

## **GENERAL CONDITIONS FOR IMPLEMENTATION OF THE CIECH CAPITAL GROUP INVESTMENT**

These GENERAL CONDITIONS FOR THE IMPLEMENTATION OF THE CIECH GROUP INVESTMENT, together with the AGREEMENT and Annexes to the Agreement, constitute a uniform agreement entered into by the PARTIES.

Any changes to these GENERAL TERMS AND CONDITIONS are binding upon the PARTIES only in the case of the express reservations of the implementation of changes to the GENERAL CONDITIONS expressed in the AGREEMENT and must be in writing, in order to be valid.

In the case of any discrepancies between the provisions of the GENERAL CONDITIONS and the provisions of the AGREEMENT, the provisions of the AGREEMENT shall prevail.

The use of any standard contracts and general conditions of the CONTRACTOR is excluded.

### **TABLE OF CONTENTS:**

- § 1 DEFINITIONS
- § 2 SCOPE OF GENERAL TERMS AND CONDITIONS
- § 3 STATEMENTS OF THE CONTRACTOR
- § 4 OBLIGATIONS OF THE CONTRACTOR
- § 5 SUB-CONTRACTORS
- § 6 OBLIGATIONS AND POWERS OF THE CONTRACTING PARTY
- § 7 TIME LIMIT FOR COMPLETION OF THE AGREEMENT
- § 8 WASTE MANAGEMENT
- § 9 REMUNERATION
- § 10. CONDITIONS OF INVOICING AND PAYMENT
- § 11. INSURANCE
- § 12. DESIGN
- § 13. ADDITIONAL, REPLACEMENT OR ABANDONED WORKS
- § 14. SUPPLIES
- § 15. ACCEPTANCE
- § 16. GUARANTEES
- § 17. CONTRACTUAL PENALTIES
- § 18. LIABILITY
- § 19. WITHDRAWAL FROM THE AGREEMENT
- § 20. ASSIGNMENT
- § 21. SECURITIES
- § 22. CONFIDENTIALITY
- § 23. INTELLECTUAL PROPERTY
- § 24. FORCE MAJEURE
- § 25. GOVERNING LAW AND DISPUTE RESOLUTION
- § 26. REPRESENTATIVES OF THE PARTIES
- § 27. FINAL PROVISIONS

### **§ 1 DEFINITIONS**

**"CONTRACTING PARTY"** means the company within the CIECH CAPITAL GROUP

<b>"CONTRACTOR"</b>	means the entity with which the CONTRACTING PARTY has entered into the AGREEMENT,
<b>"PARTIES" or "PARTY"</b>	means the CONTRACTING PARTY and the CONTRACTOR jointly or severally
<b>"AGREEMENT"</b>	means an agreement entered into by the PARTIES, the subject of which is the execution of the investment specified therein,
<b>"GENERAL TERMS AND CONDITIONS" or "GT&amp;C"</b>	means the GENERAL TERMS AND CONDITIONS FOR THE IMPLEMENTATION OF THE CIECH CAPITAL GROUP INVESTMENT
<b>"PROJECT "</b>	means a set of design documents, created by the CONTRACTOR in connection with the SUBJECT OF THE AGREEMENT and submitted to the CONTRACTING PARTY, as well as each document or part thereof and its copy given to the CONTRACTING PARTY. The PROJECT includes the construction project within the meaning of Construction Legislation, technological projects and technical engineering designs, shop drawings, manuals and other materials developed for the needs of the AGREEMENT, in accordance with the legislation, in particular with Construction Legislation and the requirements for the investments, as specified in the AGREEMENT.
<b>"SUBJECT OF THE AGREEMENT"</b>	means an object specified in the AGREEMENT with all associated works, installations and supplies and project documentation ( <i>where applicable</i> ) as described in the Annexe to the AGREEMENT and commissioned by the CONTRACTOR to be performed under the AGREEMENT,
<b>"Guaranteed Technical Parameters from Group A"</b>	If introduced into the AGREEMENT, these represent the Guaranteed Technical Parameters set out in the Annexe to the AGREEMENT; failure to achieve them entitles the CONTRACTING PARTY to withdraw from the AGREEMENT,
<b>"Guaranteed Technical Parameters of the Group B"</b>	If introduced into the AGREEMENT, these represent the Guaranteed Technical Parameters set out in the Annexe to the AGREEMENT; failure to achieve them entitles the CONTRACTING PARTY to request the CONTRACTOR to pay contractual penalties, as specified in § 17 section 3 of the GT&C or in the AGREEMENT,
<b>"FINAL ACCEPTANCE"</b>	means acceptance of the SUBJECT OF THE AGREEMENT confirms completion of all the contractual obligations of the CONTRACTOR, except for those obligations relating to GUARANTEE AND WARRANTY PERIODS, recorded in the Protocol of the FINAL ACCEPTANCE,
<b>"BASIC GUARANTEE PERIOD"</b>	Means the basic Guarantee Period for defects in the SUBJECT OF THE AGREEMENT, counted from the date of

the FINAL ACCEPTANCE, for which the CONTRACTOR grants the CONTRACTING PARTY a quality guarantee and commits to the removal of defects and faults and to accord other benefits, referred to both in the AGREEMENT and in the GT&C,

**"EXTENDED  
GUARANTEE PERIOD"**

means an extended guarantee period for defects in the SUBJECT OF THE AGREEMENT for structural components (load-bearing elements fulfilling construction tasks including foundations, load-bearing walls, supports, brackets and poles), calculated from the date of the FINAL ACCEPTANCE, for which the CONTRACTOR grants the CONTRACTING PARTY a quality guarantee and commits to the removal of defects and to meeting other benefits referred to in the agreement and the GT&C,

**"SUB-CONTRACTOR"**

means the entity to which the CONTRACTOR entrusts the performance of part of the AGREEMENT in such as supplies, services or construction works,

**"MEASUREMENT OF THE  
GUARANTEED  
PARAMETERS"**

means measurement of the Guaranteed Parameters is carried out before FINAL ACCEPTANCE of the SUBJECT OF THE AGREEMENT,

**"QUALITY ASSURANCE  
AND CONTROL  
PROGRAMME"**

means the Quality Assurance and Control Programme, developed by the CONTRACTOR, based on the Contractor's own system for quality assurance and applicable to the performance of the SUBJECT OF THE AGREEMENT and agreed with the ORDERING PARTY,

**"HEALTH AND SAFETY  
PROGRAMME"**

means the Health and Safety Programme developed by the CONTRACTOR based on the Contractor's own internal regulations in the field of Safety and Health Protection (BIOZ) for the performance of the SUBJECT OF THE AGREEMENT and agreed with the CONTRACTING PARTY.

## **§ 2 THE SCOPE OF GENERAL TERMS AND CONDITIONS**

The GENERAL TERMS AND CONDITIONS FOR THE IMPLEMENTATION OF THE CIECH CAPITAL GROUP INVESTMENT shall apply to contracts concluded by the CONTRACTING PARTY, the subject of which is the comprehensive implementation, by the CONTRACTOR, of the investment specified in the AGREEMENT

## **§ 3 STATEMENTS OF THE CONTRACTOR**

1. The CONTRACTOR declares that it has the appropriate technical expertise, equipment, and experience necessary for the professional execution of the SUBJECT OF THE AGREEMENT.
2. The CONTRACTOR declares that it is familiar with the scope of the work that constitutes the SUBJECT OF THE AGREEMENT with all the circumstances and that it has inspected

the future construction site and declares that it raises no objections to the scope of the work, or to the solutions adopted or to the requirements of the CONTRACTING PARTY.

3. The CONTRACTOR declares that it is familiar with the project documentation and with the documentation of the available devices provided by the CONTRACTING PARTY and confirms that it is complete and sufficient for the performance of the SUBJECT OF THE AGREEMENT and does not report any objections to it.
4. The CONTRACTOR declares that it undertakes to execute the AGREEMENT with due care, the principles of *state-of-the-art* technical knowledge, the legislation and standards applicable, the arrangements with the CONTRACTING PARTY and the administrative decisions concerning the investment.
5. The CONTRACTOR declares that it conducts its activities in accordance with the legislation applicable, especially with that legislation which deals with the protection of the environment, labour and social affairs including health and safety, and declares, further, that it is without prejudice as to employment regulations and legislation.
6. The CONTRACTOR declares that its financial situation, its technical facilities and its access to qualified personnel will facilitate the fulfilment of the obligations arising from AGREEMENT.
7. The CONTRACTOR declares that no restructuring proceedings are in the process of being carried out against it, nor has it filed for bankruptcy. He further declares that he is not in arrears with its obligations to Social Insurance or to the Tax Office.

#### **§ 4 OBLIGATIONS OF THE CONTRACTOR**

1. The CONTRACTOR agrees to perform all the work necessary for the execution of the AGREEMENT, regardless of whether the works have been clearly defined in the AGREEMENT, or result directly or indirectly from the AGREEMENT and should have been predicted by the CONTRACTOR by reason of its having sufficient knowledge and experience.
2. In the case of missing specifications for some elements of the AGREEMENT or scope of work necessary for the proper functioning of the SUBJECT OF THE AGREEMENT, the CONTRACTOR undertakes to complete, within the remuneration specified in the AGREEMENT and on time, which will allow the deadlines, specified in the AGREEMENT, to be maintained. In particular, the CONTRACTOR undertakes to:
  - 1) design the documentation relating to the project and operations (if necessary) in accordance with the material scope specified in the AGREEMENT and the requirements of § 12 GT&C;
  - 2) obtain the appropriate permits to conduct the works being the SUBJECT OF THE AGREEMENT at the CONTRACTING PARTY's premises;
  - 3) take over the construction site on the basis of the *Protocol for the Taking-over of a Construction Site*, the model for which constitutes part of the Acceptance Control Procedure and forms an Annexe to the AGREEMENT;
  - 4) provide security and comply with all conditions contained in the *Protocol for the Taking-over of a Construction Site*;
  - 5) prepare and secure the construction site;
  - 6) ensure the presence of a Works' Manager at the construction site throughout the performance of the SUBJECT OF THE AGREEMENT and the attendance of managers of individual sectors in the scope appropriate for the proper implementation of the AGREEMENT;
  - 7) purchase and supply, at its own expense and within the remuneration specified in the AGREEMENT, all equipment and materials necessary for the implementation of the AGREEMENT;
  - 8) execute the SUBJECT OF THE AGREEMENT using the materials and equipment manufactured, no earlier than 12 months before the date of incorporation specified in

- the AGREEMENT, with the quality specified in the PROJECT or in other documents annexed to the AGREEMENT, after the prior approval of the CONTRACTING PARTY;
- 9) transfer to the CONTRACTING PARTY all necessary approvals, certificates and declarations of conformity with the relevant Polish standards and/or other documents required by building regulations, concerning materials and equipment used for the execution of the SUBJECT OF THE AGREEMENT within a period agreed with the CONTRACTING PARTY, which in any case cannot be any shorter than 14 days prior to the acceptance of a given stage, as well as those necessary approvals, certificates and declarations of conformity resulting from the Terms of Reference because of its use in the seat of the CONTRACTING PARTY and which are therefore required by pharmaceutical legislation, energy legislation, HACAP, GMP, REACH, ISO, ATEX or machinery directives and depend on the needs identified in the SUBJECT OF THE AGREEMENT;
  - 10) promptly inform the CONTRACTING PARTY of any defects in the project documentation provided by the CONTRACTING PARTY and noticed during the execution of works, not later than three days from the date of disclosure and submit assumptions for appropriate modifications in order to remove such defects;
  - 11) carry out the construction works;
  - 12) implement the AGREEMENT properly and promptly;
  - 13) execute and transfer *'as-built'* documentation to the CONTRACTING PARTY together with all the necessary decisions and permits required by the SUBJECT OF THE AGREEMENT;
  - 14) train personnel;
  - 15) provide a guarantee service;
  - 16) provide the necessary technical supervision of the works carried out as also of the personnel, with regard to permissions required to operate the equipment, clearance to work at heights, their equipping with personal protective devices and all basic tools necessary for the performance of the AGREEMENT;
  - 17) comply with the safety rules and environmental regulations applicable;
  - 18) prevent their employees from working, without initial training, in health and safety hazards at the plant/construction site, as also without instruction in the general terms and guidelines of the organisation/operation of the facility and in safe behaviour on the premises, with particular emphasis on hazards in the area in which the project, which is the SUBJECT OF THE AGREEMENT, are to be implemented;
  - 19) conduct initial training on the health and safety of their employees by the person designated by the CONTRACTOR having the appropriate permissions for the task;
  - 20) establish and discuss with the ORDERING PARTY all possible situations that may affect the safety of the employees, both of the CONTRACTOR and of the ORDERING PARTY, in particular relating to hazardous work, the switching on and off of power supplies to technological media, etc., and the method and rules of conduct in cases of such situations;
  - 21) bear the costs of waste management resulting from the works carried out, unless the provisions of the AGREEMENT provide otherwise;
  - 22) take-over and remove, on an ongoing basis, all waste generated in the course of the CONTRACTOR'S business, from where it originates to the area outside the premises of the CONTRACTING PARTY, in accordance with the Legislation on the Disposal of Waste of December 14<sup>th</sup>. , 2012 (Legal Journal, 2013, item 21 as amended) except for metal and non-metal scrap and certain types of waste reserved for the carrying out of specific works which can be re-used in the premises of the CONTRACTING PARTY;
  - 23) maintain order in the course of work and after its completion, cleaning up facilities at the construction site and bringing the work site to order promptly and in a manner agreed in advance with the CONTRACTING PARTY;

- 24) comply with the environmental, health and safety, fire protection and road traffic regulations pertaining to the ORDERING PARTY;
- 25) remove from employment under the AGREEMENT, any person employed by the CONTRACTOR or sub-contractor who, by their lack of qualifications or because of non-compliance with legal regulations, safety rules, regulations or, on account of misconduct, insubordination or gross negligence, threatens in any way, the satisfactory performance of the AGREEMENT;
- 26) report, immediately, accidents at work and any potential accidents that may take place at the CONTRACTING PARTY's while performing work under the AGREEMENT. Notifications should be submitted to the person approving permits for the conducting of works, that is, to the Head of the Organisational Unit and the employee of the OHS services at the CONTRACTING PARTY's;
- 27) The CONTRACTOR is obliged to carry out the work in accordance with *on-site* Standards for work and the OHS regulations;
- 28) recommend, for approval, by the CONTRACTING PARTY, those key representatives of the CONTRACTOR for the construction site, along with the number of permissions and valid insurance, *vis-à-vis* the Construction Manager, works managers, building inspectors and others, as required by Construction Legislation, within 7 days of signing the AGREEMENT but in any case, not later than as stipulated by the Construction Legislation;
- 29) prepare and transfer the QUALITY ASSURANCE AND CONTROL PROGRAMME for acceptance by the CONTRACTING PARTY;
- 30) prepare and transfer the SAFETY and HEALTH PROGRAMME for acceptance by the CONTRACTING PARTY;
- 31) supervise the process for the supply of materials for implementing the AGREEMENT, as also the receipting, unloading, protection and use, thereof, on the construction site, (in co-operation with the CONTRACTING PARTY) ;
- 32) provide the software for the SUBJECT OF THE AGREEMENT as indicated in the Annexe to the AGREEMENT;
- 33) comply with the prevailing internal principles and safety procedures at the CONTRACTING PARTY's;
- 34) at the request of the CONTRACTING PARTY, employ, appropriate remedial measures, such as making appropriate repairs, increasing the number of personnel or equipment, extending daily working time, working on public holidays, etc.;
- 35) take into account final administrative decisions obtained in the name- and on behalf of- the CONTRACTING PARTY during the design phase and pass them on to the CONTRACTING PARTY;
- 36) immediately inform the CONTRACTING PARTY of any changes to entries in the Register of Entrepreneurs of the National Court Register. In the case of any failure to do so, correspondence sent to the last known address of the PARTY will be treated as having been properly served;
- 37) provide protection, fencing and marking for the construction area;
- 38) provide employees with proper attire and badges;
- 39) ensure the cleanliness of internal paths and access roads;
- 40) arrange and confirm with the owner of the area concerned, any exclusions, inclusions, installations or areas covered by the AGREEMENT that are in motion, and take them into account when implementing the schedule of the AGREEMENT.

## **§ 5 SUB-CONTRACTORS**

1. The CONTRACTOR may only commission implementation of the SUBJECT OF THE AGREEMENT to sub-contractors with the prior, written consent of the CONTRACTING PARTY.

2. The CONTRACTOR may order the carrying out of the SUBJECT OF THE AGREEMENT to professional entities, possessing the appropriate qualifications and powers only, in compliance with the legislation on carrying out such activities in the implementation of the AGREEMENT.
3. The CONTRACTOR is responsible for the acts and omissions of the sub-contractors as much as for its own acts or omissions.
4. In the case of construction and assembly work sub-contractors, the CONTRACTOR undertakes to apply the following provisions:
  - 1) the CONTRACTOR is obliged to submit to the CONTRACTING PARTY, for approval, the agreement with the sub-contractor, or its draft, including the remuneration agreed with the sub-contractor, together with a statement that the total amount of the remuneration and other obligations under the agreement which are due for payment by the CONTRACTOR under agreements with sub-contractors, shall not be higher than the remuneration of the CONTRACTOR arising from the AGREEMENT, together with that part of the documentation relating to the performance of works specified in the agreement with the sub-contractor or its draft;
  - 2) The CONTRACTING PARTY will advise should any lack of consent arise for the conclusion of an agreement with a sub-contractor or agree to such an agreement with a given sub-contractor or report objections to such an agreement in writing, within 14 days of presenting such an agreement or its draft. After expiry of this period, it will be regarded that the CONTRACTING PARTY has consented to the conclusion of the agreement with the sub-contractor;
  - 3) The CONTRACTING PARTY is entitled to insist that the conclusion of an agreement with a sub-contractor must depend on a submission by the CONTRACTOR of a BANK GUARANTEE for the RETURN of the REMUNERATION PAID TO SUB-CONTRACTORS, the necessary conditions of which shall be submitted to the CONTRACTOR, in writing, within the time limit specified in point 2. Such a guarantee would be issued for the amount of compensation specified in the agreement with the sub-contractor with a validity period covering the duration of the agreement with the sub-contractor and for 6 months after the planned completion of the agreement by the sub-contractor;
  - 4) if the CONTRACTING PARTY has agreed to an agreement with a sub-contractor on the basis of its draft, the CONTRACTOR shall deliver the agreement with the sub-contractor within three days of its conclusion. In the event of any differences between the draft and the actual agreement with the sub-contractor, as delivered, the CONTRACTING PARTY may withdraw from the AGREEMENT within 30 days of delivery of the agreement to the sub-contractor but not later than by the end of the work. Such a withdrawal shall be deemed to have been made for reasons attributable to the CONTRACTOR;
  - 5) the agreements referred to in this section shall be in writing in order to be valid;
  - 6) the agreement with the sub-contractor will include, among other things, the following provisions:
    - i. the material scope is to be identical with the corresponding part of the work constituting the SUBJECT OF THE AGREEMENT;
    - ii. remuneration by a single lump sum or the upper limit; in the case of compensation, to be settled on the basis of the amount of completed work;
    - iii. prohibition of the assignment of receivables arising from the agreement by the sub-contractor without the consent of the CONTRACTING PARTY;
    - iv. the sub-contractor's statement that it will not increase lump sum remuneration, particularly where this is due to increases in the prices of construction materials, construction services or of energy, fuel or steel prices, increases in public levies or foreign exchange rates in the case of lump sum remuneration;
    - v. the sub-contractor's commitment to submit to the CONTRACTING PARTY a statement of the amount of its receivables from the CONTRACTOR, indicating the

- date of payment, along with a statement that these are all receivables due from the CONTRACTOR and that the CONTRACTING PARTY is empowered to obtain information regarding payments made on its behalf by the CONTRACTOR, directly from the sub-contractor;
- vi. the terms for the payment of receivables due for the respective scopes of work are prescribed at least 5 days prior to the actual payment dates, arising from the AGREEMENT due to receivables for the corresponding scopes of works commissioned by the CONTRACTOR.
- 7) The CONTRACTOR, solely, is obliged to pay any remuneration due, observing the payment deadlines laid down in the agreement with the sub-contractor, provided that the maturity of the last invoice covering part of the sub-contractor's remuneration takes place earlier than the maturity of the last invoice for the CONTRACTOR's remuneration;
  - 8) payment of remuneration due to the CONTRACTOR, depends on presentation, by the CONTRACTOR, of statements of all construction work sub-contractors, issued on the date of the protocol being the basis of the invoice, declaring that the CONTRACTOR is not in arrears for the work performed under the AGREEMENT;
  - 9) failure to provide the CONTRACTING PARTY with the statements referred to in point 8 above, as well as failure to obtain information regarding the CONTRACTOR's delays in payments to sub-contractors, will result in the CONTRACTING PARTY withholding payments of invoices for the particular stage, which includes the scope of the above-mentioned sub-contractor's work according to the time of receipt of the aforementioned statements from the CONTRACTOR and finalisation of the above payments. Any payments withheld shall be interest-free and shall not mature for the time of their retention; the CONTRACTOR shall desist from claiming them and shall treat them as *payments not yet due*.
  - 10) in the event of failure to provide the CONTRACTING PARTY with the statements referred to in point 8 above, or if the CONTRACTOR is in arrears with payments to sub-contractors, the CONTRACTING PARTY may pay the sub-contractor directly. This will have the effect that the payment was made by the CONTRACTOR; any such payment will thus relieve the CONTRACTING PARTY from the obligation to pay that part of the remuneration to the CONTRACTOR; the CONTRACTOR hereby agrees thereto;
  - 11) in the case of payment of remuneration to the sub-contractor for construction works made by the CONTRACTING PARTY, the CONTRACTOR commits to refund the amount of remuneration paid by the CONTRACTING PARTY together with any accrued, statutory interest each time, unless the above amount had previously been withheld from the CONTRACTOR's remuneration and paid directly to the sub-contractor;
  - 12) in the case of distraint against the ORDERING PARTY, further to Article 647<sup>1</sup> of the Civil Code or seizure in enforcement proceedings of sub-contractors' claims due from the ORDERING PARTY further to Art. 647<sup>1</sup> of the Civil Code, the CONTRACTOR shall return to the CONTRACTING PARTY, the interest and costs of the enforcement proceedings in addition to the principal amount seized from the CONTRACTING PARTY in such enforcement proceedings. In such a case, the ORDERING PARTY is entitled to deduct an amount equal to the amount seized from the ORDERING PARTY in the enforcement proceedings from the CONTRACTOR's remuneration.
  - 13) the consent of both the CONTRACTING PARTY and the CONTRACTOR is required in order to conclude by a sub-contractor a contract with further sub-contractors;
  - 14) the provisions of paragraph 4 points 1) – 12) shall apply accordingly, to agreements concluded by the sub-contractor with further sub-contractors.

## **§ 6 OBLIGATIONS AND POWERS OF THE CONTRACTING PARTY**

1. The CONTRACTING PARTY agrees to:



- 1) hand-over the construction site, location, installation and working area free from hazards;
  - 2) provide the supervision of the investor;
  - 3) carry out completed acceptance of the SUBJECT OF THE AGREEMENT, further to the AGREEMENT, within the time limit agreed, unless there are compelling reasons to postpone the date of such an acceptance;
  - 4) pay the CONTRACTOR promptly.
2. During performance of the SUBJECT OF THE AGREEMENT, the CONTRACTING PARTY- whenever possible, shall allow and pay the CONTRACTOR to use the media, further to the current price list as *per* the Annexe to the AGREEMENT.
  3. The PARTIES will allow reciprocal compensation of payments for the delivery of media under this AGREEMENT.
  4. For the time of the execution of the SUBJECT OF THE AGREEMENT, the CONTRACTING PARTY will allow the CONTRACTOR to use the land and facilities insofar as these are needed for implementation of the AGREEMENT; any costs incurred will be borne by the CONTRACTING PARTY.
  5. The settlement of fees referred to in section 2 of this paragraph will take place monthly on the basis of invoices issued by the CONTRACTING PARTY. Deadlines for payment of these invoices shall be set at 21 days from the invoice date.
  6. The ORDERING PARTY is entitled to inspect the status of the progress of the work as well as the methods of implementation of the SUBJECT OF THE AGREEMENT, at any time.

#### **§ 7 TIME LIMIT FOR COMPLETION OF THE AGREEMENT**

1. The CONTRACTOR undertakes to complete the execution of the SUBJECT OF THE AGREEMENT on the date specified in the schedule annexed to the AGREEMENT.
2. The end of the execution of the *SUBJECT OF THE AGREEMENT*, is to be understood by the PARTIES as being that state of completion which will allow the uninterrupted use of the SUBJECT OF THE AGREEMENT in accordance with its intended purpose and in accordance with the requirements of performance and quality, as confirmed by the Protocol for FINAL ACCEPTANCE.
3. The CONTRACTOR is obliged to keep the ORDERING PARTY informed about the course of execution of the AGREEMENT, in particular, he shall promptly notify the ORDERING PARTY of any difficulties and risks, which could result in failure to meet the deadlines stipulated in the AGREEMENT.
4. The CONTRACTOR is obliged to take over the construction site with a protocol within 5 working days from the date of receipt of the request from the CONTRACTING PARTY.

#### **§ 8 WASTE MANAGEMENT**

1. The temporary storage of waste in the premises of the CONTRACTING PARTY is only permitted with its consent and at the place indicated by him. Waste, generated as a result of performing the AGREEMENT, shall be removed on an ongoing basis from the premises of the CONTRACTING PARTY at the expense of the CONTRACTOR on the basis of a pass issued for this purpose and a copy of the waste transfer will be submitted to the CONTRACTING PARTY each time.
2. The CONTRACTOR is obliged to have a permit in order to produce waste or show the agreement with the entity holding such a permit.
3. Any debris and other waste arising in the course of the work are the property of the CONTRACTOR subject to section 4, and should be immediately removed from the premises of the CONTRACTING PARTY at the expense of the CONTRACTOR and treated in accordance with permits for waste management.

4. The CONTRACTOR is obliged to store metallic and non-metallic scrap and certain types of waste, referred to in § 4 section 2 point 22, which are generated during execution of the AGREEMENT, at the place indicated by the representative of the CONTRACTING PARTY. This will constitute the property of CONTRACTING PARTY.
5. The CONTRACTOR is obliged to act in accordance with the legislation and regulations applicable, including the provisions of the Waste Act where applicable.
6. The CONTRACTOR is obliged to carry out selective, temporary storage of waste in a manner that protects human life and health and the environment.
7. The CONTRACTOR is obliged to provide, at its expense, sealed containers suitable for the type and quantity of waste generated, with a cover to prevent contamination of the rainwater.
8. The CONTRACTOR is obliged to keep records of the waste generated and any relevant agreements with providers of waste management permits.
9. The CONTRACTOR is obliged to provide information on the implementation of the above provisions at the request of the CONTRACTING PARTY.

## **§ 9 REMUNERATION**

1. For execution of the SUBJECT OF THE AGREEMENT, the CONTRACTOR is entitled to a lump sum remuneration in the amount indicated in the AGREEMENT.
2. The fixed (lump sum) remuneration referred to in section 1 is complete and final and includes all receivables of the CONTRACTOR associated with the implementation of the AGREEMENT, including all expenditure required to complete all works, also those works which were not indicated directly in the AGREEMENT, and which are necessary for the proper execution of the AGREEMENT.
3. The CONTRACTOR declares that, being a professional, he is aware that even if at the time of entering into the AGREEMENT, it was not possible to predict the size or cost of the work, or that the CONTRACTOR misjudged the size or cost of the work, he cannot demand an increase in remuneration; this means, that any claim by the CONTRACTOR, further to Art. 632 § 2 of the Civil Code, is excluded. The CONTRACTOR declares that he will not increase the lump sum of remuneration, in particular due to any increase in prices of construction materials, construction services, energy, fuel, steel, or any increases in public levies or foreign exchange rates.
4. Any reservations as to the project documentation and/or to the construction site and documentation of devices transferred, which are raised after the date of the conclusion of the AGREEMENT, cannot constitute the basis for the CONTRACTOR to request any increase in the remuneration laid down in the AGREEMENT.
5. In the case of a failure of all works covered by the SUBJECT OF THE AGREEMENT, the remuneration referred to in section 1 of the AGREEMENT, shall be reduced in proportion to the scope of the work performed; this does not exclude the rights of the CONTRACTING PARTY to claim damages and penalties, as provided for in the AGREEMENT, or from withdrawing from the AGREEMENT entirely.
6. Moreover, as part of the remuneration referred to in section 1 of this paragraph, the CONTRACTOR, in particular:
  - 1) bears the costs of carrying out all tests, examinations, checks, inspections, measurements and hand-over procedures necessary for the handing-over of the SUBJECT OF THE AGREEMENT for use;
  - 2) bears the costs of establishing securities provided for in the AGREEMENT, including any changes made therein
  - 3) transfers to the CONTRACTING PARTY copyrights as provided for in § 23 GT&C.

## § 10 CONDITIONS OF INVOICING AND PAYMENT

1. Invoicing of the CONTRACTOR's remuneration shall take place after execution and acceptance of each stage of the work, as confirmed in the acceptance protocol in accordance with the schedule set out in the AGREEMENT.
2. The remuneration for the scope of the work executed, will take place on the basis of properly issued invoices, which must meet the requirements specified in sections 4, 5 and 6 of this paragraph.
3. If an advance payment has been provided for the AGREEMENT, its payment is subject to the provision of a Bank Guarantee for the Return of any Advanced Payment by the CONTRACTOR, in accordance with § 19 of GT&C.
4. The basis for issuing invoices by the CONTRACTOR shall be the acceptance protocol, without remarks, as issued upon completion of the individual stages of the AGREEMENT and signed by an authorised representative of the PARTIES. The final settlement of the SUBJECT OF THE AGREEMENT shall be made on the basis of the FINAL ACCEPTANCE Protocol and the issuance of a final invoice, based on the said Protocol.
5. In addition to the statutory requirements, the invoice issued by the CONTRACTOR should also include:
  - 1) The project number and the AGREEMENT number.
  - 2) The order number
  - 3) The name and number of the CONTRACTING PARTY's project within which the AGREEMENT is carried out;
  - 4) information as to the prohibition to assign receivables without the written consent of the CONTRACTING PARTY included in the AGREEMENT.
6. The CONTRACTOR is obliged to attach the following documents to the invoice:
  - 1) the acceptance protocol signed by the PARTIES and - in the case of the final invoice – the FINAL ACCEPTANCE Protocol;
  - 2) if the CONTRACTOR has not used any sub-contractors for the execution of works, a written statement in this regard,
  - 3) if the CONTRACTOR has used sub-contractors for building works, a statement signed by the person authorised to represent each of the sub-contractors, confirming that the CONTRACTOR has settled all obligations to the sub-contractors under the agreement concluded between the CONTRACTOR and the sub-contractor for the period until the expiry date of the CONTRACTOR's invoice;
  - 4) copies of invoices issued by the sub-contractor(s).
7. If the CONTRACTOR delivers to the CONTRACTING PARTY invoices that do not meet the requirements set out in sections 4, 5, and 6 of this paragraph, the CONTRACTING PARTY is entitled to withhold payment. The deadline for the payment of receivables resulting from such an invoice supplied by the CONTRACTOR shall be counted from the date of the correction of such deficiencies by the CONTRACTOR. Payments withheld shall be interest-free and shall not mature for the time of their retention and the CONTRACTOR shall desist from claiming them and shall treat them as *payments not yet due*.
8. Payments due will be made in the form of bank transfers to the CONTRACTOR'S account as indicated in the invoice, within the period specified in the AGREEMENT, counted from the date of the receipt of the invoice fulfilling the requirements specified in this paragraph by the CONTRACTING PARTY.
9. The date for payment of the invoice shall be the date that the CONTRACTING PARTY's bank account is credited.
10. Except in the cases specified in this paragraph, payments may be suspended in the circumstances provided for in § 21 section5 and 6, §5, §11 section4, §15 section7 of the GT&C.

## § 11 INSURANCE

1. The CONTRACTOR is required to have and to maintain an insurance liability policy in tort and contract (professional liability) for damages caused to third parties and customers (including the CONTRACTING PARTY) in connection with the AGREEMENT, with an insured amount not lower than the amount specified in the AGREEMENT, held in the insurance company approved by the CONTRACTING PARTY.
2. The scope of the CONTRACTOR's insurance and the amount insured in the civil liability policy shall be agreed with the CONTRACTING PARTY before signing the AGREEMENT. Requirements for the liability insurance of the CONTRACTOR will be specified in the Annexes to the AGREEMENT.
3. For the duration of the CONTRACT, the CONTRACTOR will be required to have and maintain accident insurance (NNW) for employees, confirmation of which, in the form of an insurance policy or a certified copy thereof, should be submitted to the CONTRACTING PARTY before commencement of the works.
4. Failure to provide the CONTRACTING PARTY with a certified copy of the insurance policy, within 7 days, valid for the subsequent periods before the end of the policy - *a copy of which is attached to the AGREEMENT*- authorises the CONTRACTING PARTY to take advantage of the PERFORMANCE BOND or withhold payment of up to 10% of the remuneration specified in the AGREEMENT.
5. The handing over of documents - *referred to in point 1 of this paragraph* - to the CONTRACTING PARTY, as stated at 1 and 3 of this paragraph, determines the handover of the building site to the CONTRACTOR.
6. The assignment of rights under the insurance contract requires the prior, written consent of the CONTRACTING PARTY.

## § 12 DESIGN

1. The CONTRACTOR shall prepare and deliver to the CONTRACTING PARTY, *via* the persons referred to in § 26, a complete PROJECT in Polish and on paper, as well as electronically, an acknowledgment of receipt. The PROJECT will consist of the development documents listed in the Annexe to the AGREEMENT.
2. The ownership of all the documents constituting the PROJECT, delivered to the CONTRACTING PARTY by the CONTRACTOR shall pass to the CONTRACTING PARTY on the day of its transfer.
3. The CONTRACTOR shall prepare the PROJECT:
  - 1) according to the AGREEMENT;
  - 2) in the electronic form in an editable version (e.g. DWG, editable in AutoCAD, Word and Excel) and in the amount of paper copies indicated in the Annexe to the AGREEMENT;
  - 3) providing such a selection of structures, facilities, equipment, materials, software and technology for the implementation that they are sufficiently, practically experienced, have been appropriately tested and calculated by adopting adequate safety factors in order to avoid the aggregated effects of various negative phenomena occurring in the operation of such facilities;
  - 4) ensuring, as far as possible, unification of facilities, equipment and materials;
  - 5) ensuring uniformity of terminology, text descriptions and transparency of documentation;
  - 6) ensuring that the solutions proposed meet the requirements, rules and standards of the best available techniques (BAT) as defined in the BREF for the LCP;
  - 7) supplying architectural and construction projects with a list of publications and a written statement regarding the completeness of the projects implemented and their compliance with the objectives covered by the AGREEMENT, the applicable standards,

legislation, rules of technical knowledge and that they are issued in a complete state with respect to the purpose for which they are intended.

4. If such a range is specified in the SUBJECT OF THE AGREEMENT, the CONTRACTOR shall prepare the documentation required for obtaining the necessary administrative decisions for implementation of the investment.
5. If such a range has been specified in the SUBJECT OF THE AGREEMENT, the CONTRACTOR, at its own expense and on behalf of and for the CONTRACTING PARTY, shall make any necessary applications and obtain all necessary final administrative decisions required for the implementation of the investment, including *authorisations to use*, with the exception of those that are indicated in the AGREEMENT and will be obtained by the CONTRACTING PARTY, and will also represent the CONTRACTING PARTY in any administrative proceedings related to making such notifications and obtaining such decisions, covering all costs arising therefrom, or the costs necessary to obtain them.
6. The CONTRACTOR agrees to present to the CONTRACTING PARTY, without the prior request of the CONTRACTING PARTY, the successive stages of the Project in order to obtain the opinion and comments of the CONTRACTING PARTY.
7. The CONTRACTING PARTY has the right to give opinions and to comment on the PROJECT during its execution, and the CONTRACTOR shall not refuse to consider the position of the CONTRACTING PARTY, without just cause. If the CONTRACTOR considers that taking the comments of the CONTRACTING PARTY into account is not possible, he shall justify its position in writing within 14 days from the date of receipt of such comments from the CONTRACTING PARTY unless the PARTIES jointly arrange for another date
8. Regardless of the comments and opinions reported by CONTRACTING PARTY, the overall responsibility for the execution of the PROJECT rests exclusively with the CONTRACTOR. The CONTRACTOR'S responsibility for the PROJECT, as provided for in this section, is excluded in the case of solutions adopted at the request of the CONTRACTING PARTY only and imposed by the CONTRACTING PARTY after the conclusion of the AGREEMENT despite any technically and technologically viable reservations of the CONTRACTOR, having been informed in writing.
9. The CONTRACTING PARTY has the right to reject the PROJECT, if it is incomplete or inconsistent with the AGREEMENT.
10. The CONTRACTOR shall correct any design errors and carry out the necessary repair work without additional remuneration.
11. The CONTRACTOR shall be liable for any physical and legal defects of the PROJECT, as well as for resulting delays in obtaining the relevant opinions, approvals and permits.
12. The CONTRACTOR, as the designer, shall continuously supervise the execution of the SUBJECT OF THE AGREEMENT. The subject of the supervision shall be, in particular:
  - 1) the author's supervision within the meaning of Construction Legislation;
  - 2) the provision of surveillance of the factory production and acceptances of appliances and equipment covered by the SUBJECT OF THE AGREEMENT and produced for the implementation of the AGREEMENT regarding the right to ensure that the projects approved for production or implementation have been followed faithfully and without deviation;
  - 3) the provision of explanations necessary for the proper implementation of the AGREEMENT and participation in solving problems during the implementation of the AGREEMENT;
  - 4) where necessary, make changes to the Project. Changes in the PROJECT can be made only with the consent of the CONTRACTING PARTY and in accordance with the provisions of Construction Legislation;
  - 5) participation in the acceptance (hand-over) of the SUBJECT OF THE AGREEMENT.
13. The CONTRACTOR shall perform an author's, multi-disciplinary supervision in accordance with the applicable building regulations, until a final and legally binding decision on the *permit-for-use* or a notice of completion of construction within the meaning of the Act on

proceedings before administrative courts is issued, if the CONTRACTING PARTY so decides.

### § 13 ADDITIONAL, REPLACEMENT OR ABANDONED WORKS

1. Under no circumstances shall the work, necessary for the proper performance of the whole SUBJECT OF THE AGREEMENT, be considered as additional works and subject to additional remuneration for the CONTRACTOR, the need for which has occurred during execution of AGREEMENT and which the CONTRACTOR *could and should* have foreseen upon entering into the AGREEMENT.
2. The CONTRACTOR undertakes to perform a new and additional scope of work agreed upon by the authorised representatives of the PARTIES, the need for which has been notified by the ORDERING PARTY or has occurred during implementation of the AGREEMENT. Implementation of any additional work must first be annexed to the AGREEMENT together with the remuneration, agreed in writing, in order for it to be valid.
3. Additional works, the necessity of which has been confirmed in writing by the CONTRACTING PARTY and which has occurred in the course of the performance of the SUBJECT OF THE AGREEMENT, and for which a suitable annexe to the AGREEMENT has been signed, shall be carried out by the CONTRACTOR with the application of the principles and standards set forth for the remaining works covered by the GT&C and the SUBJECT OF THE AGREEMENT. Settlement of any additional works shall be made *via* an invoice issued on the basis of an estimate based on the following principles:
  - 1) when preparing the cost estimate, the CONTRACTOR should:
    - i. calculate the amount of work actually performed on the basis of appropriate measurements;
    - ii. calculate the value of the completed works based on the actual amount of work, estimated on the basis of base materials and the prices set out below.
  - 2) the basis for the cost estimate shall be the **"Polish Standards for Costing Construction Works"**;
  - 3) the basis for the cost calculations shall be:
    - i. **The Directories of Tangible Expenditures, Cost Estimate Standards for Tangible Expenditures**;
    - ii. The average "price-setting components" for the region where the construction work is carried out, i.e. cost estimates of labour and overheads rates according to the '*Pricing Service for the Construction Sector*', published by the Orgbud Servis Sp. z o.o. Publishing House, Poznań, '*Price Bulletin for the Construction Industry*';
    - iii. average prices of materials and equipment according to the '*Information Set of Prices of Building Production Factors*' by the Orgbud Servis Publishing House Sp. z o.o.;
    - iv. The date of the completion of additional work determines the appropriate "*quarter*" of year for the issue of the Bulletin.
4. In justified cases, the CONTRACTING PARTY may exclude certain works from the scope of the SUBJECT OF THE AGREEMENT; the lump sum of the CONTRACTOR's remuneration will then be reduced accordingly by the value of the work excluded from the scope of the AGREEMENT. The value of the works will be calculated on the basis of the CONTRACTOR's offer; in the absence of any such calculation, it will be based on those calculations made according to the description specified in § 13 section 3.

### § 14 SUPPLIES

1. Within the framework of the SUBJECT OF THE AGREEMENT, the CONTRACTOR shall provide the CONTRACTING PARTY with all the facilities, equipment and materials necessary for the execution of the SUBJECT OF THE AGREEMENT in accordance with its

requirements and deadlines. Even when a certain element, which is necessary for the proper implementation and functioning of the SUBJECT OF THE AGREEMENT, and ensures functionality of the solutions, including ease of use, repair and overhaul, has not been specified in the AGREEMENT, it will be delivered within the REMUNERATION and in time, in order to avoid delaying AGREEMENT deadlines.

2. All facilities, equipment and materials delivered within the AGREEMENT will be new and of high-quality, manufactured on the basis of the *state-of-the-art* technologies already used in practice and approved for use in the construction industry in Poland, meeting the requirements of the Technical Inspection Office and bearing mutually compatible CE marking with installations and existing equipment which are subject to association and meet all the requirements specified in the AGREEMENT. At the same time, all the new facilities, equipment and materials provided, shall have been manufactured no earlier than 6 months before the date of construction.
3. Together with the devices and equipment, the CONTRACTOR will provide operation and maintenance documentation for these devices and equipment, in Polish, both on paper and in the electronic form, as also the warranty, certificates, attestations, tightness tests, etc., to the extent necessary for the implementation of the AGREEMENT and the proper operation, repair and overhaul by the CONTRACTING PARTY or the third parties employed by CONTRACTING PARTY.
4. If it has been provided for in the SUBJECT OF THE AGREEMENT, the CONTRACTOR shall provide additional *wear-and-tear* parts as well as consumables to the extent specified in the Annexe to the AGREEMENT, defining its material scope, for the REMUNERATION stipulated.
5. The ownership of all facilities, equipment and materials supplied in the framework of the AGREEMENT shall be transferred to the CONTRACTING PARTY on the day of their delivery to the construction site, along with an invoice for remuneration for the stage, which takes into account the provision of data for such facilities, equipment and materials, however the risk of their loss or damage remains the responsibility of the CONTRACTOR until the date of the signing of the FINAL ACCEPTANCE Protocol.

## **§ 15 ACCEPTANCE**

1. In the course of the implementation of the SUBJECT OF THE AGREEMENT, the CONTRACTOR shall report its readiness to receive, and the CONTRACTING PARTY shall receive them.
2. Partial acceptance will be made at the end of each stage specified in the Schedule. The CONTRACTING PARTY is not obliged to accept individual stages before the date specified in the Schedule.
3. The object of the FINAL ACCEPTANCE is all works carried out under the SUBJECT OF THE AGREEMENT.
4. "*Significant flaws*" means, in particular, defects, fulfilling one or more of the following prerequisites:
  - 1) irremovable defects or defects which prevent or significantly hinder the use of the SUBJECT OF THE AGREEMENT;
  - 2) indelible defects, that is, indelible to the extent that the SUBJECT OF THE AGREEMENT fundamentally differs from its assumed functional or aesthetic characteristics;
  - 3) defects, the removal of which would raise costs by a total amount exceeding the net remuneration determined in the AGREEMENT of 10%.
5. "*Insignificant defects*" mean those defects that prevent the normal and intended use of the SUBJECT OF THE AGREEMENT but which can be removed without disturbing the use of the SUBJECT OF THE AGREEMENT.

6. THE PARTIES agree that the acceptance carried out in accordance with the principles set out in this paragraph, does not relieve the CONTRACTOR from the liability for defects discovered after such acceptance.
7. The CONTRACTING PARTY can make the FINAL ACCEPTANCE of THE SUBJECT OF THE AGREEMENT with "*insignificant defects*" which will be described in the acceptance protocol, together with an indication of the date of their removal by the CONTRACTOR or with an indication of the reduced remuneration, in respect thereof, corresponding to the reduced value of the work performed due to such defects. Until the signing of an additional protocol confirming the removal of defects, the CONTRACTING PARTY has the right to withhold part of the CONTRACTOR's remuneration, proportional to the share of the non-executed or improperly executed works in the total value of such remuneration. Payments withheld shall be interest-free and shall not mature for the time of their retention; the CONTRACTOR shall desist from claiming them and shall treat them as *payments not yet due*.
8. Signing of the partial acceptance protocol by the CONTRACTING PARTY shall not constitute its confirmation of the due performance of the AGREEMENT neither shall it release the CONTRACTOR from its obligations and responsibilities. The final acceptance protocol will be the basis for the settlement of the AGREEMENT.

## **§ 16 GUARANTEES**

1. The CONTRACTOR, regardless of the right of the CONTRACTING PARTY under the warranty for defects, shall grant the CONTRACTING PARTY a quality guarantee for the SUBJECT OF THE AGREEMENT implemented, including a quality guarantee for materials, devices and equipment for the BASIC and EXTENDED WARRANTY PERIOD, calculated from the date of the FINAL ACCEPTANCE.
2. The BASIC WARRANTY PERIOD is defined in the AGREEMENT.
3. The EXTENDED WARRANTY PERIOD is 60 months from the date of the FINAL ACCEPTANCE.
4. Regardless of the quality guarantee, the CONTRACTOR shall also make a conditional assignment of the rights under the guarantee and warranty for the materials and equipment, supplied by their manufacturers, to the CONTRACTING PARTY.
5. In the case of discovering any defects in the SUBJECT OF THE AGREEMENT, during the guarantee period, the CONTRACTOR is obliged to remove them at its own expense within the period prescribed by the CONTRACTING PARTY.
6. Subject to section 7 of this paragraph, the guarantee period shall be extended for the time of the repairs, carried out under guarantee, on the SUBJECT OF THE AGREEMENT.
7. If the CONTRACTOR has carried out any repairs or replacements of parts or materials under the guarantee, the guarantee period shall commence from the date on which the CONTRACTING PARTY has accepted the works, including any significant repairs or replacements of defective pieces of equipment, parts or materials, without reservation.
8. The warranty does not cover damages resulting from the operation of the SUBJECT OF THE AGREEMENT by the CONTRACTING PARTY in contravention of the written instructions provided by the CONTRACTOR.
9. In the event of defects occurring in the SUBJECT OF THE AGREEMENT, the CONTRACTING PARTY shall submit to the CONTRACTOR, in writing or via e-mail, a complaint, to which the CONTRACTOR is obliged to respond within 48 hours of the receipt thereof. Failure to promptly answer by 'phone or *via* e-mail shall be considered as having accepted the complaint.
10. In the case of the ineffective expiry of the deadline for the removal of defects, the ORDERING PARTY can remove them or have them removed by another entity, without judicial authorisation, instead of the CONTRACTOR and at its expense, while charging those penalties specified in § 17 section 1 point 3 of the GT&C.



11. For the purposes of the complaint, any correspondence *via* e-mail will be considered by both PARTIES to be correspondence in writing and as having the same probative value.
12. In the case of the introduction of the Guaranteed Technical Parameters to the SUBJECT OF THE AGREEMENT, the following provisions apply:
  - 1) The CONTRACTOR guarantees the achievement of the Guaranteed Technical Parameters of Group A and Group B referred to in the Annexe to the AGREEMENT. Verification of the achievement of the Guaranteed Technical Parameters of Groups A and B will be in accordance with the acceptance procedure specified in the Annexe to the AGREEMENT;
  - 2) if the measured values do not correspond to the values of the Guaranteed Technical Parameters of Groups A and B, the CONTRACTOR shall make the necessary repairs or modifications, at its cost, at the time designated by the CONTRACTING PARTY;
  - 3) a maximum of two (2) repairs or modifications on the same Guaranteed Technical Parameter are allowed, unless the PARTIES agree otherwise in a particular case. In the case of further failure to achieve the Guaranteed Technical Parameters of Group A, the CONTRACTING PARTY has the right to withdraw from the AGREEMENT, in whole or in part, and in the case of continued failure to achieve the Guaranteed Technical Parameters in Group B, the CONTRACTING PARTY may require the CONTRACTOR to pay the contractual penalties specified in the AGREEMENT.

## **§ 17 CONTRACTUAL PENALTIES**

1. The CONTRACTOR shall pay the CONTRACTING PARTY contractual penalties for the non-performance or improper performance of the AGREEMENT in the following cases and in the amounts indicated below:
  - 1) for the non-performance of the AGREEMENT, in the event of the cancellation of the AGREEMENT by the CONTRACTING PARTY, in whole or in part, if the cancellation was for reasons attributable to the CONTRACTOR – a contractual penalty of 20% of the net lump sum of the remuneration specified in the AGREEMENT,
  - 2) for any delay in the execution of the SUBJECT OF THE AGREEMENT, or for any stage, thereof - a contractual penalty of 0.2% of the net lump sum of the remuneration specified in the AGREEMENT for each day of such a delay in the SUBJECT OF THE AGREEMENT or stage thereof, will be charged, bearing in mind that the amount of the penalty calculated cumulatively cannot be any higher than 10% of the lump sum of the net remuneration of the CONTRACTOR specified in the AGREEMENT,
  - 3) for any delay in the removal of defects found upon hand-over / acceptance or within the guarantee or warranty period - a contractual penalty of 0.3% of the gross lump sum of remuneration specified in the AGREEMENT for each day of such a delay will be charged, in relation to the deadline for the removal of defects;
  - 4) for each violation found to safety regulations, fire protection principles or to environmental protection legislation during the implementation of the AGREEMENT by the CONTRACTOR, its employees, or sub-contractors and persons providing work or services for him on the basis of another legal relationship - according to the current tariff of fines for the non-compliance OHS, fire protection or environmental protection regulations which constitute an annexe to the AGREEMENT
  - 5) for failure to meet the Guaranteed Parameters from Group B - contractual penalties in the amount specified in the AGREEMENT;
  - 6) in the case of violation of the Confidentiality Clause - a contractual penalty in the amount of 50.000,00 PLN for each violation.
2. Each of the above stipulated contractual penalties is independent and the CONTRACTING PARTY has the right to pursue each of them independently of the others, as well as charge a cumulative penalty for all such penalties, the calculation of which is justified by the occurrence of reasons stipulated in the AGREEMENT.

3. Accrued contractual penalties may be deducted from the remuneration of the CONTRACTOR. The CONTRACTOR agrees to deduct the contractual penalties referred to in section 1 of this paragraph from the remuneration due to the CONTRACTOR without a separate statement of the CONTRACTING PARTY regarding any such deduction.
4. The CONTRACTING PARTY reserves the right to supplementary compensation, covering the actual damage suffered by the BUYER and not covered by the contractual penalties reserved.

## **§ 18 LIABILITY**

1. The CONTRACTOR is responsible for the proper execution of the SUBJECT OF THE AGREEMENT.
2. The CONTRACTOR shall be liable for damages resulting from any breaches of obligations under this AGREEMENT including any damages arising from the acts or omissions of its employees or third parties, including those sub-contractors which the CONTRACTOR uses for the execution of the AGREEMENT as well as for its own acts or omissions.
3. In the event of the non-performance of obligations under § 4 section 2 point 10 of the GT&C, the CONTRACTOR shall be liable to the CONTRACTING PARTY for damages resulting therefrom. The CONTRACTOR furthermore bears responsibility for any faults in the SUBJECT OF THE AGREEMENT, which arise from defects in the design documentation, checked or developed by him.
4. The CONTRACTOR shall be responsible for any damages in connection with any stoppage in the performance of work by persons employed by him or by its sub-contractors and/or for any stoppage of equipment resulting from delays or lack of permission to perform the work for reasons attributable to the CONTRACTOR, including safety reasons.
5. The CONTRACTOR shall be responsible -and liable to the CONTRACTING PARTY - for any injury or property damage that may occur during the execution of the AGREEMENT caused by negligence or misconduct related to the exercise of command or supervision of personnel by the CONTRACTOR, its suppliers or sub-contractors.
6. On the day of the protocol handover by the CONTRACTOR of the construction site , the responsibility for damages caused in this area and for damages caused to third parties and the environment in connection with the construction works passes to the CONTRACTOR.

## **§ 19 WITHDRAWAL FROM THE AGREEMENT**

1. Regardless of the statutory right, the ORDERING PARTY is entitled to withdraw from the AGREEMENT in whole or in uncompleted part until expiry of the guarantee period but no longer than by the date specified in the AGREEMENT in the case of:
  - 1) a significant failure on the part of the CONTRACTOR, bearing in mind that the CONTRACTING PARTY may not withdraw from the AGREEMENT if, at the time of such a statement, the significant failure, being the reason or cause thereof, has ceased to exist and its effects have been removed by the CONTRACTOR,
  - 2) a state of Force Majeure has continued for more than 6 months
  - 3) a material change in circumstances making the performance of the AGREEMENT not in the interests of the CONTRACTING PARTY, which could not have been foreseen at the time of entering into the AGREEMENT. In this case, the CONTRACTING PARTY may withdraw from the AGREEMENT within 30 days of becoming aware of these circumstances and the CONTRACTOR can only demand compensation due for the execution of that part of the AGREEMENT completed up to the date of the written notice of withdrawal given to the CONTRACTOR,
  - 4) any application for the CONTRACTOR's bankruptcy or restructuring has been filed or a resolution to liquidate the CONTRACTOR has been adopted or a process

- corresponding to the above procedures has been initiated in the country of the CONTRACTOR's residence,
- 5) the insolvency of the CONTRACTOR within the meaning of the legislation passed on 28th. February 2003 - Bankruptcy Legislation (i.e. Legal Journal of 2015, item 233, as amended), or where there is the threat of the CONTRACTOR's insolvency within the meaning of the legislation of 15th. May 2015. viz. the legislation on restructuring (i.e. Legal Journal of 2016, item 1574, as amended);
  - 6) the total delay in the implementation of the SUBJECT OF THE AGREEMENT exceeding 50 days;
  - 7) the CONTRACTOR's failure to establish security as defined in GT&C and in the AGREEMENT, in particular, the failure to provide the CONTRACTING PARTY with any guarantee;
  - 8) failure to achieve the Guaranteed Technical Parameters of Group A.
2. Any significant failure on the part of the CONTRACTOR, justifying withdrawal from the AGREEMENT on the principles set out in section1 point 1 of this paragraph, in particular:
- 1) violation of a significant provision of this AGREEMENT essential for its proper execution;
  - 2) failure to perform the duties relating to the liability for defects in the SUBJECT OF THE AGREEMENT,
  - 3) violation of the legislation or appropriate administrative decisions;
  - 4) the entrusting by the CONTRACTOR, of the performance of all or part of the AGREEMENT to a third party which constitutes a breach of the AGREEMENT, in particular entering into a sub-contract without the CONTRACTING PARTY's consent;
  - 5) the improper performance of the AGREEMENT by the CONTRACTOR despite the written request of the CONTRACTING PARTY, to desist from such violations and the imposition of an additional deadline for the removal of their consequences;
  - 6) suspension by the CONTRACTOR, without valid reason, of the implementation of the AGREEMENT,
  - 7) the persistent failure or denial of the CONTRACTOR, to perform its obligations under this AGREEMENT;
  - 8) the CONTRACTOR's incapacity to execute the SUBJECT OF THE AGREEMENT;
  - 9) any unjustified delay in the performance of the SUBJECT OF THE AGREEMENT caused by the CONTRACTOR.
  - 10) breach of the obligations specified in § 7 of GT.
3. In the case of withdrawal from the AGREEMENT, either wholly or partially, by the CONTRACTING PARTY, due to the occurrence of the pre-requisites set forth in section1 point 1, 4-8, the CONTRACTOR shall be obliged to pay a contractual penalty for withdrawing from the AGREEMENT for reasons attributable to the CONTRACTOR, as indicated in §17 section1 point 1.
4. In the case of withdrawal from the AGREEMENT, with regard to the uncompleted part of the AGREEMENT, the CONTRACTOR shall clear the construction site and hand it over, with the protocol, to the CONTRACTING PARTY within the period specified in the statement of withdrawal from the AGREEMENT.
5. In the case of withdrawal from the AGREEMENT, with regard to its incomplete part for reasons other than the occurrence of an event of *Force Majeure*, the CONTRACTING PARTY will pay the CONTRACTOR the actual value of the work duly completed and accepted till the day of the withdrawal, and for work in progress, if it is duly executed and useful for the complete realisation of the SUBJECT OF THE AGREEMENT by another CONTRACTOR.
6. As part of the remuneration referred to in section 5 of this paragraph, the CONTRACTOR:

- 1) shall provide the CONTRACTING PARTY with all facilities, equipment and materials which are a proper part of the SUBJECT OF THE AGREEMENT for which the CONTRACTOR receives remuneration;
  - 2) shall hand-over to the ORDERING PARTY, the PROJECT, software and documentation as far as has been completed on the day of withdrawal from the AGREEMENT with regard to its incomplete part;
  - 3) shall transfer to the CONTRACTING PARTY all intellectual property rights covered by the SUBJECT OF THE AGREEMENT for the part of the AGREEMENT that has been realised,
  - 4) at the request of the CONTRACTING PARTY, the CONTRACTOR shall transfer all obligations arising from any contracts concluded between the CONTRACTOR and its sub-contractors to the extent required by the CONTRACTING PARTY, subject to their consent for a change of creditor expressed by sub-contractors,
  - 5) on the date of withdrawal from the AGREEMENT, and with regard to the incomplete part of the AGREEMENT, the CONTRACTOR shall provide a guarantee to the CONTRACTING PARTY in accordance with the terms of § 14 GT&C for the scope of the SUBJECT OF THE AGREEMENT that has been realised and accepted by the CONTRACTING PARTY.
7. In the case of withdrawal from the AGREEMENT in whole or in incomplete part by the CONTRACTING PARTY, for reasons attributable to the CONTRACTOR, the CONTRACTING PARTY, without the prior consent of the court, may entrust completion of the AGREEMENT to another contractor. If execution of the SUBJECT OF THE AGREEMENT by another contractor will increase the cost thereof, the CONTRACTOR will be obliged to pay the CONTRACTING PARTY an amount corresponding to such an increase in costs within 30 days of receipt of the CONTRACTING PARTY's request for payment, together with an invoice confirming the increase in costs.
8. In the case of withdrawal from the AGREEMENT, in whole or incomplete part, by either PARTY due to a *Force Majeure* event, lasting longer than 6 months, the settlement of the AGREEMENT will be based on agreement between the PARTIES on the basis of the protocol of completion of the AGREEMENT on the day of withdrawal, as approved by both PARTIES.
9. In the event of cancellation of the AGREEMENT by the CONTRACTING PARTY, the provisions of Art. 17 and 22 of GT&C shall remain in force.

## **§ 20 ASSIGNMENT**

1. Any transfer of all or of part of the rights or obligations arising from AGREEMENT by the CONTRACTOR requires the prior, express written consent of the CONTRACTING PARTY in order to be valid. The CONTRACTOR shall insert information on the prohibition of assignment without the written consent of the CONTRACTING PARTY, on each invoice issued.
2. The CONTRACTING PARTY is entitled to transfer its rights and obligations under the AGREEMENT without the consent of the CONTRACTOR.
3. Any transfer of the CONTRACTING PARTY's receivables, due under this AGREEMENT to a third party or the authorisation of any third party to pursue such claims without the express, prior consent of the CONTRACTING PARTY, in writing, shall not be valid.

## § 21 SECURITY

1. In order to secure the proper execution of the SUBJECT OF THE AGREEMENT and the claims of the CONTRACTING PARTY hereunder, the CONTRACTOR undertakes to provide to the CONTRACTING PARTY:
  - 1) within 14 days from the date of signing the AGREEMENT, a bank or insurance Guarantee of Performance Bond issued according the model annexed to the AGREEMENT in order to secure the proper performance of the AGREEMENT including the fulfilment of obligations under the quality guarantee and claims arising under the warranty for the non-performance or the improper performance of the AGREEMENT, in particular, penalties, claims for damages, claims for reimbursement of replacement costs and litigation and enforcement costs incurred, with the guaranteed amount at the level of 15% of the net lump sum of remuneration, specified in the AGREEMENT, valid for a period of 30 days from the end of the GUARANTEE PERIOD, as indicated in §16 section 2;
  - 2) in the case and on the terms specified in § 5 section 4. point 3 of GT&C, a Bank Guarantee for the Return of Remuneration Paid to sub-contractors, issued according to the pattern annexed to the AGREEMENT, securing claims for the payment of remuneration to sub-contractors of construction works further to Art. 647<sup>1</sup> of the Civil Code together with the amounts indicated §5 section 4, point 12 of GT&C;
  - 3) If an advance payment or payments has been provided for, in the AGREEMENT, its payment is subject to the provision of a Bank Guarantee for the Return of Advance Payments issued for the gross amount of such advance payments or payments in accordance with the Annexe to the AGREEMENT. The Guarantee for the Return of Advance Payments may be issued separately for each advance payment or jointly for all the advance payments, referred to in the AGREEMENT. Providing the Bank Guarantee for the Return of Advanced Payments is a condition for paying the advance or advances indicated in the AGREEMENT.
2. If the period for the implementation of the AGREEMENT is extended at least 14 days before the expiry date of the previous guarantee, the CONTRACTOR is obliged, at its own expense, to provide an extension to the existing guarantee, appropriate for the changes in the term of the guarantee. Failure to comply with this obligation entitles the CONTRACTING PARTY to draw from the existing guarantee or retain payments in accordance with section 5 hereof.
3. If the remuneration payable to the CONTRACTOR is increased by the PARTIES, the guarantees referred to in section 1 of this paragraph, will be adapted to such changes and the CONTRACTOR shall submit to the CONTRACTING PARTY, at its own expense, further guarantees with changes appropriate to the changes in remuneration, within 14 days from the date of signing the annexe to the AGREEMENT. Failure to comply with this obligation entitles the CONTRACTING PARTY to draw from the existing guarantee or retain payments in accordance with section 5 hereof.
4. The guarantees referred to in this paragraph shall be unconditional, irrevocable, payable on first demand, written in Polish, issued by a Polish bank or insurer approved by the CONTRACTING PARTY with S&P long-term debt rating of BBB+ or higher, Moody's rating of Baa1 or higher and prepared and construed in accordance with Polish legislation.
5. Failure to provide the CONTRACTING PARTY with the guarantees referred to in this paragraph, shall entitle the CONTRACTING PARTY to withhold payments of invoices by the CONTRACTING PARTY to the value of those guarantees, until receipt of the guarantee or the period for which the guarantee would apply in the case of its delivery. Withheld payments shall be interest-free and shall not mature for the time of their retention, and the CONTRACTOR shall desist from claiming them and shall treat them as *payments not yet due*.
6. The PARTIES may, in justified, individual cases as foreseen in the AGREEMENT, agree on other types of security than referred to in section 1 of this paragraph, while maintaining the

same periods, scope of security and its amount as well as the appropriate application of the provisions of section 2, 3, 4, 5 and 6 for the following:

- 1) cash payment by the CONTRACTOR to the CONTRACTING PARTY bank account (interest-free deposit) within the period prescribed by the CONTRACTING PARTY; the payment of the specified deposit may be made by deduction from the remuneration due to the CONTRACTOR,
- 2) blocking of funds in the CONTRACTOR's bank account
- 3) provided that the requirements of the GT&C and the AGREEMENT as to the value and duration of the replaced guarantee are fulfilled, replacement of one Performance Bond Guarantee by two Performance Bond Guarantees for the AGREEMENT, while maintaining the principle that the first will be delivered to the CONTRACTING PARTY within 14 days from the date of signing the AGREEMENT and will be valid for 30 days from the date of the signing of the FINAL ACCEPTANCE Protocol or until the day of the delivery of the second Guarantee of the Performance Bond - depending on whichever occurs earlier, and the second Guarantee will be delivered no later than 10 days from the date of signing the FINAL ACCEPTANCE Protocol and will be valid until the expiry of 30 days from the end of the guarantee period, specified in § 16 section 3. Failure of the second Guarantee entitles the CONTRACTING PARTY to:
  - draw from any existing security and retain the amount obtained as substitute collateral until such security has been submitted or up until the time for which the Guarantee would apply had it been delivered, or
  - withhold payments in accordance with section 5, hereof, until such security has been submitted or for the time for which the Guarantee would apply had it been delivered.

## § 22 CONFIDENTIALITY

1. "Confidential Information" within the meaning of the GT&C, means any information of the CONTRACTING PARTY of a technical, technological or organisational nature made available to the CONTRACTOR, in any form, regardless of whether it was marked "**Confidential**" or not; in particular ideas, techniques, technologies, diagrams, drawings, subjects of copyrights, models, inventions, *know-how*, equipment, software and security systems, information on tests and their results, projects and specifications, financial information, commercial and manufacturing requirements, lists of partners, investors and employees and their contact details, business relationships and contractual, business forecasts, marketing plans, confidential information of third parties *-to the extent permitted-* or other information of commercial value, the use, transfer or disclosure of which, to an unauthorised person, may affect the interests of the CONTRACTING PARTY.
2. The CONTRACTOR agrees to maintain, in strict confidence, all confidential information received and the contents of this AGREEMENT and not to disclose it to third parties and undertakes not use such confidential information for any purpose other than the performance of this AGREEMENT.
3. The CONTRACTOR may disclose confidential information to its sub-contractors or sub-suppliers only to the extent required for the implementation of the AGREEMENT, provided that the obligations of confidentiality on terms corresponding to the terms of the AGREEMENT and GT&C are observed.
4. The obligation of confidentiality binds the CONTRACTOR indefinitely.
5. The obligations of confidentiality set out in this paragraph do not apply to:
  - 1) information that is widely known or which is in the public domain, without breach of the obligation to preserve its confidentiality;
  - 2) in cases where the CONTRACTING PARTY has given its written consent to such disclosure;

- 3) information for which there is an *obligation to disclose* to the public authorities according to applicable legislation or to a final court decision.
6. At the CONTRACTING PARTY's request, and in the case of withdrawal from the AGREEMENT immediately upon receipt of the declaration of withdrawal from the AGREEMENT, the CONTRACTOR shall return to the CONTRACTING PARTY all documents, materials and other information media containing confidential information.
7. If the CONTRACTOR discloses confidential information to any other parties, he will bear full responsibility for any actions and omissions of these parties as if they were its own.
8. The CONTRACTING PARTY's consent is not required for disclosure of confidential information to companies belonging to the same group as the CONTRACTING PARTY.

## **§ 23 INTELLECTUAL PROPERTY**

1. the CONTRACTOR shall transfer to the CONTRACTING PARTY the copyrights relating to the works created as part of the AGREEMENT, in particular the PROJECT ("Works"), upon the transfer of such works to the CONTRACTING PARTY within the remuneration specified in the AGREEMENT.
2. The transfer of copyrights relating to Works occurs without limitations as to territory, time, number of copies, in the following fields of use:
  - 1) recording and reproducing the work using any technique, including printing, reprographic, magnetic storage and digital technique,
  - 2) saving the work to computer memory;
  - 3) public exhibition, display and playback;
  - 4) lending a copy or the original work,
  - 5) sharing the work in such a way that anyone can have access thereto, at a place and time of their choice, including *via* the Internet
  - 6) in terms of trade in the original or the copies on which the work was recorded - the sale of the original work and its marketing.
  - 7) making reprints of the whole or part of the work, and making it available for surveys, exhibitions and catalogues,
  - 8) personal use of the work to the extent necessary to execute investment and operation, repair and overhaul of the investment or its part, its future modernisation, reconstruction or expansion, including sharing it:
    - a) with other contractors as the basis or start-up material for making other designs for the project, directly related to the investment,
    - b) contractors participating in procurement procedures for the implementation of the work within the scope of construction, operation, repair or renovation of the investment or its part, its future modernisation, reconstruction or expansion, in particular through the inclusion of a work into the technical documentation for investment,
    - c) in part required for other contractors as a basis for the implementation or supervision of the execution of work,
    - d) in part, necessary to third parties involved in the investment process;
3. When the SUBJECT OF THE AGREEMENT includes the provision of software, the CONTRACTOR shall provide the CONTRACTING PARTY with the necessary licences to use the software within the remuneration specified in the AGREEMENT as part of the execution of the AGREEMENT. The licences provided will include at least the right to use, by the CONTRACTING PARTY, unrestricted by time or space and the right to transfer all the licence rights to the successor in title or entities belonging to the CIECH CAPITAL GROUP. The licences will be permanent and will include the following fields of use:
  - 1) permanent or temporary reproduction of the software programme, in whole or in part, by any means and in any form;
  - 2) the rights for translation, adaptation, layout change or any other alterations to

- the software;
- 3) dissemination, including by loan or leasing of a computer programme or its copies.
  4. The CONTRACTOR declares that the remuneration cited in section 1, 2 and 3 exhausts all claims against the CONTRACTING PARTY due to implementation of obligations set out in this paragraph, in particular the transfer of copyrights related to all fields of use indicated in section 2 and to the licence conditions specified in section 3.
  5. The CONTRACTING PARTY will have the exclusive pre-emptive right to the copyrights to the Works in the range of fields of use unknown at the time of concluding the AGREEMENT, which will become apparent in the future. The CONTRACTOR is obliged to transfer to the CONTRACTING PARTY, the copyrights to the Works in the scope of the fields of use referred to in the first sentence, upon first request. Notwithstanding the foregoing, the CONTRACTING PARTY holds, in respect of the CONTRACTOR, the right to request the transfer of copyrights to the Works in the range of fields of use known at the time of the conclusion of the AGREEMENT, other than those referred to in section 2.
  6. The CONTRACTOR allows the CONTRACTING PARTY to exercise derivative copyrights to the derivative works and transfers to the CONTRACTING PARTY the exclusive right to exercise such derivative copyrights.. The aforementioned right includes, in particular, the CONTRACTOR's consent to use and dispose of any developments of the Works.
  7. The CONTRACTOR grants the CONTRACTING PARTY its unconditional consent to make changes, without limitation, to the Works.
  8. The CONTRACTOR gives the assurance that he is entitled to the vested intellectual property rights of the Works and these rights are not in any way restricted or encumbered by third party claims, and that the Works do not infringe the rights of third parties, and also declares that he will assure the CONTRACTING PARTY, that the author of the Works will not use the moral rights to the Works against the CONTRACTING PARTY and its legal successors, to whom the copyrights to the Works will be transferred in accordance to the AGREEMENT and GT&C.
  9. With the release of the Works to the CONTRACTING PARTY, the CONTRACTOR transfers to the CONTRACTING PARTY ownership of copies of the Works and the media on which they were recorded, within the remuneration specified in the AGREEMENT.
  10. The CONTRACTOR declares that the Works, as well as the technology used to implement the SUBJECT OF THE AGREEMENT, do not violate any copyright, patent or design rights, protected trademarks, etc., reserved by or on behalf of third parties.
  11. The CONTRACTOR declares that neither of its claims expressed in the contents of this paragraph shall be revoked and that any withdrawal of the CONTRACTING PARTY's rights or privileges will result in the CONTRACTOR's liability for the improper performance of the AGREEMENT.
  12. Notwithstanding any other provisions, in the event of claims by any third party against the CONTRACTING PARTY, its successors or entities to whom the CONTRACTING PARTY shall transfer the rights under the AGREEMENT, arising from the violation of copyrights or moral rights, derivative copyrights, patent infringements, violations of registered designs, trademarks or trade names, or other intangible property rights, the CONTRACTOR shall immediately release the CONTRACTING PARTY, its successors or entities to whom the ORDERING PARTY transfers the rights arising from the AGREEMENT, from any liability arising from such claims and pay any costs incurred by the CONTRACTING PARTY in relation to the raising of these claims.

## **§ 24 FORCE MAJEURE**

1. The PARTIES shall not be liable for failure to fulfil contractual obligations due to the occurrence of *Force Majeure*.



2. A *Force Majeure* event shall mean any external and sudden event, which could not have been foreseen at the time of the conclusion of the AGREEMENT and cannot be resisted, the consequences of which could not have been prevented, in particular:
  - 1) war (declared or not), and other military operations, invasions, acts of terrorism, mobilisation, or embargoes;
  - 2) radiation or contamination by radioactivity from nuclear fuel or nuclear waste from the combustion of nuclear fuel, radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assemblies of components,
  - 3) terrorism, military coups or civil war;
  - 4) natural disasters such as earthquakes, landslides, flood;
  - 5) the following geological conditions related to the substrate: archaeological relics, hazardous materials such as unexploded bombs and misfires or toxic materials, such as petroleum;
  - 6) a shock wave caused by a flying object travelling at subsonically or supersonically.
3. The PARTY for which the execution of this AGREEMENT has become impossible due to the event of *Force Majeure*, shall notify the other PARTY, in writing, of the occurrence thereof, immediately (within 14 days of its occurrence). When the *Force Majeure* event ceases, this should be also reported forthwith to the other PARTY along with a simultaneous proposal to renew collaboration.

## **§ 25 THE GOVERNING LAW AND DISPUTE RESOLUTION**

1. The AGREEMENT shall be governed and interpreted in accordance with Polish law. For any cases not covered by the GT&C and the AGREEMENT, the provisions of Polish law, including in particular the Civil Code and the legislation of 7<sup>th</sup>. July 1994, Construction Legislation (Legal Journal of 2016 item 290, as amended) and executory regulations shall apply.
2. Any disputes that may arise from the AGREEMENT, shall be settled by the PARTIES, amicably. If no agreement is reached within 30 calendar days of the raising by one PARTY of claims against the other PARTY and the requesting of an amicable settlement of the dispute, the dispute will be referred for the jurisdiction of the appropriate common court competent for the seat of the CONTRACTING PARTY.

## **§ 26 REPRESENTATIVES OF THE PARTIES**

1. Each Party shall appoint its representative to be responsible for decision making and for correspondence on the implementation of the AGREEMENT on its behalf but without authorisation to submit binding declarations of intent.
2. The representatives of the PARTIES referred to in section 1 and indicated in the AGREEMENT are not authorised to enter into financial obligations or to submit other declarations of intent on behalf of the CONTRACTING PARTY or the CONTRACTOR, resulting in a change of the AGREEMENT.
3. The change of PARTIES representatives does not constitute a change to the AGREEMENT and does not require an amendment to the AGREEMENT. For the effective change of the PARTIES representatives prior written notice delivered to the other PARTY will be sufficient.

## **§ 27 FINAL PROVISIONS**

1. Should any provision of this GT&C or the AGREEMENT be found invalid due to its non-compliance with the law, ineffectiveness or unenforceability, or if there is a loophole in the GT&C or the AGREEMENT, the validity of the remaining provisions of the AGREEMENT shall not be affected by that, and the AGREEMENT shall continue to be implemented

without referring to the provision in question, unless the invalidity affects any material terms of the AGREEMENT, or the AGREEMENT stipulates that without the invalid provisions the AGREEMENT would not have been concluded. In such a case the PARTIES undertake to replace such a provision with another important and effective provision, which in terms of the economic and financial impact and the intentions of the PARTIES would be as close as possible to the affected, invalid provision.

2. All changes to this AGREEMENT must be in writing in order to be valid.