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AGREEMENT NO.

“Purchase of ejectors for purposes of construction of Innovative Ultra-pure Monochloroacetic Acid Production Plant”

PCC P4/PCC P4/00...../14

for the project

“Innovative ultra-pure monochloroacetic acid production plant (UP MCAA)”

being carried out by PCC P4 Sp. z o.o. in Brzeg Dolny

The project is being carried out within the framework of the Innovative Economy Operational Program, 2007-2013, Priority 4 “Investments in innovative ventures”, Measure 4.5 “Support of investments with a high significance to the economy”, sub-measure 4.5.1 “Support of investments in the production sector”

concluded on and effective as of this date (DATE of SIGNATURE of the AGREEMENT), between:

PCC P4 Sp. z o. o. with the registered office at ul. Sienkiewicza 4, 56-120 Brzeg Dolny, Poland, entered to the register maintained by the District Court for Wrocław-Fabryczna IX Department of the National Court Register, no. KRS 0000366820, NIP 988-028-53-75, the initial capital in the amount of PLN 50,050,000, fully paid, – hereinafter referred to as the **ORDERING PARTY** represented by:

Szymon Gross – President of the Management Board

a

..... with the registered office in at ul.....(____-- _____), entered to the Register of Entrepreneurs of the National Court Register in the District Court for Economic Department of the National Court Register under the number KRS, NIP, the initial capital PLN, the paid capital PLN, hereinafter referred to as the **CONTRACTOR**, represented by:

- 1. -**
- 2. -**



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hereinafter referred to individually as a PARTY and jointly as PARTIES.

Whereas:

The ORDERING PARTY intends to order a design, manufacturing and delivery of ejectors with all necessary accessories, hereinafter referred to as DEVICES, along with – in case of such a necessity - with a service of SUPERVISION over the ASSEMBLY of these DEVICES and SUPERVISION over START-UP and supervision over test operation, for the needs of construction of innovative ultra-pure monochloroacetic acid production plant on the premises of the company PCC ROKITA S.A. in Brzeg Dolny and taking into consideration that it has at its disposal the design documentation developer by Fluor S.A. and taking into consideration that the ORDERING PARTY has transferred this documentation to the CONTRACTOR in order to enable it to carry out a full cost evaluation and later on full and complaint with the documentation performance of the task, and also taking into consideration that the CONTRACTOR confirms that it has received all the necessary information needed to perform the SUBJECT of the AGREEMENT from the PARTIES involved in the investment process, it thus confirms its experience in performance of similar tasks,

The ORDERING PARTY is interested in performance of the Purchase Project under the name

- a) "Purchase of ejectors for purposes of construction of Innovative Ultra-pure Monochloroacetic Acid Production Plant" completed by PCC P4 Sp. z o. o. in Brzeg Dolny as a result of the proceeding no. PCC P4/PCC P4/000..../14 carried out by the ORDERING PARTY.
- b) By purchase of ejectors the ORDERING PARTY understands design, performance, delivery under the terms of INCOTERMS 2010 DDP/DAP PCC Rokita S.A. Brzeg Dolny, ul. Sienkiewicza 4, of ejectors in detail described in the Attachment no. 1 together with – in case of such a necessity - the service of SUPERVISION over the ASSEMBLY and SUPERVISION over the START-UP and over test operation.

The CONTRACTOR declares that:



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- c) it ensures under a lump-sum remuneration indicated in § 6 of this AGREEMENT all materials, devices, tools, parts for start-up necessary to perform the SUBJECT of the AGREEMENT
- d) it sustains in whole its statement placed in the tender documents on possessed authorities and possibilities of performing the SUBJECT of the AGREEMENT.
- e) it shall perform the SUBJECT of the AGREEMENT in compliance with the valid standards and industrial regulations as well as in compliance with the Directives valid in individual industries. Due to the fact that the SUBJECT of the AGREEMENT is to be delivered to the PREMISES of PCC Rokita SA, the CONTRACTOR states that it shall perform the works in compliance with the valid regulations on safety and hygiene at work (BHP) and with the Regulations valid on the premises of PCC Rokita S.A.
- f) that it understands the scope and purpose of the SUBJECT of the AGREEMENT and has knowledge and means as well as experience sufficient for its performance, including, but not limited to – sufficient personnel, with regard to a number and qualifications, possibilities of designing and verification of third party's designs, technical backup and potential and financial means and as an entity professionally dealing with provision of services covered by the SUBJECT of the AGREEMENT is shall perform the SUBJECT of the AGREEMENT maintaining the professional character of its operations, utmost diligence, current level of knowledge and technology as well as in compliance with applicable provisions of law
- g) that it is familiar with the ORDERING PARTY's expectations and the need for the performance of the SUBJECT of the AGREEMENT
- h) it is familiar with a design documentation prepared by Fluor S.A. (Attachment no.1), does not state any faults or shortages which could impede proper performance of the AGREEMENT and clear all the doubts related to the documentation

Representatives of the PARTIES declare that their authorities have not expired nor have been limited and that in relation to the above they are fully authorised to conclude this AGREEMENT.



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§ 1. INITIAL PROVISIONS AND DEFINITIONS

1. Interpretation of the notions used in this Agreement shall take into consideration the following definitions in particular:

AGREEMENT – means the agreement concluded between the ORDERING PARTY and the CONTRACTOR whose contents are contained in this document together with all the below mentioned attachments and all subsequent modifications agreed bilaterally between the Parties in writing, unless null and void.

ORDERING PARTY– means a legal person mentioned in the introduction of the AGREEMENT or its lawful successors.

DEVICES – mean ejectors which are described in detail in Attachment 1 to this AGREEMENT.

SUBJECT of the AGREEMENT – includes design, manufacture, DELIVERY of the DEVICES, and in case of such a necessity, SUPERVISION over the ASSEMBLY and SUPERVISION over the start-up and supervision over test operation, referred to in § 8 (3) of this AGREEMENT.

OPERATION INSTRUCTION – approved by the ORDERING PARTY the instruction defining procedures and rules for performing actions necessary to perform safely work at technical equipment developed based on legal regulations, normative acts and the producer's documentation

CONTRACTOR – means a person mentioned in the introduction of the AGREEMENT or its lawful successors being jointly or separately responsible for each obligation resulting from this AGREEMENT, which is to execute the SUBJECT of the AGREEMENT.

LUMP VALUE of the AGREEMENT – means a total lump-sum of the remuneration net, unchangeable during the period of this AGREEMENT, referred to in § 6 (1) of this AGREEMENT due to the CONTRACTOR for the DELIVERY, including the parts for START-UP and documentation

SUB-SUPPLIER(„S”)/ SUBCONTRACTOR(„S”) – means a company or a person having a contract with the CONTRACTOR for performance of any part of the works or deliveries to which the CONTRACTOR, in compliance with this AGREEMENT, may order performance of the SUBJECT of the AGREEMENT, delivery of materials or performance of another scope of works.

FINAL DOCUMENTATION– means all kind of documentatin related to the SUBJECT of this AGREEMENT, including in particular certificates, conformity declarations, attestation for materials, protocols of the performed tests, trials, reports, etc., in particular documentation the scope of which is described in Attachment no.1 to the AGREEMENT, in part

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„Specification for the Minimum MDB Requirements” (document no. - A6MU-1000-55-SP-006) and in point „Installation, operation & maintenance Manual (IOM)”, which is in „Seller drawing & data commitment (SDDC) form”.

TECHNICAL DOCUMENTATION – means all kind of documentatin related to the SUBJECT of this AGREEMENT, scope of which is described in Attachment no.1 to the AGREEMENT, in part „Seller drawing & data commitment (SDDC) form” (except „Instalation, operation & maintainance Manual (IOM)” and points „Documents for information only after purchase order”).

DELIVERY – shall mean design, manufacturing, delivery of the DEVICES by the CONTRACTOR, including supplementary equipment and the documentation required by the AGREEMENT. The DELIVERY include also delivery by the CONTRACTOR of DOCUMENTATION with all additional activities of the CONTRACTOR, as for instance packaging and protection of the DEVICES, transportation, customs clearance, insurance, etc.

DAYS – mean calendar days unless the AGREEMENT states otherwise.

SUPERVISION over the ASSEMBLY - means all activities of the CONTARCTOR aiming at supervision over the ASSEMBLY of the DEVICES on the AREA of CONSTRUCTION of PCC P4.

START-UP – means a set of activities taken up by a start-up team in order to check correctness of the assembly of the installation within INVESTMENT, and to perform mechanic operation trails of the DEVICES within INVESTMENT, according to § 9 of the AGREEMENT.

SUPERVISION OVER START-UP - means all activities of the CONTARCTOR aiming at supervision over START – UP.

FINAL ACCEPTANCE – means acceptance of the SUBJECT of the AGREEMENT by the ORDERING PARTY referred to in § 8 section 3 of the AGREEMENT.

PREMISES of PCC ROKITA S.A. – it is an industrial area with technical infrastructure in which the INVESTMENT is located

The AREA of CONSTRUCTION of PCC P4 – it is an area located within the area of PREMISES of PCC ROKITA S.A.

PCC ROKITA S.A. – the company with the registered office at ul. Sienkiewicza 4, 56-120 Brzeg Dolny, Poland, entered to the register maintained by the District Court for Wrocław-Fabryczna IX Department of the National Court Register, no. KRS 000010588, NIP 917-000-00-15, REGON 930613932, the initial capital in the amount of PLN 18 265 036,00, fully paid,



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INVESTMENT – construction of the innovative ultra-pure monochloroacetic acid UP-MCAA production instalation, maintained by the ORDERING PARTY

§ 2. SUBJECT AND SCOPE OF THE AGREEMENT

1. The CONTRACTOR, having at its disposal appropriate qualification, economic and human potential, experience and technical expertise commits itself to full performance of:
 - a) DELIVERY
 - b) SUPERVISION over ASSEMBLY, SUPERVISION over the START-UP, supervision over test operation referred to in § 8 (3) of this AGREEMENT.
2. The SUBJECT of the AGREEMENT, in particular DEVICES, shall be compliant with the proposal of the CONTRACTOR constituting Attachment no. 2 to the AGREEMENT, however the SUBJECT of the AGREEMENT shall meet the requirements indicated in Attachment no. 1 to the AGREEMENT (Detailed Technical Specification).
3. The CONTRACTOR is obliged to perform of all services (works) necessary for correct, compliant with the valid regulations, standards and technical expertise, performance of the SUBJECT of the AGREEMENT.
4. The CONTRACTOR is obliged to perform the SUBJECT of the AGREEMENT so as to make it adjusted to operation in the technological system of the plant belonging to the ORDERING PARTY.
5. All materials used to perform the SUBJECT of the AGREEMENT shall be brand new. The CONTRACTOR is obliged to deliver all the materials to the execution of the SUBJECT of the AGREEMENT, unless the AGREEMENT states explicitly otherwise.
6. The CONTRACTOR shall ensure a free of charge access to its workshop to the persons indicated by the ORDERING PARTY or to bulding site inspectors or persons indicated by certifying institution (if required). All necessary certificates of materials, data of plant tests, reports of non-intrusive surveys etc. shall be available upon request of the ORDERING PARTY.

§ 3. THE CONTRACTOR'S OBLIGATIONS

1. The CONTRACTOR, under completion of the SUBJECT of the AGREEMENT is in particular obliged to perform the following activities and works:
 - a) providing to the ORDERING PARTY of TECHNICAL DOCUMENTATION and the rest of documentation indicated in Attachment no. 1, within the deadlines indicated in the Attachment no. 1, calculated from the DATE of SIGNATURE of the AGREEMENT, however not later than within the deadline indicated in § 4 (1) of the AGREEMENT
 - b) delivery to the ORDERING PARTY all necessary attestation, safety certificates, certifi-



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- ates of conformity with norms, declarations of conformity, protocols of performed tests, trials etc.,
- c) providing to the ORDERING PARTY of 3 copies of complete FINAL DOCUMENTATION within the deadlines indicated in the Attachment no. 1, calculated from the DATE of SIGNATURE of the AGREEMENT, however not later than within the deadline indicated in § 4 (1) of the AGREEMENT
 - d) delivery of manual instructions of DEVICES and operation instructions and a list of spare parts, DTR (operation and maintenance documentation), and documents of guarantee or warranty in Polish and valid in the territory of the Republic of Poland, with regard to the SUBJECT of the AGREEMENT.
 - e) collecting and preparing documentation necessary for acceptance.
 - f) training of the ORDERING PARTY's personnel in terms of proper exploitation of DEVICES (as a part of supervision over the assembly).
2. In case if according to the attachments to the AGREEMENT the documentation shall be delivered by the CONTRACTOR before the conclusion of the AGREEMENT, and it has not been delivered, the CONTRACTOR shall deliver immediately after the conclusion of the AGREEMENT.
 3. The CONTRACTOR acknowledges and confirms that the partial performance of the AGREEMENT may not have the meaning for the ORDERING PARTY bearing in mind the aim of the AGREEMENT of the INVESTMENT realization.
 4. DEVICES delivered with no documentation required by the AGREEMENT or with incomplete documentation, shall be treated as DEVICES undelivered, in particular default and delay in the delivery of the complete DOCUMENTATION is treated as the default and delay in the delivery of the DEVICES.
 5. The Contractor is obliged to introduce the project of the DEVICES for their acceptance of the ORDERING PARTY before the start of their manufacturing, in a period ensuring meeting the deadline indicated in § 4 section 1 of the AGREEMENT.
 6. The CONTRACTOR provides all necessary materials and equipment necessary to a proper performance of the SUBJECT of the AGREEMENT.

§ 4. COMPLETION DATES

1. The PARTIES agree that the SUBJECT of this AGREEMENT in a part of DELIVERY shall be completed within not longer than **5 months from the DATE of SIGNATURE the AGREEMENT** in a place indicated by the ORDERING PARTY, under the terms of INCOTERMS 2010 DDP/DAP PCC Rokita S.A. Brzeg Dolny, ul. Sienkiewicza 4. Application of the INCOTERMS terms shall not exclude the far-reaching liability and obliga-



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- tions of the CONTRACTOR described in the AGREEMENT.
2. In case the CONTRACTOR offers performance of the SUBJECT of the AGREEMENT before the deadlines indicated in the AGREEMENT, the ORDERING PARTY is entitled, but not obliged, to accept SUBJECT of the AGREEMENT before these deadlines.
 3. The DELIVERY is deemed completed in the moment of performing a positive acceptance on the day of delivery, indicated in § 8 section 1 of the AGREEMENT and delivery of complete documentation required by the CONTRACT
 4. The CONTRACTOR is obliged to inform the ORDERING PARTY in writing about the date of delivery of the DEVICES and about planned entrance to the BUILDING SITE of PCC P4 at least with 2-week advance. Safe for the obligations resulting from the preceding sentence the CONTRACTOR commits itself to deliver the shipping documents 3 weeks before the planned date of delivery.
 5. The CONTRACTOR shall execute the SUPERVISION over the ASSEMBLY in the period indicated by the ORDERING PARTY, indicated to the CONTRACTOR not later than within 18 months from the DATE of SIGNATURE of the AGREEMENT. The Ordering Party is not obliged to order these services from the CONTRACTOR.
 6. The CONTRACTOR shall execute the SUPERVISION over the START-UP and over test operation, referred to in § 8 section 3 of the AGREEMENT in the period indicated by the ORDERING PARTY, indicated to the CONTRACTOR not later than within 22 months from the DATE of SIGNATURE of the AGREEMENT. The Ordering Party is not obliged to order these services from the CONTRACTOR.
 7. The ORDERING PARTY is entitled to monitor the timelines of the work performed on the day-to day basis. The CONTRACTOR shall immediately inform the ORDERING PARTY in writing or in an electronic form on each (current or future) events or circumstances which have effect (or may have effect) on the AGREEMENT's deadlines or which may have impact the performance of the AGREEMENT in other way or important for the protection of the ORDERING PARTY's interest, providing, if applicable: the given event or circumstances, the impact on deadlines or other elements of the AGREEMENT or other impact on the AGREEMENT, predicted time of the delay and the possible actions aimed at remedying a delay. In the absence of visible documented actions from the CONTRACTOR's side, in order to remedy the delay the ORDERING PARTY may undertake actions aimed at remedying a delay, on the cost of the CONTRACTOR, which shall be informed hereof by the ORDERING PARTY 5 days in advance. In the case of failure to notify, the CONTRACTOR shall be responsible for the damage arising therefrom even in the case when the very event is beyond the CONTRACTOR's control. The significant events shall in particular include the following:
 - a) possibility of or initiation of execution proceedings or proceedings to secure debtor's assets against the CONTRACTOR,
 - b) initiation of bankruptcy proceedings or filing for bankruptcy by the CONTRACTOR or other authorized persons.
 8. The CONTRACTOR shall make every effort to minimize any delay in the performance



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of the SUBJECT of the AGREEMENT, regardless of the reasons for such delays.

§ 5. REPRESENTATIVES OF THE PARTIES

1. A representative of the CONTRACTOR authorised to all technical and other contacts with the ORDERING PARTY within the scope covered with the SUBJECT of the AGREEMENT, and to sign all protocols predicted in this Agreement, shall be
2. A representative of the ORDERING PARTY authorised to all technical and other contacts with the CONTRACTOR within the scope covered with the SUBJECT of the AGREEMENT, and to sign all protocols predicted in this Agreement, shall be
3. Provisions of this paragraph shall not be deemed granting the authorization to amend this AGREEMENT on behalf of the PARTIES or to execute other declarations of will on behalf of their PARTIES in the scope wider than indicated above.
4. Amendmend of the PARTIES' representatives requires written under pain of nullity notification to the other PARTY and does not require the amendment of this AGREEMENT.

§ 6. REMUNERATION OF THE CONTRACTOR

1. For the proper performance of the SUBJECT of this AGREEMENT in the scope of DELIVERY the PARTIES agree a net lump-sum remuneration of the CONTRACTOR in amount of PLN/EUR net (in words:), including:
 - 1) Liquid vacuum jet pump J-1413: PLN/EUR net, including documentation: PLN/EUR net
 - 2) Steam jet heater J-1808: PLN/EUR net, including documentation: PLN/EUR net
 - 3) Waste water jet mixer J-1905A: PLN/EUR net, including documentation: PLN/EUR net
 - 4) Waste water jet mixer J-1905B: PLN/EUR net, including documentation: PLN/EUR net
 - 5) Waste water jet mixer J-1905C: PLN/EUR net, including documentation: PLN/EUR net



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- 6) Waste water jet mixer J-1905D: PLN/EUR net, including documentation: PLN/EUR net
- 7) Steam jet heater J-3404: PLN/EUR net, including documentation: PLN/EUR net
- 8) Steam jet heater J-3414: PLN/EUR net, including documentation: PLN/EUR net
- 9) Venturi Scrubber J-1804: PLN/EUR net, including documentation: PLN/EUR net.

2. The remuneration for the SUPERVISION over the ASSEMBLY shall be paid on the basis of the actually performed working days and according to the daily rate (1 working day): EUR/PLN net (in words:) and confirmed by the presence list introduced for the acceptance of the ORDERING PARTY.

The ORDERING PARTY assumes that the SUPERVISION over the ASSEMBLY shall be performed within the time limit of no less than one (1) working day and maximum of thirty (30) working days.

The remaining services as SUPERVISION over START-UP and over trial test which may occur in relation to performance of the AGREEMENT, shall be paid separately, according to ATTACHMENT no.8, after their previous written acceptance of their scope by the ORDERING PARTY and confirmed by the presence list introduced for the acceptance of the ORDERING PARTY. Unless Attachment no. 8 provides explicitly otherwise, remuneration for these services is calculated according to the rates provided for the SUPERVISION over ASSEMBLY.

The remuneration for the SUPERVISION OVER THE ASSEMBLY, START-UP and other services referred to in this section shall be paid within 30 calendar days from the date of delivery to the ORDERING PARTY of the correctly issued VAT invoice.

3. The CONTRACTOR`s remuneration indicated in the item 1 of this paragraph and rates of remuneration indicated in item 2 are fixed and shall not be changed during the whole term of this AGREEMENT, without prejudice for the provisions of § 15 (2).
4. Payment schedule. The ORDERING PARTY shall pay the CONTRACTOR the remuneration provided for in the item 1 of this paragraph according to the following schedule:
 - a) 10 % of the LUMP VALUE of the AGREEMENT +VAT, if applicable - payable within 30 DAYS after delivery of:
 - Properly issued advance payment VAT invoice



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- TECHNICAL DOCUMENTATION
- Tax Residence Certificate of the CONTRACTOR (if applicable)
- b) 75 % of the LUMP VALUE of the AGREEMENT +VAT if applicable- payable within 30 DAYS after completing of the DELIVERY according to § 4 section 3 hereof, including providing complete FINAL DOCUMENTATION and any other documentation required by the AGREEMENT and receiving properly issued VAT invoice (reflecting the sum of amounts indicated in letters before and in this this letter)
- c) 15 % of the LUMP VALUE of the AGREEMENT +VAT if applicable - payable within 30 DAYS after the delivery of:
 - the insurance/bank guarantee compliant with §11 (12) hereof of value of 10% of the LUMP VALUE of the AGREEMENT
 - properly issued VAT invoice.

The CONTRACTOR has a right to issue an invoice indicated in this letter already after DELIVERY as referred in letter b) above, however as an invoice separate from above invoices. This shall not amend the payment terms specified by the AGREEMENT. Without the prejudice for the provisions of the next sentence, the payment specified in this letter is hold as a deposit until all the conditions specified in this letter are fulfilled.

The condition to pay a given payment is fulfilment of conditions described for the given payment and of conditions described for all preceding payments.

The CONTRACTOR shall deliver a Tax Residence Certificate (if applicable) issued in the calendar year of the given payment. Notwithstanding the other provisions of the AGREEMENT, the ORDERING PARTY may hold each payment, if the CONTRACTOR has not delivered a Tax Residence Certificate issued in the calendar year, in which the payment shall be made or, at the ORDERING PARTY's discretion, to make a payment after deduction of the withholding tax from the remuneration payable to the CONTRACTOR, if a payment is subject to such a deduction.

5. All the costs of the AGREEMENT execution shall be borne by the CONTRACTOR, unless this AGREEMENT does not explicitly states otherwise. The lump sum remuneration of the CONTRACTOR described in this AGREEMENT includes all the costs of the CONTRACTOR necessary for its proper execution.
6. The date when the ORDERING PARTYs bank account is debited shall be the date of payment.
7. On each demand of the ORDERING PARTY made in relation to making a payment of the given invoice in whole, the CONTRACTOR is obliged to deliver to the ORDERING PARTY written declaration according to the form as in Appendix no. 7 to the AGREEMENT.



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§ 7. CONTRACTUAL PENALTIES

1. Penalties for withdrawing from the AGREEMENT:

- 1.1. For withdrawing from the AGREEMENT by one of the PARTIES for reasons for which the other PARTY is responsible, the PARTY at fault for withdrawing shall pay a penalty in the amount of 10% of LUMP VALUE of the AGREEMENT.
- 1.2. In the event of withdrawing from the AGREEMENT during its completion at fault of the ORDERING PARTY, the ORDERING PARTY shall pay all the documented costs incurred by the CONTRACTOR until the moment of stopping the works by the CONTRACTOR or until the day of the withdrawal from the AGREEMENT, depending which moment is earlier.
- 1.3. In the event of withdrawing from the AGREEMENT during its completion at fault of the CONTRACTOR, the CONTRACTOR shall return the ORDERING PARTY all the remuneration paid by the date of withdrawing from the AGREEMENT with all due interests calculated from the day of the payment of the remuneration made by the ORDERING PARTY to the CONTRACTOR.

If the amount of incurred loss exceeds the value of the contractual penalty the ORDERING PARTY have a right to pursue compensation of the incurred loss.

2. Penalties for delays.

2.1. The CONTRACTOR shall pay the ORDERING PARTY contractual penalties for delays:

- a) for each started week of delay in completion of any part of the SUBJECT of the AGREEMENT in the amount of 2.0 % of LUMP VALUE of the AGREEMENT, not more than 20% of the LUMP VALUE of the AGREEMENT;
- b) for each started week of delay in removal of faults (it also relates to failure to achieve parameters provided for in the Attachment no. 1) and failures covered with a guarantee and statutory guarantee in relation to the deadlines indicated by the ORDERING PARTY in the amount of 1.0 % of the LUMP VALUE of the AGREEMENT, not more than 20% of the LUMP VALUE of the AGREEMENT.

The total of contractual penalties referred to in this section cannot exceed 25% of the LUMP VALUE of the AGREEMENT.

If the amount of incurred loss exceeds the value of the contractual penalty the ORDERING PARTY has a right to pursue compensation of the incurred loss.

3. Pursuing by the ORDERING PARTY of the contractual penalties for the withdrawal



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from the AGREEMENT does not exclude pursuing the contractual penalties specified in the AGREEMENT for other reasons, in particular of the contractual penalties referred to in section 2.1. letter a) and b) of the AGREEMENT.

4. In order to avoid any doubts the PARTIES confirm that provisions of the contractual penalties do not exclude the CONTRACTOR's obligation to deliver the DEVICES free from faults nor the ORDERING PARTY's rights resulting from the guarantee and statutory guarantee.
5. The CONTRACTOR declares that possess and is obliged to have and maintain in force for the duration of the AGREEMENT civil liability (OC) insurance related to the activity carried out and product which is manufactured by the CONTRACTOR for the amount of **PLN 1 000 000** (including at least the SUBJECT of the AGREEMENT, including the scope executed by the SUBCONTRACTORS) i.a to ensure liquidation of damages to persons and property. Insurance should comprise tortuous liability and contractual liability. A copy of the insurance policy constitutes the Attachment no. 3 to this AGREEMENT.

Guaranteed amount will not be lower than **PLN 1 000 000** for one and all cases.

Moreover the insurance will cover at least:

- a) civil liability for damages caused by sub suppliers,
- b) civil liability for loses appeared after delivery of the SUBJECT of the AGREEMENT,
- c) civil liability for loses related to natural environment contamination.

In case the civil liability insurance referring to the currency other than PLN, meeting of the above condition will be assessed according to the average currency exchange rate announced by NBP (National Bank of Poland) announced for the date of concluding of the AGREEMENT.

6. The CONTRACTOR commits itself to maintain this insurance under the same or not worse terms for the whole period of completion of the AGREEMENT. By the time of submitting a valid insurance policy the ORDERING PARTY shall be entitled to withhold payment of the remuneration entitled to the CONTRACTOR.
7. Withdrawal from the AGREEMENT requires written form under a pain of nullity.

§ 8. ACCEPTANCE AND TERMS OF ACCEPTANCE

Completion of the AGREEMENT shall be subject to acceptance mentioned in the further part of this paragraph:

1. To the Acceptance on the day of DELIVERY, covering checking completeness of delivered DEVICES with the documents transferred by the producer.



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2. To the Technical acceptance, which shall be carried out after ending the SUPERVISION over the ASSEMBLY and START-UP which shall confirm readiness of the DEVICES to perform a 72-hour test operation. After ending the SUPERVISION over the ASSEMBLY and START-UP the CONTRACTOR shall notify about readiness to sign the protocol of technical acceptance of the ORDERING PARTY. The ORDERING PARTY shall accept the protocol in writing within 7 DAYS from the date of its receipt, and in the event of refusal of such acceptance within this period it shall give the CONTRACTOR reasons for such a refusal in writing. If the ORDERING PARTY refuses to accept the protocol on the above mentioned date without a written information about the reasons, the protocol is deemed signed. In particular the reason for refusal of the protocol acceptance is not fulfilling of the obligation to deliver the documentation required by the AGREEMENT.
3. To the FINAL ACCEPTANCE which shall occur after a successfully finished START-UP and test operation. The test operation shall consist of 72-hour uninterrupted operation of the DEVICES in working conditions and shall be deemed successfully finished if the correctness of functioning of the EQUIPMENT and correctness of its performance in relation to the received documentation of the Attachment no. 1 shall be confirmed. The final acceptance shall be accompanied by a written under pain of nullity protocol of final acceptance prepared by the PARTIES. If the test operation is not completed successfully or DOCUMENTATION, the ORDERING PARTY does not perform a FINAL ACCEPTANCE, indicating in the protocol reasons for non-acceptance. After removal of the reasons for non-acceptance the CONTRACTOR notifies the ORDERING PARTY about removal of the obstacles for its acceptance, and for further proceeding the provisions in respect of the FINAL ACCEPTANCE are applicable.

§ 9. START-UP'S

1. START-UP is carried out by the START-UP committee appointed by the PARTIES. START-UP is carried out with participation and in close co-operation with the technical services of the ORDERING PARTY.
2. The course of the START-UP is managed by the START-UP manager who is also a chairman of the START-UP committee. The START-UP manager is an authorised representative of the ORDERING PARTY.
3. Cost of performance of START-UP of the SUBJECT of the AGREEMENT in the part covering the cost of energy factors for the needs of the START-UP and during its performance is incurred by the ORDERING PARTY.
4. All other than indicated in section 3 of this paragraph additional costs in the form of auxiliary or exploitation materials, measurements, small reworks etc. which may occur during the START-UP are in whole incurred by the CONTRACTOR.
5. The course of the START-UP of the SUBJECT of the AGREEMENT is documented by:
 - a) the programme of the first voltage feeding,



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- b) protocol of the START-UP prepared by the START-UP committee and signed by the representatives of the PARTIES.
6. During the START-UP all checking and functional trials according to the procedure accepted by the START-UP committee shall be carried out, they are necessary for correct assessment of the parameters achieved by the DEVICES. The committee may decide on performance of additional checking and functional trials on the cost of the CONTRACTOR.
7. Successful ending of the START-UP of the SUBJECT of the AGREEMENT means transfer of the SUBJECT of the AGREEMENT for FINAL ACCEPTANCE.

§ 10. RESULTS AND RESPONSIBILITY FOR IMPROPER PERFORMANCE OF THE AGREEMENT

1. The CONTRACTOR is obliged to exercise due diligence in performance of the SUBJECT of this AGREEMENT, taking into consideration professional nature of its activity. In the event of non-performance or improper performance (faults of the SUBJECT of the AGREEMENT) of the AGREEMENT by the CONTRACTOR, it is obliged to pay compensation. A claim to pay compensation is independent of other claims entitled to the ORDERING PARTY on the grounds of this AGREEMENT.
2. Every time when this AGREEMENT refers to faults of the DEVICES/ SUBJECT of the AGREEMENT (including their lack) it means physical or legal faults of the SUBJECT of the AGREEMENT understood as a functional entirety as well as faults of its individual elements i.e. in particular the equipment, devices, building structures, installations etc.
3. Physical faults are in particular the faults resulting from use of faulty materials or faulty elements of the SUBJECT of the AGREEMENT, errors in performance of building works and assembly works. A fault is not its normal usage wear-out of the equipment or its elements.
4. An obligation of proving a circumstance excluding a defined shortage, event or irregularity etc. of the category of physical or legal faults is on the part of the CONTRACTOR.
5. The ORDERING PARTY is not liable for damages made by the CONTRACTOR during performance of the SUBJECT of the AGREEMENT or for the damages made by the CONTRACTOR not related to the AGREEMENT execution. The CONTRACTOR shall be liable for these damages. In case if according to the mandatory provisions of law also the ORDERING PARTY is liable towards third parties for the damages made by the CONTRACTOR, the CONTRACTOR is obliged to release the ORDERING PARTY from these obligations towards third parties.
6. The CONTRACTOR is solely responsible for the execution of the SUBJECT of this AGREEMENT, what included the SUBCONTRACTORS/SUBSUPPLIERS and all the persons acting on behalf of the CONTRACTOR.
7. If this AGREEMENT states on the execution of the obligations by the CONTRACTOR, which in the result of entrusting of the works to the SUBCONTRACTORS according to the AGREEMENT, the AGREEMENT in this scope shall be deemed as the obligation



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of the CONTRACTOR referred to in the Article 391 of the Polish Civil Code. This provision does not exclude far-reaching liability of the CONTRACTOR set in this AGREEMENT.

8. Acceptance made by the ORDERING PARTY of any documentation provided by the CONTRACTOR does not release of the CONTRACTOR from the liability for damages (including for the liability for non-completeness) or for potential delays in the AGREEMENT execution and does not exclude or limit the liability of the CONTRACTOR for the proper performance of the AGREEMENT and does not constitute the acceptance without reservations. Acceptance made by the ORDERING PARTY of any documentation or the part or the whole of SUBJECT of the AGREEMENT does not result in expiration of the rights resulting from the statutory guarantee for the faults of the work, which shall expire according to the general provisions of the Polish Civil Code, unless this AGREEMENT explicitly states otherwise.

§ 11. GUARANTEES AND SECURITY OF GOOD PERFORMANCE

1. The CONTRACTOR guarantees that the SUBJECT of the AGREEMENT (including DEVICES, all delivered materials, instalations, etc.) shall be executed according to the scope of the AGREEMENT, assumptions and design documentation, best technical knowledge and will be complete. The CONTRACTOR guarantees that the delivered SUBJECT of the AGREEMENT (including DEVICES, all delivered materials, instalations, etc.) shall be new, free of faults, including design, material and construction faults, legal faults, faults resulting from the performance quality and other errors and moreover that the construction of the SUBJECT of the AGREEMENT and quality of the materials applied in it correspond to the state of the art of technical achievements and correspond to the highest standards of quality, safety and environmental protection in respect of materials and performance. The CONTRACTOR declares that it shall perform the SUBJECT of the AGREEMENT in compliance with the quality assurance system ISO 9001. Due to the above the CONTRACTOR also guarantees that the SUBJECT of the AGREEMENT shall achieve the parameters according to the documentation referred to in Attachment 1 and other documentation required by the AGREEMENT and its intended use. The CONTRACTOR guarantess the proper performance of the assembly and works performed by him.
2. The CONTRACTOR grant a guarantee for a period of minimum 24 months counted from the date of signing the protocol of the FINAL ACCEPTANCE or a 36 months counted from the date of DELIVERY depending on which of the deadlines elapses first.
3. The CONTRACTOR shall incur all the costs related to replacement and repair of elements performed in a faulty manner.



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4. In the event of revealing during the period of the guarantee faults in the SUBJECT of the AGREEMENT, the CONTRACTOR shall be obliged to remove them free of charge in the place of occurrence of such fault or deliver to the ORDERING PARTY and mount at its own cost a free of faults, instead of a faulty, element. The CONTRACTOR is obliged to perform the obligations resulting from the granted guarantee without delay after receipt of a request from the ORDERING PARTY sent with a registered post, fax or e-mail.
5. If the CONTRACTOR does not start removal of the faults within **3 DAYS** from the date of receiving a written or electronic or fax notification and does not remove them in a possibly shortest time agreed with the ORDERING PARTY and confirmed with a proper note, the ORDERING PARTY is entitled to perform a necessary repair at the cost and responsibility of the CONTRACTOR after previous written or electronic information send introduction of such action In this situation the ORDERING PARTY does not lose guarantee rights, however it is obliged to inform the CONTRACTOR in advance about starting the repair by the ORDERING PARTY at the cost of the CONTRACTOR.
6. If in performance of the obligations resulting from the guarantee the CONTRACTOR has made essential changes in the SUBJECT of the AGREEMENT or performed a new subject of the AGREEMENT instead of the faulty subject, then the guarantee period starts anew from the moment of the repair or performance of the new SUBJECT of the AGREEMENT. In the remaining cases the guarantee period is prolonged by the time during which the ORDERING PARTY as a result of the fault, could not use the SUBJECT of the AGREEMENT.
7. The CONTRACTOR ensures that in performance of the SUBJECT of the AGREEMENT it shall not use asbestos or any similar substances threatening to the environment, health and safety.
8. The delivered SUBJECT of the AGREEMENT should have a declaration of conformity and be marked with the sign CE, if this is required by relevant regulations.
9. The CONTRACTOR shall attach to the SUBJECT of the AGREEMENT and equipment transferred under the AGREEMENT original guarantee documents delivered by the producer.
10. The CONTRACTOR shall indicate to the ORDERING PARTY a company which shall carry out maintenance services, guarantee and post-guarantee repairs.
11. The CONTRACTOR shall contribute security of good performance of the AGREEMENT in a form of irrevocable and payable upon the first demand bank guarantee or insurance guarantee governed by the laws of Poland for the amount of 10% of the LUMP VALUE of the AGREEMENT and valid throughout the whole period of the AGREEMENT + 30 DAYS. The CONTRACTOR shall hand over the ORDERING PARTY the above



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- mentioned bank or insurance guarantee within 30 DAYS from the date of signing this AGREEMENT after prior acceptance of its contents by the ORDERING PARTY.
12. The CONTRACTOR shall contribute the security of removal of faults and failures during the guarantee period in a form of irrevocable and payable upon the first demand bank guarantee or insurance guarantee governed by the laws of Poland for the amount of 10% LUMP VALUE of the AGREEMENT and valid for a guarantee period indicated in section 2 above, increased by the period resulting from the provision of section 6 above + 30 DAYS. The CONTRACTOR shall hand over the ORDERING PARTY the above mentioned bank or insurance guarantee after prior acceptance of its contents by the ORDERING PARTY not later than till 30 June 2015, safe for the provisions of § 6 section 4 letter b) of the AGREEMENT, i.e. by the time of submitting the security, referred to in this section, the ORDERING PARTY is entitled to a right to withhold payment of the final invoice.
 13. The ORDERING PARTY has a right to make a deduction from the contractual remuneration or from the abovementioned securities of the good performance of the AGREEMENT and security of removal of faults and failures of all claims and receivables of the ORDERING PARTY towards the CONTRACTOR resulting from non-performance or improper performance of the SUBJECT of this AGREEMENT and failure to remove faults and failures, including the contractual penalties. The ORDERING PARTY shall have such a right to deduction also before the lapse of the deadlines for payment, on the basis of the one-sided declaration of will.
 14. Provisions of §11 of the AGREEMENT do not exclude the rights of the ORDERING PARTY resulting from the statutory guarantee.
 15. Delivery by the CONTRACTOR of the guarantee documents of the producer does not exclude rights of the ORDERING PARTY resulting from provisions of §11 of the AGREEMENT.
 16. The CONTRACTOR may not refuse fault removal in the scope of works executed within the guaranty or statutory guarantee works for the reason of their cost (in this scope the application of the Article 637§ 1 second sentence of the Polish Civil Code is excluded).
 17. The AGREEMENT constitutes the guarantee document.
 18. In case the CONTRACTOR is obliged on any basis to remove fault, and such a removal of the fault requires replacement of the given element of the SUBJECT of the AGREEMENT for a new one, the CONTRACTOR is obliged within the lump sum remuneration described by the AGREEMENT to secure the substitutive element of the SUBJECT of the AGREEMENT in the period of the fault removal (including to its



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installation and start-up for a period of the fault removal in a manner allowing for a proper functioning of the INVESTMENT).

§ 12. FORCE MAJEURE

1. None of the PARTIES shall be held liable for non-performance of improper performance of this AGREEMENT if it is a consequence of circumstances of Force Majeure. Force Majeure are circumstances which occurred after concluding the AGREEMENT as an extraordinary event whose occurrence could not predict the CONTRACTOR nor the ORDERING PARTY such as: wars, riots, fires, floods, earthquakes or other random incidents and also acts of public authorities, national or industrial strikes.
2. The PARTY which is not able to perform its obligations as a result of occurrence of Force Majeure should within 7 DAYS notify another PARTY about this fact. The other PARTY should be also informed about cease of the circumstances deemed Force majeure. If the mentioned circumstances last longer than 1 month the PARTIES should decide together about the course of the AGREEMENT, safe for the fact that the ORDERING PARTY is entitled to withdraw from the AGREEMENT within the period of 7 months from the day the Force majeure event occurred (sending the letter in this period shall be deemed meeting a deadline). In such an event the withdrawal from the AGREEMENT by the ORDERING PARTY does not result in the obligation of the contractual fee payment by the ORDERING PARTY. The declaration on the withdrawal requires the written form unless null and void.
3. Weather phenomena and conditions typical for a given season of the year, including rains and heat, cannot be treated as Force majeure.

§ 13. OBLIGATION OF KEEPING SOBRIETY / THEFTS

1. The ORDERING PARTY declares and the CONTRACTOR acknowledges that on the premises of PCC ROKITA S.A. the obligation of keeping sobriety has to be observed. The obligation of keeping sobriety is expressed in: prohibition of bringing in and consuming alcohol or other intoxicants on the premises of PCC ROKITA S.A., prohibition of coming to work after consuming alcohol or other intoxicants or not sober. The CONTRACTOR ensures that it shall obliged its employees and other persons with which the CONTRACTOR performs the works being the SUBJECT of this AGREEMENT to observe the obligation of keeping sobriety on the premises of PCC ROKITA S.A. and guarantees observance of the obligation of keeping sobriety by the above mentioned persons on the premises of PCC ROKITA S.A. The above obligation also relates to the prohibition of bringing in and consuming drugs.
2. In the event of stating in an employee and/or in any person with which the CONTRACTOR performs the works being the SUBJECT of this AGREEMENT a status after consuming alcohol or other intoxicants or a status of insobriety this person,



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depending on the circumstances, in which such a status is stated, shall not be admitted to the PREMISES OF PCC ROKITA S.A. or shall be removed from this area. The CONTRACTOR is obliged to withdraw the aforesaid person from performing works being the SUBJECT of this AGREEMENT with immediate effect that is from the moment when this person breached this obligation as this person shall have an absolute prohibition of entering and staying on the premises of PCC ROKITA S.A.

3. The ORDERING PARTY has the right to calculate a contractual penalty in the amount of PLN 10 000 (say: ten thousand PLN) for each case of stating insobriety. The ORDERING PARTY may pursue damage exceeding the amount of contractual penalties on the basis of the general rules of the Polish Civil Code.
4. The provision of the item 2 has relevant application in the event when any of the employees or other parties with which the CONTRACTOR performs the works being the SUBJECT of this AGREEMENT, has committed or tried to commit theft/appropriation of the property of the ORDERING PARTY or any other entity running its business activity on the premises of the ORDERING PARTY and PCC ROKITA S.A.

§ 14. SOLVING DISPUTES

Relevant regulation of Polish law, including the Polish Civil Code, excluding United Nations Convention on Contracts of the International Sale of Goods, are applicable to any issues not provided for in this AGREEMENT. Potential disputes that may result from conclusion or performance of the AGREEMENT shall be settled by a common Polish court competent for the registered office of the ORDERING PARTY.

§ 15. ADDITIONAL PROVISIONS

1. All changes and supplements of this AGREEMENT require a written form in a form of bilaterally agreed annex, under pain of invalidity.
2. The PARTIES reserve the possibility to amend provisions of the AGREEMENT by the annex to the AGREEMENT in the following cases:
 - a) in case of change of binding provisions of law in the scope influencing the performance of the SUBJECT of the AGREEMENT or the necessity of adjustment to the requirements of the binding provisions of law,
 - b) occurrence of impossibility of performance of the AGREEMENT in whole or in part, caused by objective factors, independent from the CONTRACTOR and from the ORDERING PARTY,



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- c) occurrence of discrepancies and misunderstandings of terms used in the AGREEMENT, including in attachments hereto, which are not possible to remove without amendment of the AGREEMENT, including attachments hereto,
- d) deadlines of the performance of the AGREEMENT are rescheduled due to time of occurrence of obstacles having a character of Force Majeure events,
- e) materials or devices of newer generation, technical or technological solutions which in particular allow to save costs of the performance of the AGREEMENT or costs of further usage of performed SUBJECT of the AGREEMENT, occur on the market, and the PARTES agree that their application is justified for the proper or effective performance of the AGREEMENT
- f) as a result of the occurrence of justified reasons, in order to secure proper performance of all activities within the SUBJECT of the AGREEMENT and achieving result intended by the ORDERING PARTY, the PARTES agree that it is necessary to reschedule deadlines of performance of the AGREEMENT
- g) the PARTES agree it is necessary to change a manner of performance of the AGREEMENT, in particular justified by the technical, technological, market or safety reasons,

This provision shall not be deemed as independent basis of claims/ rights of any PARTY to one –sided amendment of this AGREEMENT, including its termination, unless such claims/rights results from the other provisions of the AGREEMENT.

- 3. The CONTRACTOR performing this AGREEMENT shall have a right to use SUBCONTRACTORS, after obtaining prior written under pain of invalidity consent of the ORDERING PARTY. The CONTRACTOR is liable for the acts and omissions of the SUBCONTRACTORS or other persons used for the performance of this AGREEMENT as for its own acts and omissions. The CONTRACTOR represents that all persons appointed by it to perform this AGREEMENT shall be properly skilled, experienced, trained, including in particular in the scope of work safety and hygiene as well as possess qualifications required by the provisions of law and necessary medical certificates and it shall provide the ORDERING PARTY at its request with applicable documents for inspection.
- 4. Due to the fact that the INVESTMENT is located on the PREMISES of PCC ROKITA SA, the CONTRACTOR commits itself to observe and apply all the regulations valid in PCC ROKITA SA, and in particular the ones related to safety and hygiene at work (BHP), in particular of the Regulation no. 46/2012 of the General Director of PCC Rokita SA of 18 October 2012 on "Introducing in application Instruction of safety and



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hygiene at work and fire protection during organisation or performance of overhaul, modernisation or construction works in PCC Rokita SA and Instruction on fire protection for welding works in PCC Rokita SA " are applicable to any issues not provided for above.

5. In particular the CONTRACTOR shall ensure their application of gas masks and helmets by its employees and SUBCONTRACTORS during the works on the PREMISES of PCC ROKITA.
6. The ORDERING PARTY shall enable the CONTRACTOR access to the regulations referred to in item 4 above.
7. In the event of gross negligence of the regulations of work safety and hygiene, fire protection, environment protection and internal regulations by the employees of the CONTRACTOR or of SUBCONTRACTORS or by other persons used for the performance of this AGREEMENT, the PARTIES shall jointly determine a contractual penalty for the above mentioned breaches in the amount of PLN 1000 for each case of breaching the above mentioned regulations which the CONTRACTOR commits itself to pay to the ORDERING PARTY. This provision on contractual penalty does not exclude pursuance of compensation under general rules of the Civil Code.
8. Withdrawal from the AGREEMENT from any reason:
 - a) does not release the CONTRACTOR from any obligations referred to in this AGREEMENT which stay binding after its termination, according to the reason stated in the AGREEMENT explicitly or impliedly;
 - b) does not influence negatively the provisions disputes setting;
 - c) does not release the CONTRACTOR from its duties or liability for the damages of the ORDERING PARTY resulting from acts or omissions of the CONTRACTOR before the day of withdrawal or resulting from such a withdrawal;
 - d) the ORDERING PARTY does not lose its rights to the contractual penalties, due according to the AGREEMENT for the reasons occurred before the date of withdrawal as well as contractual penalties resulting from such a withdrawal.
9. The AGREEMENT does not limit the ORDERING PARTY 's right, which the PARTIES hereby confirm the ORDERING PARTY is entitled to, to disclose all information and documentation relating to the AGREEMENT, including all the documentation and information received from the CONTRACTOR in relation to the AGREEMENT, in particular the ORDERING PARTY's right to disclose these documentation and



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information among others cooperating with the ORDERING PARTY designers, PCC Rokita Group companies, companies or technical advisers cooperating with ORDERING PARTY.

10. The AGREEMENT does not exclude any far reaching obligations and liability of the CONTRACTOR related to the obligation of confidentiality, resulting from any other agreements concluded by the PARTIES and from other legal acts, which agreements and acts shall in this scope stay in force.
11. The AGREEMENT has been prepared in two identically-worded copies, one for each PARTY.
12. Except for the case the ORDERING PARTY granted a prior written under the pain of nullity consent, the possibility of transfer by the CONTRACTOR of the receivables due to it from the ORDERING PARTY to third parties shall be excluded.
13. THE CONTRACTOR shall be obliged to observe the fire regulations (p.poż), resulting from the mandatory provisions of law as well as from the internal regulations of the ORDERING PARTY (fire regulations). The CONTRACTOR will maintain fire equipment in working order, required by applicable fire regulations in the promises of the ORDERING PARTY. Flammable materials shall be stored by the CONTRACTOR in the manner compliant with applicable fire provisions and protected against the third parties' access. The CONTRACTOR shall be liable for all the losses and damage caused by the fire being a result of the SUBJECT of the AGREEMENT execution and / or caused by the CONTRACTOR's personnel.
14. Any one-sided deductions by the CONTRACTOR of its liabilities to the ORDERING PARTY shall be excluded.
15. An integral part of this AGREEMENT are the attachments listed below. In the event of differences between the provisions in the Agreement and the attachments the provisions of the AGREEMENT prevail.
16. General terms and conditions of the CONTRACTOR or other templates of the agreements of the CONTRACTOR shall not apply to this AGREEMENT.
17. List of the attachments:

Attachment no.1 – Detailed technical specification

Attachment no.2 – CONTRACTOR`s offer

Attachment no.3 – Third party liability insurance policy (OC)

Attachment no. 4 – Compendium of expertise



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Attachment no.5 – Bank/insurance guarantee of good performance

Attachment no.6 – Bank/insurance guarantee of removal of faults and failures

Attachment no.7 – Draft of the declaration of the CONTRACTOR in relations to the ORDERING PARTY's payment

Attachment no.8 – Costs of supervision