



Commission Staff Report – *DRAFT*

DATE: April 26, 2017

COMMISSION MEETING DATE: May 25, 2017

SUBJECT: Andritz Hydro – Five Year Equipment Supply Agreement for OEM equipment and supplies at Collierville Power House; Applicable to the following projects: NCPA Hydroelectric facilities

AGENDA CATEGORY: Consent

FROM:	Ken Speer	METHOD OF SELECTION:
	Assistant General Manager	N/A
Division:	Generation Services	<i>If other, please describe:</i>
Department:	Hydroelectric	

IMPACTED MEMBERS:		
All Members <input type="checkbox"/>	City of Lodi <input checked="" type="checkbox"/>	City of Ukiah <input checked="" type="checkbox"/>
Alameda Municipal Power <input checked="" type="checkbox"/>	City of Lompoc <input checked="" type="checkbox"/>	Plumas-Sierra REC <input checked="" type="checkbox"/>
Bay Area Rapid Transit <input type="checkbox"/>	City of Palo Alto <input checked="" type="checkbox"/>	Port of Oakland <input type="checkbox"/>
City of Biggs <input type="checkbox"/>	City of Redding <input type="checkbox"/>	Truckee Donner PUD <input type="checkbox"/>
City of Gridley <input type="checkbox"/>	City of Roseville <input checked="" type="checkbox"/>	Other <input type="checkbox"/>
City of Healdsburg <input checked="" type="checkbox"/>	City of Santa Clara <input checked="" type="checkbox"/>	<i>If other, please specify.</i>

RECOMMENDATION:

Approve Resolution 17-XX authorizing the General Manager or his designee to enter into a multiple year Amended Terms and Conditions Agreement with Andritz Hydro for electromechanical parts and equipment for the Collierville powerhouse, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$2,500,000 over five years for use at the hydroelectric facilities owned and/or operated by NCPA.

BACKGROUND:

Andritz Hydro is the original equipment designer, manufacturer, and supplier (OEM) for the major electromechanical components of the Collierville powerhouse. OEM equipment supply (spare and replacement parts) and consulting services (design review, root cause investigation, troubleshooting, upgrade integration) are routinely needed at the hydroelectric facilities in order to maintain the reliability of the facilities. Terms and Conditions for Limited Scope of Equipment Supply Rev2012.08.22 supersedes prior terms and conditions agreement Rev2009.07.03 signed May 9, 2012.

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not to exceed \$2,500,000 over five years to be used out of NCPA approved budgets as services are rendered. Purchase orders referencing the terms and conditions of the Agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. As Andritz Hydro is the original equipment provider, there are no other enabling agreements of this exact nature; however, third-party fabrication of custom parts can be sought from other vendors. Bids are awarded to the lowest cost provider. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

ENVIRONMENTAL ANALYSIS:

This activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a “project” for purposes of Section 21065 the California Environmental Quality Act. No environmental review is necessary.

COMMITTEE REVIEW:

Committee Review Pending.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution
- Multiple year terms and conditions agreement with Andritz Hydro

RESOLUTION 17-XX

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY
APPROVING AN EQUIPMENT SUPPLY AGREEMENT WITH ANDRITZ HYDRO**

(reference Staff Report #xxx:17)

WHEREAS, the Northern California Power Agency (NCPA) requires periodic equipment supply such as spare and replacement parts for the hydroelectric generation facilities in order to maintain the reliability of the facilities; and

WHEREAS, Andritz Hydro is the original equipment designer, manufacturer, and supplier for many of the major electromechanical components of the hydroelectric facilities; and

WHEREAS, NCPA seeks to enter into a 5 year terms and conditions enabling agreement with Andritz Hydro, in an amount not to exceed \$2,500,000 over five years; and

WHEREAS, NCPA will use purchase orders associated with this Services Agreement and utilize approved Generation Services budgets and procurement procedures; and

WHEREAS, this activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a "project" for purposes of Section 21065 the California Environmental Quality Act. No environmental review is necessary;

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency adopts the Terms and Conditions Agreement with Andritz Hydro with any non-substantial changes approved by NCPA General Counsel, which shall not exceed \$2,500,000 over five years.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2017 by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	_____	_____	_____
BART	_____	_____	_____
Biggs	_____	_____	_____
Gridley	_____	_____	_____
Healdsburg	_____	_____	_____
Lodi	_____	_____	_____
Lompoc	_____	_____	_____
Palo Alto	_____	_____	_____
Port of Oakland	_____	_____	_____
Redding	_____	_____	_____
Roseville	_____	_____	_____
Santa Clara	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

BOB LINGL
CHAIR

ATTEST: CARY A. PADGETT
ASSISTANT SECRETARY

Amendment to
Terms and Conditions for Limited Scope of Equipment Supply Rev 20120822
Between Andritz Hydro and Northern California Power Agency

This Amendment is entered into by and between Andritz Hydro ("Andritz") and Northern California Power Agency ("NCPA" or "Client"), as of _____, 2017, to amend Andritz Hydro Terms and Conditions for Limited Scope of Equipment Supply Rev 20120822 ("Base Contract"), to which the Amendment is attached. Andritz and NCPA agree as follows:

1. Duration of Agreement.

The Base Contract and this Amendment (collectively, "the Amended Contract") shall begin on the Effective Date and shall end five (5) years from the date indicated in the paragraph above, unless the term of the Amended Contract is otherwise terminated or modified in writing, as provided for herein. If the providing the Equipment (as defined in the Base Contract) under a specific Purchase Order extends beyond the five (5) year term of the Amended Contract, then the term of the Amended Contract shall be extended solely for and until provision of the Equipment under that Purchase Order.

2. Applicability.

Notwithstanding any other provisions of the Base Contract, in the case of any conflict or inconsistency between this Amendment, the Base Contract, the Quote from Andritz and the Purchase Order issued by NCPA, then the following Order of Precedence shall control (number "1" being the highest hierarchy of the documents): (1) the terms and conditions of this Amendment; (2) the terms and conditions of the Base Contract; (3) NCPA's Purchase Order.; and (4) Andritz Quote to supply;

3. Compensation. Agency hereby agrees to pay Andritz for the Scope of Services under the Amended Contract, whether by fixed price, hourly rates subject to a fixed rate schedule with a not to exceed amount, or other basis as may be described in the applicable Base Contract. Total compensation for Services provided, including equipment and supplies, costs and any other expenses under this Amended Contract, NOT TO EXCEED TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000). The compensation amount set forth is not a guarantee that Agency will pay the full amount to Andritz but, instead, a limitation of the total expenditures authorized by this Amended Contract.

4. Risk of Loss.

A. All risk of loss or damage to the Equipment will pass from Andritz to Client upon delivery of the Equipment DDP to Client's site, located at 477 Bret Harte Dr., Murphys, CA, regardless of whether title has passed to the Client, transportation is arranged or supervised by Andritz, or erection or start-up is carried out under Andritz' supervision or direction.

B. If Equipment delivery is delayed due to any of the reasons described in Article 3 of the Base Contract, the risk of loss shall not pass to Client until actual delivery is made DDP and Client shall have no responsibility or liability for the Equipment, whether as to storing, insuring or any related costs, until actual delivery DDP.

5. **Instruments of Service.**

Any reports, drawings, specifications, filed date and other documents, including those in electronic form prepared and/or submitted by Andritz to Client ("Instruments of Service") on which Andritz wishes to maintain confidentiality or otherwise restrict Client's ability to copy, reproduce or disclose to third parties shall be marked as Confidential by Andritz prior to Andritz providing such Instruments of Service to Client. Client shall endeavor to maintain the confidentiality of such duly marked Instruments of Service consistent with applicable law.

6. **Dispute Resolution, Mediation, Governing Law, Jurisdiction, Venue, Limitations Period.**

In the event of any Dispute, the Parties shall attempt in the first instance to resolve such Dispute through good faith negotiations between the Parties. If such consultations do not result in a resolution of the Dispute within thirty (30) days after written notice of a Dispute is delivered by either Party, then the parties agree that all claims properly raised be submitted to Mediation. The parties will select an impartial Mediator together who is a licensed attorney. This Mediation is to be held at a neutral site and the costs of the Mediator and Mediation shared equally by the parties. The Mediation shall be conducted within 45 days after written demand by one of the parties. Only after an impasse is reached at mediation is either party entitled to initiate an action to enforce this Amended Contract as provided below. The Parties agree to attempt to resolve all Disputes arising hereunder promptly, equitably and in a good faith manner. The Base Contract and this Amendment shall be governed by the laws, substantive and procedural, of the State of California. Exclusive jurisdiction and venue for any mediation, litigation or other disputes shall lie in Placer County Superior Court and/or in the United States District Court, Eastern District of California or such state and federal court in which Client's facility is located. Any causes of action between the Parties will have accrued and the applicable statute of limitations will commence to run not later than the earlier of (1) the Delivery Date as extended under Article 3 of the Base Contract; (2) the date on which the Equipment is delivered to the Client DDP; (3) the date on which the Base Contract and/or this Amendment is breached; or (4) the date on which the Amended Contract is terminated.

7. **Indemnification.**

A. Client shall indemnify and hold harmless Andritz from any and all claims, damages, losses and expenses (including attorneys' and consultants' fees) to the extent caused by Client's negligence and arising out of or related to the Equipment, including but not limited to any claims for bodily injury, sickness, disease, or death, or to injuries or claims related to the removal, handling or use of any hazardous materials, except to the extent that such claims, damages, losses or expenses are caused by Andritz' sole or gross negligence.

B. Andritz shall indemnify and hold harmless Client from any and all claims, damages, losses and expenses (including attorneys' and consultants' fees) to the extent caused by Andritz' negligence and arising out of or related to the Equipment, including but not limited to any claims for bodily injury, sickness, disease, or death, or to injuries or claims related to the removal, handling or use of any hazardous materials, except to the extent that such claims, damages, losses or expenses are caused by Client's sole or gross negligence.

8. Insurance.

Andritz shall maintain commercial general liability insurance for the term of the Base Contract and Amendment, including products liability, covering any loss or liability, including the cost of defense of any action for bodily injury, death, personal injury and property damage which may arise out of the performance of the underlying Purchase Order. The policy shall provide a minimum limit of \$1,000,000 per occurrence/\$2,000,000 aggregate.

The Parties have executed this Amendment as of the date indicated on the 1st page of this Amendment.

NORTHERN CALIFORNIA POWER AGENCY

Date: _____

Randy S. Howard, General Manager

ANDRITZ HYDRO CORP.

Date: 3/30/2017



CARLOS TORRES, Co-President

Attest:

Assistant Secretary to the Commission

Approved as to Form:

General Counsel

ANDRITZ HYDRO TERMS AND CONDITIONS FOR LIMITED SCOPE OF EQUIPMENT SUPPLY

Rev Aug 22, 2012

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start-up is carried out under Andritz' direction or supervision.

ARTICLE 1 THE CONTRACT

1.1 Definition. The Contract consists of the following documents: (1) these Terms and Conditions; (2) the terms and conditions specified in Andritz' Offer; (3) the plans, specifications, or other documents, if any, incorporated by reference in Andritz' Offer; and (4) additional terms, if any, that Andritz approves in writing.

1.2 Varying Terms. Andritz hereby gives notice of its objection to and rejection of any terms that are different from or in addition to those described in **Paragraph 1.1.**

ARTICLE 2 EQUIPMENT AND PRICE

2.1 Equipment. The "Equipment" consists of the products, goods, materials, and equipment specified in Andritz' Offer.

2.2 Price. The "Price" is specified in Andritz' Offer and is the compensation that the Client must pay to Andritz in exchange for the Equipment. Unless stated otherwise in Andritz' Offer, the monetary units of the Contract are U.S. Dollars and exclusive of all State or Local taxes which must be collected from Client.

ARTICLE 3 DELIVERY DATE

3.1 Definition. The date(s) for delivery of the Equipment ("Delivery Date") specified in Andritz' Offer is approximate and will be extended on account of delays arising from: (1) the Client's failure to timely provide information required by Andritz to perform the Contract; (2) hindrances beyond Andritz' control such as those occurring in the works of Andritz' suppliers or third parties, epidemics, acts of civil or military authority, mobilization of armed services, war, riots, strikes, boycotts, picketing, lock-outs or other disturbances, breakdowns, accidents, labor conflicts, delayed or deficient delivery of necessary raw materials or semi-manufactured and manufactured products, scraping of components due to defective casting, official or other measures of whatever kind, transport difficulties, natural catastrophes, and acts of God; (3) the Client's failure to timely fulfill any of its obligations under the Contract; or (4) as agreed by Andritz and the Client.

ARTICLE 4 TERMINATION

4.1 Client's Right to Terminate. The Client may terminate the Contract in whole or in part, for any or no reason, by giving written notice of the termination to Andritz. Within three business days after receipt of the Client's notice, Andritz must stop performance of the Contract except as otherwise directed by Client.

4.2 Andritz' Right to Terminate. Andritz may terminate the Contract upon three-days' notice to the Client if: (1) the Client fails to timely perform any obligation under the Contract; or (2) any proceeding is brought against the Client, voluntarily or involuntarily, under applicable bankruptcy or any insolvency laws. Andritz' rights under this **Article 5** are in addition to its rights at law or in equity.

4.3 Termination Payment. If the Contract is terminated, the Client must pay to Andritz immediately upon the presentation of an invoice: (1) the agreed unit prices for Equipment (or components or units of components) delivered and work completed prior to the date of termination; (2) **15% Overhead + 10% Profit** of the difference between the Price and the sum of payments (if any) made prior to the date of termination plus the amount specified in item (1); and (3) the other costs and expenses, including cancellation charges under subcontracts, that Andritz incurs on account of the termination.

ARTICLE 5 RISK OF LOSS

5.1 General Provision. All risk of loss of or damage to the Equipment will pass from Andritz to the Client upon delivery of the Equipment at the FOB point specified in Andritz' Offer, regardless of whether (1) title has passed to the Client, (2) transportation is arranged or supervised by Andritz, or (3) erection or

5.2 Delayed Deliveries. If Equipment delivery is delayed due to any of the reasons described in **Article 3**, the risk of loss will pass to the Client as of the original Delivery Date. From the original Delivery Date forward, the Client is solely responsible for storing and insuring the Equipment and paying all related costs.

ARTICLE 6 WARRANTY

6.1 Limited Warranty. Andritz warrants that for a period of one year ("Warranty Period"), the Equipment will be the kind and quality described in the Contract and will be free of defects in workmanship or material that are not inherent in the quality of workmanship or material required or permitted under the Contract. The one-year period will begin not later than the earlier of (1) the Delivery Date as extended under **Article 3**; (2) the date on which to the Equipment is delivered at the FOB point specified in Andritz' Offer, (3) the Contract is breached, or (4) the Contract is terminated. **THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY.**

6.2 Warranty Obligation. If any failure to conform to the Warranty appears during the Warranty Period, the Client must give prompt written notice of the nonconformity to Andritz. After receiving the written notice, Andritz will, in its sole discretion, either repair or replace the Equipment. Andritz has no responsibility for the disassembly, removal, or reinstallation of the Equipment or any other equipment components, or for damage to or destruction of adjacent equipment or premises. The Client must provide free access to the Equipment. The original Warranty Period will be extended to 18 months for any Equipment repaired or replaced under the Warranty.

6.3 Termination of the Warranty. The Warranty will terminate immediately if (1) the Client fails to properly store, install, maintain, or use the Equipment; (2) the Client or any third party undertakes any inappropriate or improper modification or repairs of the Equipment; or (3) the Client, in case of a defect, does not immediately take all appropriate steps to mitigate damages and promptly notify Andritz as required under **Paragraph 6.2.**

ARTICLE 7 INSTRUMENTS OF SERVICE

7.1 Definition. All reports, drawings, specifications, field data, and other documents, including those in electronic form, that Andritz prepares are Instruments of Service for use solely with respect to the Contract. Andritz is the author and owner of the Instruments of Service and retains all common law, statutory, and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to perform the Contract or to meet official regulatory requirements or for similar purposes in connection with the Contract is not to be construed as publication in derogation of Andritz' reserved rights. All information in the Instruments of Service is approximate only.

7.2 Use Limitation and Confidentiality. The Client must not copy, otherwise reproduce, or disclose the Instruments of Service to any third party without first obtaining Andritz' written consent.

7.3 Return of Instruments of Service. Immediately upon termination of the Contract as provided under **Article 4**, the Client must deliver to Andritz all Instruments of Service and copies and reproductions of them that are under the Client's control.

ARTICLE 8 PATENTS

8.1 Patent Warranty. Andritz warrants that the Equipment in the particular form sold by Andritz, is free of any rightful claim of any third party for infringement of any United States patent. If notified promptly in writing and given appropriate authority, information, and assistance, Andritz will defend or may settle, at its expense, any suit or proceeding against the Client that is based on a claimed patent infringement in breach of this warranty. The foregoing sentence states

Andritz' entire liability for patent infringement.

8.2 Limitation of Patent Warranty. Paragraph 8.1 does not apply to any Equipment or component part manufactured to the Client's design, or to the use of any Equipment in conjunction with any other product in a combination not furnished by Andritz. As to any such Equipment, component part, or use in such combination, Andritz has no liability whatsoever for patent infringement, and the Client must indemnify and defend Andritz from and against any such infringement claims.

ARTICLE 9 EQUAL EMPLOYMENT OPPORTUNITY

9.1 General. The Contract incorporates by reference applicable provisions and requirements of Executive Order 11246 and the Federal Acquisition Regulations including FAR § 52.222-26 (covering race, color, religion, sex and national origin); the Vietnam Era Veterans Readjustment Assistance Act of 1974 and FAR § 52.222-35 (covering special disabled and Vietnam era veterans) and; the Rehabilitation Act of 1973 and FAR § 52.222-36 (covering handicapped individuals). The Client certifies that it does not and will not maintain any facilities in a segregated manner, or permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Client further certifies that appropriate physical facilities are maintained for both sexes. The Client must obtain a similar certificate prior to award of any nonexempt lower-tier subcontracts.

ARTICLE 10 GENERAL PROVISIONS

10.1 Andritz. The term "Andritz" includes Andritz Hydro Corp. and its consultants (regardless of tier), agents, officers, employees, successors, assigns, and designated representatives. Only corporate officers of Andritz Hydro Corp. are authorized to bind Andritz.

10.2 Client. The Client is the entity designated as such in the Contract. The term "Client" includes the Client and the Client's agents, officers, employees, successors, assigns, and designated representatives; and, regardless of tier, the Client's consultants, contractors, subcontractors, and suppliers; but does not include Andritz.

10.3 Governing Law; Jurisdiction; Venue; Mediation; Joinder; Limitations Period. The Contract is governed by the substantive laws of the state of North Carolina, USA, without reference to choice-of-law rules. All litigation arising out of or relating to the Contract must be brought and held only in the United States District Court for the Western District of North Carolina, Charlotte Division, or the Superior Court of the 26th Judicial District of North Carolina; and Andritz and the Client consent to the exclusive jurisdiction of and venue in those courts. However, prior to the initiation of any legal proceeding by either party, Andritz, in its sole discretion, may elect that any dispute, controversy or claim arising out of or relating to this Agreement, or the interpretation, performance or breach thereof, shall be first submitted to mediation after written notice of the dispute by the disputing party. If Andritz elects in its sole discretion, to submit the matter to mediation then both parties agree to select a neutral mediator who is a licensed attorney and conduct said mediation promptly. The costs of the mediation, including the compensation of the mediator and all other fees and expenses, shall be borne equally by the parties. The mediation shall be conducted in Charlotte, NC or any other mutually agreed upon venue. Any dispute, controversy or claim arising out of or relating to this Agreement, or the interpretation, performance or breach thereof not resolved through mediation OR any dispute, controversy or claim arising out of or relating to this Agreement, or the interpretation, performance or breach thereof that Andritz elected not to submit to mediation shall be settled through Litigation per this paragraph. Except with Andritz' prior written consent, no litigation arising out of or relating to the Contract will include, by consolidation or joinder or in any other manner, any entities other than the Client and Andritz. Causes of action between the Parties will have accrued and the applicable statute of limitations will commence to run not later than the earlier of (1) the Delivery Date as extended under Article 3; (2) the date on which the Equipment is delivered at the FOB point specified in Andritz' Offer, (3) the date on which the Contract is breached, or (4) the date on which the Contract is terminated.

10.4 Waiver of Subrogation. To the extent damages are covered by property insurance, the Client and Andritz waive all rights against each other for damages, except such right as they may have to the proceeds of such insurance.

10.5 Extent of Contract. Andritz is an independent contractor of the Client and nothing contained in the Contract shall be construed as creating any other relationship between Andritz and the Client. Nothing contained in the Contract creates a contractual relationship with or a cause of action in favor of any third party against either the Client or Andritz.

10.6 Survivability. The terms and conditions of the Contract will survive the delivery of the Equipment and the payment of the Price.

10.7 Modification. This Agreement may not be modified, discharged, or

changed in any respect whatsoever, except by further agreement in writing between the Parties; provided, however, that any consent, waiver, approval, or authorization will be effective if signed by the Party granting or making such consent, waiver, approval, or authorization.

10.8 Waiver. The failure of either Party to insist in any one or more instances upon the strict performance of any one or more of the provisions of the Contract or to exercise any right herein contained or provided by law is not to be construed as a waiver or relinquishment of such provision or right or of the right to subsequently demand such strict performance or exercise such right, and the rights will continue unchanged and remain in full force and effect.

10.9 Captions. The captions of the Contract are for convenience and reference only and in no way define, describe, extend, or limit the scope, meaning, or intent of the Contract.

10.10 Severability. The invalidity of any provision of the Contract will not affect the other provisions, and the Contract will be construed in all respects as if any invalid provision were omitted.

10.11 Successors and Assigns. Each Party, respectively, binds itself, its partners, successors, assigns, and legal representatives to the other Party, and to the partners, successors, assigns, and legal representatives of the other Party with respect to all covenants of the Contract. Neither Party may assign or transfer any interest in the Contract without the written consent of the other. Any assignment or transfer made without the required written consent is void.

10.12 Integration. The Contract constitutes the entire agreement between the Parties and there exist no other agreements, oral or written, between them relating to any matters covered by the Contract, whether or not within the knowledge or contemplation of either of them at the time of execution of the Contract.

10.13 Time of Essence. Time is of the essence of the Contract.

10.14 Indemnification. To the maximum extent permitted by law, the Client must indemnify and hold harmless Andritz from and against all claims, damages, losses, and expenses, including, but not limited to, attorneys and consultant fees, arising out of or related to the Equipment, including, but not limited to, any claims for bodily injury, sickness, disease, or death, or to injuries or claims related to the removal, handling, or use of any hazardous materials; except to the extent that such claims, damages, losses, and expenses are the result of Andritz' sole negligence.

10.15 Delay Damages. Damages for delayed delivery will not exceed the greater of (1) one-half of one percent of the Price of that portion of the Equipment that was delivered late for every full week of late delivery or (2) an aggregate of five percent of the Price of that portion of the Equipment that was delivered late. Andritz will not be liable for any delay damages on account of the first two full weeks of late delivery.

10.16 LIMITATION OF LIABILITY. Andritz will not be liable, whether in contract or in tort, or under any other legal theory, for loss of use, revenue, or profit, or for cost of capital or of substitute use or performance or for any other incidental, indirect, special or consequential damages, or for any other loss or cost of similar type, or for claims by Client for damages to Client's customers. To the maximum extent permitted by law, the aggregate liability of Andritz to the Client for any and all damages arising or allegedly arising out of or relating to the negligence of Andritz or a breach of the Contract is limited to the amount of the compensation paid by the Client to Andritz on account of the supply of the portion of the Equipment upon which such liability is based.