Załącznik nr 5 A

Postępowania nr EU/32/STS/ZZ/ o udzielenie zamówienia w trybie przetargu nieograniczonego na:

DOSTAWĘ 2 Sztuk SUWNIC NABRZEŻOWYCH

Zamówienie na zakup sprzętu w ramach projektu pt:

„Wyposażenie terminalu intermodalnego BCT w nowoczesne urządzenia przeładunkowe”.

PODPIS ZAUFANY
MACIEJ
MALISZEWSKI
17.07.2024 10:47:29 [GMT+2]
Dokument podpisany elektronicznie podpisem zaufanym

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Dokument podpisany przez Adam Kaliszewski
Data: 2024.07.17 13:10:40 CEST

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Recommended by

The Institution of Engineering and Technology

The Institution of Mechanical Engineers

Model Form of General Conditions of Contract

For the supply of equipment, electrical, electronic or mechanical plant – with erection

2010 Edition

1. GENERAL CONDITIONS

Definitions and interpretations

Definitions

1.1 In construing the Contract the following words and expressions shall have the following meanings hereby assigned to them.

1.1.a 'Purchaser' means the person named as such in the Special Conditions and the legal successors in title to the Purchaser but not (except with the consent of the Contractor) any assignee of the Purchaser.

1.1.b 'Contractor' means the tenderer whose Tender has been accepted by the Purchaser and the legal successors in title to the Contractor but not any assignee of the Contractor.

1.1.c 'Sub-Contractor' means any person (other than the Contractor) named in the Contract for the supply of any part of the Works or any person to whom any part of the Contract has been sub-let with the consent of the Engineer, and the Sub-Contractor's legal successors in title, but not any assignee of the Sub-Contractor.

1.1.d 'Engineer' means the person appointed by the Purchaser to act as Engineer for the purposes of the Contract and designated as such in the Special Conditions or, in default of any appointment, the Purchaser.

1.1.e 'Engineer's Representative' means any assistant of the Engineer appointed from time to time to perform the duties delegated to him under clause 2 (Engineer and engineer's representative) hereof.

1.1.f 'Conditions' means these general conditions and the Special Conditions.

1.1.g 'Contract' means the agreement between the Purchaser and the Contractor (howsoever made) for the execution of the Works including the Letter of Acceptance, the Conditions, the Specification and the drawings (if any) annexed thereto, and such schedules as are referred to therein and the Tender.

1.1.h 'Contract Price' means the sum stated in the Contract as the price payable to the Contractor for the execution of the Works.

1.1.i 'Contract Value' means such part of the Contract Price, adjusted to give effect to such additions or deductions as are provided for in the Contract, other than under sub-clause 6.2 (Labour, materials and transport), as is properly apportionable to the Plant or work in question. In determining Contract Value the state, condition and topographical location of the Plant, the amount of work done and all other relevant circumstances shall be taken into account.

1.1.j 'Cost' means all expenses and costs incurred including overhead and financing charges properly allocable thereto with no allowance for profit.

1.1.k 'Tender' means the Contractor's priced offer to the Purchaser for the execution of the Works.

1.1.l 'Letter of Acceptance' means the formal acceptance by the Purchaser of the Tender incorporating any amendments or variations to the Tender agreed by the Purchaser and Contractor.

1.1.m 'Time for Completion' means the period of time for completion of the Works or any Section thereof as stated in the Contract or as extended under sub-clause 33.1 (Extension of time for completion) calculated from whichever is the later of:

(a) the date specified in the Contract as the date for commencement of the Works;

(b) the date of receipt of such payment in advance of the commencement of the Works as may be specified in the Contract;

(c) the date on which any necessary legal, financial or administrative requirements specified in the Contract as conditions precedent to commencement have been fulfilled.

1.1.n 'Contractor’s Equipment' means all appliances or things of whatsoever nature required for the purposes of the Works but does not include Plant, materials or other things intended to form or forming part of the Works.

1.1.o 'Plant' means machinery, computer hardware and software, apparatus, materials, articles and things of all kinds to be provided under the Contract other than Contractor’s Equipment.

1.1.p 'Works' means all Plant (Equipment) to be provided and work to be done by the Contractor under the Contract.

1.1.q 'Section of the Works' or 'Section' means the parts into which the Works are divided by the Specification.

1.1.r 'Programme' means the programme referred to in clause 14 (Programme).

1.1.s 'Specification' means the Technical specification of the Works annexed to or included in the Contract including any modifications thereof made under clause 27 (Variations).

1.1.t 'Special Conditions' means the alterations to these general conditions and such further conditions as may be specified and identified as the Special Conditions in the Contract.

1.1.u 'Site' means the actual place or places, provided or made available by the Purchaser, to which Plant is to be delivered or at which work is to be done by the Contractor, together with so much of the area surrounding the same as the Contractor shall with the consent of the Purchaser actually use in connection with the Works otherwise than merely for the purposes of access.

1.1.v 'Tests on Completion' means the tests specified in the Contract (or otherwise agreed by the Purchaser and the Contractor) which are to be made by the Contractor upon completion of erection and/or installation before the Works are taken over by the Purchaser.

1.1.w 'Performance Tests' means the tests (if any) detailed in the Specification or in a performance tests schedule otherwise agreed between the Purchaser and the Contractor, to be made after the Works have been taken over to demonstrate the performance of the Works.

1.1.x 'Defects Liability Period' has the meaning assigned by sub-clause 36.1 (Defects after taking-over).

1.1.y 'Purchaser's Risks' has the meaning assigned by clause 45 (Purchaser's risks).

1.1.z 'Force Majeure' has the meaning assigned by sub-clause 46.1 (Force majeure).

1.1.aa 'Appendix' means the Appendix to these general conditions.

1.1.bb 'writing' means any hand-written, type-written or printed statement.

1.1.cc 'day' means calendar day.

1.1.dd 'week' means any period of seven days.

1.1.ee 'month' means calendar month.

~~**1.**1.ff 'UK Construction Act' means the Housing Grants, Construction and Regeneration Act 1996 (incorporating any amendments brought into force by the Local Democracy, Economic Development and Construction Act 2009 or otherwise from time to time).~~

Interpretation

1.2 Words importing persons or parties shall include firms, corporations and any organisation having legal capacity.

Singular and plural

1.3 Words importing the singular only also include the plural and vice versa where the context requires.

Notices and consents

1.4 Wherever in the Conditions provision is made for the giving of notice or consent by any person, unless otherwise specified such notice or consent shall be in writing and the word 'notify' shall be construed accordingly.

Any consent required of a party or the Engineer shall not be unreasonably withheld.

Headings and marginal notes

1.5 The headings or marginal notes in the Conditions shall not be deemed part thereof or be taken into consideration in the interpretation or construction thereof or of the Contract.

Engineer and engineer's representative

Engineer's duties

2.1 The Engineer shall carry out such duties in issuing certificates, decisions, instructions and orders as are specified in the Contract.

If the Engineer is required, under the terms of his appointment by the Purchaser, to obtain the prior specific approval of the Purchaser before exercising any of his duties under the Contract, particulars of such requirements shall be set out in the Special Conditions.

Engineer's representative

2.2 The Engineer's Representative shall be responsible to the Engineer and shall watch and supervise the Works, and test and examine any Plant or workmanship employed in connection therewith.

The Engineer's Representative shall have only such further authority as may be delegated to him by the Engineer under sub-clause 2.3 (Engineer's power to delegate).

Engineer's power to delegate

2.3 The Engineer may from time-to-time delegate to the Engineer's Representative any of his duties and he may at any time revoke such delegation.

Any delegation or revocation shall be in writing. The Engineer shall furnish to the Contractor and to the Purchaser a copy of any such delegation or revocation. No such delegation or revocation shall have effect until a copy thereof has been delivered to the Contractor.

Any written decision, instruction, order or approval given by the Engineer's Representative to the Contractor in accordance with such delegation shall have the same effect as though it had been given by the Engineer.

If the Contractor disputes or questions any decision, instruction or order of the Engineer's Representative he may refer the matter to the Engineer who shall confirm, reverse or vary the decision, instruction or order in accordance with sub-clause 2.6 (Disputing engineer's decisions, instructions and orders).

Engineer's decisions, instructions and orders

2.4 The Contractor shall proceed with the Contract in accordance with the decisions, instructions and orders given by the Engineer in accordance with the Conditions.

Confirmation in writing

2.5 The Contractor may require the Engineer to confirm in writing any decision, instruction or order of the Engineer which is not in writing. The Contractor shall make such request without undue delay. Such a decision, instruction or order shall not be effective until written confirmation thereof has been received by the Contractor.

Disputing engineer's decisions, instructions and orders

2.6 Without derogating from the right to adjudication under sub-clause 52.1(a), if the Contractor by notice to the Engineer within 21 days after receiving any decision, instruction or order of the Engineer in writing or written confirmation thereof under sub-clause 2.5 (Confirmation in writing), disputes or questions the same, giving his reasons for so doing, the Engineer shall within a further period of 21 days by notice to the Contractor and the Purchaser with reasons, confirm, reverse or vary such decision, instruction or order.

If either the Contractor or the Purchaser disagrees with such decision, instruction or order as confirmed, reversed or varied he shall be at liberty to refer the matter to adjudication or arbitration within a further period of 21 days. In the absence of such a reference to adjudication or arbitration within the said period of 21 days such decision, instruction or order of the Engineer shall be final and binding on the parties.

Engineer to act fairly

2.7 Wherever by the Conditions the Engineer is required to exercise his discretion:

– by giving his decision, opinion or consent

– by expressing his satisfaction or approval

– by determining value

– or otherwise by taking action which may affect the rights and obligations of either of the parties,

he shall exercise such discretion fairly within the terms of the Contract and having regard to all the circumstances.

Replacement of engineer

2.8 The Purchaser shall not appoint any person to act with the Engineer or in replacement of the Engineer without the Contractor's prior consent.

Assignment and sub-contracting

Assignment

3.1 The Contractor shall not assign the benefit of the Contract in whole or in part or any of his obligations under the Contract. A charge in favour of the Contractor's bankers of any monies due under the Contract, or the subrogation of insurers to the Contractor's rights, shall not be considered an assignment.

Sub-contracting

3.2 Except where otherwise provided by the Contract the Contractor shall not sub-contract any part of the Works without the prior consent of the Engineer.

The Contractor shall however not require such consent to place contracts for minor details nor for purchases of materials nor for any part of the Works of which the manufacturer or supplier is named in the Contract.

The Contractor shall be responsible for the acts, defaults and neglects of any Sub-Contractor, his agents, servants or workmen as fully as if they were the acts, defaults and neglects of the Contractor, his agents, servants or workmen.

Precedence of documents

Precedence of documents

4.1 Unless otherwise provided in the Contract the Conditions as amended by the Letter of Acceptance shall prevail over any other document forming part of the Contract and in the case of conflict between the general conditions and the Special Conditions the Special Conditions shall prevail. Subject thereto the Specification shall prevail over any other document forming part of the Contract.

Basis of tender and contract price

Contractor to inform himself fully

5.1 The Contractor shall be deemed to have inspected the Site and to have satisfied himself as far as can reasonably be done as to the conditions of and all circumstances affecting the Site (including any safety regulations of the Purchaser applicable thereto), if access has been made available to him, and to have examined the Conditions and Specification, with such drawings, schedules, plans and information as may be annexed thereto or referred to therein.

Site data

5.2 The Tender shall be deemed to have been based on such data on climatic, hydrological, soil and general conditions of the Site and for the operation of the Works as the Purchaser or the Engineer has made available in writing to the Contractor for the purposes of the Tender. The Contractor shall be responsible for his own interpretation of such data.

5.3 The Contractor shall be responsible for any misunderstanding or incorrect information however obtained except information provided in writing by the Purchaser or the Engineer.

Provisional sums

5.4 Provisional sums included in the Contract Price shall be expended or used as the Engineer may in writing direct and not otherwise. In so far as a provisional sum included in the Contract Price is not expended or used it shall be deducted from the Contract Price.

Prime cost items

5.5 All sums included in the Contract Price in respect of prime cost items shall be expended or used as the Engineer may in writing direct and not otherwise. To the net amount paid by the Contractor in respect of each prime cost item there shall be added the percentage thereof stated in the Appendix.

5.6 The Contractor shall have no responsibility for work done or Plant supplied by any other person in pursuance of directions given by the Engineer under the preceding sub-clause unless the Contractor shall have approved in writing the person by whom such work is to be done or such Plant is to be supplied and the Plant, if any, to be supplied.

Unexpected site conditions

5.7 In the case of work underground or involving excavation where the actual conditions of the ground are not stated in the Contract or if rock, rocky soil, solid chalk, water, running sand, slag, pipes, concrete or other obstructions are found, and such conditions or obstructions could not reasonably have been ascertained from an inspection of the Site by the Contractor before he prepared the Tender or from information made available to the Contractor for the purposes of the Tender, or if it should be necessary to leave in timber or provide support for existing work (such necessity not having been indicated in the Contract), the Contractor shall forthwith inform the Engineer of the obstructions or hazards encountered and obtain the approval of the Engineer to the steps he proposes to take to deal with the same. If the Contractor in taking such steps incurs extra Cost, such Cost shall be added to the Contract Price.

Changes in costs

Statutory and other regulations

6.1 If the Cost to the Contractor of performing his obligations under the Contract shall be increased or reduced by reason of the making after the date of the Tender of any law or of any order, regulation or bylaw having the force of law that shall affect the Contractor in the performance of his obligations under the Contract, the amount of such increase or reduction shall be added to or deducted from the Contract Price as the case may be.

Labour, materials and transport

6.2 If, by reason of any rise or fall in the Cost of labour or in the Cost of material or transport above or below such Cost ruling at the date of the Tender, the Cost to the Contractor of performing his obligations under the Contract shall be increased or reduced, the amount of such increase or reduction shall be added to or deducted from the Contract Price as the case may be. No account shall be taken of any amount by which any such Cost incurred by the Contractor has been increased by the default or negligence of the Contractor.

This sub-clause shall apply unless specifically excluded by the Special Conditions. Where this sub-clause does apply then unless otherwise agreed, increases or decreases shall be calculated and determined by reference to a formula to be specified in the Special Conditions.

Agreement

Agreement

7.1 Either party shall be entitled to require the other to enter into an agreement in the form annexed with such modifications as may be necessary within 45 days after the Letter of Acceptance. The expenses of preparing, completing and stamping the agreement shall be borne by the party making such request and he shall provide the other party free of charge with a copy of the agreement.

Bond or guarantee

Provision of bond or guarantee

8.1 If required by the Purchaser the Contractor shall provide the guarantee or bond of a parent company, bank or other surety for the due performance of the Contract. Unless otherwise specified in the Special Conditions, the terms of the bond or guarantee shall be in the relevant form annexed to the Conditions.

Unless otherwise specified in the Contract the Contractor shall provide the bond or guarantee at his own expense.

The amount of the bond or guarantee, the period of its validity, the arrangements for its release and the currency of any monetary transactions involved shall be stated in the Special Conditions.

Failure to provide bond or guarantee

8.2 If the Contractor shall have failed to provide the bond or guarantee within 30 days after the date of the Letter of Acceptance or within such further period as may be advised by the Purchaser, the Purchaser shall be entitled to terminate the Contract by seven days' notice to the Contractor. In the event of termination under this sub-clause the Contractor shall have no liability to the Purchaser other than to repay to the Purchaser all Cost properly incurred by the Purchaser incidental to the obtaining of new tenders.

Details confidential

Details confidential

9.1 The Purchaser and the Contractor shall treat the details of the Contract and any information made available in relation thereto as private and confidential and neither of them shall publish or disclose the same or any particulars thereof (save in so far as may be necessary for the purposes of the Contract) without the previous consent of the other, provided that nothing in this clause shall prevent the publication or disclosure of any such information that has come within the public domain otherwise than by breach of this clause.

Notices

Notices to purchaser and engineer

10.1 Any notice to be given to the Purchaser or to the Engineer under the Contract shall be served by sending the same by post or facsimile transmission to, or by leaving the same at, the respective addresses nominated for that purpose in the Special Conditions or by secure email to an email address agreed acceptable for such purpose by the Purchaser or Engineer.

Notices to contractor

10.2 All certificates, notices or decisions, instructions and orders to be given by the Engineer or the Purchaser under the Contract shall be served by sending the same by post, or facsimile transmission to, or by leaving the same at, the Contractor's principal place of business or such other address as the Contractor shall nominate for that purpose or by secure email to an email address agreed acceptable for such purpose by the Contractor.

Service of notices

10.3 Any notice sent by facsimile transmission shall be deemed to have been served at the time of transmission. Any notice sent by secure email shall be deemed properly served at the time stated in a successful delivery status notification in respect of the emailed notice. A notice sent by post shall be deemed to have been served four days after posting.

Purchaser's general obligations

Access to site

11.1 The Purchaser shall give the Contractor access (but not exclusive access) to the Site on the date specified in the Contract. If no date is stated then access shall be given in reasonable time having regard to the Time for Completion. The Purchaser shall provide such roads and other means of access to the Site as may be stated in the Specification, subject to such limitations as to use as may be imposed.

Wayleaves, consents, etc.

11.2 The Purchaser shall, within the times stated in the Programme or, if not so stated, before the time specified for delivery of any Plant to the Site, obtain all consents, wayleaves and approvals in connection with the regulations and bylaws of any local or other authority which shall be applicable to the Works on the Site.

Import permits, licences and duties

11.3 The Purchaser shall obtain all import permits or licences required for any part of the Plant or Works within the time stated in the Programme or, if not so stated, in reasonable time having regard to the time for delivery of the Plant and the Time for Completion. The Purchaser shall pay or reimburse to the Contractor all customs and import duties arising upon the importation of Plant into the country in which the Plant is to be erected. In the event that the Purchaser shall fail to obtain such import permits or licences then the additional Cost reasonably incurred by the Contractor in consequence thereof shall be added to the Contract Price.

Foundations, etc.

11.4 Buildings, structures, foundations, approaches or work, equipment or materials to be provided by the Purchaser shall be provided within the time specified in the Contract or in the Programme, shall be of the quality specified and, in a condition, suitable for the efficient transport, reception, installation and maintenance of the Works.

Utilities and power

11.5 The Purchaser shall make available on the Site for use by the Contractor for the purposes of the Works such supplies of electricity, water, gas, air and other services as may be specified in the Special Conditions. Such

supplies shall be made available at the point(s) specified in the Contract on the terms mentioned in sub-clause 18.2 (Site services).

Power, etc. for tests on site

11.6 Where the Contract provides for any tests on Site, the Purchaser shall, unless otherwise stated in the Special Conditions, provide free of charge such fuel, electricity, skilled and unskilled labour, materials, stores, water, apparatus, instruments and feedstocks as may be requisite and as may reasonably be requested by the Contractor to enable the tests to be carried out effectively.

Breach of purchaser's general obligations

11.7 In the event that the Purchaser shall be in breach of any of his general obligations imposed by this clause then the additional Cost reasonably incurred by the Contractor in consequence thereof shall be added to the Contract Price.

Contractor's obligations

Contractor's general obligations

13.1 The Contractor shall, subject to the provisions of the Contract, with due care and diligence, design, manufacture, deliver to Site, erect and test the Plant, execute the Works and carry out the Tests on Completion within the Time for Completion. The Contractor shall also make good defects in the Works and provide specialist advice to enable the Performance Tests (where these are included) to be carried out by the Purchaser. The Contractor shall, subject to sub-clause 11.7 (Power, etc. for tests on site), provide all labour, skilled and unskilled, the supervision thereof and all Contractor's Equipment required for the execution of the Works.

Manner of execution

13.2 The Works shall be manufactured and executed in the manner set out in the Specification or, where not so set out, to the reasonable satisfaction of the Engineer and all work on Site shall be carried out in accordance with such reasonable directions as the Engineer may give.

Contractor's design

13.3 The Contractor shall be responsible for the detailed design of the Plant and of the Works in accordance with the requirements of the Specification. In so far as the Contractor is required by the Contract or is instructed by the Engineer to comply with any detailed design provided by the Purchaser or the Engineer the Contractor shall be responsible for such design unless within a reasonable time after receipt thereof, he shall have given notice to the Engineer disclaiming such responsibility.

Programme

14.1 Within the time stated in the Contract or, if no time is stated, within 30 days after the Letter of Acceptance, the Contractor shall submit to the Engineer for his approval the Programme for the execution of the Works showing:

(a) the sequence and timing of the activities by which the Contractor proposes to carry out the Works (including design, manufacture, delivery to Site, erection and testing),

(b) the anticipated numbers of skilled and unskilled labour and supervisory staff required for the various activities when the Contractor is working on Site,

(c) the respective times for submission by the Contractor of drawings and operating and maintenance instructions and for the approval thereof by the Engineer,

(d) the times by which the Contractor requires the Purchaser:

(i) to furnish any drawings or information,

(ii)to provide access to Site,

(iii) to have completed any necessary civil engineering or building work (including foundations for the Plant),

(iv) to have obtained any import permits or licences, consents, wayleaves and approvals necessary for the purposes of the Works,

(v) to provide electricity, water, gas, air and other services on the Site or any equipment, materials or services which are to be provided by the Purchaser.

Form of programme

14.2 The Programme shall be in such form as may be specified in the Special Conditions or, if not so specified, as may reasonably be required by the Engineer.

Approval of programme

14.3 Approval by the Engineer of the Programme shall not relieve the Contractor of any of his obligations under the Contract.

Alterations to programme

14.4 The Contractor shall not without the Engineer's consent make any material alteration to the approved Programme.

Revision of programme

14.5 If the Engineer decides that progress under the Contract does not match the Programme, he may order the Contractor to revise the Programme. The Contractor shall thereafter revise the Programme to show the modifications necessary to ensure completion of the Works within the Time for Completion.

If modifications are required for reasons for which the Contractor is not responsible, the Cost of producing the revised Programme shall be added to the Contract Price.

Rate of progress

14.6 The Engineer shall notify the Contractor if the Engineer decides that the rate of progress of the Works or of any Section is too slow to meet the Time for Completion and that this is not due to a circumstance for which the Contractor is entitled to an extension of time under sub-clause 33.1 (Extension of time for completion).

Following receipt of such a notice the Contractor shall take such steps as may be necessary and as the Engineer may approve to remedy or mitigate the likely delay, including revision of the Programme. The Contractor shall not be entitled to any additional payment for taking such steps.

Drawings

15.1 The Contractor shall submit to the Engineer for approval:

(a) within the times given in the Contract or in the Programme such drawings, samples, patterns, models or information (including calculations) as may be called for therein, and in the numbers therein required;

(b) during the progress of the Works within such reasonable times as the Engineer may require such drawings of the general arrangement and details of the Works as may be specified in the Contract or as the Engineer may reasonably require.

The Engineer shall signify his approval or disapproval thereof. If he fails to do so within the time given in the Contract or the Programme, or, if no time limit is specified, within 30 days of receipt, they shall be deemed to have been approved.

Approved drawings, samples, patterns and models shall be signed or otherwise identified by the Engineer.

The Contractor shall supply additional copies of approved drawings in the form and numbers stated in the Contract.

Consequences of disapproval of drawings

15.2 Any drawings, samples, patterns or models which the Engineer disapproves shall be modified and re-submitted without delay.

Approved drawings

15.3 Approved drawings shall not be departed from except as provided in clause 27 (Variations).

Inspection of drawings

15.4 The Engineer shall have the right at all reasonable times to inspect all drawings of any part of the Works.

Foundation, etc. drawings

15.5 The Contractor shall provide within the times stated in the Contract or in the Programme, drawings showing how the Plant is to be affixed and any other information required for

– preparing suitable foundations or other means of support,

– providing suitable access for the Plant and any necessary equipment to the point on Site where the Plant is to be erected, and

– making necessary connections to the Plant.

Operating and maintenance instructions

15.6 Within the time or times stated in the Contract or in the Programme the Contractor shall supply operating and maintenance instructions and drawings of the Works as built. These shall be in such detail as will enable the Purchaser to operate, maintain, dismantle, reassemble and adjust all parts of the Works.

Instructions and drawings shall be supplied in the form and numbers stated in the Contract.

The Works shall not be considered as having been delivered for the purposes of taking-over until such instructions and drawings have been supplied to the Purchaser.

Purchaser's use of drawings, etc. supplied by contractor

15.7 Drawings and information supplied by the Contractor may be used by the Purchaser only for the purposes of completing, maintaining, adjusting and repairing the Works. No licence is granted to the Purchaser to copy or use drawings or information so supplied in order to make or have made spare parts for the Works. Drawings or information supplied by the Contractor shall not without the Contractor's consent be used, copied or communicated to a third party by the Engineer or the Purchaser otherwise than as strictly necessary for the purposes of the Contract.

Contractor's use of drawings, etc. supplied by purchaser or engineer

15.8 Drawings and information supplied by the Purchaser and the Engineer to the Contractor for the purposes of the Tender and the Contract shall remain the property of the Purchaser. They shall not without the consent of the Purchaser be used, copied or communicated to a third party by the Contractor otherwise than as strictly necessary for the purposes of the Contract.

Manufacturing drawings, etc.

15.9 Notwithstanding any other provisions of the Contract the Contractor shall not be required to provide to the Purchaser or to the Engineer shop drawings nor any Contractor's confidential manufacturing drawings, designs, or know-how nor the confidential details of manufacturing practices, processes or operations.

Errors in drawings, etc. supplied by contractor

16.1 Notwithstanding approval by the Engineer of drawings, samples, patterns, models or information submitted by the Contractor, the Contractor shall be responsible for any errors, omissions or discrepancies therein unless they are due to incorrect drawings, samples, patterns, models or information supplied by the Purchaser or the Engineer.

The Contractor shall bear any costs he may incur as a result of delay in providing such drawings, samples, patterns, models or information or as a result of errors, omissions or discrepancies therein, for which the Contractor is responsible.

The Contractor shall at his own expense carry out, or bear the reasonable cost of, any alterations or remedial work necessitated by such errors, omissions or discrepancies for which he is responsible and modify the drawings, samples, patterns, models or information accordingly.

The performance of his obligations under this clause shall be in full satisfaction of the Contractor's liability under this clause but shall not relieve him of his liability under clause 34 (Delay).

Errors in drawings, etc. supplied by purchaser or engineer

16.2 The Purchaser shall be responsible for errors, omissions or discrepancies in drawings and written information supplied by him or by the Engineer. The Purchaser shall at his own expense carry out any alterations or remedial work necessitated by such errors, omissions or discrepancies for which he is responsible or pay the Contractor the Cost incurred by the Contractor in carrying out in accordance with the Engineer's instructions any such alterations or remedial work so necessitated.

Contractor’s representatives and workmen

17.1 The Contractor shall employ one or more competent representatives, whose name or names shall have been notified previously to the Engineer by the Contractor, to superintend the carrying out of the Works on the Site. The said representative, or if more than one shall be employed, then one of such representatives, shall be present on the Site during working hours, and any orders or instructions which the Engineer may give to the said representative of the Contractor shall be deemed to have been given to the Contractor.

Objection to representatives

17.2 The Engineer shall be entitled by notice to the Contractor to object to any representative or person employed by the Contractor in the execution of or otherwise about the Works who shall, in the opinion of the Engineer, misconduct himself or be incompetent or negligent, and the Contractor shall remove such person from the Works.

Returns of labour

17.3 The Contractor shall, if required by the Engineer, send to the Engineer's Representative a detailed return of the supervisory staff and the numbers of labour in the categories from time to time employed by the Contractor and his Sub-Contractors upon the Site. The returns shall be provided in such form and with such frequency as the Engineer may reasonably require.

Fencing, guarding, lighting and watching

18.1 The Contractor shall be responsible for the proper fencing, guarding, lighting and watching of all the Works on the Site until taken over and for the proper provision of temporary roadways, footways, guards and fences as far as may be necessary for the Works and for the accommodation and protection of the owners and occupiers of adjacent property, the public and others. The Contractor shall not use any naked light on the Site without the specific consent of the Engineer or the Engineer's Representative.

Site services

18.2 The Contractor shall provide any apparatus necessary for the use of such supplies of electricity, water, gas, air and other services as are made available for the Contractor's use by the Purchaser under sub-clause 11.6 (Utilities and power). The Contractor shall pay the Purchaser for such use at the rates specified in the Special Conditions or, if not so specified, at such reasonable rates as the Engineer shall determine.

Clearance of site

18.3 From time to time during the progress of the Works the Contractor shall clear away and remove from the Site all surplus materials and rubbish and, on completion, all Contractor's Equipment. The Contractor shall at all times leave the Site and the Works clean and in a safe and workmanlike condition to the Engineer's reasonable satisfaction.

Opportunities for other contractors

18.4 The Contractor shall, in accordance with the Engineer's requirements, afford all reasonable opportunities for carrying out their work to any other contractors employed by the Purchaser and to the workmen of the Purchaser who may be employed in the execution on or near the Site of any work not included in the Contract or of any contract which the Purchaser may enter into in connection with or ancillary to the Works. If, however, the Contractor shall, on the written request of the Engineer or the Engineer's Representative, make available to any such other contractor or to the Purchaser any Contractor's Equipment or provide any other service of whatsoever nature, the Purchaser shall pay to the Contractor in respect of such use or service such sum or sums as shall, in the opinion of the Engineer, be reasonable.

Hours of work

19.1 Unless otherwise provided in the Contract the Purchaser shall give the Contractor facilities for carrying out the Works on the Site continuously during the normal working hours generally recognised in the district. The Engineer may, after consulting with the Contractor, direct that work shall be done at other times if it shall be practicable in the circumstances for work to be so done. The extra Cost of work so done shall be added to the Contract Price unless such work has, by the default of the Contractor, become necessary to ensure the completion of the Works within the Time for Completion.

No night or rest day working

19.2 No work shall be carried out on Site during the night or on locally recognised days of rest without the consent of the Engineer or the Engineer's Representative unless the work is unavoidable or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Engineer or the Engineer's Representative. The Engineer or the Engineer's Representative shall not withhold any such consent if work at night or on rest days is considered by the Contractor to be necessary to meet the Time for Completion.

Safety

20.1 The Contractor shall be responsible for the adequacy, stability and safety of his operations on Site and shall comply with the Purchaser's safety regulations applicable at the Site unless specifically authorised by the Engineer to depart therefrom in any particular circumstances.

Extraordinary traffic

21.1 The Contractor shall use every reasonable means to prevent damage to any of the highways or bridges on the routes to the Site by any traffic of the Contractor or any of his Sub-Contractors.

Special loads

21.2 Should the Contractor consider that the moving of one or more loads of Plant or Contractor's Equipment is likely to damage any highway or bridge unless special protection or strengthening is carried out, then the Contractor shall, before moving the load notify the Engineer. The Contractor shall in the notice state the weight and other particulars of the load to be moved and his proposal for protecting or strengthening the highway or bridge.

Unless within fourteen days of receipt of such notice the Engineer by notice directs that such protection or strengthening is unnecessary, then the Contractor shall carry out his proposals with any modification thereof that the Engineer may require.

If there are items in the rates specified in the schedule of prices applicable to such work the Contractor shall be paid for such work at the rates specified. If there are no such rates, the Cost of the work shall be certified by the Engineer and added to the Contract Price.

Extraordinary traffic claims

21.3 If the Contractor shall receive any claim in respect of damage or injury to highways or bridges arising out of the execution of the Works, he shall immediately report the claim to the Engineer. The Purchaser shall then negotiate the settlement of and pay all sums due in respect of such claim. The Purchaser shall indemnify the Contractor in respect of the claim and in respect of all proceedings, damages, Cost, charges and expenses in relation thereto.

If the Engineer decides that any part of such claim results from the negligence of the Contractor or from the Contractor's failure to perform his obligations under sub-clauses 21.1 (Extraordinary traffic) and 21.2 (Special loads) then the Engineer shall certify the amount thereof which shall be deducted from the Contract Price.

Waterborne traffic

21.4 In the event that the Contractor uses waterborne transport the foregoing provisions of this clause shall be construed as though the word 'highway' included a lock, dock, sea wall or other structure relating to a waterway.

Setting out

22.1 The Contractor shall accurately set out the Works in relation to original points, lines and levels of reference given by the Engineer in writing and provide all necessary instruments, appliances and labour therefor.

If, at any time during the execution of the Works, any error appears in the positions, levels, dimensions or alignment of the Works, the Contractor shall rectify the error.

The Contractor shall bear the Cost of rectifying the error, unless the error results from incorrect information supplied in writing by the Purchaser, the Engineer or the Engineer's Representative, or from default by another contractor, in which case the Cost incurred by the Contractor shall be added to the Contract Price.

The Contractor shall identify, protect and preserve benchmarks, sight rails, pegs and other things used in setting out the Works.

Inspection and testing of plant before delivery

Engineer's entitlement to test

23.1 The Engineer shall be entitled at all reasonable times during manufacture to inspect, examine and test on the Contractor's premises or elsewhere the materials and workmanship and performances of all Plant. If any part of the Plant is being manufactured on premises, other than the Contractor's own, the Contractor shall obtain permission for the Engineer to inspect, examine and test as if the Plant were being manufactured on the Contractor's premises. Such inspection, examination and testing shall not release the Contractor from any obligation under the Contract.

Date for test or inspection

23.2 The Contractor shall agree with the Engineer the date on and the place at which any Plant will be ready for testing or inspection as provided in the Contract. The Engineer shall give the Contractor 24 hours' notice of his intention to attend the test or inspection. If the Engineer shall not attend at the place so named on the date

agreed, the Contractor may proceed with the test or inspection which shall be deemed to have been made in the Engineer's presence. The Contractor shall forthwith forward to the Engineer duly certified copies of the results of the test or inspection.

Services for test or inspection

23.3 The Contractor shall provide free of charge such assistance, labour, materials, electricity, fuel, stores, apparatus, instruments and other things as may be requisite and as may be reasonably demanded to carry out the test or inspection.

Certificate of test or inspection

23.4 When the Engineer is satisfied that any Plant has passed the test or inspection referred to in this clause he shall forthwith issue to the Contractor a certificate to that effect.

Failure on test or inspection

23.5 If after inspecting, examining or testing any Plant the Engineer shall decide that such Plant or any part thereof is defective or not in accordance with the Contract, he may reject the said Plant or part thereof by giving to the Contractor within 14 day's notice of such rejection, stating therein the grounds upon which the said decision is based. Following any such rejection the Contractor shall make good or otherwise repair or replace the rejected Plant and resubmit the same for test or inspection in accordance with this clause and all expenses reasonably incurred by the Purchaser in attending or in consequence of such re-testing or inspection and the Engineer's attendance shall be deducted from the Contract Price.

Delivery

24.1 The Contractor shall apply in writing to the Engineer for permission to deliver any Plant or Contractor's Equipment to the Site. No Plant or Contractor's Equipment may be delivered to the Site without the Engineer's written permission.

The Contractor shall be responsible for the reception and unloading on Site of all Plant and Contractor's Equipment delivered for the purposes of the Contract.

Suspension of work, delivery or erection

Instructions to suspend

25.1 The Engineer may at any time instruct the Contractor to suspend the progress of the whole or any part of the Works.

If by reason of any delay or failure on the part of the Engineer, or of failure by the Engineer to give the permission referred to in sub-clause 24.1 (Delivery), or from any cause for which the Purchaser or some other contractor employed by him is responsible, the Contractor is prevented from either:

(a) delivering to the Site any Plant which is ready for delivery at the time for delivery thereof specified in the Programme, or if no time is specified, at the time appropriate for it to be delivered having regard to the Time for Completion ('the Normal Delivery Date'), or

(b) erecting any Plant which has been delivered to the Site

then the Engineer shall be deemed to have given instructions to suspend the progress of the Works to the extent that progress is dependent on the delivery or erection of such Plant.

The Contractor shall during suspension store, preserve, protect and otherwise secure the Works and/or Plant affected and insure the same to the extent required by the Engineer.

Unless otherwise instructed by the Engineer, the Contractor shall during any suspension affecting the progress of the Works on Site maintain his staff, labour and Contractor's Equipment on or near the Site ready to proceed with the Works upon receipt of the Engineer's further instructions.

Additional cost caused by suspension

25.2 Any additional Cost incurred by the Contractor in complying with the provisions of and/or the Engineer's instructions under sub-clause 25.1 (Instructions to suspend) shall be added to the Contract Price.

Payment for plant affected by suspension

25.3 The Contractor shall be entitled to payment for Plant, work on which, or the delivery of which at the Normal Delivery Date, has been suspended for more than 30 days and the Contract Value of such Plant as at

the date of suspension shall be included in an interim certificate of payment under sub-clause 39.3 (Issue of payment certificate).

The Contractor shall not be entitled to a certificate of payment until he has sufficiently marked the Plant as the Purchaser's property under sub-clause 37.2 (Marking of plant) and has insured it in accordance with sub-clause 47.1 (Insurance of works) as if the Plant were on Site.

Disallowance of additional cost or payment

25.4 The Contractor shall not be entitled to be paid any additional Cost under sub-clause 25.2 (Additional cost caused by suspension) nor to any payment under sub-clause 25.3 (Payment for plant affected by suspension) if suspension is necessary by reason of default on the part of the Contractor or for the proper execution or the safety of the Works or Plant, save where such necessity results from any act or default of the Engineer or the Purchaser or the occurrence of any of the Purchaser's Risks.

Resumption of work, delivery or erection

25.5 At any time after suspension under sub-clause 25.1 (Instructions to suspend) the Engineer may give notice to the Contractor to proceed with the delivery or erection of Plant and/or work the subject of suspension under this clause.

If suspension has continued for more than 90 days and the suspension is not necessitated by any of the reasons stated in sub-clause 25.4 (Disallowance of additional cost or payment) the Contractor may by notice to the Engineer require him to give notice to proceed within 30 days.

If notice to proceed is not given within that time the Contractor may elect to treat the suspension as an omission under clause 27 (Variations) of the part of the Works affected thereby. If the suspension affects the whole of the Works the Contractor may terminate the Contract in which event he shall be entitled to be paid in accordance with sub-clause 51.3 (Payment on termination due to purchaser's default) as if the Contract had been terminated under sub-clause 51.1 (Notice of termination due to purchaser's default). If the Contractor does not elect to treat the suspension as an omission or to terminate the Contract, as the case may be, he shall be entitled to be paid the Contract Value of the Plant affected by the suspension.

Upon receipt of notice to proceed, the Contractor shall examine the Plant and work affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of such Plant or work that may have occurred during suspension. The Cost incurred in making such examination and of making good and resuming work shall be added to the Contract Price, provided that the Contractor shall not be entitled to be paid any Cost incurred in making good any deterioration, defect or loss caused by defective materials or workmanship or by the Contractor's failure to comply with any instructions of the Engineer under sub-clause 25.1 (Instructions to suspend).

Effect of suspension on defects liability

25.6 If the Contractor shall, solely in consequence of suspension, be required to perform his obligations under clause 36 (Defects liability) in relation to defects in any Plant at a time which is more than three years after the Normal Delivery Date therefor, the additional Cost incurred by the Contractor shall be added to the Contract Price.

Defects before taking-over

Defects before taking-over

26.1 Without prejudice to the Purchaser's rights under sub-clause 23.5 (Failure on test or inspection) if, in respect of any part of the Works not yet taken over, the Engineer shall at any time:

(a) decide that any work done, or Plant supplied, or materials used by the Contractor or any Sub-Contractor is or are defective or not in accordance with the Contract, or that such part is defective or does not fulfil the requirements of the Contract (all such matters being hereinafter in this clause called 'defects'), and

(b) as soon as reasonably practicable notify the Contractor of the said decision, specifying particulars of the defects alleged and

(c) so far as may be necessary place the Plant at the Contractor's disposal,

then the Contractor shall with all speed and, except as provided in sub-clause 25.5 (Resumption of work, delivery or erection) at his own expense, make good the defects so specified. If the Contractor fails so to do the Purchaser may, provided he does so without undue delay, take, at the expense of the Contractor, such steps as may in all the circumstances be reasonable to make good such defects. All work done, or Plant provided by the Purchaser to replace defective Plant, shall comply with the Contract and shall be obtained at reasonable prices and where

reasonably practicable under competitive conditions. The Contractor shall be entitled at his own expense to remove and retain all Plant that the Purchaser may have replaced. Nothing contained in this clause shall affect any claim by the Purchaser under clause 34 (Delay).

Variations

Meaning of variation

27.1 In the Conditions the term 'variation' means any alteration of the Works whether by way of addition, modification or omission.

Engineer's power to vary

27.2 The Engineer alone shall have the power until the whole of the Works have been taken over under clause 29 (Taking-over) to instruct the Contractor by notice to make any variations to the Works.

The Contractor shall carry out such variations and be bound by the Conditions in so doing as though the variations were stated in the Specification.

As soon as possible after having received any such instruction, the Contractor shall notify the Engineer if, in the Contractor's opinion, the variation will involve an addition to or deduction from the Contract Price or will have an effect on the Programme.

No such variation shall, together with any variations already ordered, involve a net addition to or deduction from the Contract Price of more than 15 per cent thereof unless the Contractor and the Purchaser consent thereto in writing.

Nothing in this sub-clause shall prevent the Contractor from making proposals to the Engineer for variations to the Works, but no variation so proposed shall be carried out by the Contractor except as directed in writing by the Engineer.

Valuation of variations

27.3 The amount to be added to or deducted from the Contract Price shall, if not the subject of a quotation from the Contractor which has been accepted by the Purchaser prior to the variation having been ordered, be determined by the Engineer in accordance with the rates specified in the schedules of prices, if applicable. Where rates are not contained in the said schedules or are not applicable then the amount shall be such sum as is in all the circumstances reasonable. Due account shall be taken of any partial execution of the Works which is rendered useless by any such variation.

Contractor's records of costs

27.4 In any case where the Contractor is instructed to proceed with a variation prior to the determination of the value thereof under sub-clause 27.3 (Valuation of variations) the Contractor shall keep contemporary records of the Cost of making the variation and of time expended thereon. Such records shall be open to inspection by the Engineer at all reasonable times.

Notice and confirmation of variations

27.5 When ordering any variation to any part of the Works, the Engineer shall give the Contractor such reasonable notice as will enable him to make his arrangements accordingly.

In cases where Plant is already manufactured, or in the course of manufacture, or any work done or drawings or patterns made that require to be altered, the Contractor shall be entitled to be paid the Cost of such alterations.

If, in the opinion of the Contractor, any such variation is likely to prevent or prejudice him from or in fulfilling any of his obligations under the Contract, he shall notify the Engineer thereof with full supporting details. The Engineer shall decide forthwith whether or not the variation shall be carried out.

If the Engineer confirms his instructions in writing the said obligations shall be modified to such an extent as may be justified. Until the Engineer so confirms his instructions, they shall be deemed not to have been given.

Progress with variations

27.6 The Contractor shall on receipt of the Engineer's instructions under sub-clause 27.2 (Engineer's power to vary), or confirmation of instructions under sub-clause 27.5 (Notice and confirmation of variations), immediately proceed to carry out such instructions, unless the Contractor has notified the Engineer that the variation in his opinion will involve a net addition to or deduction from the Contract Price of more than 15 per cent.

Subject thereto, the carrying out of such instructions shall not, without the consent of the Engineer, be delayed pending agreement on price.

Tests on completion

Notice of tests

28.1 The Contractor shall give to the Engineer 21 days' notice of the date after which he will be ready to make the Tests on Completion. Unless otherwise agreed the Tests on Completion shall take place within 10 days after the said date on such day or days as the Engineer shall notify to the Contractor.

Time for tests

28.2 If the Engineer fails to appoint a time after having been asked so to do or to attend at any time or place duly appointed for making the Tests on Completion, the Contractor shall be entitled to proceed in his absence and the Tests on Completion shall be deemed to have been made in the presence of the Engineer. The Contractor shall forthwith forward to the Engineer duly certified copies of the results of the Tests on Completion.

Delayed tests

28.3 If the Tests on Completion are being unduly delayed by the Contractor, the Engineer may, by notice, call upon the Contractor to make them within 21 days from the receipt of the said notice. The Contractor shall make the Tests on Completion on such days within the said 21 days as the Contractor may fix and of which he shall give notice to the Engineer. If the Contractor fails to make the Tests on Completion within the time aforesaid the Purchaser or the Engineer may proceed therewith at the risk and expense of the Contractor and the Cost thereof shall be deducted from the Contract Price. If the Contractor shall establish that the Tests on Completion were not being unduly delayed, the Tests on Completion so made shall be at the risk and expense of the Purchaser.

Repeat tests

28.4 If any part of the Works fails to pass the Tests on Completion they shall be repeated within a reasonable time upon the same terms and conditions. All Cost which the Purchaser may incur in the repetition of the Tests on Completion shall be deducted from the Contract Price. The provisions of this sub-clause shall also apply to any tests carried out under sub-clause 36.7 (Further tests).

Consequences of failure to pass tests on completion

28.5 If the Works or any Section fails to pass the Tests on Completion (including any repetition thereof) the Contractor shall take whatever steps may be necessary to enable the Works or the Section to pass the Tests on Completion and shall thereafter repeat them, unless any time limit specified in the Contract for the passing thereof shall have expired, in which case the Engineer shall be entitled to reject the Works or the Section and the Purchaser shall be entitled to proceed in accordance with clause 49 (Contractor's default).

Taking-over

Taking-over by sections

29.1 If the Contract provides for the Works to be taken over by Sections the provisions of this clause shall apply to each such Section as it applies to the Works.

Taking-over certificate

29.2 When the Works have passed the Tests on Completion and are complete (except in minor respects that do not affect their use for the purpose for which they are intended) the Engineer shall issue a certificate to the Contractor and to the Purchaser (herein called a 'Taking-Over Certificate'). The Engineer shall in the Taking-Over Certificate certify the date upon which the Works passed the Tests on Completion and were so complete.

The Purchaser shall be deemed to have taken over the Works on the date so certified. Except as permitted by clause 30 (Use before taking-over) the Purchaser shall not use the Works before they are taken over.

Effect of taking-over certificate

29.3 With effect from the date of taking-over as stated in the Taking-Over Certificate, risk of loss or damage to the Works or to the Section to which the Taking-Over Certificate relates (other than any parts thereof excluded by the terms of the Taking-Over Certificate) shall pass to the Purchaser and he shall take possession thereof.

Outstanding work

29.4 The Contractor shall rectify or complete to the reasonable satisfaction of the Engineer within the time stated in the Taking-Over Certificate any outstanding items of work or Plant noted as requiring rectification or as incomplete. In the event the Contractor fails to do so, the Purchaser may arrange for the outstanding work to be done and the Cost thereof shall be certified by the Engineer and deducted from the Contract Price.

Use before taking-over

30.1 If, by reason of any default on the part of the Contractor, a Taking-Over Certificate has not been issued in respect of the whole of the Works within one month after the Time for Completion, the Purchaser shall be entitled to use any Section or part of the Works in respect of which a Taking-Over Certificate has not been issued, provided the same is reasonably capable of being used. The Contractor shall be afforded the earliest possible opportunity of taking such steps as may be necessary to permit the issue of the Taking-Over Certificate. The provisions of sub-clause 43.1 (Care of the works) shall not apply to any Section or part of the Works while being so used by the Purchaser and clause 36 (Defects liability) shall apply thereto as if a Taking-Over Certificate had been issued from the date on which the Section or part was taken into use.

Interference with tests

31.1 If by reason of any act or omission of the Purchaser, the Engineer or some other contractor employed by the Purchaser, the Contractor shall be prevented from carrying out the Tests on Completion in accordance with clause 28 (Tests on completion) then, unless in the meantime the Works have been proved not to be substantially in accordance with the Contract, the Purchaser shall be deemed to have taken over the Works and the Engineer shall, upon the application of the Contractor, issue a Taking-Over Certificate accordingly.

Tests during defects liability period

31.2 In any case where a Taking-Over Certificate has been issued under sub-clause 31.1 (Interference with tests) the Contractor shall be under an obligation to carry out the Tests on Completion during the Defects Liability Period as and when required by 14 days' notice from the Engineer. Such allowances shall be made from the results required to be attained in the Tests on Completion as may be reasonable having regard to any use of the Works by the Purchaser prior to the Tests on Completion and to any deterioration therein which may have occurred since the issue of the Taking-Over Certificate in respect thereof. The additional Cost incurred by the Contractor in making the Tests on Completion in accordance with this sub-clause shall be certified by the Engineer and added to the Contract Price.

Time for completion

Time for completion

32.1 Subject to any requirement under the Contract for the completion of any Section before the completion of the whole of the Works, the Contractor shall so execute the Works that they shall be complete and pass the Tests on Completion (but not the Performance Tests, if any be included) within the Time for Completion.

Extension of time for completion

33.1 If, by reason of any variation ordered pursuant to clause 27 (Variations) or of any act or omission on the part of the Purchaser or the Engineer or of any industrial dispute or by reason of circumstances beyond the reasonable control of the Contractor arising after the acceptance of the Tender or of any valid suspension of the performance of the Contract pursuant to the Polish Law where applicable, the Contractor shall have been delayed in the completion of the Works, whether such delay occurs before or after the Time for Completion, then provided that the Contractor shall as soon as reasonably practicable have given to the Purchaser or the Engineer notice of his claim for an extension of time with full supporting details, the Engineer shall on receipt of such notice grant the Contractor from time to time in writing either prospectively or retrospectively such extension of the Time for Completion as may be reasonable.

Delays by sub-contractors

33.2 Any delay on the part of a Sub-Contractor which prevents the Contractor from completing the Works within the Time for Completion shall entitle the Contractor to an extension thereof provided such delay is due to a cause for which the Contractor himself would have been entitled to an extension of time under sub-clause 33.1 (Extension of time for completion).

Mitigation of consequences of delay

33.3 In all cases where the Contractor has given notice under sub-clause 33.1 (Extension of time for completion) the Contractor shall consult with the Engineer in order to determine the steps (if any) which can be taken to overcome or minimise the actual or anticipated delay. The Contractor shall thereafter comply with all reasonable instructions which the Engineer shall give in order to overcome or minimise such delay. If compliance with any such instruction shall cause the Contractor to incur additional Cost and the Contractor is entitled to an extension of time, the amount thereof shall be added to the Contract Price.

Delay

Delay in completion

34.1 If the Contractor fails to complete the Works in accordance with the Contract, save as regards his obligations under clauses 35 (Performance tests) and 36 (Defects liability), within the Time for Completion, or if no time be fixed, within a reasonable time, there shall be deducted from the Contract Price or paid to the Purchaser by the Contractor the percentage stated in the Appendix of the Contract Value of such parts of the Works as cannot in consequence of the said failure be put to the use intended for each week between the Time for Completion and the actual date of completion. The amount so deducted or paid shall not exceed the maximum percentage stated in the Appendix of the Contract Value of such parts of the Works, and such deduction or payment shall, subject to sub-clause 34.2 (Prolonged delay), be in full satisfaction of the Contractor's liability for the said failure.

Prolonged delay

34.2 If any part of the Works in respect of which the Purchaser has become entitled to the maximum amount provided under sub-clause 34.1 (Delay in completion) remains uncompleted, the Purchaser may by notice to the Contractor require him to complete. Such notice shall fix a final Time for Completion which shall be reasonable having regard to such delay as has already occurred and to the extent of the work required for completion. If for any reason, other than one for which the Purchaser or some other contractor employed by him is responsible, the Contractor fails to complete within such time, the Purchaser may by further notice to the Contractor elect either:

(a) to require the Contractor to complete, or

(b) to terminate the Contract in respect of such part of the Works,

and recover from the Contractor any loss suffered by the Purchaser by reason of the said failure up to an amount not exceeding the sum stated in the Appendix or, if no sum be stated, that part of the Contract Price that is properly apportionable to such part of the Works as cannot by reason of the Contractor's failure be put to the use intended.

Performance tests

Time for performance tests

35.1 Where Performance Tests are included in the Contract they shall be carried out as soon as is reasonably practicable and within a reasonable time after the Works, or the Section of the Works to which such tests relate, have been taken over by the Purchaser.

Procedures for performance tests

35.2 Performance Tests shall be carried out by the Purchaser or the Engineer on his behalf under the supervision of the Contractor and in accordance with the procedures and under the operating conditions specified in the Contract and in accordance with such other instructions as the Contractor may give in the course of carrying out such tests.

Cessation of performance tests

35.3 The Purchaser, or the Engineer on his behalf, or the Contractor shall be entitled to order the cessation of any Performance Test if damage to the Works or personal injury are likely to result from continuation.

Adjustments and modifications

35.4 If the Works or any Section thereof fails to pass any Performance Test (or repetition thereof) or if any Performance Test is stopped before its completion, such test shall, subject to sub-clause 35.5 (Postponement of adjustments and modifications), be repeated as soon as practicable thereafter. Any additional Cost incurred by the Purchaser solely by reason of the repetition of any Performance Test shall be deducted from the Contract Price. The Purchaser shall permit the Contractor to make adjustments and modifications to any part of the Works before the repetition of any Performance Test and shall, if required by the Contractor, shut down any part of the Works for such purpose and re-start it after the adjustments and modifications have been made. All such adjustments and modifications shall be made by the Contractor with all reasonable speed and at his own expense. The Contractor shall, if so required by the Engineer, submit to the Engineer for his approval details of the adjustments and modifications which he proposes to make.

Postponement of adjustments and modifications

35.5 If the Works or any Section thereof fails to pass any Performance Test (or repetition thereof) and the Contractor in consequence proposes to make any adjustments or modifications thereto, the Engineer may notify the Contractor that the Purchaser requires the carrying out of such adjustments or modifications to be postponed. In such event the Contractor shall remain liable to carry out the adjustments or modifications and a successful Performance Test within a reasonable time of being notified to do so by the Engineer. If however the Engineer fails to give any such notice within one year of the date of taking-over of the Works or Section thereof, the Contractor shall be relieved of any such obligation and the Works or Section thereof shall be deemed to have passed such Performance Test.

Time for completion of performance tests

35.6 If the Contract provides that the Performance Tests (or repetition thereof) shall be completed within a specified time the Purchaser shall be entitled to use the Works as he thinks fit from the expiry of such time.

Evaluation of results of performance tests

35.7 The results of Performance Tests shall be compiled and evaluated jointly by the Purchaser, or the Engineer on his behalf, and the Contractor in the manner detailed in the Contract. Any necessary adjustments to the results to take account of any previous use of the Works by the Purchaser, the measuring tolerances and any differences between the operating conditions under which the Performance Tests were conducted and those detailed in the Specification or performance test schedule shall be made in accordance with the provisions of the Specification or, if the Specification contains no such provisions, then in such manner as is fair and reasonable.

Consequences of failure to pass performance tests

35.8 If the Works or any Section fails to pass the Performance Tests (or any repetition thereof) within the period specified in the Special Conditions or, if no period is specified, within a reasonable time:

(a) where liquidated damages for failure to achieve any guaranteed performances have been specified in the Special Conditions and the results are within the stipulated acceptance limits the Contractor shall pay or allow to the Purchaser the liquidated damages so specified. Upon payment or allowance of such liquidated damages by the Contractor the Purchaser shall accept the Works.

(b) where such damages have been so specified but the results are outside the stipulated acceptance limits, or where liquidated damages have not been so specified, the Purchaser shall be entitled to accept the Works or the Section subject to such reasonable reduction in the Contract Price as may be agreed by the Purchaser and the Contractor or, in default of agreement, as may be determined by arbitration under clause 52 (Disputes).

(c) where such failure of the Works or the Section would deprive the Purchaser of substantially the whole of the benefit thereof the Engineer shall be entitled to reject the Works, or the Section and the Purchaser shall be entitled to proceed in accordance with clause 49 (Contractor's default).

Defects liability

Defects after taking-over

36.1 In the Conditions the expression 'Defects Liability Period' means the period stated in the Special Conditions as the Defects Liability Period or, if no such period is stated, 12 months, calculated from the date of taking-over of the Works under clause 29 (Taking-over). Where any Section or part of the Works is taken over separately the Defects Liability Period in relation thereto shall commence on the date of taking-over thereof.

Making good defects

36.2 The Contractor shall be responsible for making good by repair or replacement with all possible speed at his expense any defect in or damage to any part of the Works which may appear or occur during the Defects Liability Period and which arises either:

(a) from any defective materials, workmanship or design, or

(b) from any act or omission of the Contractor done or omitted during the said period.

The Contractor's obligations under this clause shall not apply to any defects in designs furnished or specified by the Purchaser or the Engineer in respect of which the Contractor has disclaimed responsibility in accordance with sub-clause 13.3 (Contractor's design), nor to any damage to any part of the Works in consequence thereof.

Notice of defects

36.3 If any such defect shall appear or damage occur the Purchaser or the Engineer shall forthwith inform the Contractor thereof stating in writing the nature of the defect or damage. The provisions of this clause shall apply to all repairs or replacements carried out by the Contractor to remedy defects and damage as if the said repairs or replacements had been taken over on the date they were completed; however, the Defects Liability Period in respect thereof shall not extend beyond two years from the date of taking-over or such other period as may be stated in the Special Conditions.

Extension of defects liability

36.4 The Defects Liability Period shall be extended by a period equal to the period during which the Works (or that part thereof in which the defect or damage to which this clause applies has appeared or occurred) cannot be used by reason of that defect or damage.

Delay in remedying defects

36.5 If any such defect or damage be not remedied within a reasonable time, the Purchaser may proceed to do the work at the Contractor's risk and expense provided that he does so in a reasonable manner and notifies the Contractor of his intention so to do. The Cost reasonably incurred by the Purchaser shall be deducted from the Contract Price or be paid by the Contractor to the Purchaser.

Removal of defective work

36.6 The Contractor may with the consent of the Engineer remove from the Site any part of the Works which is defective or damaged, if the nature of the defect or damage is such that repairs cannot be expeditiously carried out on the Site.

Further tests

36.7 If the repairs or replacements are of such a character as may affect the operation of the Works or any part thereof, the Purchaser or the Engineer may within one month after such repair or replacement give to the Contractor notice requiring that further Tests on Completion or Performance Tests be made, in which case such tests shall be carried out as provided in clauses 28 (Tests on completion) or 35 (Performance tests) as the case may be.

Contractor to search

36.8 The Contractor shall, if required by the Engineer in writing, search for the cause of any defect, under the direction of the Engineer. Unless such defect shall be one which the Contractor is responsible for making good under sub-clause 36.2 (Making good defects) the Cost of the work carried out by the Contractor in searching as aforesaid shall be borne by the Purchaser and added to the Contract Price.

Limitation of liability for defects

36.9 The Contractor's liability under this clause shall be in lieu of any contract term implied by law as to the quality or fitness for any particular purpose or the workmanship of any part of the Works taken over under clause 29 (Taking-over) and, save as expressed in this clause 36, neither the Contractor nor his Sub-Contractors, their respective servants or agents shall be liable, whether in contract, in tort (including but not limited to negligence) or by reason of breach of statutory duty or otherwise, in respect of defects in or damage to such part, or for any damage or loss of whatsoever kind attributable to such defects or damage or any work done or service or advice rendered in connection therewith.

For the purposes of this sub-clause the Contractor contracts on his own behalf and on behalf of and as trustee for his Sub-Contractors, servants and agents. Nothing in this clause 36 shall affect the liability of the Contractor under the Conditions in respect of any part of the Works not yet taken over or his liability for death or personal injury caused by his wilful or negligent acts or omissions.

Latent defects

36.10 If any defect of the kind referred to in sub-clause 36.2 (Making good defects) shall appear in any part of the Works within a period of three years after the date of the taking-over of such part of the Works, the same shall be made good by the Contractor by repair or replacement at the Contractor's option provided that the defect would not have been disclosed by a reasonable examination prior to the expiry of the Defects Liability Period.

Vesting of plant, and contractor’s equipment

Ownership of plant

37.1 Plant to be supplied pursuant to the Contract shall become the property of the Purchaser at whichever is the earlier of the following times:

(a) when Plant is delivered pursuant to the Contract

(b) when the Contractor becomes entitled to have the value of the Plant in question included in an interim certificate of payment.

Marking of plant

37.2 Where, prior to delivery, the property in Plant passes to the Purchaser, the Contractor shall, so far as is practicable, set the Plant aside and mark it as the Purchaser's property in a manner reasonably required by the Engineer.

Until the Plant has been so set aside and marked the Contract Value of the Plant shall not be included in any interim certificate of payment to which the Contractor might otherwise be entitled.

The Contractor shall permit the Engineer at any time upon reasonable notice to inspect any Plant which has become the property of the Purchaser and shall grant the Engineer access for such purpose to the Contractor's premises or procure the grant to the Engineer of access for such purpose to any other premises where such Plant may be located.

All such Plant shall be in the care and possession of the Contractor solely for the purposes of the Contract and shall not be within the ownership or disposition of the Contractor.

No interim certificate of payment issued by the Engineer shall prejudice his right to reject Plant which is not in accordance with the Contract. Upon any such rejection the property in the rejected Plant shall immediately revert to the Contractor.

Contractor’s equipment

38.1 The Contractor shall within 30 days after the Letter of Acceptance provide to the Engineer a list of the Contractor's Equipment that the Contractor intends to use on the Site.

Contractor’s equipment on site

38.2 All Contractor's Equipment shall, when brought on to the Site, be deemed to be intended exclusively for the execution of the Works. The Contractor shall not thereafter remove the same or any part thereof from the Site without the consent of the Engineer, which shall not be withheld in the case of Contractor's Equipment not currently required for the execution of the Works on Site.

Loss or damage to contractor’s equipment

38.3 The Contractor shall be liable for loss of or damage to any of the Contractor's Equipment which may occur otherwise than through the default of the Purchaser or those for whom he is responsible.

Maintenance of contractor’s equipment

38.4 The Contractor shall be responsible for maintaining Contractor's Equipment on Site in safe working order.

Certificates and payment

Application for payment

39.1 Unless otherwise provided in the Special Conditions the Contractor may make application to the Engineer for interim certificates of payment in respect of:

– Plant in the course of manufacture,

– Plant delivered or shipped and end route to the Site,

– work executed on the Site,

– claims for additional payment in accordance with the Conditions,

– Plant affected by suspension under sub-clause 25.1 (Instructions to suspend).

Form of application

39.2 Applications for interim certificates of payment shall be in the form of an invoice accompanied:

(a) in the case of Plant in the course of manufacture, by such evidence of the value of the work done as may be specified in the Special Conditions;

(b) in the case of Plant delivered, shipped or end route to the Site, by such evidence of delivery or shipment and payment of freight and insurance, bills of lading or documents of title and by such other documents as may be specified in the Special Conditions;

(c) in the case of work executed on the Site, by such evidence of the value of the work done as may be specified in the Special Conditions;

(d) in the case of claims for additional payment, by the particulars required under sub-clause 41.1 (Notification of claims);

(e) under sub-clause 25.3 (Payment for plant affected by suspension), by such evidence of the value of the work done as the Engineer may reasonably require.

Issue of payment certificate

39.3 The Engineer shall issue an interim certificate of payment to the Contractor (with a copy to the Purchaser) within 14 days after receiving an application therefor which the Contractor was entitled to make.

Value included in certificates of payment

39.4 Every interim certificate of payment shall certify the total sum due to the Contractor from the Purchaser in accordance with the terms of payment specified in the Special Conditions in respect of:

– work done in the course of manufacture and/or duly executed on the Site and/or

– Plant shipped and/or Plant delivered to the Site including where appropriate freight, carriage and insurance charges and/or

– claims for additional payment and/or

– sub-clause 25.3 (Payment for plant affected by suspension)

up to the date named in the application for payment, less:

– the total of any sums previously certified in certificates of payment.

Provided that no sum shall be included in any interim certificate of payment in respect of any work or Plant which, in the reasonable opinion of the Engineer:

– does not comply with the Contract, or

– has been brought, and is at the date of the certificate, prematurely upon the Site.

Adjustments to certificates

39.5 If any sum shall become payable to the Contractor under the Contract otherwise than for work executed or Plant delivered, the amount thereof shall be included in the next certificate of payment.

If any sum shall become payable under the Contract by the Contractor to the Purchaser, whether by deduction from the Contract Price or otherwise, the amount thereof shall be deducted in the next certificate of payment.

Corrections to certificates

39.6 The Engineer may in any certificate of payment make any correction or modification that should properly be made in respect of any previous certificate.

Withholding certificate of payment

39.7 An interim certificate of payment shall not be withheld on account of defects of a minor character which are not such as to affect the use of the Works.

Effect of certificates of payment

39.8 No certificate of payment other than a final certificate of payment shall be relied upon as conclusive evidence of any matter stated therein, nor shall it affect or prejudice any right of the Purchaser or the Contractor against the other.

Application for final certificate of payment

39.9 The Contractor shall make application for the final certificate of payment forthwith after the Contractor's obligations under clause 36 (Defects liability), other than under sub-clause 36.10 (Latent defects), have ceased and the Contractor has completed any outstanding remedial work thereunder. If a separate Taking-Over Certificate has been issued in respect of a Section of the Works, the Contractor may apply for a final certificate of payment in respect thereof.

The application for the final certificate of payment shall be accompanied by a final account prepared by the Contractor in relation to those Sections of the Works to which the application relates. The final account shall give full details of the value of all Plant supplied and work done under the Contract and other sums certified by the Engineer, together with a detailed analysis and valuation of all claims to which the Contractor considers he is entitled under the Contract.

Value of final certificate of payment

39.10 A final certificate of payment shall certify the total amount payable to the Contractor under the Contract in respect of the Works or any Section thereof having regard to any addition to or deduction from the Contract Price provided for in the Conditions and claims in respect thereof made by the Contractor or the Purchaser, the total amounts paid on certificates of payment previously issued, and the balance payable whether by the Purchaser to the Contractor or by the Contractor to the Purchaser.

Issue of final certificate of payment

39.11 The Engineer shall issue to the Contractor (with a copy to the Purchaser) a final certificate of payment within 30 days after receiving an application therefor which the Contractor was entitled to make and which complies with all the requirements of sub-clause 39.9 (Application for final certificate of payment). For the purposes of this sub-clause time shall not start to run until the Contractor has provided to the Engineer all information in amplification of the final account that the Engineer may reasonably require.

Effect of final certificate of payment

39.12 A final certificate of payment shall be conclusive evidence:

– that the Works or Section to which such certificate relates is in accordance with the Contract;

– that the Contractor has performed all his obligations under the Contract in respect thereof; and

– of the value of the Works or Section.

Payment of the amount certified in a final certificate of payment shall be conclusive evidence that the Purchaser has performed all his obligations under the Contract in relation to the Works or Section thereof to which the certificate relates.

A final certificate of payment shall not be conclusive as to any matter dealt with in the certificate in the case of fraud or dishonesty relating to or affecting any such matter.

A final certificate of payment shall not be conclusive if any proceedings arising out of the Contract whether under clause 52 (Disputes) or otherwise shall have been commenced by either party in relation to the Works or Section to which the certificate relates,

– before the final certificate of payment has been issued, or

– within three months thereafter.

39.13 Nothing in this clause shall affect the rights of the Purchaser or the obligations of the Contractor under sub-clause 36.10 (Latent defects).

Payment

40.1 The Purchaser shall pay to the Contractor the sum certified as due to the Contractor in a certificate of payment within 30 days after the date of issue thereof, unless otherwise specified in the Special Conditions.

Any payment made before delivery of Plant otherwise than a payment in respect of Plant in the course of manufacture or work done shall be subject to the Contractor first having furnished to the Purchaser a bond or guarantee of a bank or insurance company approved by the Purchaser, if so, required by the Special Conditions.

Delayed payment

40.2 If payment of any sum payable under sub-clause 40.1 (Payment) is delayed, the Contractor shall be entitled to receive simple interest on the amount unpaid during the period of delay. The interest shall be at the rate of four per cent above the National Bank of Poland Base Rate in force from time to time during the period of

delay (or at such other rate as may be specified in the Special Conditions). The Contractor shall be entitled to interest without formal notice and without prejudice to any other right or remedy. The parties acknowledge that the Purchaser's liability under this sub-clause 40.2 is a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998, where applicable.

Remedies on failure to certify or make payment

40.3 If the Engineer fails to issue a certificate of payment to which the Contractor is entitled or if the Purchaser fails to make any payment as provided in this clause subject to any deduction that the Purchaser is entitled to make under the Contract the Contractor shall be entitled:

(a) to stop work until the failure be remedied, by giving 14 days' notice to the Engineer and the Purchaser, in which event the additional Cost to the Contractor occasioned by the stoppage and the subsequent resumption of work shall be added to the Contract Price, and/or

(b) to terminate the Contract by giving 30 days' notice to the Engineer and the Purchaser, whether or not the Contractor has previously stopped work under paragraph (a) of this sub-clause.

Claims

Notification of claims

41.1 In every case in which circumstances arise which the Contractor considers entitle him, by virtue of the Conditions, to claim additional payment the following provisions shall take effect:

(a) within 30 days of the said circumstances arising the Contractor shall, if he intends to make any claim for additional payment, give to the Engineer notice of his intention to make a claim and shall state the reasons by virtue of which he considers that he is entitled thereto;

(b) as soon as is reasonably practicable after the date of the notice given by the Contractor of his intention to make a claim for additional payment, and not later than the expiry of the last Defects Liability Period, the Contractor shall submit to the Engineer (with copies for transmission to the Purchaser) full particulars of and the actual amount of his claim. The Contractor shall thereafter promptly submit such further particulars as the Engineer may reasonably require to assess the value of the claim.

Allowance for profit on claims

41.2 In any case where under the provisions of

sub-clause 5.7 (Unexpected site conditions),

sub-clause 11.8 (Breach of purchaser’s general obligations),

sub-clause 14.5 (Revision of programme),

sub-clause 16.2 (Errors in drawings, etc. supplied by purchaser or engineer),

sub-clause 21.2 (Special loads),

sub-clause 22.1 (Setting out),

sub-clause 25.2 (Additional cost caused by suspension),

sub-clause 25.5 (Resumption of work, delivery or erection),

sub-clause 25.6 (Effect of suspension on defects liability),

sub-clause 27.5 (Notice and confirmation of variations),

sub-clause 31.2 (Tests during defects liability period),

sub-clause 33.3 (Mitigation of consequences of delay),

sub-clause 36.8 (Contractor to search),

sub-clause 40.3 (Remedies on failure to certify or make payment) or

sub-clause 52.4 (Performance to continue during adjudication or arbitration)

the Contractor is entitled to be paid or to have included in the Contract Price any extra or additional Cost the Contractor shall add to such Cost on account of profit the percentage thereof stated in the Appendix.

Purchaser's liability to pay claims

41.3 Notwithstanding anything contained in the Conditions the Purchaser shall not be liable to make payment in respect of any claim for an additional payment unless the Contractor has complied with the requirements of this clause.

Patent rights, etc.

Indemnity against infringement

42.1 The Contractor shall indemnify the Purchaser against all actions, claims, demands, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of patent, registered design, unregistered design right, copyright, trade mark or trade name protected in the country where the Plant is to be manufactured or where the Works are to be erected by the use or possession of any Plant supplied by the Contractor, but such indemnity shall not cover any use of the Works otherwise than for the purpose indicated by or reasonably to be inferred from the Specification or any infringement which is due to the use of any Plant in association or combination with any other plant not supplied by the Contractor.

Conduct of proceedings

42.2 In the event of any claim being made or action brought against the Purchaser arising out of the matters referred to in this clause, the Contractor shall be promptly notified thereof and may at his own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. The Purchaser shall not, unless and until the Contractor shall have failed to take over the conduct of the negotiations or litigation, make any admission which might be prejudicial thereto. The conduct by the Contractor of such negotiations or litigation shall be conditional upon the Contractor having first given to the Purchaser such reasonable security as shall from time to time be required by the Purchaser to cover the amount ascertained or agreed or estimated, as the case may be, of any compensation, damages, costs, charges and expenses for which the Purchaser may become liable. The Purchaser shall, at the request of the Contractor, afford all available assistance for the purpose of contesting any such claim or action, and shall be repaid all reasonable expenses incurred in so doing.

Purchaser's indemnity against infringement

42.3 The Purchaser on his part warrants that any design or instructions furnished or given by him or by the Engineer on his behalf shall not be such as will cause the Contractor to infringe any patent, registered design, unregistered design right, copyright, trade mark or trade name in the performance of the Contract and shall indemnify the Contractor in the same terms as the Contractor indemnifies the Purchaser under sub-clause 42.1 (Indemnity against infringement). The provisions of sub-clause 42.2 (Conduct of proceedings) shall apply with the necessary changes of detail being made.

Infringement preventing performance.

42.4 If the Contractor shall be prevented from executing the Works, or the Purchaser is prevented from using the Works, in consequence of any infringement of patent, registered design, unregistered design right, copyright, trade mark or trade name and the party indemnifying the other in accordance with sub-clause 42.1 (Indemnity against infringement) or sub-clause 42.3 (Purchaser's indemnity against infringement) is unable within 90 days after notice thereof from the other party to procure the removal at his own expense of the cause of prevention then:

(a) in the case of an infringement which is the subject of the Contractor's indemnity to the Purchaser under sub-clause 42.1 (Indemnity against infringement) the Purchaser may treat such prevention as a default by the Contractor and exercise the powers and remedies available to him under clause 49 (Contractor's default), and

(b) in the case of an infringement which is the subject of the Purchaser's indemnity under sub-clause 42.3 (Purchaser's indemnity against infringement) the Contractor may treat such prevention as a default by the Purchaser and exercise the powers and remedies available to the Contractor under clause 51 (Purchaser's default).

Accidents and damage

Care of the works

43.1 The Contractor shall be responsible for the care of the Works or any Section thereof until the date of taking-over as stated in the Taking-Over Certificate applicable thereto. The Contractor shall also be responsible for the care of any outstanding work which he has undertaken to carry out during the Defects Liability Period until such outstanding work is complete. In the event of termination of the Contract in accordance with the Conditions,

responsibility for the care of the Works shall pass to the Purchaser upon expiry of the notice of termination, whether given by the Purchaser or by the Contractor.

Making good loss or damage to the works

43.2 In the event that any part of the Works shall suffer loss or damage whilst the Contractor has responsibility for the care thereof, the same shall be made good by the Contractor at his own expense except to the extent that such loss or damage shall be caused by the Purchaser's Risks. The Contractor shall also at his own expense make good any loss or damage to the Works occasioned by him in the course of operations carried out by him for the purpose of completing any outstanding work or of complying with his obligations under clause 36 (Defects liability).

Damage to works caused by purchaser's risks

43.3 In the event that any part of the Works shall suffer loss or damage whilst the Contractor has responsibility for the care thereof which is caused by any of the Purchaser's Risks the same shall, if required by the Purchaser within six months after the happening of the event giving rise to loss or damage, be made good by the Contractor. Such making good shall be at the expense of the Purchaser at a price to be agreed between the Contractor and the Purchaser. In default of agreement such sum as is in all the circumstances reasonable shall be determined by adjudication or arbitration under clause 52 (Disputes). The price or sum so agreed or determined shall be added to the Contract Price.

Injury to persons or damage to property whilst contractor has responsibility for care of the works

43.4 Except as hereinafter mentioned the Contractor shall be liable for and shall indemnify the Purchaser against all claims in respect of personal injury or death or in respect of loss of or damage to any property (other than property forming part of the Works not yet taken over) which arises out of or in consequence of the execution of the Works whilst the Contractor has responsibility for the care thereof and against all demands, costs, charges and expenses arising in connection therewith. The Contractor shall not be liable under this sub-clause for, and the Purchaser shall indemnify him from and against, any claims in relation to death or personal injury or loss of or damage to property to the extent that the same is caused by any of the Purchaser's Risks and in the case of damage to property to the further extent that the damage is an inevitable consequence of the execution of the Works.

Injury to persons or damage to property after responsibility for care of the works passes to purchaser

43.5 If there shall occur any death or injury to any person or loss of or damage to any property (other than the Works) after the responsibility for the care of the Works shall have passed to the Purchaser the Contractor shall be liable for and shall indemnify the Purchaser against all such claims and all actions, demands, costs, charges and expenses arising in connection therewith to the extent that such death or personal injury or loss of or damage to property was caused by the negligence or breach of statutory duty of the Contractor, his Sub-Contractors, servants or agents or by defective design [other than a design for which the Contractor has disclaimed responsibility in accordance with sub-clause 13.3 (Contractor's design)], materials or workmanship but not otherwise. The Contractor's liability for any loss or damage to the Works shall be limited to the fulfilment of his obligations in relation thereto under clause 36 (Defects liability).

Accidents or injury to workmen

43.6 The Contractor shall indemnify the Purchaser against all actions, suits, claims, demands, costs, charges and expenses arising in connection with the death of or injury to any person employed by the Contractor or his Sub-Contractors for the purposes of the Works. This indemnity shall not apply to the extent that any death or injury results from any act or default of the Purchaser, his servants, agents or other contractors for whom he is responsible. The Purchaser shall indemnify the Contractor against all claims, damages, costs, charges and expenses to such extent.

Claims in respect of injury to persons or damage to property

43.7 In the event of any claim being made against the Purchaser arising out of the matters referred to in this clause and in respect of which it appears that the Contractor may be liable under this clause the Contractor shall be promptly notified thereof and may at his own expense conduct all negotiations for the settlement of the same and any litigation that may arise in relation thereto. The Purchaser shall not, unless and until the Contractor shall have failed to take over the conduct of the negotiations or litigation, make any admission which might be prejudicial thereto. The conduct by the Contractor of such negotiations or litigation shall be conditional upon the Contractor having first given to the Purchaser such reasonable security as shall from time to time be required by him to cover the amount ascertained or agreed or estimated, as the case may be, of any compensation, damages, costs, charges and expenses for which the Purchaser may become liable. The Purchaser shall, at the request of

the Contractor, afford all available assistance for any such purpose and shall be repaid all expenses reasonably incurred in so doing.

Limitations of liability

Mitigation of loss

44.1 In all cases the party establishing or alleging a breach of contract or a right to be indemnified in accordance with the Contract shall be under a duty to take all necessary measures to mitigate the loss which has occurred provided that he can do so without unreasonable inconvenience or cost.

Indirect or consequential damage

44.2 Except as expressly provided in sub-clauses 34.1 (Delay in completion) and 35.8 (Consequences of failure to pass performance tests) for the payment or deduction of liquidated damages for delay or failure to achieve performance and except for those provisions of the Conditions whereby under sub-clause 41.2 (Allowance for profit on claims) the Contractor is expressly stated to be entitled to receive profit, neither the Contractor nor the Purchaser shall be liable to the other by way of indemnity or by reason of any breach of the Contract or of statutory duty or by reason of tort (including but not limited to negligence) for any loss of profit, loss of use, loss of production, loss of contracts or for any financial or economic loss or for any indirect or consequential damage whatsoever that may be suffered by the other.

Limitation of contractor's liability

44.3 In no circumstances whatsoever shall the liability of the Contractor to the Purchaser under the Conditions for any one act or default exceed the sum stated in the Appendix or if no sum is so stated, the Contract Price. The Contractor shall have no liability to the Purchaser for or in respect or in consequence of any loss of or damage to the Purchaser's property which shall occur after the expiration of the Defects Liability Period except as stated in sub-clause 36.10 (Latent defects).

Exclusive remedies

44.4 The Purchaser and the Contractor intend that their respective rights, obligations and liabilities as provided for in the Conditions shall be exhaustive of the rights, obligations and liabilities of each of them to the other arising out of, under or in connection with the Contract or the Works, whether such rights, obligations and liabilities arise in respect or in consequence of a breach of contract or of statutory duty or a tortious or negligent act or omission which gives rise to a remedy at common law. Accordingly, except as expressly provided for in the Conditions, neither party shall be obligated or liable to the other in respect of any damages or losses suffered by that other which arise out of, under or in connection with the Contract or the Works, whether by reason or in consequence of any breach of contract or of statutory duty or tortious or negligent act or omission.

Purchaser’s risks

Purchaser’s risks

45.1 The 'Purchaser's Risks' are:

– fault, error, defect or omission in designs furnished or specified by the Purchaser or the Engineer responsibility for which has been disclaimed by the Contractor in the manner provided for by sub-clause 13.3 (Contractor's design);

– the use or occupation of the Site by the Works, or for the purposes of the Contract; interference, whether temporary or permanent, with any right of way, light, air, or water or with any easement, wayleave or right of a similar nature which is the inevitable result of the construction of the Works in accordance with the Contract.

– damage (other than that resulting from the Contractor's method of construction) which is the inevitable result of the construction of the Works in accordance with the Contract.

– use of the Works or any part thereof by the Purchaser.

– the act, neglect or omission or breach of contract or of statutory duty of the Engineer or the Purchaser, his agents, servants or other contractors for whom the Purchaser is responsible.

– Force Majeure except to the extent insured under the insurance policies to be effected by the Contractor in accordance with clause 47 (Insurance).

Force majeure

Force majeure

46.1 'Force Majeure' means:

– war, hostilities (whether war be declared or not), invasion, act of foreign enemies.

– ionising radiations, or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

– pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

– rebellion, revolution, insurrection, military or usurped power or civil war.

– riot, civil commotion or disorder.

– any circumstances beyond the reasonable control of either of the parties.

Notice of force majeure

46.2 If either party is prevented or delayed from or in performing any of his obligations under the Contract by Force Majeure, then he may notify the other party of the circumstances constituting the Force Majeure and of the obligations performance of which is thereby delayed or prevented, and the party giving the notice shall thereupon be excused the performance or punctual performance, as the case may be, of such obligations for so long as the circumstances of prevention or delay may continue.

Termination for force majeure

46.3 Notwithstanding that the Contractor may have been granted under sub-clause 33.1 (Extension of time for completion) an extension of the Time for Completion of the Works, if by virtue of sub-clause 46.2 (Notice of force majeure) either party shall be excused the performance of any obligation for a continuous period of 120 days, then either party may at any time thereafter, and provided that such performance or punctual performance is still excused, by notice to the other terminate the Contract.

Payment on termination for force majeure

46.4 If the Contract is terminated under sub-clause 46.3 (Termination for force majeure) the Engineer shall certify, and the Purchaser shall pay to the Contractor in so far as the same shall not have already been included in certificates of payment paid by the Purchaser or be the subject of an advance payment, the Contract Value of the Works executed prior to the date of termination.

The Contractor shall also be entitled to have included in a certificate of payment and to be paid:

(a) the Cost of materials or goods reasonably ordered for the Works or for use in connection with the Works which have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery. Such materials or goods shall become the property of the Purchaser when paid for by the Purchaser. The Purchaser shall be entitled to withhold payment in respect thereof until such materials or goods have been delivered to, or to the order of, the Purchaser.

(b) the amount of any other expenditure which in the circumstances was reasonably incurred by the Contractor in the expectation of completing the whole of the Works.

(c) the reasonable Cost of removal of Contractor's Equipment and the return thereof to the Contractor's works in his country or to any other destination at no greater Cost.

(d) the reasonable Cost of repatriation of all the Contractor's staff and workmen employed at the Site on or in connection with the Works at the date of such termination.

Insurance

Insurance of works

47.1 The Contractor shall, in the joint names of the Contractor and the Purchaser, insure the Works and Contractor's Equipment and keep each part thereof insured for its full replacement value against all loss or damage from whatever cause arising, other than the Purchaser's Risks. Such insurance shall be effected from the date of the Letter of Acceptance, until 14 days after the date of issue of a Taking-Over Certificate in respect of the Works or any Section thereof, or if earlier, 14 days after the date when responsibility for the care of the

Works passes to the Purchaser in accordance with the provisions of sub-clause 43.1 (Care of the works) upon expiry of notice of termination.

Extension of works insurance

47.2 The Contractor shall so far as reasonably possible extend the insurance under sub-clause 47.1 (Insurance of works) to cover damage which the Contractor is responsible for making good pursuant to clause 36 (Defects liability) or which occurs whilst the Contractor is on Site for the purpose of making good a defect or carrying out the Tests on Completion during the Defects Liability Period or supervising the carrying out of the Performance Tests or completing any outstanding work or which arises during the Defects Liability Period from a cause occurring prior to taking-over and for which the Contractor is liable under sub-clause 43.5 (Injury to persons or damage to property after responsibility for care of the works passes to the Purchaser).

Application of insurance monies

47.3 All monies received under any such policy shall be applied in or towards the replacement and repair of the part of the Works lost, damaged or destroyed but this provision shall not affect the Contractor's liabilities under the Contract.

Third party insurance

47.4 The Contractor shall, prior to the commencement of any work on the Site by the Contractor pursuant to the Contract, insure in an amount not being less than the amount stated in the Special Conditions against his liability for damage or death or personal injury occurring before all the Works have been taken over to any person (including any employee of the Purchaser) or to any property (other than property forming part of the Works) due to or arising out of the execution of the Works. The terms of the policy shall include a provision whereby, in the event of any claim being made against the Purchaser in respect of which the Contractor would be entitled to indemnity under the policy, the insurers will indemnify the Purchaser against such claims and any costs, charges and expenses in respect thereof.

Insurance against accident, etc. to workmen

47.5 The Contractor shall insure and shall maintain insurance against his liability under sub-clause 43.6 (Accidents or injury to workmen). The terms of any such policy shall also include the provision to indemnify the Purchaser mentioned in sub-clause 47.4 (Third party insurance) provided always that in respect of any persons employed by any Sub-Contractor, the Contractor's obligation under this sub-clause shall be satisfied if the Sub-Contractor shall have insured against the liability in respect of such persons in such manner that the Purchaser is indemnified under the policy, but the Contractor shall require such Sub-Contractor to produce to the Engineer when required the policy, the receipts for the premiums or other satisfactory evidence of insurance cover.

General insurance requirements

47.6 All insurances shall be effected with an insurer and in terms to be approved by the Purchaser (such approval not to be unreasonably withheld) and the Contractor shall from time to time, when so required by the Engineer, produce the policy and receipts for the premiums or other satisfactory evidence of insurance cover. The Contractor shall promptly notify the Purchaser of any alteration to the terms of the policy or in the amounts for which insurance is provided.

Exclusions from insurance cover

47.7 The insurance policy may exclude cover for any of the following:

(a) the cost of making good or repairing any Plant which is defective or work which is not in accordance with the Contract.

(b) the Purchaser’s Risks.

(c) indirect or consequential loss or damage including any deductions from the Contract Price for delay.

(d) fair wear and tear; shortages and pilferages.

(e) risks related to mechanically propelled vehicles for which third party or other insurance is required by law.

Remedy on failure to insure

48.1 If the Contractor shall fail to effect and keep in force the insurances referred to in the Conditions the Purchaser may effect and keep in force any such insurance and pay such premiums as may be necessary for that purpose and from time to time deduct the amount so paid by the Purchaser from any monies due or which may become due to the Contractor under the Contract or recover the same as a debt from the Contractor.

Joint insurances

48.2 Wherever insurance is arranged under the Conditions in the joint names of the parties, or on terms containing provisions for indemnity to principals, the party effecting such insurance shall procure that the subrogation rights of the insurers against the other party are waived and that such policy shall permit either:

(a) the co-insured, or

(b) the other party to the Contract

to be joined to and be a party to any negotiations, litigation or arbitration upon the terms of the policy or any claim thereunder.

Contractor's default

Contractor's default

49.1 If the Contractor shall assign the Contract, or sub-let the whole of the Works without the consent of the Purchaser, or if the Engineer has rejected the Works or a Section under sub-clauses 28.5 (Consequences of failure to pass tests on completion) or 35.8 (Consequences of failure to pass performance tests) or shall certify that the Contractor:

(a) has abandoned the Contract, or

(b) has without reasonable excuse suspended the progress of the Works for 30 days after receiving from the Engineer written notice to proceed, or

(c) despite previous warnings in writing from the Engineer is not executing the Works in accordance with the Contract, or is failing to proceed with the Works with due diligence or is neglecting to carry out his obligations under the Contract so as to affect adversely the carrying out of the Works,

then the Purchaser may give 21 days' notice to the Contractor of his intention to proceed in accordance with the provisions of this clause. Upon the expiry of such notice the Purchaser may without prejudice to any other remedy under the Contract forthwith terminate the Contract and enter the Site and expel the Contractor therefrom but without thereby releasing the Contractor from any of his obligations or liabilities which have accrued under the Contract and without affecting the rights and powers conferred by the Contract on the Purchaser or the Engineer. Upon such termination the Purchaser may himself complete the Works or may employ any other contractor so to do, and the Purchaser shall have the free use of any Contractor's Equipment for the time being on the Site.

Valuation at date of termination

49.2 As soon as practicable after the Purchaser has terminated the Contract the Engineer shall, by or after reference to the parties and after making such enquiries as he thinks fit, value the part of the Works executed prior to the date of termination and all sums then due to the Contractor as at the date of termination in accordance with the principles of clause 39 (Certificates and payment) and certify the amount thereof. The amount so certified is herein called 'the Termination Value'.

Payment after termination

49.3 The Purchaser shall not be liable to make any further payments to the Contractor until the Cost of execution and all other expenses incurred by the Purchaser in completing the Works have been ascertained and the amount incurred certified by the Engineer (herein called 'the Cost of Completion'). If the Cost of Completion when added to the Termination Value exceeds the total amount which the Engineer certifies would have been payable to the Contractor for the execution of the Works, the Engineer shall certify such excess and the Contractor shall upon demand pay to the Purchaser the amount of such excess. Any such excess shall be deemed a debt due by the Contractor to the Purchaser and shall be recoverable accordingly. If there is no such excess, the Contractor shall be entitled to the Termination Value and shall be paid or shall repay to the Purchaser as the case may be the difference, if any, between the Termination Value and the total of all payments received by the Contractor at the date of termination.

Bankruptcy and insolvency

50.1 If the Contractor becomes bankrupt or insolvent, or has a receiving order made against him, or compounds with his creditors, or, being a corporation, commences to be wound up (not being a members' voluntary winding up for the purposes of amalgamation or reconstruction) or has an administration order made against him or carries on his business under an administrator, a receiver, a manager or liquidator for the benefit of his creditors or any of them, the Purchaser shall be entitled:

(a) to terminate the Contract forthwith by notice to the Contractor or to the administrator, receiver, manager or liquidator or to any person in whom the Contract may become vested, in which event the provisions of clause 49 (Contractor's default) shall apply, or

(b) to give such administrator, receiver, manager or liquidator or other person the option of carrying out the Contract subject to his providing a guarantee for the due and faithful performance of the Contract up to an amount to be agreed.

Purchaser's default

Notice of termination due to purchaser's default

51.1 In the event of the Purchaser:

(a) failing to pay to the Contractor the amount due under any certificate of the Engineer within 30 days after the date of its issue subject to any deduction that the Purchaser is entitled to make under the Contract, or

(b) interfering with or obstructing the issue of any certificate of the Engineer, or

(c) becoming bankrupt or (being a corporation) going into liquidation other than for the purpose of a scheme of reconstruction or amalgamation, or carrying on its business under an administrator, receiver, manager or liquidator for the benefit of its creditors or any of them, or

(d) appointing a person to act with or in replacement of the Engineer against the reasonable objections of the Contractor,

the Contractor shall be entitled without prejudice to any other rights or remedies under the Contract [and in respect of paragraph (a) above in addition to the provisions of sub-clause 40.3 (Remedies on failure to certify or make payment)] to terminate the Contract by giving 14 days' notice to the Purchaser with a copy to the Engineer.

Removal of contractor’s equipment

51.2 Upon the giving of notice under sub-clause 51.1 (Notice of termination due to purchaser's default) the Contractor shall with all reasonable despatch remove from the Site all Contractor's Equipment.

Payment on termination due to purchaser's default

51.3 In the event of termination under sub-clause 51.1 (Notice of termination due to purchaser's default) the Engineer shall act as provided in sub-clause 49.2 (Valuation at date of termination) and certify the Termination Value of the Works as at the date of termination. The Engineer shall, on the application of the Contractor accompanied by supporting details, also certify the amount of any expenditure reasonably incurred by the Contractor in the expectation of the performance of, or in consequence of the termination of, the Contract to the extent that the same has not been included in the Termination Value. The Engineer shall also certify in respect of the Contractor's loss of anticipated profit on the Contract the percentage referred to in sub-clause 41.2 (Allowance for profit on claims) on the difference between the total of the Termination Value plus the expenditure before referred to and the Contract Price but in no case shall the total amounts so certified exceed the Contract Price. Thereafter the Engineer shall issue a certificate of payment for the amount by which the said Termination Value, expenditure and allowance for profit exceeds the total of sums previously paid to the Contractor and such certificate of payment shall be paid by the Purchaser within 30 days after the date of issue.

Disputes

Adjudication

52.1

(a) If at any time any dispute or difference shall arise between the Purchaser and the Contractor in relation to the Contract which cannot be settled amicably, either party may, at any time, give notice in writing to the other of his intention to refer the dispute or difference to adjudication.

(b) The adjudicator shall be selected by the President of the institution named in the Appendix (or by his deputy appointed by such president for such purpose) ('the Nominator') with the object of securing the appointment of the adjudicator and the referral of the dispute or difference to him within 7 days of the notice of intention to refer.

(c) Subject to sub-clause 52.1(d) the adjudication shall be conducted in accordance with the rules specified in the Appendix or, if no rules be so specified, in accordance with rules chosen and determined by the adjudicator at the outset of the adjudication.

(d) The adjudicator:

i. shall reach his decision within 28 days of referral or such longer period as the parties may agree after the dispute has been referred.

ii. may extend the said 28-day period by up to 14 days, with the consent of the referring party.

iii. shall act impartially and may take the initiative in ascertaining the facts and the law.

iv. shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith. Furthermore, any employee or agent of the adjudicator acting in connection with the carrying out of the adjudication shall be similarly protected from liability.

v. shall be permitted to correct his decision so as to remove a clerical or typographical error arising by accident or omission.

(e) The decision of the adjudicator shall be binding until the dispute or difference is finally determined by legal proceedings, arbitration or by agreement.

Arbitration

52.2

(a) Any party may refer a dispute or difference to a single arbitrator. The arbitrator shall be appointed by agreement between the parties, but, if the parties fail to appoint an arbitrator within one month of either serving on the other a notice in writing to concur in the appointment of an arbitrator, then the dispute shall be referred to a person to be appointed by the Nominator, who shall not appoint any person previously appointed as adjudicator in relation to the Contract.

(b) Where a dispute has been referred to arbitration under this sub-clause 52.2 and the Contractor is in a related dispute with a Sub-Contractor which is substantially the same as the matter referred to arbitration hereunder, the parties consent to the joinder of the Sub-Contractor as a party to the arbitration and to the reference of such related dispute to the arbitrator appointed hereunder and further agree that the arbitrator shall have power to order the consolidation of such arbitration proceedings and/or to order the holding of concurrent hearings.

(c) The arbitration shall be conducted in accordance with the arbitration rules specified in the Special Conditions or, if no rules be so specified, in accordance with the provisions of the the Rules of Arbitration of the Court of Arbitration at the Polish Chamber of Commerce in Warsaw.

(d) The arbitrator shall have power to order on a provisional basis (subject to the arbitrator's final award) any relief which he would have power to grant in a final award including but not limited to the making of a provisional order for the payment of money as between the parties or an order to make an interim payment on account of the costs of the arbitration.

Adjudicator's and arbitrator's powers

52.3 The adjudicator or arbitrator shall have power to open up, review and revise any certificate or valuation of the Engineer or any decision, opinion, instruction or order of the Engineer, save for any decision, instruction or order which has become final and binding on the parties by virtue of the operation of sub-clause 2.6.

Performance to continue during adjudication or arbitration

52.4 Performance of the Contract shall be unaffected by the occurrence of an adjudication or arbitration, unless the Engineer shall order the suspension thereof. No payment due or payable by the Purchaser shall be withheld on account of a pending reference to adjudication or arbitration.

Sub-contractors, etc.

Sub-contractors, servants and agents

53.1 It is expressly agreed that no servant or agent of the Contractor nor any Sub-Contractor shall in any circumstances whatsoever (with the exception of liability for death or personal injury caused by wilful or negligent acts or omissions) be under any obligation, responsibility or liability to the Purchaser for or in respect of any loss, damage or injury of whatsoever kind and howsoever arising. Without prejudice to the generality of the foregoing every limitation and exclusion of liability of the Contractor contained in the Conditions shall also extend to protect

every such servant, agent or Sub-Contractor. For the purposes of this clause the Contractor is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons who are or who may from time to time become servants, agents or Sub-Contractors as aforesaid and to such extent all such persons shall be or be deemed to be parties to the Contract.

Applicable law

Applicable law

54.1 Unless otherwise stated in the Special Conditions, the Contract shall in all respects be governed by and interpreted in accordance with the laws of the Republic of Poland shall govern the procedure of any arbitration under clause 52 (Disputes).

2. GENERAL CONDITIONS – APPENDIX

Delay in completion

SUB-CLAUSE 34.1

The sum to be paid or deducted for each day of delay as liquidated damages for delay shall be as follows:

Table A		
Item 1	Quayside Container Cranes	US$ 6,000 per QC, per day for each day delay after the Completion Date as contained in Schedule 3, Section 6

The maximum sum for which payments or deductions for liquidated damages shall not exceed is 10% of the total Contract Price.

Limitation of Contractor's liability

SUB-CLAUSE 44.3

The Contractor's liability shall not exceed a maximum amount equivalent to the Contract Price, save that:

No limitation of liability under the Contract shall apply in cases of Gross Negligence and/or Wilful Misconduct on the part of the Contractor.

For the purposes of this provision and the Contractor's limitation of liability:

(a) 'Gross Negligence' shall mean any conscious disregard as to the need to use reasonable care, and which would be considered by a competent similarly experienced contractor as to be likely to cause foreseeable damage, and/or grave injury and/or material harm to persons, property, or both, and

(b) 'Wilful Misconduct' shall mean intentionally doing something which should not be done and/or intentionally failing to do that which should be done, or otherwise consciously or deliberately electing to breach the terms of the Contract.

Person to appoint adjudicator or arbitrator ('the Nominator')

SUB-CLAUSES 52.1(b) AND 52.2(a)

The Nominator for the purposes of the Contract shall be the International Chamber of Commerce (ICC) by application to the Secretariat of the ICC International Court of Arbitration.

3. SPECIAL CONDITIONS

Numbers refer to the general conditions' sub-clause numbers.

Purchaser

1.1.a The Purchaser is:

Baltic Container Terminal (BCT),
Gdynia,
Poland

Engineer

1.1.d The Engineer is:

Mr Zdzislaw Mejer
BCT – Baltic Container Terminal LTD.
Kontenerowa 60 Str., 81-127 Gdynia
Poland
Mobile: +48 795501377
Email: zmejer@bct.gdynia.pl

Notify: Mr Gareth Scott

Manila International Container Terminal,
MICT South Access Road,
Manila 1012,
Philippines
Phone: +63 (2) 245 4101 Extension: 2539
Mobile: +63 918 963 5250
Email: gscott@ictsi.com

or other indicted by the Purchaser for objective reasons.

Conditions

Sub-clause 1.1.f of the general conditions is deleted and replaced with the following:

1.1.f 'Conditions' means these General Conditions, the Appendix to the General Conditions and the Special Conditions.

Contract Price

Sub-clause 1.1.h of the general conditions is deleted and replaced with the following:

1.1.h 'Contract Price' means the lump sum stated in the Contract as the price payable to the Contractor for the execution of the Works. Save as otherwise stated hereunder or elsewhere in the Contract, the Contract Price shall include all transportation and shipping costs, port fees, insurance premiums, and/or any and all taxes (including, without limitation, any withholding, sales, use, value added, stamp duty or excise taxes) or any costs, charges or duties whatsoever which may be imposed on the Contractor and/or which may arise in connection with the Contractor's performance of its obligations under the Contract, (hereinafter collectively called the "Charges") and the Contractor shall, accordingly be liable for, and shall accept responsibility for payment of all Charges to the appropriate body or authority as the case may be.

In the event that there should be any set off and/or deduction and/or payment by the Purchaser of any part of the Charges to any aforesaid body or authority then the Purchaser shall be entitled to deduct an equivalent amount from the Contract Price and/or from any other sum otherwise due to the Contractor, and/or be paid the aforesaid equivalent amount which shall be recoverable by the Purchaser from the Contractor as a debt.

For the avoidance of doubt, the Purchaser shall pay all customs import duties and taxes, including value added tax related to the importation of the Works, and stevedoring charges which may apply within the country of the Site. Any wharfage and dockage fees which might otherwise be chargeable by the Purchaser in respect of the Plant shall be waived. Other port fees and Charges, including but not limited to pilot and tug charges applied by the local port authority shall be borne by the Contractor.

Time for completion

Sub-clause 1.1.m (a) of the general conditions is deleted and replaced with the following:

1.1.m (a) The Time for Completion of each Item of the Works is defined in Schedule 3 – Delivery Times / Dates for Completion

1.1.m (b) "Commencement Date" means the issue date of the Letter of Acceptance.

Section of the Works

Delete Sub-clause 1.1.s of the general conditions and replace with the following:

1.1q "Section of the Works" or "Section" or "item of Plant" means the parts of the works into which the Works are divided, as expressed or identified as such in the Contract and includes any item(s) of Plant so specifically identified.

Specification

Delete Sub-clause 1.1.s of the general conditions and replace with the following:

1.1.s 'Specification' means the technical specification of the Works annexed to or included in the Agreement including any modifications thereof made under clause 27 (Variations). The Specification is given as minimum acceptable requirements. The Purchaser's over-riding requirement is for the Plant and Works to be suitable in all respects for safe, efficient and continuous use under actual operating conditions in a modern large capacity, international container terminal for a period of not less than 20 years subject to fair wear and tear and routine maintenance.

The Contractor shall propose and shall implement such modifications or additions to the Specification which are necessary to meet the over-riding requirements of the Purchaser.

Neither the Specification nor any approval, certification, inspections, test or comment made at any time by the Purchaser in relation to the Specification or any other specification, drawing, design, material, method of working or any of the Works or any other matter shall relieve or modify the Contractor's obligations as set out herein.

Site

The following shall be inserted at the end of Sub-clause 1.1.u of the general conditions:

The Site where the Works shall be delivered and completed is:

Baltic Container Terminal (BCT), Gdynia, Poland.

UK Construction Act

Sub-clause 1.1.ff of the general conditions is deleted in its entirety.

Additional Definitions

The following additional definitions shall be added to sub-clause 1.1 of the general conditions:

1.1.gg "Main Works Contractor" means the organisation, entity or company responsible for the construction of the Site under a separate contract with the Purchaser.

1.1.hh "Supervision" means all necessary witnessing, testing, instructing and other site support conducted by a suitably qualified representative from the Contractor to ensure that the Works are executed correctly.

1.1.ii 'Environmental License': means any license granted by the relevant environmental authorities and agencies in country and location where the Works are to be operated.

1.1.jj 'QC' or ‘Quay Crane’ means Quayside Container crane(s). ‘RTG’ means Rubber Tyred Gantry crane(s). ‘Crane’ and/or ‘crane’ means Quayside Container crane(s) and Rubber Tyred Gantry crane(s).

1.1.kk 'Law' and/or 'law' means any National, State or local law of any kind, including any statute, ordinance, decree, regulation, or by-law, and which is applicable to the Works or the Contract and which is promulgated by a duly constituted authority in the Country of the Purchaser’s Site.

1.1.ll 'Party' or 'party' means, unless the context otherwise requires, either party to the Contract and "Parties" or 'parties' shall mean both parties to the Contract.

1.1.mm 'Appendix' means the appendix to the general conditions.

1.1.nn ‘Delivery of Plant to Site’ means the unloading of a Crane from a vessel to the quay of the Purchaser’s Site in fully erected condition.

Engineer's duties

The second paragraph of sub-clause 2.1 of the general conditions is deleted and replaced with the following:

The Engineer is required to obtain the Purchaser's prior specific approval before exercising the following duties:

a. Issuing Variation Orders
b. Granting approval for Delivery of Plant at the Site

Disputing Engineer’s decisions, instructions and orders

Delete the second paragraph of Sub-clause 2.6 of the general conditions and replace with the following:

If either the Contractor or the Purchaser disagrees with such decision, instruction or order as confirmed, reversed or varied he shall be at liberty to refer the matter to adjudication in accordance with the provisions of Sub-clause 52.1(a) of this Contract within a further period of 21 days. In the absence of such a reference to adjudication within the said period of 21 days such decision, instruction or order of the Engineer shall be final and binding on the parties.

Assignment and sub-contracting

Add the following at the end of Sub-Clause 3.1 of the general conditions:

The Purchaser shall have the right to assign any or all of its rights and/or obligations under this Agreement at its sole discretion.

The Supplier agrees to assist and cooperate with the Purchaser as may be reasonably necessarily required in order to permit the securing of project financing by the Purchaser at the Purchaser’s discretion.

Unexpected site conditions

Sub-clause 5.7 of the general conditions is deleted in its entirety.

Changes in costs–labour, materials and transport

Sub-clauses 6.1 and 6.2 of the general conditions are deleted and replaced with the following:

6.1 No adjustment shall be made to the Contract Price, nor payment made to the Contractor, in respect of:

(a) change, modification, or reinterpretation of any law; and/or

(b) the introduction of any new law, or repeal of any existing law after the date of the Contract,

Agreement

Sub-clause 7.1 of the general conditions is deleted and replaced with the following:

7.1 Either party shall be entitled to require the other to enter into an agreement in the form annexed with such modifications as may be necessary within 21 days after the date of issue of the Letter of Acceptance. The expenses of preparing, completing and stamping the agreement shall be borne by the party making such request and he shall provide the other party free of charge with a copy of the agreement.

Provision of bond or guarantee

The third paragraph of Sub-clause 8.1 of the general conditions is deleted and replaced with the following:

The Contractor shall provide a Performance Bond with the following criteria:

Bond Amount	10% of Contract Price
Currency of bond	US$ (United States Dollars)
Period of validity	the elapse of *six (6) months after the contractual taking-over date of the last crane, or if earlier, at the actual taking-over date of the last crane to be delivered under this contract.
Procedure for forfeiture	On Demand and according to wording of the bond as approved by the Purchaser.
Arrangements for release	Automatic or on expiry

Refer to Form of Performance Bond appended to these Special Conditions

The Performance bond, submitted by the Contractor in accordance with this Sub-Clause, shall be in the form of a Standby Letter of Credit (SBLC). The form and issuer of the Performance Bond shall be approved by the Purchaser prior to submission by the Contractor.

The Performance Bond may be furnished by any of the following banks listed below registered in and carrying out business in Manila, Philippines, or major banks in Poland/European Union, approved by the Purchaser.

- Deutsche Bank - Manila
- Metropolitan Bank and Trust Company (Metrobank / MBTC)
- Banco de Oro (BDO)
- Citibank - Manila
- Standard Chartered Bank (SCB) - Manila
- The Hong Kong and Shanghai Banking Corporation (HSBC) - Manila
- Australia and New Zealand Bank (ANZ) - Manila
- China Banking Corporation (CBC)
- Rizal Commercial Banking Corp. (RCBC)
- Philippine National Bank (PNB)

or such other bank as may be nominated by the Contractor and approved by the Purchaser.

During the performance of the Contract, if the bank providing the performance security is not able to abide by its commitments, the Purchaser shall treat the performance security as terminated. The Purchaser shall give formal notice to the Contractor to provide a new Performance Security on the same terms as the previous one. Should the Contractor fail to provide a new Performance Security, he shall be in breach of Contract, and such breach shall be deemed to be a breach falling within Sub-Clause 49.1(c) of the general conditions.

Failure to provide bond or guarantee.

In the first sentence of sub-clause 8.2 delete "30" and replace with "45".

The last sentence in Sub-Clause 8.2 of the general conditions is deleted and replaced with the following:

In the event of such termination under this sub-clause all rights of the Purchaser to recover losses either under this Contract, at law or in tort shall prevail.

Notices

The following shall be inserted at the end of Sub-clause 10.1 of the general conditions:

10.1 Purchaser's address: Baltic Container Terminal Ltd.
Kwiatkowskiego Str. 60,
81-127 Gdynia,
Poland

Engineer's address:

Mr Zdzislaw Mejer
BCT – Baltic Container Terminal LTD.
Kontenerowa 60 Str., 81-127 Gdynia
Poland
Mobile: +48 795501377
Email: zmejer@bct.gdynia.pl

Notify: Mr Gareth Scott

Manila International Container Terminal,
MICT South Access Road,
Manila 1012,
Philippines
Phone: +63 (2) 245 4101 Extension: 2539
Mobile: +63 918 963 5250
Email: gscott@ictsi.com

The following shall be inserted at the end of Sub-clause 10.2 of the general conditions:

10.2 Contractor's address: TBD.

Wayleaves, consents, etc.

Sub-clause 11.2 of the general conditions is deleted and replaced with the following:

11.2 Save for obtaining customs clearance and wayleaves, consents, permits, licenses and approvals which shall be obtained under the Purchaser's name and/or obligation, the Contractor shall be solely responsible for obtaining all wayleaves, consents, permits, licenses and approvals which are required for the commencement, execution and completion of all aspects of the Works, including the delivery of Plant and any authorization that may be required from any authority as well as all permits, licenses and approvals required by its Subcontractors to perform and complete the Works (hereafter all referred to as the "Contractor's Permits"). The Purchaser shall, at the request of the Contractor, provide reasonable assistance to the Contractor in applying for the Contractor's Permits. Such assistance shall not relieve the Contractor from its sole responsibility for the cost of obtaining, and due diligence in implementing and complying with the Contractor's Permits.

All documents to be submitted to any local authorities for obtaining the Contractor's Permits shall be in the required local language, and the Contractor shall make due allowance in his Programme and Contract Price for making all such adaptations and applications. It is a condition precedent of the Purchaser's assistance that the Contractor shall provide all documents, information, manpower and all administrative help and/or other support required by the Purchaser. If any of the Contractor's Permits is required to be obtained in the name of the Purchaser, the Contractor shall make available to the Purchaser in a timely manner all information, assistance, and resources (including any instructed by the Engineer) which may be necessary or desirable in connection with any such Contractor's Permit.

The Contractor shall undertake and exercise all rights and obligations under this Contract and shall so carry out the Works so as not to cause a breach of any term, condition or requirement of the Contractor's Permits or the Environmental License, and so as to maintain in force for as long as required by the Works the Contractor's Permits and the Environmental License, whether the same is in the name of the Contractor or the Purchaser.

Purchaser's lifting equipment

Sub-Clause 11.5 of the general conditions is deleted and replaced with the following:

No lifting equipment belonging to the Purchaser will be provided by the Purchaser and none may be used by the Contractor in connection with the Works.

Utilities and power

11.6 Utilities available for use by the Contractor on Site are as follows:

Water and Electricity may be available according to the different locations within the Site.

Power, etc. for tests on site

Sub-clause 11.7 of the general conditions is deleted and replaced with the following:

11.7 Electrical Power shall be made available free of charge for conducting the Tests on Completion for Cranes with electrical power supply.

Diesel Fuel for purpose of conducting the Tests on Completion shall be provided free of charge for Cranes with Diesel-electrical power supply.

Manner of execution

The following paragraphs shall be inserted at the end of sub-clause 13.2 of the general conditions:

The Contractor shall perform the Works so as to comply with the following requirements:

(1) Any applicable environmental laws.
(2) All Laws regarding ordinary international maritime and other navigational waters.

Contractor's Design

The last paragraph of sub-clause 13.3 of the general conditions is deleted and replaced with the following:

The Purchaser's overriding requirement is for the Plant and Works be suitable in all respects for safe, efficient and continuous use under actual operational conditions in a modern, large capacity, international container handling facility for a period of not less than 20 years subject to fair wear and tear and routine maintenance.

The terms of the Specification are minimum requirements and must be read subject to the overriding requirements set out herein. The Contractor shall propose and/or implement all and any modifications or additions to the Specification which are necessary to meet the overriding requirement.

Neither the Specification nor any approval, certification, inspections, test or comment made at any time by the Purchaser in relation to the Specification or any other specification, drawing, design, material, method of working or any of the Works or any other matter shall relieve or modify the Contractor's obligations as set out herein.

Form of programme

Sub-clause 14.2 of the general conditions is deleted and replaced with the following:

14.2 The Programme (and any revisions thereof) shall be in the following form:

The Programme for the Works (and any revisions thereof) shall be in the form of a logic linked timed schedule covering all activities appertaining to the manufacture of each item of Plant and programming the execution of all major construction activities comprised in the Works. The Programme shall show the critical path for execution of the Works, and shall specifically provide for, and programme, the following items/activities, as well as any others which may be requested by the Engineer:

i) Commencement date.
ii) Engineering Design Period.
iii) Dates for the Submission of Drawing/Design Calculations.
iv) Procurement of Materials and Components.
v) Manufacturing Periods for the main Structural Sections.
vi) Erection in the Contractor's Facility.
vii) Shop Testing.
viii) Purchaser's completion of any necessary civil engineering or building work (including foundations for the Works and access to the Site)
ix) Transportation Period for delivery to the Site of Plant.
x) Site installation of Plant
xi) Commissioning of Plant

xii) The time for carrying out of Automation Tests
xiii) Time for Completion for the Works, including where applicable, the Time for Completion of any Sections.
xiv) Dates when Purchaser supplied information or permits are required

The Programme shall be provided in “MS Project” format (or such other commonly used programming format as shall be specifically directed by the Engineer) and shall be presented in a way that clearly shows each activity connected in a logical programme sequence. Each activity shall show the duration, early start and early finish and shall identify the critical path for the construction of the Works.

Each month the Contractor shall provide an updated programme to the Purchaser and all revisions of the Programme shall be provided to the Purchaser immediately on their production in electronic format) (e.g.pdf) and the Contractor shall bear the cost of both revising the Programme and furnishing copies to the Purchaser.

The following is added at the end of sub-clause 14.3 of the general conditions:

No approval of the Programme by the Engineer shall be construed as, or serve to, or signify the granting of an extension of time for completion under the Contract.

Rate of progress

The second paragraph in Sub-Clause 14.6 of the general conditions is deleted and replaced with the following:

Following receipt of such a notice the Contractor shall take such steps as are necessary, and as the Engineer may approve, to remedy and/or mitigate the likely delay, including accelerating the execution of the Works, and providing additional resources (including but not limited to additional labour, Equipment and/or materials) and the revision of the Programme and/or re-sequencing of construction activities. The Contractor shall not be entitled to any additional payment for taking any such steps.

Operating and maintenance instructions

Delete the first paragraph of Sub-clause 15.6 and replace with the following:

15.6 Within the time or times stated in the Contract or in the Programme the Contractor shall supply operating and maintenance instructions and drawings of the Works as built. These shall be in such detail as will enable the Purchaser to operate, maintain and to the extent such drawings are necessary for such purpose, dismantle, reassemble and adjust all parts of the Works.

Purchaser's use of drawings, etc. supplied by Contractor.

The following is added to the end of the first paragraph in Sub-clause 15.7 after the word “Contract”

“, subject to a similar confidentiality undertaking by such third parties.”

Contractor’s representatives and workmen

Sub-clause 17.1 shall be deleted and replaced with the following:

17.1 The Contractor shall employ one or more competent representatives, whose name or names shall have been notified previously to the Engineer by the Contractor, to superintend the carrying out of the Works on the Site. The said representative, or if more than one shall be employed, then one of such representatives, shall be present on the Site during working hours, and any written orders or instructions which the Engineer may give to the said representative of the Contractor shall be deemed to have been given to the Contractor.

Objection to representatives

Insert the following at the end of sub-clause 17.2:

Any such notice given by the Engineer shall be given in writing.

Site services

Sub-Clause 18.2 of the general conditions is deleted and replaced with the following:

18.2 The Contractor shall provide any apparatus necessary for the use of such supplies of electricity, water, gas, air and other services as are made available for the Contractor's use by the Purchaser under sub-clause 11.6 (Utilities and power). The Contractor shall not pay the Purchaser for such use before the contractual Taking-over date. After that date, in case of delay due to the Contractor's cause, the Contractor shall pay the Purchaser for the use at such reasonable rates as the Engineer shall determine.

Safety

After sub-clause 20.1 of the general conditions the following additional paragraphs of a new sub-clause 20.2 are inserted:

20.2 **Health and Safety**

The Contractor shall at all times comply with such health and safety procedures, rules and regulations of the Purchaser that are in force at any given time and at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel and third parties affected by any aspect of the Works.

The Plant will be delivered, and Supervision will be conducted within an operational construction site. In addition to the above, the Contractor shall at all times comply with the health and procedures, rules and regulations of the Main Works Contractor that are in force at any given time.

The Contractor shall appoint a responsible person who shall be the sole point of contact between the Contractor and the Purchaser on matters of Health and Safety and who shall have a duty to liaise with the Purchaser and any third-party contractor working at the Site to ensure that the Works are carried out safely.

The Contractor shall report to the Engineer details of any accident on or about the Site or in connection with the delivery of the Works, as soon as possible and, in any event within 24 hours after its occurrence. The Contractor shall also report such accident to the appropriate authority whenever such report is required by law. In the case of any fatality or serious accident, the Contractor shall, in addition, notify the Purchaser immediately by the quickest available means.

Extraordinary traffic claims

Sub clause 21.3 of the general conditions is deleted and replaced with the following:

If the Contractor shall receive any claim in respect of damage or injury to highways or bridges arising out of the execution of the Works, he shall immediately report the claim to the Engineer. The Contractor shall indemnify the Purchaser in respect of the said claim and in respect of all proceedings, damages, Cost, charges and expenses suffered or incurred by the Employer to the extent that they are attributable to the negligence of the Contractor.

Inspection and testing of plant before delivery

Add the following at the end of the first paragraph in sub-clause 24.1:

The Contractor may not apply for such permission unless the plant is in a state suitable for delivery to the Site. The Engineer shall not be compelled to grant such permission unless, in the reasonable opinion of the Engineer, the Plant is, or will be in such a state suitable for delivery to the Site by the date proposed for loading the plant for transportation to the Site.

The Purchaser may, at their sole discretion, and not as a result of a default, act or omission on the part of the Contractor, elect to delay or postpone the delivery of the plant (the scheduled Delivery Date) subject to the following:

(1) If the Purchaser informs the Contractor seven (7) months before the scheduled Delivery Date, the Delivery Date may be deferred by four (4) months without any change in the Contract Price or without any further sums becoming payable to the Contractor by the Purchaser.

(2) If the Purchaser informs the Contractor five (5) months before the scheduled Delivery Date, the Delivery Date may be deferred by eight (8) weeks without any change in the Contract Price or without any further sums becoming payable to the Contractor by the Purchaser.

(3) If the Purchaser informs the Contractor four (4) months before the scheduled Delivery Date, the Delivery Date may be deferred by six (6) weeks without any change in the Contract Price or without any further sums becoming payable to the Contractor by the Purchaser.

(4) If the Purchaser requires the Contractor to delay shipment and notifies the Contractor of such requirement, less than 4 months prior to the scheduled Delivery Date, the Purchaser shall pay the Contractor the cost of storage and maintenance at the Contractor's premises at the rate of USD $2000 per day per crane. To the extent that the Contractor will suffer a delay under this sub-clause 24.1(4) the Contractor shall be entitled to an extension of the time for completion in accordance with sub-clause 33.1 of the general conditions.

(5) If the Contractor has transported the plant to the Site such that the plant is capable of being delivered in the condition required under this Contract, on the Delivery Date as contained in Schedule 3 herein (or as may be amended in accordance with the provisions of this Contract) and for reasons solely attributable to the Purchaser the plant cannot be discharged by the Contractor, a compensation of USD $50,000 per day shall become payable to the Contractor for each day in delay that the Contractor is so prevented from delivering the plant, and subject to the provisions of sub-clause 33.1 herein, the Contractor shall be entitled to an extension of the time for completion.

Additional cost caused by suspension

Sub-clause 25.2 of the general conditions is deleted and replaced with the following:

25.2 Any reasonable additional Cost incurred by the Contractor in complying with the provisions of and/or the Engineer's instructions under sub-clause 25.1 (Instructions to suspend) or any undue delay by the Purchaser under sub-clause 24.1 (Delivery) shall be added to the Contract Price.

Disallowance of additional cost or payment

Sub-clause 25.4 of the general conditions is deleted and replaced with the following:

25.4 The Contractor shall not be entitled to be paid any additional Cost under sub-clause 25.2 (Additional cost caused by suspension), or sub-clause 24.1 (Inspection and testing of plant before delivery), nor to any payment under sub-clause 25.3 (Payment for plant affected by suspension) if suspension is necessary by virtue of events which constitute Force Majeure under sub-clause 46.1 and/or which arise by reason of default on the part of the Contractor and/or where suspension of the Works is necessary for the proper execution or the safety of the Works or Plant, save where such necessity results from any act or default of the Engineer or the Purchaser or from the occurrence of any of the Purchaser's Risks.

Taking-over certificate

Sub-clause 29.2 is deleted and replaced with the following:

29.2 When the Works have passed the Tests on Completion and are complete (except in minor respects that do not affect their use for the purpose for which they are intended, which are to be listed in a so-called punch list) the Contractor shall make an application to the Engineer for the issue of a certificate herein called a 'Taking-Over Certificate' wherein the Engineer shall certify the date upon which the Works passed the Tests on Completion and were so complete. The Purchaser shall be deemed to have taken over the Works on the date so certified. Except as permitted by clause 30 (Use before taking-over) the Purchaser shall not use the Works before they are taken over. If the Engineer fails either to issue the Taking-Over Certificate or to reject it within a period of 14 days following receipt of the Contractor's application, the Taking-Over Certificate will be deemed to have issued on the last day of that period and the date upon which the Works are deemed to have been completed shall be the date of issue of the Contractor's application.

Outstanding work

The following is to be inserted at the end of Sub-clause 29.4:

Outstanding items (also called "punch list items") shall be rectified by the Contractor within a period of eight (8) weeks after the date of Taking-Over, or within such a period as may be agreed by the Parties. The Purchaser shall give the Contractor access to the Works as necessary to resolve the punch list items.

Should the Purchaser fail to give the Contractor access to the Works as necessary for resolving the punch list items within this period or continue to fail to provide such access within 4 months after the Contractor has applied for the access to the Works to resolve particular punch list items, this particular outstanding item shall be deemed resolved.

Extension of time for completion

Sub-clause 33.1 of the general conditions is amended as follows:

The words '*or of any industrial dispute or by reason of circumstances beyond the reasonable control of the Contractor arising after the acceptance of the Tender or of any valid suspension of the performance of the Contract pursuant to Section 112 of the UK Construction Act where applicable*' is deleted from this sub-clause.

Delay in completion

Sub-clause 34.1 of the general conditions is deleted and replaced with the following:

34.1 If the Contractor fails to either deliver or complete the Works in accordance with the Contract, or such Sections thereof or items of Plant as may be identified in the Appendix, save as regards his obligations under clauses 35 (Performance Tests) and 36 (Defects liability), within the Time for Delivery and / or the Time for Completion, or if no time be fixed, within a reasonable time, there shall be deducted from the Contract Price or shall otherwise be paid to the Purchaser by the Contractor the amount of liquidated damages for delay stated in the Appendix to the general conditions as applying to the relevant part of the Works or Section or item of Plant as shall be incomplete for each day between the Time for Delivery and / or the Time for Completion for the relevant part of the Works, Section or item of Plant, and the actual date of delivery and / or the actual date for completion of the aforesaid part of the Works, Section or item of Plant. The amount so deducted or paid shall not exceed the maximum sum stated in the Appendix to the general conditions for the corresponding part of the Works, Section or item of Plant, and such deduction or payment shall, subject to sub-clause 34.2 (Prolonged delay), be in full satisfaction of the Contractor's liability for the said failure.

The Purchaser shall be entitled to deduct any sums owing to it by way of liquidated damages or otherwise pursuant to this sub-clause 34.1, or otherwise under the Contract, from any monies due or which may become due to the Contractor under this Contract and the Purchaser may recover the same from the Contractor as a debt. The rights given to the Purchaser pursuant to this sub-clause 34.1 shall be without prejudice to any rights of the Purchaser to terminate this Contract.

Performance tests

Sub-clause 35.1 of the general conditions is deleted and replaced with the following:

35.1 The following Performance Tests shall be conducted.

Performance Target
Mean Moves Between Failure (MMBF) shall be used as the criteria for measuring the adequacy of Plant Performance.

The Purchaser will establish the MMBF of each crane after taking-over based on verifiable records from Operations. For the purpose of calculating MMBF the Crane will be placed into operation under such conditions and circumstances as may exist. No credit or allowance shall be given for the benefit of the Contractor in respect of conditions, circumstances or operator's performance, prevailing conditions during operations or any other circumstance.

The MMBF is defined as:

$$\text{MMBF} = \frac{\text{Twist Lock Count (TLC) for one month}}{\text{Number of Breakdowns of a Crane for one month}}$$

TLC: One TLC is defined as the operation of twist lock + hoisting + trolley travelling + lowering + unlock.

Breakdown: One Breakdown is defined as any interruption to the operation of a crane during operational service caused by a malfunction of a crane system which takes longer than 10 minutes to resolve, counting from the moment a technician starts to resolve the problem.

The actual MMBF shall be recorded on a monthly basis following issue of the Taking-Over Certificate. The MMBF shall be calculated by dividing the total number of twist lock counts recorded during each four-week period by the total number of emergency breakdowns in the same period. The following minimum performance criteria shall be achieved for two consecutive months for each crane:

Within 2 months of Taking-over	400 MMBF
Within 4 months of Taking-over	600 MMBF
Within 6 months of Taking-over	800 MMBF

For a valid calculation, the number of moves per month for each crane shall not be below 3000. Any month where the number of moves is less than stated above shall be disregarded for the calculation and the time for completion of Performance tests shall be extended accordingly.

If at the end of the Defect Liability Period there have not been sufficient number of months to count for, the Performance test shall be regarded as successfully passed.

The Purchaser shall meet the agreed boundaries of the Specifications and shall ensure that suitably qualified personnel carry out all preventive maintenance works and repairs according to the Maintenance Instructions.

The following incidents are not regarded as breakdowns:

- Alarms and warnings that the (remote) operator can safely reset and do not require maintenance actions
- Failures caused by incorrect operation, third party impact (including impact from systems not covered under this Contract) and/or weather circumstances above the crane specification requirements
- Failures caused by incorrect or inadequate maintenance
- An accidently damaged QC will not be counted as an incidence against MMBF scoring

Sub-clause 35.6 of the general conditions is deleted and replaced with the following:

35.6 The time for Completion of Performance Tests to achieve minimum of average 800 MMBF shall be 6 months after the issue of the Taking-Over Certificate relating to the relevant Crane.

Sub-clause 35.8 of the general conditions is deleted and replaced with the following:

35.8 If a Crane fails to pass any of the Performance Tests within the period provided for by sub-clause 35.6 Liquidated damages for such failure to pass any of the Performance Tests shall be paid or allowed by the Contractor to the Purchaser as follows:

Table B		
Item 1	Quayside Container Cranes	US$ 50,000 for each QC

(a) Liquidated Damages for failure of a Crane to pass the Performance Tests shall be paid by the Contractor to the Purchaser within 30 days of the respective invoice. Such payment of Liquidated Damages shall not constitute a waiver of the rights of the Purchaser under the Contract, at Law or otherwise, and shall not relieve or limit the Contractors obligations and liabilities as set out herein. If the payment has not been made until the end of the Defects Liability Period, such amount may be deducted from the payment due at the end of the Defects Liability Period as set forth in Schedule 2, item 1. (e).

Without prejudice to the Purchaser's other rights and remedies where the failure of a Crane to pass any of the Performance Tests means that the Purchaser is likely to suffer a substantial continued loss of use and/or

performance in relation to the aforesaid Crane, the Engineer shall be entitled to reject the Crane and the Purchaser shall be entitled to proceed in accordance with clause 49 (Contractor's default).

Defects liability period

The following paragraphs shall be inserted at the end of sub-clause 36.1 of the general conditions:

The Defects Liability Period shall be twenty-four (24) months after taking-over.

Components or any part of the Works repaired or replaced during the Defects liability period shall carry warranty of 1 year or the balance of the Defects liability period, whichever is the longer.

Extended warranty in respect of the following items shall apply according to clauses defined in the Technical Specifications:

- Crane Structure 20 years
- Paint System 10 years (according to ISO 4628/3/Ri2)
- Galvanizing System 10 years

The paint system extended warranty does not apply to buy-out parts such as AC units, cabin, elevator, on the basis that the Contractor defines appropriate environmental conditions to suppliers when placing contracts. This shall be verified before making the respective interim payment for major stipulated components.

Components repaired during the Defects liability period shall carry warranty of 1 year or the balance of the Defects liability period, whichever is the longer.

Making good defects

The last paragraph of sub-clause 36.2 of the general conditions is deleted and replaced with the following:

The Contractor undertakes and warrants that all of the Plant and Works shall be in accordance with the description, including but not limited to quality, performance, measurement and any other conditions stipulated in this Contract and shall be fit for the purpose intended as set out in the Contract and shall comply with all applicable legal requirements and other regulations. The Plant and Works when completed shall be free from all defects in design, manufacture, materials, workmanship and operational logic, so as to be capable of use by the Purchaser in accordance with this Contract.

Should any defect arise in any of the Plant or Works within the applicable Defects Liability Period, the Contractor shall, at its own expense, do all things necessary to rectify the situation, including the repair or replacement of the defective Works or Plant or where appropriate any components thereof.

If pursuant to the provisions contained herein, the Contractor repairs or replaces any of the Plant or Works or components, the provisions of this warranty clause shall then apply to such Plant or Works or components thereof, for a period of 1 (one) year or the balance of the Defects Liability Period, whichever is longer after the date of completion of such repair or replacement to the satisfaction of the Purchaser.

During the warranty period specified under the paragraphs above, should a similar repeated defect arise in any of the Plant or Works or components, this shall indicate its unsuitability for the purpose intended, and the Contractor shall take immediate steps to conduct a thorough investigation jointly with the Purchaser to ascertain the reasons for such a defect and shall, upon mutual agreement of the Parties and at the Contractor’s expense, change the design and/or effect delivery of replacement Plant or Works or components thereof suitable for the purpose intended, as specified in the Contract, to replace those that were defective.

Should the Contractor need to make good any defects and/or to effect any replacement of Plant or components, then all related costs thereto including but not limited to shipment, taxes and additional manpower and all direct costs and expenses of the Purchaser shall be borne and/or be paid by and/or be reimbursed by the Contractor.

Sub-clause 36.5 is deleted and replaced with the following:

36.5 If any such defect or damage be not remedied within a reasonable time, the Purchaser may proceed to do the work at the Contractor's risk and expense provided that he does so in a reasonable manner and notifies the Contractor of his intention so to do. The Cost reasonably incurred by the Purchaser shall be deducted from the Contract Price or be paid by the Contractor to the Purchaser.

In the event that a defect which prevents any of the Plant from being used in the manner intended and specified in the Contract for a period of more than seven (7) consecutive days, the Purchaser shall be entitled to deduct from the warranty bond, or to otherwise recover from the Contractor as a debt, all costs and losses incurred during the period in which the Plant was incapable of being used.

Limitation of liability for defects

Sub-clause 36.9 of the general conditions is deleted and replaced with the following:

36.9 For the purposes of this clause 36 the Contractor contracts on his own behalf and on behalf of and as trustee for his Sub-Contractors, servants and agents. Nothing in this clause 36 shall affect the liability of the Contractor under the Conditions in respect of any part of the Works not yet taken over or his liability for death or personal injury caused by his wilful or negligent acts or omissions.

Latent defects

Sub-clause 36.10 of the general conditions is deleted and replaced with the following:

36.10 If any defect of the kind referred to in sub-clause 36.2 (Making good defects) shall appear in any part of the Works within a period of four years after the date of taking-over of such part of the Works, the same shall be made good by the Contractor by repair or replacement at the Contractor's option and the provisions of sub-clause 36.5 shall equally apply.

Ownership of plant

Sub-clause 37.1 of the general conditions is deleted and replaced with the following:

Plant and in general the Works to be supplied pursuant to the Contract shall become the property of the Purchaser at the issue of the Taking-Over Certificate for the Works or part thereof. Before the issuance of the Taking-Over Certificate, the Contractor shall at its own cost and risk comply with all necessary permits, approvals, registrations and procedures required pursuant to the applicable law to transfer the property of the Works to the Purchaser.

Certificates and payment

The following paragraph shall be inserted at the end of sub-clause 39.2 of the general conditions:

The Form of application shall be as defined in Clause 39.2 of the general conditions and shall be a pre-requisite for any payment to the Contractor as provided for by sub-clause 40.1 (Payment).

Value included in certificates of payment

In sub-clause 39.4 of the general conditions the third bullet point ("- claims for additional payment") is deleted and replaced with the following:

– additional payment awarded by the Engineer or agreed by the Purchaser and/or

Payment

Sub-clause 40.1 of the general conditions is deleted and replaced with the following:

40.1 The applicable terms of payment shall be those included in Schedule 2 (Payment Schedule) to this Contract.

Delayed payment

The second sentence of sub-clause 40.2 of the general conditions shall be deemed deleted and shall be substituted with the following:

The interest shall be at the rate of three (3) per cent above the National Bank of Poland Base Rate in force from time to time during the period of delay.

Remedies on failure to certify or make payments.

Sub-clause 40.3 of the general conditions is deleted and replaced with the following:

40.3 If the Engineer fails to issue a certificate of payment, to which the Contractor is entitled or if the Purchaser fails, to make any payment as provided in this clause, subject to any deduction that the Purchaser has claimed or is entitled to make under the Contract, the Contractor shall be entitled:

(a) 30 days after the due date of the certificate of payment: to stop work until the failure be remedied, by giving 14 days' notice to the Engineer and the Purchaser, in which event the additional Cost to the Contractor occasioned by the stoppage and the subsequent resumption of work shall be added to the Contract Price. The contractual delivery time may be extended for the same stoppage time after the work is resumed.

(b) 30 days after the due date for payment: to terminate the Contract by giving 30 days' prior notice to the Engineer and the Purchaser before the effectivity of the termination, whether or not the Contractor has previously stopped work under paragraph (a) of this sub-clause.

Limitation of Contractor's liability

Sub-clause 44.3 of the general conditions is deleted and shall be substituted as follows:

44.3 In no circumstances whatsoever shall the aggregate liability of the Contractor to the Purchaser under the Contract exceed the amount stated in the Appendix to the general conditions. The Contractor shall have no liability to the Purchaser for or in respect or in consequence of any loss of or damage to the Purchaser's property which shall occur after the expiration of the Defects Liability Period except as stated in sub-clause 36.10 (Latent defects).

Exclusive remedies

Sub-clause 44.4 of the general conditions is deleted.

Purchaser’s risks

In sub-clause 45.1 of the general conditions the following is deleted:

“Force Majeure except to the extent insured under the insurance policies to be effected by the Contractor in accordance with clause 47 (Insurance)”.

Force majeure

Sub-clause 46.1 of the general conditions is deleted and replaced with the following:

46.1 “Force Majeure” shall mean an exceptional event or circumstance:

(a) which is beyond a Party’s control,

(b) which such Party could not reasonably have provided against before entering into the Contract,

(c) which, having arisen, such Party could not reasonably have avoided or overcome,

(d) which is not substantially attributable to the other Party, and

(e) which prevents a Party from performing all or any of its obligations pursuant to the Contract.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (e) above are satisfied:

(i) war, hostilities (whether war be declared or not), invasion or other act of foreign enemies,

(ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war,

(iii) riot, commotion, disorder, strike or lockout by persons other than the Contractor’s Personnel and other employees of the Contractor and Subcontractors,

(iv) stoppage or disruptions caused by an industrial action not confined at the Site or caused by the local labour union.

(v) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and

(vi) natural catastrophes in the form of earthquakes, hurricanes, typhoons or volcanic activity.

(vii) any changes in Law in the country of Purchaser

For the sake of clarity Force Majeure excludes:

(i) any operation of the forces of nature including climatic conditions unless these give rise to a natural catastrophe.

(ii) any natural physical conditions and man-made and other physical obstructions which the Contractor encounters at the Site, including geotechnical conditions; and

(iii) insolvency of any Party; and

(iv) delays in the obtaining of any Contractor's Permits, or any other consecution of permits, authorizations or licenses.

Third party insurance

The following paragraph shall be inserted at the end of sub-Clause 47.4 of the general conditions:

The Contractor shall effect third party insurance for a minimum amount of US$ 10,000,000 for any one claim or series of claims arising from the same incident.

General Insurance requirements

47.6 Notwithstanding the insurance cover mentioned under Payment Terms, the Contractor shall effect insurance cover as defined in Schedule 10 – Form of Insurance Requirements.

Purchaser's default

Sub-clause 51.1of the general conditions is deleted and replaced with the following:

51.1 In the event of the Purchaser:

(a) failing to pay to the Contractor the amount due under any certificate of the Engineer within 60 days after the date of its issue subject to any deduction that the Purchaser is entitled to make under the Contract; or

(b) becoming bankrupt or (being a corporation) going into liquidation other than for the purpose of a scheme of reconstruction or amalgamation, or carrying on its business under an administrator, receiver, manager or liquidator for the benefit of its creditors or any of them;

the Contractor shall be entitled without prejudice to any other rights or remedies under the Contract [and in respect of paragraph (a) above in addition to the provisions of sub-clause 40.3 (Remedies on failure to certify or make payment)] to terminate the Contract by giving 30 days' notice to the Purchaser with a copy to the Engineer, provided always that the Contractor shall have no right to terminate in relation to paragraph (a) above if before the expiry of the aforesaid 30 days the Purchaser shall have remedied any default by paying the amount properly due to the Contractor.

Arbitration rules

Paragraph (c) of Sub-clause 52.2 in the general conditions is deleted and replaced with the following:

52.2(c) The arbitration shall be conducted in accordance with the arbitration rules of the Court of Arbitration at the Polish Chamber of Commerce in Warsaw by one or more arbitrators appointed in accordance with the aforementioned rules. The arbitration shall take place in Warsaw, Poland. The language of the arbitration proceedings shall be English. The Parties agree that the decision made in the arbitration proceedings shall be binding on both Parties.

Additional special conditions

The following additional sub-clauses shall be inserted:

Disorderly Conduct

55.1 The Contractor shall not give, barter or otherwise dispose of to any person or persons, any arms or ammunition of any kind of permit or suffer the same as aforesaid.

55.2 The Contractor shall not, otherwise than in accordance with the Law for the time being in force, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs, or permit or suffer any such importation, sale, gift, barter or disposal by his Subcontractors, agents, staff or labour.

55.3 Any commission, advantage, gift, gratitude, reward or bribe given, promised or tendered by or on behalf of the Contractor or his agent or servant or any other person on his or their behalf to any officer, servant representative, or agent of the Purchaser or to any person on their behalf or on behalf of any of them in relation to the obtaining or to the execution of this or of any other Contract with the Purchaser shall, in addition to any criminal liability which may be thereby incurred, give rise to the Purchaser having the right to terminate this Contract, and to cancel any and all other contracts between the Contractor and the Purchaser and also give rise to the right for the Purchaser to recover from the Contractor any loss or damage resulting from such termination or cancellation."

56.1 Direct Agreement, If required at any time by the Purchaser, the Contractor must execute a direct agreement substantially in the form set out in Schedule 10 – Form of Direct Agreement.

4. THE TECHNICAL SPECIFICATIONS AND TEST PROTOCOLS

6.1 QC Technical Specification

--- Supplied under separate cover ---

6.2 QC Pre-Shipment Inspections and Test on Completion Protocol

--- Supplied under separate cover ---

5. THE SCHEDULES

Schedule 1 – Contract Price for Each Item of Works

For avoidance of doubt, all Prices defined above are exclusive of Import Tax and Customs Duties applied in Poland. The Purchaser is responsible for these charges.

ITEM	DESCRIPTION		UNITS	CONTRACT PRICE (US$)
Item 1.	Turnkey design, manufacture, delivery to the Site, erection, testing and completion of • two (2) brand new Quayside Cranes (QC) as per the Purchaser's Specification, Delivery Dates and Time for Completion.		1st QC 2nd QC	
			Subtotal for two (2) Quayside Cranes – Item 1.	
Item 2.	Manufacture and delivery to the Site of • one (1) brand-new QC spreader		One (1) QC Spreader	Included
Item 3.	Option 1.	QC Stainless Steel Hydraulic Piping	Two (2) QC Stainless Steel Hydraulic Piping	Included
	Option 2.	QC Automated Lubrication System	Two (2) QC Auto-Lubrication Systems	Included
	Option 3.	QC Elevator Auto-Lubrication System	Two (2) QC Auto Lubrication Systems	Included
	Option 4.	QC Intelligent Crane Status Monitoring	Two (2) QC Intelligent Status Monitoring	Included
	Option 5.	Vessel profiling system (QC Tech. Spec. 5.13)	Two (2) QC Vessel profiling system	Included
	Option 6.	QC Boom latch camera and monitors (QC Tech. Spec. 4.6.2)	Two (2) QC Boom Latch Camera and Monitor Systems	Included
	Option 7.	QC Heavy Lift Cargo Beam (QC Tech. Spec. 4.11)	One (1) QC Cargo Beam	Included
	Option 8.	Universal Spreader Trailer (QC Tech. Spec. 4.10)	One (1) Universal Spreader Trailer	Included
	Option 9.	QC Operator aid camera system (QC Tech. Spec. 5.6.4)	Two (2) QC Operator Aid Camera and Monitor Systems	Included
	Option 10.	QC Gantry Brake Monitoring System by renowned global producers	Two (2) QC Gantry Monitoring Systems	Included
	Option 11.	QC Spreader Cable with Integrated Fiber Optic	Two (2) QC Spreader Cables with Fiber Optic	Included
	Option 12.	QC emergency power connection (QC Tech. Spec. 5.3.23)	Two (2) QC Emergency Power Connections	Included
	Option 13.	Spreader Test Panel (QC Tech. Spec. 6.8.2)	One (1) Spreader Test Panel	Included
	Option 14.	Test Weight (QC Tech. Spec. 4.13)	One (1) Test Weight	Included
	Option 15.	U-One System	Two (2) U-One Systems	Included
	Option 16.	M-House Roof Solar Panel System	Two (2) Solar Panel Systems	Included
	Option 17.	Onsite after sales engineer for twelve (12) months	One (1) QC Onsite after sales engineer	Included
			Subtotal for Option Items – Item 3.	0
			Total Contract Price – Item 1	

Schedule 2 – Payment Schedule

The following terms of payment shall apply:

1. The Purchaser shall pay to the Contractor in the following manner Item 1 of the Contract Price adjusted to give effect to such additions, deductions, and other adjustments as are provided for by the Contract:

   (a) 10% of the Total Purchase Price plus VAT in accordance with applicable regulations will be paid in advance within 30 business days from the moment of signing this Agreement to the bank account indicated by the Contractor on the basis of the security due to the Agreement and the guarantee of return of the advance payment on the basis of the Contractor's VAT invoice must be delivered to the Purchaser as a precondition for the payment of the advance payment.

   In the event that the payment of such an advance payment is delayed due to the fault of the Purchaser or any party under the control of the Purchaser, then the Delivery Date set out in Article 5 below will be extended accordingly.

   1) a Performance Bond issued in the form included in the Schedule 8 by a bank acceptable to the Purchaser, and

   (2) all the insurances policies/certificates available at the commencement of the project as required to be provided by the Contractor as set out in Clause 47 of the general conditions and special conditions and as listed below and when such policies have been approved by the Purchaser, and

   (3) The Contractor has provided the Purchaser with an appropriate invoice in respect of the sum properly due

   The Contractor shall provide the Purchaser the insurance certificates at the commencement of the project:

   (i) Insurance of Contractor’s Property / Property All Risk
   (ii) Insurance of Erection All Risks including Products Defect Liability
   (iii) Insurance for Third Party Liability
   (iv) Insurance of Worker Compensation

   (b) 20% of the Total Purchase Price, plus VAT in accordance with applicable regulations, will be paid within 120 days from the moment of signing this Agreement on the basis of the approved detailed structural design and the guarantee of return of the advance payment on the basis of the Contractor's VAT invoice must be provided to the Purchaser as a prerequisite for the payment of the advance payment.

   (c) 25% of the Total Purchase Price plus VAT in accordance with applicable regulations, will be paid within 210 days or on the basis of an approved stage of the electrical design, from the moment of signing this Agreement and a guarantee of return of the advance payment based on the Contractor's VAT invoice must be provided to the Purchaser as a prerequisite for the payment of the advance payment.

(d) 25% of the Total Purchase Price plus VAT in accordance with applicable regulations, will be paid on a pro-rata basis on the basis of the Contractor's VAT invoice upon shipment of the Equipment confirmed by invoice and bill of lading and the guarantee of return of the advance payment on the basis of the Contractor's VAT invoice must be delivered to the Purchaser as a prerequisite for the payment of the advance payment.

The Contractor has an option to replace the Retention Money with a Defects Liability Demand Guarantee being valid until the end of the defects liability period for an equivalent amount (i.e. 5% of Items of the Contract Price), subject to it being issued in the form included in the Schedule 9 by a bank acceptable to the Purchaser, and in such circumstances not to have the Retention Money retained by the Purchaser, provided all the items in the punch list annexed to each respective Taking-over Certificate, which do effect operation of the Works, have been completed and accepted by the Engineer.

(e) 15% of the Total Purchase Price increased by VAT in accordance with applicable regulations will be paid at the time of handing over the Equipment to the Purchaser on the basis of a VAT invoice issued by the Contractor and the Handover Report signed by both Parties and the initial positive technical acceptance by TDT.

(f) 5% of the Total Purchase Price increased by VAT in accordance with the applicable regulations, will be paid after the final acceptance of the Equipment by TDT on the basis of a VAT invoice and Warranty Protections (to cover possible claims under the warranty) amounting to 5% of the Total Purchase Price.

2. If any Section of the Works shall be taken over separately under clause 29 (Taking-over) the payments herein provided for on or after taking-over shall be made in respect of the Section taken over and reference to the Contract Price shall mean such part of Items 1 and 3 of the Contract Price as shall, in the absence of agreement, be apportioned thereto by the Engineer based on the proportion of Items 1 and 3 of the Contract Price fairly attributable to that part of the Works taken over as compared with the proportion of Items 1 and 3 of the Contract Price properly attributable to the balance of the Works.
3. If at the time any payment would otherwise fall to be made under paragraph (b) or paragraph (c) of Clause 1 of this Schedule 2 there shall be any defect in any portion of the Works in respect of which such payment is proposed, the Purchaser may retain and withhold the whole of any such payment provided that, in the event of the said defect is of a minor character and not such as to materially adversely affect the use or operation of the relevant Plant for the purposes intended, the Purchaser shall not retain a greater sum than represents the reasonably estimated Cost of making good the said minor defect. Any sum retained by the Purchaser pursuant to the provisions of this Clause 3 of this Schedule 2 shall be paid to the Contractor upon the said defect being made good.

Schedule 3 – Delivery Dates / Time for Completion

ITEM	DESCRIPTION	UNITS	DELIVERY DATE (Calendar DAYS from date of issue of Letter of Acceptance)	COMPLETION DATE (Calendar DAYS from date of issue of Letter of Acceptance)
Item 1.	Two (2) Quayside Container Cranes to the Purchaser's Site.	1st QC		
		2nd QC		
Item 3.	Spare QC Spreader	1 QC Spreader		

The Contractor shall allow a period of one (1) week for Customs Clearance in addition to any other time needed for Completion of the Works following delivery to Site. Should the time for Customs Clearance be longer than two (2) weeks this will not be included in any calculation of delay in completion payment as defined in Clause 34.1 of the General Conditions.

Schedule 4 – Blank – do not use

Schedule 5 – QC Stipulated Components

Note: * denotes the items which constitute "Major Stipulated Components" for purpose of milestone payment triggers.

Item No.	Description of Stipulated Component	Stipulated Suppliers for Item	Tenderer's Preferred Supplier Chosen from Stipulated Suppliers
(1)	Structure Steel, main structures ▪ Plates and structure sections ≥35mm thickness	Renowned global producers Renowned global producers	
(2)	Structure Steel, secondary structures	Renowned global producers	
(3)	Paint	Renowned global producers	
(4)	Spreader *	Renowned global producers	
(5)	MV switchgear *	Renowned global producers	
(6)	MV transformer(s) *	Renowned global producers	
(7)	Drive Inverter System *	Renowned global producers	
(8)	PLC & Remote I/O's	Renowned global producers	
(9)	LV switchgear components	Renowned global producers	
(10)	Electrical System Integration	Crane manufacturer, System Supplier	Crane Manufacturer
	Drive Motors *		
(11)	▪ Main Hoist	Renowned global producers	
(12)	▪ Boom Hoist	Renowned global producers	
(13)	▪ Trolley	Renowned global producers	
(14)	▪ Gantry	Renowned global producers	
	Gear Reducers *		
(15)	▪ Main Hoist	Renowned global producers	
(16)	▪ Boom Hoist	Renowned global producers	
(17)	▪ Trolley	Renowned global producers	
(18)	▪ Gantry	Renowned global producers	
	Brakes *		
(19)	▪ Main Hoist (Service)	Renowned global producers	
(20)	▪ Main Hoist (Emergency)	Renowned global producers	
(21)	▪ Boom Hoist (Service)	Renowned global producers	
(22)	▪ Boom Hoist (Emergency)	Renowned global producers	
(23)	▪ Trolley (Service)	Renowned global producers	
(24)	▪ Trolley (Holding brake)	Renowned global producers	
(25)	▪ Gantry (Service)	Renowned global producers	
(26)	▪ Gantry (Wheel)	Renowned global producers	
(27)	▪ Hydraulic Power Packs	By brake manufacturer	
	Couplings		
(28)	▪ Main Hoist Drum	Renowned global producers	
(29)	▪ Boom Hoist Drum	Renowned global producers	
(30)	▪ Trolley Rope Drum	Renowned global producers	

Item No.	Description of Stipulated Component	Stipulated Suppliers for Item	Tenderer's Preferred Supplier Chosen from Stipulated Suppliers
(31)	▪ Brake Disc Couplings	By the stipulated brake supplier	
(32)	▪ Other transmission couplings	Contractor to propose	
	Hydraulic systems (other than brakes)		
(33)	▪ Main components	Renowned global producers	
(34)	▪ Cylinders	Contractor to propose	
(35)	▪ Hydraulic system integration	Contractor to propose.	
	Bearings	Renowned global producers	
(36)	▪ Main hoist, trolley, boom hoist and gantry reducer		
(37)	▪ Main hoist, trolley and boom hoist sheaves		
(38)	▪ Catenary trolley sheaves		
(39)	▪ Main hoist drum pedestal bearing		
(40)	▪ Trolley drum pedestal bearing		
(41)	▪ Boom hoist drum pedestal bearing		
(42)	▪ Trolley wheels		
(43)	▪ Trolley horizontal wheels		
(44)	▪ Catenary trolley wheels		
(45)	▪ Catenary trolley horizontal wheel		
(46)	▪ Gantry wheels		
(47)	▪ Other bearings	Contractor to propose	
(48)	Auto-Lubrication System	Renowned global producers .	
(49)	Intelligent Status Monitoring System	Renowned global producers	
(50)	Lightning and surge protection	Renowned global producers	
(51)	Rail Clips	Renowned global producers	
(52)	Buffers	Renowned global producers	
(53)	Wire Rope	Renowned global producers	
(54)	Wire Rope Sheaves 100% Forged	Contractor to propose.	
(55)	Wire Rope Rollers	Renowned global producers	
(56)	Personnel Elevator*	Renowned global producers	
(57)	Maintenance Hoist including the overhead traveling girders	Renowned global producers	
(58)	MV Cable Reeling System *	Renowned global producers	
(59)	MV Trailing Cable	Renowned global producers	
(60)	Trolley Energy Cable Chain	Renowned global producers	
(61)	Trolley Energy Cable Chain Cables	Renowned global producers	

Item No.	Description of Stipulated Component	Stipulated Suppliers for Item	Tenderer's Preferred Supplier Chosen from Stipulated Suppliers
(62)	Spreader feed cable reeling system *	Same as MV cable reel system	
(63)	Spreader Feed Cable	Renowned global producers	
(64)	Spreader Cable Plug/Socket	Renowned global producers	
(65)	Electrical Cables – Drive Motors	Renowned global producers	
(66)	Electrical Cables – Fixed & Flexible	Renowned global producers	
(67)	Operator's Cabin *	Renowned global producers	
(68)	Driver's Seat & Consoles *	Renowned global producers	
(69)	Master Controller	Renowned global producers	
(70)	Air Conditioning Units	Renowned global producers	
(71)	LED Floodlights	Renowned global producers	
(72)	LED Walkway lights	Renowned global producers	
(73)	Communications	Renowned global producers	
(74)	Overload Protection & Alarm	Renowned global producers	
(75)	Anemometer	Renowned global producers	
(76)	LED Aviation Light	Renowned global producers	
(77)	Gantry Warning Alarm/Light	Renowned global producers	
(78)	Drum Encoders	Renowned global producers	
(79)	Limit Switches (Small)	Renowned global producers	
(80)	Limit Switches (Large)	Renowned global producers	
(81)	Gravity Limit Switch	Renowned global producers	
(82)	Magnet operated Limit Switches	Renowned global producers	
(83)	Proximity Switches	Renowned global producers	
(84)	Photoelectric Switch	Renowned global producers	
(85)	Vessel Profiling System	Renowned global producers	
(86)	Chassis Positioning System (CPS)	Renowned global producers	
(87)	Narrow Beam Radar Sensors (Gantry anti-collision)	Renowned global producers	
(88)	Fire Suppression System for E-rooms	Renowned global producers	
(89)	Cabin Access and Gate Interlock	Renowned global producers	
(90)	Operator Aid and Boom Latch Camera and Monitor	Renowned global producers	
(91)	CCMS & Remote CMS	By electrical system integrator	

Schedule 6 – QC Weights and Declared Wheel Loads

Schedule 7 – Site Area and Duration

	Activity	Tenderer's Data	UOM
1	**Discharge from Vessel of the Erected Cranes**		
a	**Quayside Crane x 2**		
	Type of berthing arrangement (Stern or other)		
	Length of Quay occupied during the berthing operation	350	m
	Duration of the berthing operation	7	days
2	**Site Completion of the Erected Cranes**		
a	**Quayside Crane x 2**		
	Length of Quay required for site final assembly and testing to Completion	100	m
	Duration of Quay occupation following delivery to Completion of the Quayside Cranes	60	days
	Additional area, separate from Quay (if any) required for storage or working during the final assembly and testing to Completion	600	m²
	Duration of occupation of the additional area for all QC's	60	days

Schedule 8 - Form of Performance Bond

IRREVOCABLE STANDBY LETTER OF CREDIT

[DATE]

[PURCHASER]
[Address]

Attorney-in-Fact:

BCT – Bałtycki Terminal Kontenerowy Sp. z o.o.
ul. Kwiatkowskiego 60
81-127 Gdynia

Dear Sir,

Re Our Ref: Standby Letter of Credit No. [L/C NUMBER]
Expiry Date: [EXPIRY DATE]
Applicant Name: [NAME]

We hereby establish in your favour, for the account of [APPLICANT NAME], our Standby Letter of Credit No. [L/C NUMBER] for [AMOUNT].

This credit is available with [NAME OF BANK] for payment against beneficiary's drafts purportedly signed by the representative(s) of **BCT – Bałtycki Terminal Kontenerowy Sp. z o.o.** ('BCT') in duplicate drawn at sight on the issuing bank marked "Drawn under [NAME OF BANK]'s Standby Letter of Credit No. [L/C NUMBER] dated [L/C DATE]" with the following documents:

1. This original Standby Letter of Credit as well as any and all amendments thereto (if applicable), and

2. Notarized statement purportedly signed by at least two (2) authorized signatories of BCT, quoting the exact wordings below:

"We, the undersigned authorized signatories of BCT, on behalf of [PURCHASER] hereby certify that the amount drawn of [AMOUNT] under [NAME OF BANK]'s Standby Letter of Credit No. [L/C NUMBER] represents the amount due and owing to [PURCHASER] resulting from [APPLICANT NAME]'s failure to perform its obligations pursuant to terms and conditions of "THE AGREEMENT" dated [AGREEMENT DATE] for the supply of [WORKS] to [PURCHASER].

The amount of the draft drawn hereunder must not exceed [AMOUNT]. Partial drawings are allowed.

This Standby Letter of Credit is allowed to be claimed by BCT (representing [PURCHASER] as its attorney-in-fact), and all payments made by the Issuing Bank under this Standby Letter of Credit to, in the name of, and/or upon the instructions of, BCT shall be recognized as direct payments to [PURCHASER].

All payments made by the Issuing Bank under this Standby Letter of Credit shall be made free and clear of, and without deduction for or on account of, any present or future taxes, duties, charges, fees, deductions or withholding of any nature whatsoever and by whomsoever imposed.

We hereby agree with you that drawings under and in accordance with the terms of this Standby Letter of Credit shall be duly honoured on due presentation to us.

This Standby Letter of Credit is not transferable, and proceeds of this Standby Letter of Credit shall not be assigned by you without the Bank's prior written consent.
This Standby Letter of Credit shall remain valid until [EXPIRY DATE]. All claims must be submitted in writing to [NAME AND ADDRESS OF ISSUING BANK OR CONFIRMING BANK] by [EXPIRY DATE] before 12:00

noon after which date the Standby Letter of Credit becomes null and void irrespective of whether or not the original Standby Letter of Credit is returned to [NAME OF ISSUING BANK OR CONFIRMING BANK] for cancellation.

This Standby Letter of Credit is subject to the International Standby Practices 1998 or ISP98, International Chamber of Commerce Publication No. 590 (the "ISP98") and to the extent not inconsistent therewith shall be governed by, and construed in accordance with, the laws of the Repuiblic of Poland.

[NAME OF ISSUING BANK OR CONFIRMING BANK AND SIGNATURE]

_____ _____

Schedule 9 - Form of Defects Liability Demand Guarantee

IRREVOCABLE STANDBY LETTER OF CREDIT

[DATE]

BCT – Bałtycki Terminal Kontenerowy Sp. z o.o.
ul. Kwiatkowskiego 60
81-127 Gdynia

Dear Sir,

Re Our Ref: Standby Letter of Credit No. [L/C NUMBER]
Expiry Date: [EXPIRY DATE]
Applicant Name: [NAME]

We hereby establish in your favour, for the account of [APPLICANT NAME], our Standby Letter of Credit No. [L/C NUMBER] for [AMOUNT].

This credit is available with [NAME OF BANK] for payment against beneficiary's drafts purportedly signed by the representative(s) of **BCT – Bałtycki Terminal Kontenerowy Sp. z o.o.** ('BCT') in duplicate drawn at sight on the issuing bank marked "Drawn under [NAME OF BANK]'s Standby Letter of Credit No. [L/C NUMBER] dated [L/C DATE]" with the following documents:

3. This original Standby Letter of Credit as well as any and all amendments thereto (if applicable), and

4. Notarized statement purportedly signed by at least two (2) authorized signatories of ICTSI, quoting the exact wordings below :

"We, the undersigned authorized signatories of **BCT – Bałtycki Terminal Kontenerowy Sp. z o.o.** ('BCT'), on behalf of [PURCHASER] hereby certify that the amount drawn of [AMOUNT] under [NAME OF BANK]'s Standby Letter of Credit No. [L/C NUMBER] represents the amount due and owing to [PURCHASER] resulting from [APPLICANT NAME]'s failure to perform its obligations pursuant to terms and conditions of "THE AGREEMENT" dated [AGREEMENT DATE] for the supply of [WORKS] to [PURCHASER].

The amount of the draft drawn hereunder must not exceed [AMOUNT]. Partial drawings are allowed.

This Standby Letter of Credit is allowed to be claimed by BCT (representing [PURCHASER] as its attorney-in-fact), and all payments made by the Issuing Bank under this Standby Letter of Credit to, in the name of, and/or upon the instructions of, BCT shall be recognized as direct payments to [PURCHASER].

All payments made by the Issuing Bank under this Standby Letter of Credit shall be made free and clear of, and without deduction for or on account of, any present or future taxes, duties, charges, fees, deductions or withholding of any nature whatsoever and by whomsoever imposed.

We hereby agree with you that drawings under and in accordance with the terms of this Standby Letter of Credit shall be duly honored on due presentation to us.

The proceeds of this standby letter of credit may be assigned by you with our prior concent, which consent shall not be unreasonably witheld.

This Standby Letter of Credit shall remain valid until [EXPIRY DATE]. All claims must be submitted in writing to [NAME AND ADDRESS OF ISSUING BANK OR CONFIRMING BANK] by [EXPIRY DATE] before 12:00 noon after which date the Standby Letter of Credit becomes null and void irrespective of whether or

not the original Standby Letter of Credit is returned to [NAME OF ISSUING BANK OR CONFIRMING BANK] for cancellation.

This Standby Letter of Credit is subject to the International Standby Practices 1998 or ISP98, International Chamber of Commerce Publication No. 590 (the "ISP98") and to the extent not inconsistent therewith shall be governed by, and construed in accordance with, the laws of the Republic of Poland.

[NAME OF ISSUING BANK OR CONFIRMING BANK AND SIGNATURE]

_____ _____

Schedule 10 – Form of Insurance Requirements

Part 1 – Erection All Risks

Type of Insurance	Erection All Risks Insurance
Insured	Purchaser Contractor Subcontractors of any tier Suppliers of any tier
Period of Insurance	In respect of the Works or any part thereof: from the date of the Letter of Acceptance until 14 days after the date of issue of the final Taking-over Certificate plus 24 months coverage for defect liability cover.
Testing & Commissioning	Covered
Coverage	"All Risks" of physical loss or damage to the Works and all plant, materials and equipment intended for incorporation therein and all other real or personal property of whatsoever nature the property of the Insured or for which the Insured is responsible or for which the Insured has an obligation to insure arising from any cause not specifically excluded. With (24) months defect liability cover (this shall include all losses, defects or liabilities incurred during erection or manufacturing of the equipment which were only discovered during the defects liability period or after the issue of Take Over Certificate.
Sum Insured	**Section 1- Material Damage** Erection Works Civil Engineering Work Clearance of Debris Existing Property **Section 2 – Third Party Liability** Third Party Liability (Combined Single Limit for Bodily Injury and Property Damage any one accident): USD 10 Million
Deductible	Not to exceed USD 150,000.00 per occurrence or loss of the Works caused by defective design, materials or workmanship, testing & commissioning. Not to exceed USD 50,000.00 each and every occurrence for other losses.
Additional Coverage	1. Extended Maintenance Coverage 2. Cross Liability Clause 3. Professional fees 4. Expediting Expense, limit 25% of costs which would otherwise have been incurred 5. Minimization of Loss Expense 6. 72-Hour Occurrence Clause 7. 15% Escalation Clause 8. 50/50 Clause 9. Nominated Loss Adjuster 10. Full cover for earthquake, flood, terrorism and sabotage 11. Strike, riots, civil commotion 12. Defective material, design or workmanship 13. Non-cancelable other than through mutual agreement of the insured (including the Purchaser) and insurer 14. Waiver of subrogation rights against each Insured

15. Automatic Reinstatement of Limits
16. Suspension of Works/Silent Risk covered up to 180 days
17. Valuable Documents and computer records
18. Inland Transit/Offsite and Temporary Storage
19. Prefabrication and fabrication risks, including offsite risks
20. Multiple Insured Clause/Non-vitiation Clause

Exclusions

1. Radioactive contamination, nuclear risks
2. War, civil war, insurrection
3. Consequential losses

Part 2 – Marine Cargo Insurance

Insured:	Purchaser Contractor Subcontractors of any tier Suppliers of any tier
Coverage	All risks of physical loss or damage to the Works while in transit by sea, air or the land portion of the journey to the extent not insured under the Erection All Risks insurance.
Voyage	While in transit by sea, air or the land portion of the journey from country of origin anywhere in the world until arrival at the Site, or vice versa, from the time the insured items are being loaded at the relevant warehouse or factory for shipment until unloading at the warehouse or storage place at the Site or vice versa.
Interest Insured:	All plant, materials and equipment intended for incorporation in the Works, etc., and all other real or personal property of whatsoever nature the property of the Insured or for which the Insured is responsible or for which the Insured has an obligation to insure.
Sum Insured:	Not less than 110% of the replacement value of all property being shipped.
Limit per shipment:	Not less than 110% of the replacement value of the highest value shipment.
Deductible	Not to exceed US$ 10,000.00
Clauses	1. 50/50 Clause 2. Institute Cargo Clauses (A) 3. Institute War Clauses (Cargo and Air Cargo) 4. Institute Strike Clauses (Cargo and Air Cargo) 5. Institute Replacement Clause 6. English Law and Practice Clause 7. Packing Exclusion deleted 8. Replacement Air Extension 9. 90-days' Notice of Cancellation or Suspension by insurer or insured except 7 days for war, strikes, riots, and civil commotion, except 48 hours for sending to and from the USA it being required that such Notice is always given to the Purchaser 10. Nominated Loss Adjuster 11. Multiple Insured Clause/Non-vitiation Clause 12. Waiver of subrogation rights against each Insured 13. Debris Removal/Removal of wreck 14. Off Site Storage 15. Concealed Damage (180 Days)

6. THE LETTER OF ACCEPTANCE

7. THE SAID QUOTATION

*Quotation terms were negotiated for the final Agreement, which takes precedence.

--- END OF AGREEMENT---