

SERVICING AGREEMENT

FOR TWO eRTG CRANES

AT THE CONTAINER TERMINAL OF PCC INTERMODAL S.A.

IN KUTNO

(The Ordering Party expects the Tenderer to submit an Offer in the meaning of Article 66 Section 1 of the Polish Civil Code, conforming to the form of the eRTG crane servicing agreement, by:

- completing only the dotted spaces, i.e. the data concerning the Tenderer and in §4 paragraphs 1 and 4,*
- signing, in accordance with the method of representation of the Tenderer, the last page of the agreement and its annexes,*
- initialling all unsigned pages of the agreement and its annexes,*
- attaching the documents prepared in this manner to the Tenderer's cover letter, in two sets.*

One set of these documents will be handed over to the Tenderer whose Tender is accepted by the Ordering Party, after it has been countersigned and initialled by the Ordering Party. The Ordering Party shall complete this agreement with the number and date of conclusion in the title and complete §1 paragraph 1 with the number and date of conclusion of the crane supply agreement with the Tenderer.

The Agreement shall be executed on the date and at the place of signature by the Ordering Party and become effective from the date the Tenderer receives these documents.

The documents prepared by the Tenderer may be provided to the Client in paper or electronic form with qualified signatures. When accepting the tender, the Client may send it back in paper or electronic form with qualified signatures)

Sosnowiec, 2021

Servicing Agreement

No. _____/2021

entered into as of _____ at Sosnowiec
(to be completed by the Ordering Party)

by and between:

PCC INTERMODAL S. A. with its registered office in Gdynia, ul. Hutnicza 16, registered in the National Court Register maintained by the District Court - Commercial Court in Gdańsk-Północ under KRS (National Court Register) entry number 0000297665, share capital of PLN 103,565,556, NIP (Tax Identification Number): **749-196-84-81**, REGON (Polish Business Registry Number): **532471265**, (the "**Ordering Party**"),
represented by:

Adam Adamek - Vice-President of the Management Board

and

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.....
.....

(the "**Contractor**"),
represented by:

.....
.....

§ 1

The Subject-Matter of the Agreement, Definitions

1. Under separate agreement No. _____/2021 dated _____ 2021, the Contractor undertook to supply two eRTG cranes (the "Supply Agreement"). Under the Supply Agreement, the Contractor granted to the Ordering Party a two-year warranty of due quality of the cranes (basic warranty) and a shorter or longer warranty of due quality of individual components of the cranes. Under this Agreement, the Parties define the terms and conditions under which inspections, tests, repairs and other actions shall be performed, both during the basic warranty period and after its expiration.
2. The Contractor represents that the Contractor has the necessary knowledge, equipment and competent personnel to provide full servicing of the eRTG cranes supplied to the Ordering Party. The Contractor represents that the Contractor shall maintain the level of servicing availability:
 - a) not worse than the level presented in the Specification of the Subject-Matter of the Tender Procedure, constituting **Annexe No. 1** (the "Specification"), in particular in Part III items 3, 5 and 6.
 - b) in the event of a fully automatic mode of crane operation, the Contractor shall ensure the efficiency of the Crane operation at the level not worse than the level presented in Annexe No. 6 to the Supply Agreement.
3. Unless the context requires otherwise, the following terms used in this Agreement (the "**Agreement**") shall have their respective meanings:

- a) **“Business Day** - any day other than Saturday or Sunday or any other day legally free from work in the territory of the Republic of Poland;
- b) **“Guarantee of Proper Performance of the Agreement”** - an irrevocable, unconditional bank or insurance guarantee, payable on first demand, issued by an entity to the Ordering Party as the beneficiary, of the content confirmed in advance by the Ordering Party, valid at the time of the performance of the Agreement;
- c) **“Equipment”** - two eRTG cranes together with all accessories, equipment and infrastructure, supplied and commissioned by the Contractor as part of the performance of the Supply Agreement.

§ 2

Servicing Actions

1. In respect of the Equipment whose place of operation is the container terminal of PCC Intermodal S.A. in Kutno, the Ordering Party commissions, and the Contractor accepts for performance, the following works (the “Servicing Actions”):
 - a) periodic inspections and maintenance (performed during the basic warranty period and after its expiration) resulting from the operation and maintenance instructions and service manuals issued by the manufacturer for brand-new cranes of this type, in accordance with the Schedule of scheduled servicing works (**Annexe No. 5**),
 - b) receiving notifications and questions as well as giving explanations and instructions by phone or via the 24/7 hot-line ;
 - c) doing repairs and remedying all failures (covered and not covered by the warranty liability of the Contractor), including those resulting from force majeure or any action of third parties or incorrect operation by persons acting on behalf of the Ordering Party,
 - d) renovation of the Equipment necessary to restore the original operating and utility parameters of the cranes.
2. A **failure** shall be understood as any improper operation of the crane as well as any identified flaw or defect in its workmanship (e.g. rust in steel elements), regardless of the cause of the failure, except for mechanical damage caused by collisions with vehicles moving at the terminal or other causes not resulting from malfunction of the Equipment.
3. The Servicing Actions concerning the Equipment shall be performed in accordance with the operation and maintenance instructions and in accordance with the schedule constituting **Annexe No. 5**, at the time agreed in advance with the Ordering Party.
4. The exact date of the arrival of the service technicians and the performance of the servicing actions shall be each time agreed upon between the Parties by e-mail or telephone, with the final confirmation made by e-mail. Each arrival of the Contractor's service technicians in order to remedy a failure or carry out a repair shall be notified as soon as practicable (at least 2 hours before the arrival) to the Ordering Party's representative indicated in **Annexe No. 4**. The arrival to perform the servicing actions, including those resulting from the schedule constituting Annexe No. 5, shall be preceded by a notice given by the Contractor approximately 24 hours prior to the commencement of the servicing visit.
5. In the event of finding any failure of the Equipment, the Ordering Party's representative shall contact the Contractor's representative by phone or e-mail (make a 'hot-line' notification), in accordance with the contact details set out in **Annexe No. 4**. Any contact from the Contractor's service technicians shall take place no later than **2 hours** of the time of notification made by the Ordering Party's employees by phone or e-mail. If it is necessary to involve a specialist in software and automation, i.e. PLCs, in the problem-solving process, the response time shall be no longer than **4 hours**. The Contractor's representatives shall diagnose the problem and attempt to solve it on a remote basis. Remote inspection and improvement of the Equipment shall be permitted.

6. In the event of any failure that may not be remedied on a remote basis, the Contractor's service technicians shall arrive at the Ordering Party's terminal in Kutno and proceed to remedy the failure within **24 hours** of reporting the problem by phone or e-mail in accordance with paragraph 5. In the event of defects that do not limit the possibility of crane operation, it shall be permissible to postpone the arrival of service technicians for up to **72 hours** or to continue the crane operation, if it does not cause immobilisation of the crane, increase of the damage or deterioration of the crane condition in connection with its normal operation. The Contractor may decide to carry out such repair during the next scheduled preventive maintenance activities; the risk of misjudging the consequences of postponing the repair of the defect or malfunction shall be borne by the Contractor.
7. In order to remedy failures, the Contractor undertakes to send the Contractor's service technicians, at each request of the Ordering Party, in a number adequate to the scope of the identified failure and the resulting repair, competent to repair the damaged element of the Equipment, with appropriate equipment and repair facilities, within the time limit referred to in paragraph 6.
8. During the term of the Agreement, the Contractor shall have the exclusive right to perform the servicing actions for the Ordering Party, but only with respect to the elements covered by the warranty granted by the Contractor, the repair or replacement of which performed outside the service workshop would result in the loss of the warranty for the Equipment. In respect of those elements of the Equipment for which the warranty period has expired, the Ordering Party shall have the right to commission servicing and repair actions to the Contractor or any other entities, regardless of the validity of the Agreement.
9. Within one month of receiving a request from the Ordering Party, but not more frequently than every 6 months, the Contractor shall prepare a list of basic spare parts and consumables along with their prices, as required by the schedule constituting [Annexe No. 5](#).
10. Materials and original spare parts necessary for servicing the Equipment and for proper operation of the cranes shall be provided and supplied by the Contractor. The Ordering Party shall have the right to purchase materials and parts on its own without placing an order with the Contractor. The Contractor shall always bear the costs of the purchase, delivery and replacement of spare parts, for the purpose of remedy of failures and repairs under the warranty liability.
11. For the purpose of securing efficient repairs, the Contractor may store, free of charge, after making prior arrangements with the Ordering Party, selected materials or spare parts for the cranes supplied under the Supply Agreement at a designated place/room at the terminal in Kutno.
12. The Parties shall comply with the terms of the warranty of good quality under the Agreement, the Specification and the Supply Agreement.
13. The Contractor provides a 12-month warranty of good quality for repaired/replaced parts and completed servicing and repair works. This provision shall be without prejudice to any longer periods of warranty of good quality provided for in the Supply Contract.
14. After each performed action, the Contractor shall make appropriate entries in the crane operation log and in the warranty card.
15. The Contractor acknowledges that the cranes supplied by the Contractor are of great economic importance to the Ordering Party and their operation is crucial to the proper functioning of the terminal. Therefore, the Contractor undertakes to carry out all actions (both during and after the warranty period) without unnecessary delay, so that any failure and shutdown last as short as possible. Without an important reason, the Contractor shall not refuse to perform the servicing actions on Saturdays other than public holidays.
16. The Contractor represents that the Contractor has the personnel and technical facilities allowing to repair the crane within **5 Business Days** of the date of notification by the

Ordering Party of any failure or malfunction and undertakes to perform each repair within the said time limit.

17. In the event that the Contractor fails to carry out the commissioned actions within the time limit specified in paragraph 16, the Contractor shall pay a non-exclusive contractual penalty of 1,000 EUR for each day of the delay, unless, in the events set out below, the Contractor provides a statement of grounds for the prolonged repair and the Ordering Party agrees to extend the duration of the repair. The Ordering Party expects the Contractor to explain, each time, in writing or by e-mail, the necessity to extend the repair time specified in paragraph 16. If major components, such as complete trolley, complete spreader, complete gantry structure, main beams, power generator, winch, trolley motor, crane motor gears, cab, platforms, cable chain, require replacement, the Ordering Party shall agree to extend the time limit for the repair of the crane and the exact repair date shall be agreed upon between the Parties. Any other repairs (including replacement of other spare parts) shall be carried out within the time limit specified in paragraph 16.
18. If the Contractor fails to comply with the readiness to provide servicing as specified in paragraph 5 (contact from the service technician to the hot-line notification) or in paragraph 6 (time to proceed to remedy the fault), the Contractor shall pay a non-exclusive contractual penalty of EUR 30 for each commenced hour of the delay as compared with the time specified in paragraphs 5 and 6, respectively. However, the penalty for the delayed contact by the service technician shall not be due, if the delay is not longer than 3 hours and, at the same time, the crane is improved on a remote basis or the work aimed at remedy of the failure starts within the time limit specified in paragraph 6. On the other hand, the penalty for the delay with the commencement of remedy of the failure shall not be due, if the delay is not longer than 6 hours and the repair of the crane is carried out within the time limit specified in paragraph 16.

§ 3

Non-Warranty and Post-Warranty Service

1. In the event that the Ordering Party reports any failure or a necessity to carry out a repair which, in the opinion of the Contractor, is not covered by the Contractor's warranty liability (due to the scope or duration of the warranty), the Contractor shall, without unnecessary delay, present to the Ordering Party the scope of the servicing actions required and a full price calculation, based on the rates specified in §4 paragraph 4 of the Agreement. If any failure or a necessity to carry out the repair has been reported by the Ordering Party as covered by the Contractor's warranty liability, then the Contractor shall, at the same time, justify why the Contractor has assessed the report differently.
2. If the Ordering Party, when accepting the cost calculation presented to the Ordering Party, assigns the Contractor to carry out the repair or any other servicing actions, the Contractor shall, without unnecessary delay, proceed to carry out the received assignment on the terms and subject to the conditions specified in the Agreement, save that the running of the time limits indicated in §2 paragraphs 6 and 16-17 shall not start from the time of reporting the failure or the necessity to carry out the repair but from the time of receiving the assignment from the Ordering Party.
3. The Ordering Party may release the Contractor from the obligation to present, without unnecessary delay, the calculation referred to in paragraph 1 and direct the Contractor to commence remedying the failure or carrying out the repair without waiting for the acceptance of the price calculation. In such event, the Contractor shall be obliged to proceed to the servicing actions without unnecessary delay, and present the price calculation in the course or after the completion of the works, together with an invoice.
4. If the Contractor indicates that only after remedying the failure or carrying out the repair was the Contractor able to determine that the failure was not subject to the Contractor's warranty liability, then the Contractor shall, without unnecessary delay, but no later than three months of remedying the failure or carrying out the repair, seek satisfaction of claims for payment of the compensation, together with the documents referred to in paragraph 1.

Within the same time limit, the Ordering Party may present a claim that the remedy of the failure or the repair, carried out as a service not covered by the Contractor's warranty liability, was covered by such liability in whole or in part. If either Party disagrees with the position of the other party, then the Party pursuing the claim shall appoint, in writing, a committee composed of representatives designated by each Party, to investigate the causes and time of occurrence of the failure or detection of the defect and the method of accounting for the costs of their remedy. The concurring findings of the committee shall be in the form of a bilateral protocol and bind the parties.

5. The committee referred to in paragraph 4 may also be appointed before the remedy of the failure or the repair. In such event, the Ordering Party may, without waiting for the commission to be appointed and for the result of its work, direct the Contractor to perform the servicing actions, for compensation, in accordance with paragraphs 2-3, and stipulate, at the same time, the obligation to refund the compensation if the result of the subsequent expert opinions prove favourable to the Ordering Party.

§ 4

Compensation

1. For the Contractor's readiness to perform the servicing actions and for performing the servicing actions referred to in §2 paragraph 1 letters (a)-(b), the Contractor shall be entitled, from the date of acceptance of the Equipment by the Ordering Party pursuant to the Supply Agreement, to a flat-rate quarterly compensation

in the net amount of EUR for servicing one eRTG (the "Servicing Price"), i.e. in the amount of $\frac{1}{4}$ of the annual "M" compensation per eRTG" indicated in **Annexe No. 3**. The said compensation for the first and/or last incomplete (calendar) quarter of the provision of the services under the Agreement shall be subject to a pro-rata reduction.

2. The Servicing Price shall include the costs of scheduled inspections (including, but not limited to, the costs of the time of the travel, business trips of the service technicians), the costs of any consumables (such as oils, filters, lubricants) and the costs of parts subject to replacement, as well as any other required servicing actions other than those specified in paragraphs 3 and 4.
3. The costs of remedy of any failure and repairs under the Contractor's warranty liability have been calculated by the Contractor and included in the prices of the Equipment payable under the Supply Agreement. It is the intention of the Parties to the Agreement and to the Supply Agreement to shape their rights and obligations in such manner that, during the basic warranty period, the Ordering Party does not bear any additional costs, apart from the Servicing Price, in connection with the servicing actions relating to remedying failures and carrying out repairs, unless the necessity to perform them results from any damage caused by any action of any employee of the Ordering Party or interference of third parties.
4. If the Ordering Party assigns remedy of any failure or a necessity arises to carry out a repair, not covered by the Contractor's warranty liability (due to its scope or duration) and in the event referred to in §3 paragraph 4 sentence 1, the following rates shall apply to the Contractor's compensation (indicated in Annexe No. 3):

a) labour: EUR net per manhour (one working hour),

b) flat-rate travel to the terminal: EUR net,

and prices of parts in accordance with the valid catalogue / price list of the Contractor with a discount of..... %.

5. If the Ordering Party assigns and the Contractor undertakes to perform the servicing actions on days other than Business Days or during hours other than 8.00 a.m. - 5.00 p.m. on Business Days, the Contractor shall be entitled to additional compensation:

- a) for performing periodic inspection, in the amount equal to the product of the hours of the inspection performed within the time limit so specified and the rate indicated in paragraph 4 letter (a),
 - b) for remedying a failure or carrying out a repair assigned in accordance with paragraph 4, in the amount equal to the product of the hours of the servicing works within the period so specified and the rate indicated in paragraph 4 letter (a), in the double amount.
6. The compensation referred to in **paragraphs 1-2** shall be paid on the basis of a VAT invoice issued by the Contractor at the end of each calendar quarter of service provision. The Ordering Party may withhold payment of the invoice until the completion of the inspection, which, in accordance with Annexe No. 5, shall be carried out in the quarter for which the invoice was issued.
 7. The compensation referred to in **paragraph 4** shall be paid on the basis of a VAT invoice issued by the Contractor after completion of the servicing actions and confirming the completion of the repair (or the servicing actions) on the basis of an acceptance protocol signed by the Ordering Party.
 8. Net amounts shall be increased by the applicable VAT at the rates in force in the Republic of Poland on the invoice date. VAT invoices shall be paid by transfer to the Contractor's bank account indicated in the VAT invoice, within 30 days of the invoice date.
 9. The date of payment of the invoice shall be the date of crediting the Contractor's bank account. The Ordering Party authorises the Contractor to issue VAT invoices without the Ordering Party's signature.
 10. The Servicing Price and the rates indicated in paragraph 4 letters (a) and (b) shall be valid until 31 December 2023. Upon expiry of that date, they shall be indexed to the level defined by the price and service growth indices published by Eurostat, in accordance with the rules set out in the Specification (Annexe No. 1).
 11. 2 months prior to the expiry of the time limit specified in paragraph 10, the Contractor shall submit a proposal to change the Servicing Price and the rates indicated in paragraph 4 letters (a) and (b) and a new price list / catalogue of parts. The Parties to the Agreement shall negotiate the presented proposals, taking into account market factors, up to the level defined by the HICP Inflation Rate 27 EU-countries.

§ 5

Principles of Service Provision

1. The Ordering Party undertakes to confirm the completion of the repairs or the servicing actions immediately after their completion and the verification that the cranes have been repaired or inspected, which shall be done by signing a service acceptance protocol.
2. A protocol signed by the Ordering Party's representative shall constitute a confirmation of the completion of the servicing actions, and if the works were performed for a compensation, its copy shall be attached to a VAT invoice in accordance with §4 paragraph 4.
3. The list of the persons authorised to sign the protocol is included in Annexe No. 4. A unilateral declaration of a Party sent to the other Party, in writing or by e-mail, indicating the new list of the persons authorised to sign the protocol on behalf of the Party, shall suffice for the change of the persons indicated in that Annexe.
4. The Contractor undertakes to perform the servicing actions with due diligence and care for the Equipment.
5. The Contractor shall provide the Contractor's employees with appropriate protective clothing, tools and materials used in the course of the performance of this Agreement.
6. The Contractor shall provide protective equipment, appropriate trainings and approvals, if required, as well as equipment to ensure that service technicians work in a completely safe manner.

7. If the Contractor entrusts any third party (i.e. a subcontractor) with the performance of the subject-matter of the Agreement, the Contractor shall be liable for the subcontractor's actions and omissions like for the Contractor's own actions and omissions.
8. The Contractor undertakes to comply with the internal regulations applicable at the terminal in Kutno, in particular those concerning rules of safety and movement at the terminal. The Supplier represents that the Supplier is familiar with the content of the regulations - "**Instructions on the rules for staying and moving around the Container Terminal of PCC Intermodal S.A. in Kutno**", constituting Annexe No. 6 to the Specification.
9. The Ordering Party shall notify the Contractor of each material change to the internal regulations applicable at the terminal by sending valid safety rules to the Contractor's correspondence address, at least two business days prior to the arrival of the service technicians at the terminal, and by explaining in the cover letter what the change involves.

§ 6

Confidentiality

Upon signing this Agreement, the Parties undertake to keep secret all information obtained in connection with the performance of this Agreement and represent that the obligation to keep secret includes the obligation to keep secret all obtained information, in particular documents, notes, materials, including those recorded by electronic means. The above obligation shall not apply to information which a Party may be obliged to disclose under mandatory provisions of law or in connection with EU funding of the purchase of the Equipment under the Supply Agreement, provided that the other Party is notified in writing.

§ 7

Security Deposit / Guarantee of Proper Performance

1. In order to secure the Ordering Party's claims, if any, for non-performance or improper performance of warranty repairs or any other servicing actions, the Contractor shall, within two weeks of the acceptance of the Equipment under the Supply Agreement, provide a Guarantee of Proper Performance of the Agreement, valid for 25 months, in the amount of 3% of the total purchase price payable under the Supply Agreement.
2. In the event of failure to provide the Guarantee of Proper Performance of the Agreement on time or provision of the Guarantee of Proper Performance of the Agreement of the wording not agreed upon with the Ordering Party, the Ordering Party shall be entitled to retain 20% of each instalment of the compensation due to the Supplier as a security guarantee until the amount of the security guarantee equals the amount of the required guarantee. The unused amount of the security guarantee shall be refunded on the date by which, in accordance with paragraph 1, the Guarantee of Proper Performance of the Agreement should be valid. The amount of the security guarantee refunded without any delay shall not be subject to interest.
3. If the Guarantee of Proper Performance of the Agreement is issued for a period shorter than specified in paragraph 1, then the Contractor shall, at least 14 days prior to the expiry of the existing one, present a new guarantee or a guarantee with an appropriately extended validity period, otherwise the Ordering Party shall use the existing guarantee to cover the deposit securing due performance of the Agreement.
4. In the event of reduction or exhaustion, if any, of the existing securities in the form of a security guarantee or the Guarantee of Proper Performance of the Agreement, the Contractor shall be obliged to replenish the amount of the security guarantee or the guarantee, respectively, within 14 days of receiving a written request from the Ordering Party.

§ 8

Term of the Agreement

1. The Agreement has been concluded for an indefinite period.
2. Following the expiry of the first four (4) years of the date of conclusion of the Agreement, the Agreement may be terminated by either Party with a 12-month notice.
3. During the first five (5) years of the date of conclusion of the Agreement, the Agreement may be terminated with a two-week notice only in the following events:
 - a) by the Ordering Party due to the Contractor's failure to comply with the provisions of the Agreement (in particular the lack of a set of spare parts corresponding to the needs, the lack of due diligence in carrying out the repairs, inspections, other servicing actions, failure to meet the time limits for performance of the works, i.e. violation of the time limits specified in §2 of this Agreement); the termination of the Agreement may only be made after a prior request of the Contractor to cease the violations, along with an indication of the violations, and after the ineffective lapse of the time limits set to cease the violations and remedy their consequences, which shall not be shorter than two weeks of the date of receiving the request,
 - b) by the Contractor due to the Ordering Party's default, for more than 30 days, with uncontested payments under this Agreement; prior to submitting a notice of termination, the Contractor shall be obliged to request the Ordering Party to pay the amounts due within the time limit not shorter than two weeks of the date of receipt of the request.
4. In the event of termination of this Agreement prior to the expiry of the first five (5) years of the date of its conclusion for reasons attributable to the Contractor, the Ordering Party shall be entitled to a contractual penalty of three hundred euros (EUR 300) for each day from the date of termination of the Agreement to the date on which the period of five (5) years (inclusive) of the date of its conclusion expires.
5. Termination of this Agreement shall be without prejudice to the obligations of the Parties under the Supply Agreement, in particular as regards the provided warranty.

§ 9

Final Provisions

1. Any change to the Agreement shall be made in writing for its validity, in the form of an amendment, signed by duly authorised representatives of the Ordering Party and the Supplier.
2. Matters not provided for in the Agreement shall be governed by the applicable provisions of the Polish law, in particular the Polish Civil Code.
3. Any disputes shall be settled by a common court of jurisdiction over the Ordering Party's registered office.
4. The Agreement has been drawn up in two counterparts, with one provided to each Party.

§ 10

Annexes

The following Annexes shall constitute an integral part of the Agreement:

Annexe No. 1 - **Specification of the Subject-Matter of the Tender Procedure** (*text of the final version published on the Client's website at www.pccintermodal.pl/przetargi/*);

Annexe No. 2 **Questions and Answers** (*regarding the subject-matter of the tender procedure - text published by the Client at www.pccintermodal.pl/przetargi/*);

Annexe No. 3 - **Price Form** (*completed by the Tenderer*);

Annexe No. 4 - **Contact details of the Client's and the Supplier's representatives** authorised to perform activities relating to the cranes, including to sign protocols (form prepared by the Ordering Party);

Annexe No. 5 - **Schedule of scheduled servicing works** (*prepared by the Tenderer and consistent with the guidelines included in the Specification*);

Annexe No. 6 - **Terms and Conditions of the Warranty** (*prepared by the Tenderer*), provided that they shall apply to the extent they do not limit the rights of the Ordering Party described in the Specification, the Agreement and the Supply Agreement;

Ordering Party / (Client):

Contractor / (Supplier):