**THREE RMG CRANE SUPPLY AGREEMENT**

*(The Client expects the Tenderer to submit a Tender within the meaning of Article 66 Section 1 of the Polish Civil Code, conforming to the form below of the RMG crane supply agreement, by:*

- *completing only the dotted spaces, i.e. the data concerning the Tenderer and in §4.13 and* *§24 paragraph 2 letter (b),*

*- signing, in accordance with the method of representation of the Tenderer, the last page of the agreement and each of 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 Client, after it has been countersigned and initialled by the Client.*

*The Client shall complete this agreement with the number and date of conclusion in the title, and complete §3.3, §3.4, §3.5 and the Annex no. 3, page 2, columns E and G.*

*The Agreement shall be executed on the date and at the place of signature by the Client 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.*

\* With reference to the Annexes no. 5-12 of the Specification of the Subject-Matter of the Tender Procedure, the Ordering Party expects them to be signed electronically only with a qualified signature and returned with the Tender to the following address: przetargi.rmg@pcc.eu. Annexes no. 1-4 to the Specification of the Subject-Matter of the Tender are not the Annexes either to RMG Crane Supply Agreement or Servicing Agreement, except that the Price form, a specimen of which is annexed to the Specification under no.2, when completed will become Annex no. 3 to both agreements.

**RMG CRANE SUPPLY AGREEMENT**

**No. \_\_\_\_\_\_\_\_\_\_\_\_/2022**

entered into as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2022 in Gdynia

 *(to be completed by the Client)*

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 "**Client**" or the "**Ordering Party**"),

represented by:

Adam Adamek - Vice-President of the Management Board

and

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(the “**Supplier**”), represented by:

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**PREAMBLE:**

1. This Agreement is entered into as a result of the tender procedure announced by the Client for the **supply, together with installation, commissioning and servicing, of three gantry cranes (RMG); one of te cranes within the project** "Expansion of the intermodal container terminal in Kutno and the purchase of the equipment supporting its activities" and two cranes within the project “Expansion of the intermodal handling terminal together with accompanying facilities in Brzeg Dolny, ul. Sienkiewicza 6.”

II. The Supplier hereunder undertakes, in particular, to design and then manufacture, supply and prepare for the Client’s operation three RMG gantry cranes, in accordance with the requirements specified in the Agreement and its Annexes.

III. Concurrently with the conclusion of this Agreement, the Parties hereto conclude the **Servicing Agreement** in respect of the cranes supplied as part of the performance of this Agreement.

**§ 1.**

**DEFINITIONS**

Unless the context requires otherwise, the following terms used in this Agreement (the "**Agreement**") shall have their respective meanings:

1. **"Total Purchase Price"** - the amount of the net flat-rate compensation stipulated for the Supplier in §3.3 and § 3.4 of the Agreement (i.e. the purchase price due for the performance of the obligations under the Agreement for the supply of three RMG gantry cranes, increased by the prices for individual components of the Optional Equipment selected by the Client in Annex No. 3, page 2),
2. **"Design Documentation** " - the documentation to be prepared by the Supplier prior to commencing construction of cranes within each of the Tasks,
3. **"Technical Documentation** " - the technical documentation in Polish and English, to be provided to the Client by the Supplier in accordance with the Delivery-Handover Protocol (Annex No. 4) and technical requirements,
4. **“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,
5. **"Guarantee of Proper Performance of the Agreement"** - an irrevocable, unconditional bank or insurance guarantee, payable on first demand, issued by an entity to the Client as the beneficiary, of the content confirmed in advance by the Client,
6. **"Advance Payment Guarantee**" - an irrevocable, unconditional bank or insurance guarantee, payable on first demand, issued by an entity to the Client as the beneficiary, of the content confirmed in advance by the Client,
7. **"Set of Structural Elements"** - the crane components indicated in Sections 4.1 to 4.16 of Chapter "FUNCTIONAL DEVICES AND EQUIPMENT, in Part I of the Specification of the Subject-Matter of the Tender Procedure,
8. **"Place of Delivery"** - the Client's container terminal in Kutno, ul. Intermodalna 5 and/or the Client’s container terminal in Brzeg Dolny, ul.Sienkiewicza 6
9. **"Optional Equipment”** - the equipment selected by the Client from the equipment offered by the Supplier in Annex No. 3, p.2.
10. **“Delivery-Handover Protocol”** – the protocol signed by the Client and the Supplier after the final acceptance of the Devices by the TDT, confirming the performance by the Supplier of the contractual obligations, referring to the task, whose form is defined in Annex No. 4; If, for reasons attributable to one of the parties, its representatives do not participate in the final acceptance of the gantry crane that refers to the particular Task, the other party, after an additional period of not less than 14 days from making the call to participate in the acceptance activities, will be entitled to carry out this final acceptance on its own; in this case, the protocol drawn up in accordance with Annex 4 and signed by only one party should be sent to the other party immediately; performance of the Task 1 and task 2 will be confirmed by a separate Delivery-Handover Protocol.
11. **"TDT** " - Transport Technical Supervision, a state-owned legal person established on the basis of Article 42 Section 1 of the Technical Supervision Act of 21 December 2000 (consolidated text, Dz.U. 2021, item 272), authorised, inter alia, to issue operating permits.
12. **“Devices”** -three gantry cranes Type RMG including all equipment and infrastructure, the manufacture and delivery ot which is the responsibility of the Supplier, as specified in the Annex no. 1. “Device” any of the three cranes including together with the associated equipment and infrastructure.
13. “Task 1” delivery of one RMG crane to container terminal in Kutno, in accordance with the requirements of the Annex no. 1.
14. “Task 2” delivery of two RMG cranes to container terminal in Brzeg Dolny, in accordance with the requirements of the Annex no.1.
15. “Task” or “Tasks” – Task 1 or Task 2, or Task 1 and Task 2 together.

**§ 2.**

**SUBJECT-MATTER OF THE AGREEMENT**

1 The subject-matter of the Agreement shall be **three RMGcranes**, described in the Specification of the Subject-Matter of the Tender Procedure (the "Specification" - Annex No. 1), complete and meeting the requirements of the regulations and not having any defects or non-conformities at the time of final acceptance, designed, manufactured, installed, checked, delivered together with the Technical Documentation, approved for operation by the TDT, commissioned and handed over to the Client by the Supplier in accordance with the Agreement.

2. The Supplier hereunder undertakes to perform the following scope of actions:

1. design of the RMG cranes, taking into account optimal operation and cost parameters, respectively for for PCC Intermodal S.A. terminal in Kutno (Task 1) and PCC Intermodal S.A. terminal in Brzeg Dolny (Task 2), together with making necessary approvals, including the approvals made with the technical supervision authority, occupational health and safety assessor and fire protection assessor;
2. manufacture of two complete RMG cranes, together with the equipment conforming with the Specification, including the Optional Equipment, if any, as selected by the Client in §3.3 and §3.4 , in accordance with Annex No. 3,
3. delivery to the Place of Delivery , together with unloading, installation, together with necessary insurance coverage for the scope of the works,
4. performance of technological start-ups and the necessary operational tests and participation in acceptances;
5. development and submission of complete Technical Documentation of the Devices in paper and electronic versions,
6. training the personnel designated by the Client in the field of management, operation and maintenance of the Devices at the Place of Delivery, in accordance with the Specification,
7. preparation and submission of instructions for use and operation of the Devices,
8. obtaining appropriate authorisations for the Devices from a competent body, together with the approval for use,
9. performance of all actions defined in the Specification and the Agreement, and all other actions necessary for commencement of the proper operation and use of the Devices,
10. providing warranty service of the Deviceswithin the scope and period specified in the Agreement, in the manner specified in the Servicing Agreement,
11. assistance with development of the Client’s internal instructions concerning the training of operators, on the basis of which the Client will train new operators and the competent authority will conduct examinations for them, leading to obtaining appropriate licences.

3. The actions referred to in paragraph 2 above shall be performed by the Supplier on the terms and subject to the conditions set out in the Agreement and its Annexes, and in accordance with standards, laws and regulations, as well as the requirements of the TDT, if such requirements are specified by the TDT.

4. The Supplier represents that the Supplier has become familiar with the received tender documentation, in accordance with which the Supplier shall perform the subject-matter of the Agreement and that the Supplier makes no reservations concerning it, in particular reservations as to the comprehensibility of the requirements imposed by the Client for the Devices.

5. The obligations under the Agreement shall be performed by the Supplier with the utmost care required from a professional (i.e. an entity conducting economic activity within the scope corresponding to the subject-matter of the Agreement) and in accordance with the highest standards applicable to performance of this type of works and the solutions.

6. As part of the subject-matter of the Agreement and within the compensation provided for in the Agreement, the Supplier shall also make all necessary final mechanical, electrical and hydraulic adjustments to the Devices.

7. On the basis of an additional agreement or an annex to this Agreement, the Supplier undertakes, for an agreed remuneration, to retrofit the Devices to enable them to operate also in automatic mode, together with additional personnel training and assistance with the instruction revision, as specified in letters f), g) and k).

**§ 3.**

**PRICE**

1. For the delivery of one gantry crane and performance of the actions stipulated in the Agreement, providing its possibility of operating in the terminal in Kutno (Task 1), the Client undertakes to pay the Supplier remuneration defined as the purchase price in the amount indicated in Annex No. 3 [p. 1. row 19 "PKT" column E] .
2. For the delivery of two gantry cranes and performance of the actions stipulated in the Agreement, providing their possibility of operating in the terminal in Brzeg Dolny (Task 2), the Client undertakes to pay the Supplier remuneration defined as the purchase price in the amount indicated in Annex No. 3 [p. 1 row 20 "PBD)" column E].
3. In connection with the selection by the Client of the Optional Equipment for the crane covered by **Task 1**, indicated in Annex No. 3, page 2 marked with the number:

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the net Total Purchase Price for **Task 1** shall be:

EUR \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*(to be completed by the Client)*

(in words):

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

*(to be completed by the Client)*

1. In connection with the selection by the Client of the Optional Equipment for the crane covered by **Task 2**, indicated in Annex No. 3, page 2 marked with the number:

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the net Total Purchase Price for **Task 2** shall be:

EUR \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*(to be completed by the Client)*

(in words):

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

*(to be completed by the Client)*

1. The net Total Purchase Price, i.e. the sum of prices for the Task 1 and Task 2 shall be:

EUR \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*(to be completed by the Client)*

(in words): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

*(to be completed by the Client)*

1. Each of the net prices, i.e. exclusive of VAT, shall be increased with VAT in accordance with the applicable laws and regulations.
2. The prices specified in paragraphs 1-5 shall be flat-rate prices. The foregoing means that the Supplier has included in the prices all costs of purchase of materials and services relating to the performance of the subject-matter of the Agreement, i.e. the design, production, transportation of the Devices to the Place of Delivery, as well as the costs relating to its installation and provision of warranty service, i.e. travel and stay of service technicians at the Place of Delivery (within the scope provided for in a separate Servicing Agreement).
3. The costs of any regulatory obligations, such as taxes, customs duties, fees and costs that may be imposed by competent state authorities in connection with the sale and supply of the Devices and the performance of the services specified in the Agreement, including the costs of approvals, permissions and fees relating to organising and carrying out the acceptances, shall be the sole responsibility of the Supplier and are included in the prices specified in paragraphs 1-5.
4. Unless expressly provided otherwise in the Agreement, the prices specified in paragraphs 1-5 shall include the performance of all obligations of the Supplier under the Agreement, including those not mentioned in the Agreement and its Annexes, which are necessary to perform the subject-matter of the Agreement. The prices shall also include all elements necessary for the supply of the Devices and its optional retrofitting, if any, the proper performance and completion of the accompanying services, and the remedy of any defects covered by liability under the warranty, found until the expiry of the warranty period according to §14.1-4 .

**§ 4.**

 **TERMS OF PAYMENT**

1. Within 60 days of the conclusion of the Agreement, the Supplier may notify the Client that the Supplier requires payment of one or more instalments of advances on account of the Price for one or two Tasks. The number of instalments of advances, the amount of the instalments and the due dates may not be greater or fall earlier than, respectively:
2. 20% of the amounts referred to in §3.3, §3.4 increased by VAT in accordance with applicable laws and regulations – but not earlier than within 5 weeks of the date of concluding the Agreement;
3. 30% of the amount referred to in §3.3, increased by VAT in accordance with applicable laws and regulations - within 30 days of providing the Client with a progress report and complete Design Documentation referring to **Task 1**, but no earlier than 7 months of the date of concluding the Agreement;
4. 30% of the amount referred to in §3.4, increased by VAT in accordance with applicable laws and regulations - within 30 days of providing the Client with a progress report and complete Design Documentation referring to **Task 2**, but no earlier than 7 months of the date of concluding the Agreement;
5. 30% of the amount referred to in §3.3, increased by VAT in accordance with applicable laws and regulations - within 30 days of delivery and submission by the Supplier of a statement on delivery of the Set of Structural Elements of the crane covered by **Task 1** (loco), to the Place of Delivery, ready for installation.
6. 30% of the amount referred to in § 3.4, increased by VAT in accordance with applicable laws and regulations – within 30 days of delivery and submission by the Supplier of a statement on delivery of the Set of Structural Elements of the crane covered by **Task 2** (loco), to the Place of Delivery, ready for installation.
7. The payments referred to in paragraph 1 letters (a)-(e) shall be in the form of advance payments towards the Price for Task 1 and/or Task 2 due for the performance of all contractual obligations covered by each of the Tasks.
8. The Supplier shall be obliged to pay each advance instalment within 30 days of the date of receiving the request for payment, but no earlier than the dates specified in paragraph 1 letters (a)-(e).
9. Payments of the advances referred to in paragraph 1 letters (a)-(e) shall be made on condition of delivering, at least 30 days prior to the date of payment of the advance, an appropriate pro-forma invoice, an Advance Payment Guarantee issued for the amount equal to the amount of the advance instalment, which is to guarantee the refund, if any, of the advance, and a Guarantee of Proper Performance of the Agreement In the event of failure to deliver, 30 days prior to the expiry of the due date of the advance payment, a pro forma invoice, the Advance Payment Guarantee and the Guarantee of Proper Performance of the Agreement, the Client shall be obliged to pay the advance within 30 days of the date of delivery of the last of these three documents.
10. Each Advance Payment Guarantee **shall be valid** from the due date of the advance, the refund of which is secured by the Advance Payment Guarantee, but no later than the date of its payment. The validity of the Advance Payment Guarantee shall expire no earlier than 7 days after the expiry of the time limit for the **final acceptance**, specified in Annex No. 5, of the cranes at the Place of Delivery settled respectively.
11. If any of the time limits for the final acceptance referred to in paragraph 5 is extended on the basis of contractual provisions or as a result of amendments to the Agreement, including the schedule established in Annex No. 5, then the Supplier shall be obliged to extend the validity period of the Advance Payment Guarantee accordingly.
12. The Client shall be entitled to satisfy from the Advance Payment Guarantee the Client’s claim for the refund of the advance secured with the Advance Payment Guarantee also in the event that, 7 days prior to the expiry of its validity period, the delivery of cranes covered by Task secured with advance payment is not confirmed by the Delivery-Handover Protocol, and the Supplier fails to provide the Client with the Advance Payment Guarantee with an adequately extended validity period.
13. After confirmation of the handover of the cranes covered by the Task secured with advance payment, by the Delivery-Handover Protocol, the Client shall, at the Supplier's request, return the original guarantee to the guarantor or otherwise release the guarantor from the liability under the guarantee. After lapse of the validity of the Advance Payment Guarantee, the Client shall return to the guarantor the original guarantees issued in paper form.
14. If, prior to the payment of an advance instalment, the Supplier fails to provide the Client with an appropriate advance invoice, the Supplier shall do so no later than 7 days of receiving each advance instalment. In the content of each invoice (pro forma, advance invoice and final invoices) the Supplier shall be obliged to indicate which task and stage of the Agreement performance it concerns (in accordance with milestones).
15. The Prices for Task 1 and Task 2 , referred to in § 3.3 and § 3.4 , increased by VAT in accordance with the applicable laws and regulations and reduced by the amounts of previously paid advances, shall be paid within 30 days of the date of handing over to the Client each of the (final) invoices issued on the basis of the Delivery-Handover Protocol signed by both parties that confirms completion of the Task.
16. The payments provided for in this Section shall be made in EUR, by bank transfer to the following bank account indicated below by the Supplier:

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*(to be completed by the Tenderer/Supplier)*

The Supplier may change the account indicated above by notifying the Client in writing to the address of the registered office of PCC Intermodal S.A. in Gdynia, and, at the **same time, by sending a scan of the letter** in the form of a PDF file to: [dariusz.jablonski@pcc.eu](file:///C%3A%5CUsers%5Cdjablonski%5CDocuments%5CPCC_Intermodal%5CPrzetargi_2017_2023%5CKutno%5CZakup_eRTG%5Cpublikacja_09.09.2021%5Cdariusz.jablonski%40pcc.eu) and biuro.sosnowiec@pcc.eu The letter shall be signed by the persons authorised to make declarations of will on behalf of the Supplier.

1. The Supplier shall be entitled to charge the Client with statutory interest, if any payment due to the Supplier has not been made on time (except where the Client is entitled to withhold payment or refuse to make payment).

**§ 5.**

**PLACE AND SCHEDULE OF DELIVERIES**

1. The Supplier shall deliver the Devices to the Place of Delivery under DDP (INCOTERMS 2010). The Agreement shall be performed in accordance with the Schedule of the manufacture, installation and commissioning of the cranes, specified in Annex No. 5 (the "Schedule").
2. Notwithstanding the specific provisions of the Schedule, the following stages of the performance of the Agreement shall be completed no later than:
	1. preparation of the complete Design Documentation of the Devices together with all the necessary approvals - within **six months** of the date of concluding the Agreement;
	2. delivery to the Place of Delivery of the Set of Structural Elements for both cranes - within the dates:
3. 31 January 2023 referring to Task 1
4. 28 February 2023 referring to Task2
	1. installation and commissioning of **ready** for technical acceptance and commissioning and ready for operator training:
	2. two gantry cranes covered by Task 2 – not later than 30 April 2023
	3. one gantry crane covered by Task 1 – not later than 31 May 2023
	4. obtaining the required permit for use and handing over to the Ordering Party together with appropriate Technical Documentation and certificates of personnel training in operation and maintenance, confirmed by signing the Delivery-Handover Protocol:
	5. two gantry cranes covered by Task 2 – not later than **31 May 2023**
	6. one gantry crane covered by Task 1- not later than **30 June 2023**
5. In the event that the payment of any of the advance instalments is delayed through the exclusive fault of the Client or any entity remaining under the control of the Client, then the time limits set in the Schedule, the running of which did not finish before the occurrence of the delay with payment of the advance, shall be extended, at the request of the Supplier submitted to the Client, by a period no longer than the time of the Client's delay with payment of the advance.

**§ 6.**

**DELAY, CONTRACTUAL PENALTY**

1. In the event of any delay in the performance of the contractual obligations in relation to the time limits set out in the Schedule, the Supplier shall notify the Client in writing or by email, without unnecessary delay, but no later than forty-eight (48) hours of becoming aware of such delay. The Client's receipt of the Supplier's notice shall not be deemed as releasing the Supplier from any obligations.
2. The Client shall be entitled to charge contractual penalties for the default with respect to each of the time limits specified in **§5.2, points 1-4**. The amount of the contractual penalty shall be 0.04% of the Total Purchase Price, for each full day of the delay with respect to each of the time limits specified in §5.2, points 1-4. However, the penalty shall not be due if, despite the failure to meet the time limit specified in §5.2, points 1,2 or 3, the Supplier meets the time limit for completing the next stage (milestone for each Task), i.e. the time limit specified respectively in §5.2 points 2,3 or 4. In view of the foregoing, the amount of the contractual penalty for the failure to meet the time limit specified in, for example, §5.2 point 2 shall become due only on the date resulting from §5.point 3 letter (a), provided that the Supplier is in default with the completion of the second stage on that date.
3. Exceeding the time limit for the final acceptance specified in §5.2, point 4 letter (a) or (b) by no more than 5 Business Days shall not give rise to charging the contractual penalty; however, if the default is longer, the penalty shall be charged for each day, counting from the date specified in §5. 2, point 4, letter (a) or (b).
4. The total amount of the contractual penalties charged under paragraphs 2-3 may not exceed 10% of the Total Purchase Price.
5. Contractual penalties specified in sec. 2 are exclusive, and therefore the Client will not be entitled to claim additional compensation under the terms of § 23. Payment of the contractual penalty shall not exclude the Client’s right torescind the Agreement in accordance with §22 of the Agreement. The payment of a contractual penalty shall not release the Supplier from the Supplier’s obligation to complete and supply the Devices or to perform any other obligation under the Agreement.

**§ 7.**

**TRANSFER OF RISK**

**AND OWNERSHIP RIGHT**

1. Upon signing the Delivery-Handover Protocol by the Parties, the ownership of the Device (together with the related rights, as referred to in § 20) and the risk of loss of or damage to the Device covered by this protocol and the related Design Documentation and Technical Documentation shall pass to the Client.
2. The Supplier shall be fully liable for all risks relating to the performance of the subject-matter of the Tasks; therefore, the Supplier shall be obliged to provide for insurance of the Devices against all types of risk occurring during production, transportation and installation until the signature of the Delivery-Handover Protocol referring to each of the Tasks by the Client. Copies of the insurance policies shall be provided by the Supplier to the Client within two weeks of receiving a request from the Client.
3. Any insurance the Supplier is required to obtain under the Agreement referring to each of the Tasks shall be maintained by the Supplier until the Parties sign the Delivery-Handover Protocol referring to each of the Tasks.
4. If the Supplier fails to extend the validity of the insurance agreement or to conclude a new insurance by the date of signing the Delivery-Handover Protocol by the Parties and before the expiry of the validity of the insurance policy for any Devices, then the Client shall, after an ineffective lapse of the two-week period stipulated in paragraph 3, have the right to insure the Device on its own and charge the Supplier with the costs of such insurance.
5. Any amounts to be paid to the insurer shall be charged to the Supplier and shall be paid by the Supplier.

**§ 8.**

**SPECIAL OBLIGATIONS**

**OF THE SUPPLIER**

1. The Supplier undertakes to carry out the works at the Place of Delivery taking into account uninterrupted operation of the terminal.
2. Prior to commencing works at the terminal at the Place of Delivery, the Supplier shall be obliged to secure a source of electricity. The Client represents that the Client has access to the power line allowing the Supplier to use energy and to settle on the basis of indications of the meter intended for this purpose. The principles of use, if any, of the power line to which the Client has access shall be specified in a separate agreement.
3. The Supplier shall be obliged to obtain the approval for use of the Devices, issued by the TDT, in accordance with the applicable laws and regulations.
4. The Supplier shall be obliged to organise the delivery each of the Devices in all aspects to the place at the terminal indicated by the Client, including provision of installation personnel, and provide for performance of all actions necessary to commence undisturbed operation of the Device in accordance with applicable laws and regulations.
5. The Supplier shall be liable for carrying out all tests and trials required to issue a permit to operate the Device, as well as the required health and safety measurements. All costs of such tests, trials and measurements shall be the sole responsibility of the Supplier. The results of tests, measurements, etc., along with the obtained certificates, etc., shall be provided to the Client.
6. The Supplier shall (i) comply with all applicable safety rules imposed under applicable laws and regulations as well as those imposed by the Client; and (ii) ensure the safety of all persons involved and any property to be used at the time of the delivery, installation and commissioning of the Device.
7. In particular, the Supplier shall become familiar and comply with the provisions of the Specification and the Client's terms and conditions, defining the principles of staying and moving respectively at theContainer Terminal of PCC Intermodal S.A. in Kutno and at the Container Handling Terminal of PCC Intermodal S.A. in Brzeg Dolny, in the version valid as of the date of commencement of the works at the terminal, as well as their updates, if such updates are provided to the Supplier. The Supplier also undertakes to make all entities acting on behalf of the Supplier familiar with these principles and cause such entities to comply with these principles. 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", as well as the regulations applying for drivers in the area of terminal – 1.06.2016 constituting Annex No. 6(a) to the Specification as well as the Instruction on the rules for staying and moving around the Container Terminal of PCC Intermodal S.A. in Brzeg Dolny, along with the rules applicable to drivers – 1.09.2015, attached to the Specification as Annex no. 6 (b)
8. The Supplier shall ensure that the Device, as well as all materials, tools, equipment and other facilities, whether purchased, hired or otherwise made available or provided by the Supplier in connection with the Agreement, are safe and in a good condition allowing to accomplish the purpose for which they were supplied.
9. In the event that the negligence of the Supplier or persons for whom it is responsible in the performance of the Agreement results in the imposition of a fine or an order to take corrective actions due to non-compliance with the provisions related to safety, including environmental contamination, the Supplier will be obliged to cover such penalties and to remove the effects of violation of the law.
10. The Supplier shall fulfil the Supplier’s obligations under the Agreement in a competent and professional manner, with the use of such techniques and procedures that ensure the safety of persons and property.
11. The Supplier shall be liable for the proper quantity, stability and safety of the Devicesand all other materials and equipment being the subject-matter of the Agreement. The Supplier shall, whenever required by the Client, provide details of the arrangements and methods adopted by the Supplier to ensure such proper quantity, stability or safety. No material changes in such arrangements and methods shall be made without the written consent of the Client.
12. The Supplier shall bear liability for the performance and functionality of the Devices and other materials, resources and equipment provided by the Supplier or by the Supplier's third-party suppliers, included in the Devices or used in the course of the performance of the services and for the purpose of the completed works or works in progress.
13. The Supplier shall be solely liable for any damage, destruction or loss, of or to the Devices and other materials, tools and equipment, owned or rented by the Supplier, used or intended to be used for the purpose of the fulfilment of the Supplier's obligations under the Agreement, except for damage caused by the Ordering Party or persons for whom he is responsible.
14. The Supplier shall be liable for the actions and omissions of the Supplier’s subcontractors, if any, like for the Supplier’s own actions and omissions.
15. The Supplier is obliged to conclude a contract of further entrusting the processing of personal data in accordance with Annex 5 to the Specification. If the Supplier is delayed in accepting the offer of such an agreement by more than two weeks from the date of the call by the Client, the Client will be entitled to withhold the payment of an amount equal to ¼ of the first installment of the advance payment referred to in §4.1, point 1. The retained amount of the advance payment will become due after 7 days from the delivery of the contract signed by the Supplier to the Client of further entrusting the processing of personal data. If the Supplier is delayed in accepting the offer of the aforementioned contract by more than two months from the conclusion of this Contract, the Client shall be entitled to charge a contractual penalty in the amount of EUR 100 (one hundred euro) for each day of delay.

**§ 9.**

**AMENDMENTS TO THE DOCUMENTATION**

1. The Supplier shall be entitled to propose any amendments to the details of the Design Documentation or the Technical Documentation at no cost for the Client, provided that such amendments constitute an improvement in the value or utility of the Devices and are approved by the Client. For avoidance of any doubt, the Supplier shall be solely liable for all costs incurred in connection with the amendments and/or corrections in the Design Documentation or the Technical Documentation, except where such amendments and/or corrections are due to the fault or negligence of the Client.
2. Within three weeks of the receipt from the Supplier of a given batch of the Design Documentation or the Technical Documentation, the Client shall be entitled to receive clarifications and propose their amendments or corrections. As soon as practicable after receiving a request from the Client to make clarifications, introduce amendments or corrections, the Supplier shall provide a substantive reply, in writing or by e-mail, in which the Supplier shall inform the Client, in particular, whether the amendments proposed by the Client are technically feasible, as well as whether they will not result in a change of the schedule and whether they involve the necessity to pay additional compensation, which shall require an amendment to the Agreement under §18 paragraphs 2-3.

**§ 10.**

**SPECIFIC OBLIGATIONS OF THE CLIENT**

1. The Client shall obtain and present to the Supplier, at **least 5** months before the time limit, specified in the Schedule, for the final acceptance of the last of Devices, at the Client’s own expense, all permits and decisions authorising to place the Devices at the terminal in Kutno.
2. The Client shall be liable for organisation and fulfilment of the following conditions at the Place of Delivery and shall:
3. provide the Supplier with the agreed yard area for the purpose of unloading, testing and commissioning the Devices, which shall be free from any debris and from containers, vehicles, other equipment or its parts and free from the conduct of other activities by the Client;
4. be obliged to arrange an unloading place that is free from any terminal charges;
5. be obliged to allow passage with the materials and structural parts of the cranes and to remove all obstacles from the unloading area, in accordance with the Supplier's instructions, if it is necessary for unloading;
6. provide the Supplier with information on the strength parameters of the yard;
7. provide the Supplier with general lighting at the Place of Delivery and the possibility of using sanitary facilities (toilets, showers) free of charge;
8. provide test weights for carrying out load tests for the purpose of testing each of the Devices at the Place of Delivery.

**§ 11.**

**INSPECTION**

1. The Client and/or the Client’s authorised representatives shall have the right to inspect the progress of the works and the quality of the materials used and the workmanship of the Supplier in the production process. Starting from the eighth month after the conclusion of the Agreement, the Supplier shall provide the Client, at least once per month, with detailed reports on the progress and advancement of the works connected with the Devices.
2. The Supplier shall allow access to the Supplier’s own work and the work carried out by the Supplier’s subcontractors, on the agreed days and at agreed times after receiving a notice from the Client, sent at least one week in advance.

**§ 12.**

**OPERATIONAL TESTS BEFORE ACCEPTANCE AND HANDING OVER FOR USE**

1. The final acceptance and handover of each of the Devices for use shall be preceded by commissioning each of the Devices and performance of acceptance tests and trials, as specified in Annex No. 4 (Delivery-Handover Protocol). After acceptance by the TDT, each crane shall be tested for at least two weeks in the presence of the Supplier's commissioning engineer. During this period, trainings of the crane operators designated by the Client shall also be conducted.
2. The Client shall be obliged to provide, free of charge, crane operators in order to perform acceptance tests at the Place of Delivery, under the supervision of an operator - instructor provided by the Supplier.
3. The Client may request that the tests and trials conducted prior to the final acceptance be repeated, also those previously completed with a positive result, provided that the time required to carry them out does not significantly prolong the acceptance procedure.
4. The Supplier shall notify the Client of the dates of the technical acceptance and test commissioning of each crane at least 7 days prior to the planned date of acceptance, so that the Client may send the Client's representative(s). If the person representing the Client fails to arrive, then a test and trial report shall be sent to the Client, and it shall be accepted as correct. All costs connected with tests, interim acceptance and final acceptance shall be borne by the Supplier (such as necessary services, flights, accommodation, board, etc.).
5. If tests show that the Device does not conform with the Agreement, the Specification, or the Design Documentation or the Technical Documentation, then the Supplier shall, at the Supplier’s own expense, without unnecessary delay, remedy any defects or non-conformities in order to bring the Device into compliance with those documents. Then, at the Client's request, new tests shall be conducted at the Supplier's expense. The tests shall be repeated until the result confirms that the Device complies with the Agreement, the Specification and other documents defining the requirements for the Devices, subject to paragraph 6 The Supplier undertakes that all defects and non-conformities found by the Client shall be remedied prior to the final acceptance of the each of the Devices by the Client.
6. The Client should accept the Device if the identified defects or non-conformities are not material (they do not affect the continuous operation of the Device, the operating efficiency or the safety requirements). In such event, the Parties shall draw up a list of such minor non-conformities in the Delivery-Handover Protocol, and the Supplier shall be obliged to remedy the listed non-conformities within the time limit specified in the Protocol, not longer than 2 weeks.

**§ 13.**

**ACCEPTANCE**

1. The Supplier is obliged to notify the Client in writing of the planned date of the final acceptance of the Devices (one crane covered by Task 1 and two cranes covered by Task 2) at least 10 days in advance. The course of the acceptance in case of each of these acceptances shall be confirmed by the Delivery-Handover Protocols in accordance with Annex No. 4. If the cranes covered by the Task have successfully passed all acceptance tests in accordance with the Agreement, and the Supplier has provided the approval for them issued by the TDT, then in the event that the duly notified Client fails to proceed to the final acceptance, the Supplier after an additional period of not less than 14 days from making the call to participate in the acceptance activities, shall be entitled to unilaterally prepare the Delivery-Handover Protocol, which shall be the basis for issuing the invoice referred to in §4 paragraph 10.
2. The Client may not put any of the gantry cranes into operation before its acceptance confirmed by the Delivery-Handover Protocol (except for operation for testing and control purposes in accordance with this Agreement). However, if the Client puts the crane into operation before signing the Delivery-Handover Protocol without the Supplier's written consent, the crane shall be deemed accepted.

**§ 14.**

**QUALITY WARRANTY, GUARANTEE OF PROPER PERFORMANCE OF THE AGREEMENT**

1. The Supplier hereby warrants that the Devices to be supplied by the Supplier will be free from any defects caused by faulty design, materials or workmanship that adversely affect or prevent the proper functioning of the Devices, as set out below and in Anndex no. 6 to the Servicing Agreement. In the event of occurrence of such defects during the warranty period, the Supplier will supply, during the warranty period, free of charge, the appropriate spare parts and provide qualified personnel to perform the necessary works, on the terms and subject to the conditions specified in the Servicing Agreement.
2. The warranty for each of the Devices and all its parts shall be valid for the period of **2** **years** of the date of signing the Delivery-Handover Protocol for each of the Devices (basic warranty). The warranty for any replaced or repaired parts of the Device shall reach at least **1 year** of the acceptance of the replacement or repair, but no less than the basic warranty period. All the warranties shall expire latest 3 years from the signing of the Delivery-Handover Protocol, except for the warranty for the paint coating, durability of the color of the varnish coat and steel structures. The warranty for the paint coating shall be valid for the period of **5 years**, on the durability of the color of the varnish coat on the crane structure for a period of 8 years and the warranty for steel structures shall be valid for the period of **10 years** of signing the Delivery-Handover Protocol respectively to each of the cranes. The Client shall notify the Supplier by e-mail of any defects found in the Devices, the remedy of which is requested by the Client under this warranty. The Supplier shall contact the Client and do the repair without undue delay after receipt of such notice.
3. The Supplier may refuse to do a free warranty repair if the necessity for such repair was due to the fact that the Device was used, operated or maintained contrary to the Supplier's written instructions provided to the Client together with the Device.
4. The following parts of the Device shall be excluded from the warranty:
5. parts in relation to which repairs, corrections or adjustments have been carried out or commenced by the Client or any third party without the Supplier's prior consent;
6. whose defects were not reported to the Supplier during the said warranty period;
7. whose failures or damage arose due to an accident, misuse or any other cause attributable to the Supplier,
8. As a security for the Client’s claims, if any, for non-performance or improper performance of the Agreement, including contractual penalties, the Supplier shall provide, within 6 weeks of the date of concluding the Agreement, a **Guarantee of Proper Performance of the Agreement,** for the amount equal to **15%** of the Total Purchase Price, whose validity shall not commence later than the date (specified in Annex No. 5) of the first delivery to the Place of Delivery of any of the components of the Set of Structural Elements of the Device and shall not expire earlier than 7 days after the expiry of the date (specified in Annex No. 5) of the final acceptance the last one of the three Devices, but it shall not last longer than the date of signing the Delivery-Handover Protocol confirming this final acceptance.
9. If the Delivery-Handover Protocol is to be signed, for reasons attributable to the Supplier, after the period for which the guarantee was issued, then the Supplier shall be obliged to present, at least 7 days prior to the expiry of the guarantee validity period, a new guarantee or a guarantee with an appropriately extended validity period, otherwise the Client shall exercise the rights under the guarantee before its expiry.

 **§15.**

**FORCE MAJEURE**

1. For the purpose of this Agreement, force majeure shall be understood as an extraordinary, external event that may not be foreseen or prevented, which could not have been avoided even if the party had taken the utmost care.
2. The party referring to force majeure shall notify the other party in writing without unnecessary delay, and next document the occurrence of force majeure. After the obstacles to the performance of the Agreement caused by force majeure cease to exist, the Supplier shall be obliged to make every effort to make up for the resulting backlog.
3. Both Parties shall be released from liability for non-performance of the Agreement to the extent such non-performance has occurred as a result of force majeure events. Neither Party shall be entitled to request the other Party to reimburse for the costs incurred by it due to force majeure events and possible consequences of making up for the resulting backlog.
4. If the force majeure event lasts for a continuous period of at least two months of the date of its occurrence, then both Parties shall meet to discuss and make necessary arrangements about the further performance of the Agreement, if possible, or to determine how to terminate the Agreement.
5. Each Party shall be obliged to take all reasonable steps to minimise the other Party's loss resulting from force majeure.
6. The Parties, taking into account the change of the pandemic situation, agree that its possible effects, which could not be prevented, affecting the timing of the provision of services in connection with COVID-19, SARS-CoV-2 or its mutations unknown at the time of concluding the contract, will not be treated as culpable and will not constitute a delay, and the affected party shall immediately notify the other party in writing of any delays related to its performance. If the COVID-19 epidemic or other epidemic affects the obligations of either party in the manner set out above for force majeure, then the party whose obligations are thus affected will be entitled to invoke the force majeure in order to discharge itself from liability for non-performance or improper performance. performance of the obligation on the terms set out in § 15. 2-5.

**§ 16.**

**GOVERNING LAW AND DISPUTE RESOLUTION**

1. This Agreement shall be governed by and construed in accordance with the Polish law.
2. Any disputes arising out of or in connection with the Agreement shall be first settled amicably. If no agreement is reached, any disputes arising out of or in connection with the Agreement shall be settled by a common court of jurisdiction over the registered office of the Client.

**§ 17.**

**ASSIGNMENT**

Assignment by either Party of any claim or obligation under the Agreement to any third party may only be effected upon the prior consent of the other Party to the Agreement, given in writing for its validity. The Client's consent shall be required for establishing by the Supplier any pledge or any other encumbrance on the right under the Agreement or on the subject-matter of the supply. Prior consent of a Party shall also be required to change the content of any action to which the consent was previously given. In any event, a Party may not refuse to give consent without stating in writing valid reasons for such refusal.

**§ 18.**

**PARTIAL INVALIDITY,**

**AMENDMENTS TO THE AGREEMENT**

1. In the event that any provision of the Agreement becomes illegal, the other contractual provisions shall continue in full force and effect, provided that they do not result in any change of the economic benefits of the original Agreement for either Party.

2. Any change to the provisions of the Agreement shall be made in writing for its validly, in the form of an amendment, signed by duly authorised representatives of the Client and the Supplier. The Agreement may be amended:

1) in any event, if the amendment is beneficial for the Client in respect of the provisions concerning the scope or manner of performance of the subject-matter of the Agreement, prices or shortening the time limits for delivery;

2) to the disadvantage of the Client only in the event of occurrence of force majeure or any similar event (i.e. any event for which the Supplier bears neither fault-based liability nor strict liability) which prevents the performance or proper performance of the Agreement;

3) if the necessity to introduce amendments results from amendments to generally applicable laws and regulations, adopted after the date of signing the Agreement or issuance, after that date, of any acts by public administration bodies, if the amendments to generally applicable laws and regulations or the content of decisions or other acts issued by the said entities on the basis of the amended law result in the necessity to introduce changes in the construction of cranes;

4) in the events provided for in the Guidelines on the Eligibility of Expenditure within the framework of the European Regional Development Fund, the European Social Fund and the Cohesion Fund for 2014-2020.

3. Any amendment to the provisions of the Agreement may concern the scope or manner of performance of the subject-matter of the Agreement, prices or time limits specified in the Schedule (Annex no.5), and it shall not be more far-reaching than it results directly from the reason necessitating the amendment to the Agreement. In no event shall any amendment to the Agreement lead to any change of the nature of the Agreement. The Party submitting a proposal to amend the Agreement shall be obliged to present evidence and arguments proving that the requested scope of amendments is adequate to the reason justifying the amendment. In particular, when requesting a price increase, the Supplier shall be obliged to present a valuation of the cost increase caused by the amendments referred to in paragraph 2 subparagraph 3 above. However, when requesting a change of the time limit specified in the Schedule, the Supplier shall be obliged to provide a description of the duration and remedy of adverse consequences of force majeure or the time necessary to make changes in the construction of the crane.

**§ 19.**

**ENTIRE AGREEMENT**

The Agreement, together with the documents attached to it, represents the entirety of what has been agreed between the Parties to date. It is a summary of all prior oral or written arrangements and correspondence, all prior obligations between the Parties to the Agreement, relating to the subject-matter of the Agreement and the tender procedure conducted prior to the conclusion of the Agreement. The entire tender documentation, in particular the Specification, the questions asked in accordance with the tender rules and the answers provided in the course of the procedure, shall be incorporated into the Agreement.

**§ 20.**

**CONFIDENTIALITY,**

 **INTELLECTUAL PROPERTY, COPYRIGHT**

1. The Confidential Information shall be understood as the terms and conditions of the Agreement, all information, documents or studies, communicated or provided between the Parties during the term of the Agreement or for the purpose of performance of the Agreement.
2. The Parties undertake to keep secret the confidential information handed over during the tender procedure.
3. All intellectual property of each Party shall remain the sole property of such Party. For the purpose of the Agreement the "Intellectual Property" shall mean all trade names, trademarks, service marks, copyright and other intellectual property rights.
4. Neither the Supplier nor the Client shall seek satisfaction of any claims for use of the intellectual property received from the other Party, if it is used in the manner specified in the Agreement.
5. The Design Documentation of the Devices, the Technical Documentation and all other technical data, evaluations, reports and deliverables of the Supplier's work under the Agreement shall remain the intellectual property of the Supplier even after the acceptance of the Devices by the Client. The said documentation, if developed after the date specified above, shall be delivered to the Client without unnecessary delay after it has been developed. The Client shall be entitled to full, unrestricted access to the said documentation (both in written and electronic form) during the use of the Devices.
6. The Supplier shall fully indemnify, defend and hold the Client harmless from and against any claims, damages, costs, actions and other proceedings arising from the infringement of any patent, industrial design, trademark or other protected right in connection with the Devices and the performance of the services under the Agreement. The Client shall notify the Supplier without unnecessary delay of any claims pursued or actions brought by any third party against the Client.
7. Under the Agreement, within the price for the Task, the Supplier shall provide the Client with a right, unlimited in time, to use the documentation for operational work, ongoing maintenance and repair, renovation and modernization of the Devices, together with the related rights in the Design Documentation and the Technical Documentation of the Devices provided by the Supplier. The documentation shall be handed over on the basis of protocols confirming its acceptance by the Client.
8. Within the scope specified in sec. 7 The Ordering Party may make the documentation provided to third parties who will undertake an obligation to use them only for the purpose of using the Devices, their conservation, maintenance, repair, renovation and modernization. The Ordering Party 's rights to use the materials and software provided to him by the Supplier for the performance of the Agreement may not be transferred by the Ordering Party to third parties other than with the transfer of the ownership of the crane.
9. In the scope resulting from sec. 7-8 The Recipient will be entitled to use the proprietary copyrights to the Design and Technical Documentation made on the basis of the Agreement (non-exclusive license) in the following fields of use:
* recording documents with the use of any technique,
* in the event of sale of the Devices, transfer to the purchasers all rights in the documentation of the sold Device,
* introducing documents into the memory of computers and other similarly operating devices of the Client,
* making any changes to the documents for the purposes relating to the use of the Devices in accordance with its intended use, in particular for operative work, ongoing maintenance or repairs, renovation and modernization,
* reproduction of the documents and their parts with the use of any technique,
* correcting, modifying, developing and reproducing the whole or any part of the documents for the purposes relating to the use of the Devices in accordance with their intended use, in particular for operational work, ongoing maintenance or repairs, renovation and modernization.
1. For the use of the Design Documentation and the Technical Documentation by the Client in various fields of exploitation shall not be entitled to separate remuneration.

**§ 21.**

**WARRANTIES AND REPRESENTATIONS**

1. If either Party is aware of any error or defect of a technical nature in a document prepared for the purpose of the supply of the Devices or the performance of a service, that Party shall immediately notify the other Party of the existence of such error that requires correction or improvement.
2. Each Party represents that the Agreement has been duly signed and delivered by it and constitutes that Party’s legal, valid and binding obligation, enforceable under the terms and conditions specified in this Agreement.
3. The Supplier hereby warrants and represents that:
4. the Supplier is a legally operating company of a stable position on the market, which has all the capabilities required to perform the Supplier’s obligations under the Agreement
5. no court proceedings, proceedings for recognition of claims or disputes are pending against the Supplier, the outcome of which that is adverse for the Supplier might significantly and adversely affect the Supplier’s financial position or limit the Supplier’s ability to perform the Supplier’s obligations under the Agreement;
6. the Supplier has not been put into liquidation or passed any resolution on bankruptcy, liquidation and no petition in bankruptcy has been presented against the Supplier, and no receiver or trustee in bankruptcy has been appointed or threatened to be appointed for the Supplier in connection with the proceedings mentioned above;
7. the Supplier has disclosed to the Client all material and significant information. Significant information shall be understood as information as a result of which, if it came into the possession of the Client at any stage of the negotiation, signature and performance of the Agreement, the Client would not enter into the Agreement;
8. all governmental, corporate and other requirements, licenses, authorisations and permits necessary or desirable in connection with the conclusion, validity and enforceability of the Agreement and the transactions contemplated in the Agreement, and in connection with the supply of the Devices and the performance of any other services have been obtained or secured and remain in full force and effect.
9. The Devices, including all other materials delivered to and/or installed at the Place of Delivery by the Supplier, shall conform to the Specification and the Technical Requirements (Annex No. 1) and be free from any defects in materials or workmanship,
10. at the same time, in the event of any changes in the warranties and representations included in paragraph 3, letters a)-f), the Supplier shall be obliged to notify the Client in writing without unnecessary delay.

4. Unless otherwise expressly provided for in the Agreement,

1. the Parties acknowledge that the Supplier has obtained all necessary information regarding risks, fortuitous events and other circumstances that might reasonably be expected to affect the Devices’ construction and the Services;
2. The Supplier shall not be entitled to unilaterally extend the time limits adopted in the Agreement or to otherwise review any provisions of the Agreement.

**§ 22.**

**RESCISSION OF THE AGREEMENT, CONTRACTUAL PENALTY**

1. In the event of any delay in making an advance payment or any other payment of any of the Tasks for the period longer than two (2) months (except for events in which the Client is entitled to withhold or refuse), the Supplier shall inform the Client in a written notice addressed to the Client about the delayed amount of the , set an additional time limit of 30 days to pay the outstanding amount of the Total Purchase Price and include a threat of rescission of the Agreement. The Supplier shall be entitled to rescind the Agreement with immediate effect by written notice, after the ineffective lapse of an additional time limit of 30 days, set with a threat of rescission of the Agreement. In the event of early termination of the Agreement by the Supplier for the reasons specified in the preceding sentence, the Supplier shall be entitled to claim from the Client a contractual penalty in the amount of 10% of the Total Purchase Price. This penalty is non-exclusive and qualifying, and therefore the Supplier will be entitled to claim from the Client the amount of the materials ordered and works performed in reliance on the Agreement, but in no case more than the Total Purchase Price. If the sum of the penalties and compensation as stated above due on this account will be lower than payments received by the Supplier, the Supplier shall refund the difference to the Client without unnecessary delay.
2. The Client shall be entitled to rescind the Agreement in the following events of:

a) a delay with providing the Client with the Guarantee of proper performance of the Agreement by more than two (2) months,

b) before the lapse of the time limit for the supply of the Set of Structural Elements referring to Task 2 , if the information received from the Supplier shows that the Supplier is delayed with the commencement or completion of the

works as compared with the time limits specified in the Schedule (Annex No. 5) by more than three (3) months and the Supplier will not prove that the delay was caused by reasons beyond his control,

c) caused by supplier a delay with commissioning of at least two gantry cranes and handing them over to the Client under the Delivery-Handover Protocol by more than three (3) months as specified in the Schedule,

d) a breach by the Supplier of the provisions of the Agreement that may affect the quality and functionality of the Devices, as required in the Specification, provided the Supplier has failed to remedy the breach in the period of time mutually agreed by the Parties, but not longer than three (3) month.

1. In the event of an early rescission of the Agreement by the Client for reasons specified in paragraph 2 the Client shall be entitled to demand from the Supplier the payment of a contractual penalty in the amount of 10% of the Total Purchase Price. This penalty is exclusive, and therefore the Client, will not be entitled to claim supplementary compensation on the terms set out in § 23.
2. The rescission of the Agreement shall be effective from the date of receipt by the party of the other party’s written notice of rescission. Save as otherwise provided in sec. 1, the Supplier immediately after the rescission of the Agreement shall be obliged to refund the Client the entire remuneration received under the Agreement for the return by the Client of the complete set of structural elements and other materials provided by the Supplier. The Client shall be entitled to satisfy the Client’s rights from the Advance Guarantee and/or the Guarantee of proper performance of the Agreement.

**§ 23.**

**LIABILITY AND HOLD HARMLESS CLAUSE**

1. Each party shall be liable for loss and damage suffered by the the other party as a result of the breach ofthe statements or warranties contained in the Agreement, or as a result of improper performance or non-performance of the obligations under the Agreement.
2. The Supplier shall be liable for and hold the Client harmless against any damage to or loss of the Client's property and personal injury and/or death of members of the Client’s staff, agents and representatives, as well as third parties present at the terminal in Kutno and Brzeg Dolny, resulting from any action, omission, fault, negligence or failure to exercise due diligence by the Supplier, the Supplier’s representatives, staff or agents, whether it occurred in the course of performing the Supplier’s obligations or exercising the Supplier’s rights under the Agreement.
3. The Client shall be liable for any loss of or damage to the property, injury or death of any person(s) caused or suffered in the course of and/or arising from the supply of the Devices and the provision of the services under the Agreement at the terminal in Kutno and Brzeg Dolny, resulting from the fault or failure to exercise due diligence by the Client or persons for whom he is responsible;.
4. The Supplier assumes full liability, shall not hold the Client liable and shall hold the Client harmless against any amounts, claims, liabilities or sums under any basis of liability, i.e. civil, administrative or criminal liability, in particular with respect to: licenses, taxes, permits and similar requirements the Supplier is obliged to fulfil under the Agreement, if the breach of any of these obligations results from the fault or failure to exercise due diligence by the Supplier or persons for whom it is responsible.
5. Notwithstanding anything to the contrary in any part of this Agreement, neither party shall be liable to the other party for loss of profit, loss of sales, loss of production, loss of use, loss of business, loss of goodwill, loss of data, or any indirect or consequential loss. In addition, the maximum collective liability of a party to the other party shall be limited in any event solely to the amount of the Total Purchase Price.

**§ 24.**

**NOTICES**

1. Unless the written form is stipulated in the Agreement for a given action, in order to facilitate the communication the Parties shall accept as binding the information provided by e-mail.

2. Notices shall be addressed as follows:

a) **For the Client:**

PCC Intermodal SA, ul. Małachowskiego 1a, 41-200 Sosnowiec

biuro.sosnowiec@pcc.eu , przetargi.realizacja@pcc.eu

1. **For the Supplier:**

Address:

…………………………………..………………………………….………………………………

E-mail address: ……………………………………………………………………..

**§ 25.**

**MISCELLANEOUS**

1. The Agreement and its Annexes shall be entered into as of the date on which they are signed by the Client as the other Party and remain in full force and effect until all rights and obligations under the Agreement are exercised and performed. The Agreement shall take effect from the date of receipt by the Supplier of a counterpart of the Agreement signed by both Parties.

2. The Agreement has been drawn up in two original counterparts in the Polish language, with one provided to the Client and one provided to the Supplier.

**§ 26.**

**ANNEXES**

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

Annexe No. 1 - **Specification of the Subject-Matter of the Tender Procedure with annexes no. 5-12** *(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 - **Delivery-Handover Protocol** *(form prepared by the Client*)*;*

Annexe No. 5 **Crane Manufacture, Installation and Commissioning Schedule** *(prepared by the Supplier)*

**TENDERER/SUPPLIER: CLIENT:**