the Contract Price has been effected.
- 11.3. With respect to software delivered, the Buyer's rights to use the software shall be limited to:
- a) The use with the computers for which they were acquired, only within the scope of this Contract.
 - b) The copying for safe keeping (archives) or backup purposes.
 - c) After the end of the warranty period, modification of the software, or combination with other software, with the prior written authorization of the Supplier under the Buyer's responsibility.

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- 11.4. The Buyer agrees to safeguard the proprietary rights of the Supplier with the same degree of care as for its own.
- 11.5. The Buyer's employees or agents will not divulge, transfer, assign, sell, licence, franchise, sublease or otherwise convey the Software or any portion thereof whether in printed, magnetic or any other form to any third party, person or organization except as may be specifically agreed to in writing by the Supplier.
- 11.6. The Supplier guaranties that the goods do not infringe any patent rights, trade marks or other legally protected rights.
- 11.7. The Supplier shall hold harmless and protect the Buyer against any and all claims which might be based on the alleged infringement of patent rights as a consequence of the use and/or disposal in any manner by the Customer of the goods, provided that the Buyer shall give the Supplier the opportunity to defend and settle under the responsibility of the Supplier any lawsuit in this respect and that the Buyer shall refrain from making any admission, declaration or arrangement with the third party raising such claims. Such indemnity shall not cover any use of the goods otherwise than for the purpose indicated by the Contract.
- 11.8. Should a court or an arbitrator finally establish that there has been a patent infringement or should the Supplier consider that the goods it has delivered could be the subject of a claim or suit for infringement, then the Supplier may choose one of the following solutions:
- To obtain the right, at its own expense, for the Buyer to continue the use of the delivered goods,
 - To substitute equivalent equipment for the infringing goods,
 - To modify infringing equipment so as to eliminate the infringement.
- 11.9. The Buyer on its part warrants that any design or instructions furnished or given by it shall not be such as will cause the Supplier to infringe any letters patent, registered design, trademark or copyright in the performance of the Contract. The Buyer shall, in this respect, hold harmless and protect the Supplier in the same way as provided under clause 11.7 hereinbefore.

12. ORDER TO ENSURE SAFETY AND QUALITY REQUIREMENTS IN PUBLIC PROCUREMENT

- 12.1. Supplier shall ensure setting up an occurrence reporting system and delivery of reports to Buyer about the provided services.
- 12.2. Supplier shall ensure a full investigation of all occurrences and submission of the final report to Buyer.
- 12.3. Upon request of the Buyer, the Supplier shall allow possible audit on the safety and quality of the provided services in compliance with the Commission Implementing Regulation (EU) No 1035/2011 of 17 October 2011 laying down common requirements for the provision of air navigation

services. Cost of such audit is not included in the scope of this agreement and would need to be mutually agreed.

13. FORCE MAJEURE

- 13.1. The Supplier is relieved of the responsibility for failure to fulfil fully or partially his obligations in case of force majeure such as fire, flood, earthquake, strike, war, mobilization or unforeseen military call-up of comparable magnitude, requisition, confiscation, revolt or riot, general reductions in power supplies, sabotage, epidemics, quarantine restrictions, freight embargoes and any event beyond the Supplier's control such as any governmental decision, any refusal, cancellation or non-renewal of any export license or permit from government or other authority required for the sale of all or part of the Products or the purchase of the components /parts/ materials required for their manufacture.
- 13.2. In case of occurrence of any force majeure event, the Supplier must notify in written form the Buyer of the beginning and ending of such circumstance.
- 13.3. Such notice shall be given not later than 15 days after the occurrence of the force majeure event.
- 13.4. The parties shall decide upon a new delivery plan that shall not be extended more than is due to the force majeure cause, also provided that The Supplier makes its best effort to minimize the delay and the effects of that delay.
- 13.5. The certificates issued by the relevant authority or office of the Supplier's or his sub-contractor's country, respectively, must be regarded as a sufficient evidence of the presence of such circumstances and their duration.
- 13.6. If these circumstances continue over a period of more than 1(one) months, each of the parties has the right to refuse further fulfillment of his obligation against this Agreement and in this case neither of the parties is entitled to demand from the other party compensation for possible losses.

14. ALTERATIONS AND ADDITIONS

- 14.1. All changes and additions affecting the technical and functional contents of the Contract, or affecting the contractual time schedule and defined costs, responsibilities and other assumptions and conditions, will always be specified by written agreements between the Buyer and the Supplier.
- 14.2. Contracting parties can organize meetings in place agreed by Parties for discussing all changes, additions or other questions concerning technical and functional contents.
- 14.3. Both the Buyer and the Supplier will have the right to request changes to the Contract and Contractual agreements and obligations. All such requests shall be in writing.

15. COMMENCEMENT AND TERMINATION

- 15.1. This Contract is entering into effect after signing of the contract by both Parties.
- 15.2. This Contract shall be terminated as both parties have fulfilled their obligations under the present Contract.

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- 15.3. This supersedes all other agreements, oral or written, heretofore made with respect to the subject hereof and the transactions contemplated hereby and contain the entire contract of the parties with respect to the subject matter hereof.

16. ARBITRATION

- 16.1. Any dispute arising in the execution or performance of the present Contract shall be settled through amicable consultations between both parties.
- 16.2. If the parties will not come to such an agreement about solution of disputes or differences during 30 working days in the way of discourse, any dispute, differences or claim what is consequent to this Agreement, affect it or that contravention, finishing, modification, translation or validity and/or invalidity dispute, including any question regarding its existence, validity or termination, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. Such arbitration proceedings will take place in Stockholm, Sweden, and the procedural language shall be English. The arbitrators and the legal counsels of the Parties shall be fluent in English. The decision(s) of the arbitration tribunal shall be final and binding upon the Parties.

17. GOVERNING LAW

- 17.1. This Contract as well as the questions arising out of or in connection with the present Contract are governed and constructed in accordance with the laws of Sweden. In case of contradictions between the rules of INCOTERMS 2010 and laws of Sweden, the INCOTERMS 2010 will prevail.

18. MISCELLANEOUS PROVISIONS

- 18.1. This Contract may be terminated by mutual agreement between Buyer and Supplier after proper compensation to Supplier for work already executed or engagements made by him in accordance with this Contract.
- 18.2. Either party may terminate this Contract upon written notice if the other party seriously breaches any of its terms or provisions. Termination for a serious breach shall be without prejudice to the terminating party's other rights and recourses.
- 18.3. If the Supplier is the initiator of the Contract breaking it must finish the service according to this Contract and **Appendix 4**, which is integral part of the Contract.

19. CONTACT PERSON

- 19.1. For the purpose of this Contract, the Buyer's contact for contractual matters and for signing all kinds of the acceptance certificates will be Mr. Aleksejs Javorskis (e-mail: aleksejs.javorskis@lgs.lv, phone: +371 26551145, +371 67300721).

19.2. For the purpose of this Contract, the Supplier's contact for contractual matters and for signing all kinds of the acceptance certificates will be Jesper Fammé (e-mail: jefa@terma.com, phone: +45 8743 6000).

20. SIGNING

This contract is produced as two original copies in the English language. Each party has one copy. Each contract consists of 12 pages, Appendix No. 1 consists of 2 pages, Appendix No. 2 consists of 3 pages, Appendix No. 3 consists of 6 pages, Appendix No. 4 consists of 105 pages, Appendix No. 5 consists of 3 pages, Appendix No. 6 consists of 4 pages and Appendix No. 7 consists of 2 pages.

Signing for and behalf of:

SUPPLIER:

Terma A/S

VAT No. DK41881828

Hovmarken 4
DK-8520 Lystrup
Denmark

(signature)

Jesper Fammé, Sales Manager
Date: November 23, 2017
Place: Aarhus, Denmark

BUYER:

**State Joint Stock Company
"Latvijas gaisa satiksme"**

VAT No.40003038621

Airport "Riga"
Marupe Municipality, Latvia, LV-1053

(signature)

Dāvids TAURINŠ, Chairman of the Board
Date: November 15^h, 2017
Place: Marupe Municipality, Latvia

(signature)

Elmārs ŠVĒDE, Member of the Board
Date: November 15, 2017
Place: Marupe Municipality, Latvia