

DCT GDAŃSK S.A.

AND

[●]

**AGREEMENT TO PROVIDE CONTRACT ENGINEER SERVICES FOR
THE PURCHASE AND DELIVERY OF FIVE SHIP TO SHORE QUAY
CONTAINER GANTRY CRANES**

03/EU/T2/CESTS

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THIS AGREEMENT TO PROVIDE CONTRACT ENGINEER SERVICES FOR PURCHASE AND DELIVERY OF FIVE SHIP TO SHORE QUAY CONTAINER GANTRY CRANES

(the "Agreement")

was concluded on [●]:

BETWEEN:

1. **DCT Gdańsk S.A.** with its registered office in Gdańsk, address: ul. Kontenerowa 7, 80-601 Gdańsk, recorded in the business register kept by the District Court for Gdańsk-Północ in Gdańsk, Commercial Division VII of the National Court Register under number KRS 31077, share capital: PLN 65,500,000; NIP 2040000183; Regon 192967316, represented by:

[●] - [●]

hereinafter referred to as the "**Client**";

and

2. [●] with its registered office in [●]; address: ul. [●], [●], recorded in the business register kept by the District Court [●], Commercial Division [●] of the National Court Register under number KRS [●], share capital: PLN [●]; NIP [●]; Regon [●], represented by:

[●] - [●]

hereinafter referred to as the "**Contract Engineer**",

hereinafter also referred to jointly as the "**Parties**", and each of them individually as a "**Party**" (the other capitalized terms used in this Agreement are defined in Clause 1 below).

WHEREAS:

- A The Client intends to implement the Project. To this end, the Client intends, among other things, to conclude the General Contractor Agreement.
- B Having conducted tender procedure number 03/EU/T2/CESTS, the Client intends to employ the Contract Engineer to provide Services relating to the Project, as described in detail in Schedule 2, on the terms and conditions set out in the Agreement, and the Contract Engineer agrees to accept the aforementioned appointment.

THE PARTIES AGREE as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

1.1.1 "**Documentation**" means drawings (including CAD drawings), sketches, studies, analyses, information, schedules, specimens, estimates, visual designs, models, bidding documents, contract documents, reports and other documents prepared by the Contract Engineer as part of the performance of the Services or otherwise in relation to the Project.

1.1.2 "**Business Day**" means any day of the week excluding Saturdays, Sundays and public

holidays.

- 1.1.3 "**Completion Date**" means the date when all the following conditions are met:
- (a) all five five ship to shore quay container gantry cranes are completed, delivered, erected and commissioned by the Contractor and accepted by the Client;
 - (b) all necessary and required permits and approvals for all five five ship to shore quay container gantry cranes are issued, remain valid and final and are delivered to the Client;
 - (c) warranty period given by the Contractor for the purpose of the Project's realization is over.
- 1.1.4 "**Contractor**" means the contractor responsible for delivery of five ship to shore quay container gantry cranes (selected via Tender No. 01/EU/T2/STS) i.e. Liebherr Container Cranes Limited, Killarney, Co. Kerry, Ireland.
- 1.1.5 "**Performance Bond**" means a bank guarantee or insurance guarantee which the Contract Engineer is obliged to provide to the Client pursuant to Clause 15.1.
- 1.1.6 "**Confidential Information**" means all information and data relating to, and disclosed by, the Client (directly or indirectly) to the Contract Engineer, irrespective of their form or method of disclosure, including, but not limited to: (a) all information relating to the Client's business secrets, (b) all information relating to the Client's or customers' services and lists and their documentation; current or anticipated requirements of the Client or the customers; lists of vendors and suppliers and their documentation, pricelists, market research, business plans and business opportunities, (c) all information relating to the Client's activities and affairs; assets and liabilities; historical and current financial statements; financial forecasts and budgets; historical, current and anticipated sales results, capital expenditure budgets, forecasts, strategic plans, marketing and advisory plans; publications, agreements, names and data of key personnel and personnel training methods, and contact names and data, (d) all confidential information relating to third parties in the Client's possession, (e) all notes, information memoranda, presentations, analyses, research, summaries, interpretations and other materials prepared by the Client's advisers to the extent to which they contain, are based on or refer to the information described in subparagraphs (a) to (d) above or any other information or data relating to the Client.
- 1.1.7 "**Project**" means the project consisting in the purchase and delivery of five ship to shore quay container gantry cranes (Tender No. 01/EU/T2/STS), as briefly described in Schedule 1, realized in accordance with the Contractor Agreement.
- 1.1.8 "**Contractor Agreement**" means the agreement for purchase and delivery of five ship to shore quay container gantry cranes relating to the Project between the Client and the Contractor (STS CRANE SUPPLY CONTRACT - PORT OF GDAŃSK draft of which constitutes Annexe No. 3 to Notice of Tender No. 03/EU/T2/CESTS).
- 1.1.9 "**Retained Amount**" means the accumulated returnable guarantee deposit that the Contract Engineer is obliged to pay to the Client and the Client is obliged to return to the Contract Engineer in accordance with Clause 15.3, securing any claims of the Client against the Contract Engineer to the same extent as the Defects Liability Security.
- 1.1.10 "**Offer**" means the Contract Engineer's offer accepted by the Client as the best offer

in the tender procedure No. 03/EU/T2/CESTS conducted by the Client to select a contractor for the Services, a copy of which is attached as Schedule 4.

- 1.1.11 "**Project Period**" means the period commencing on the date of the Agreement and ending on the Completion Date.
- 1.1.12 "**Warranty Period**" means the period of one year commencing on the next day after the end of the warranty period given by the Contractor for the purpose of the Project's realization.
- 1.1.13 "**Permit**" means any permit, decision, arrangement, permission, ruling, consent, exemption, concession, authorisation, licence, certificate and similar instruments issued by any public authorities or other entities for the purpose of the correct implementation of the Project.
- 1.1.14 "**Contract Engineer's Representative**" means [●] or any other person notified to the Client by the Contract Engineer in writing at any time.
- 1.1.15 "**Client's Representative**" means Ryszard Kula or any other person notified to the Contract Engineer by the Client in writing.
- 1.1.16 "**Services**" means all the services, tasks, duties and obligations relating to the Project that the Contract Engineer undertakes to provide or perform for the Client in accordance with the Agreement, including, in particular, those set out in Clause 3 and described in more detail in Schedule 2.
- 1.1.17 "**Construction Defect**" means any design, manufacturing or construction works performed by the Contractor that have not been performed in accordance with the Contractor Agreement or the Legal Requirements, as the case may be; and in relation to any materials, structures or plant, such materials, structures or plant that are not new, are not of high quality or have other defects; and in relation to any installations, assembly of structures or plant, those which have been performed contrary to the manufacturers' or vendors' instructions.
- 1.1.18 "**Legal Requirements**" means any laws, regulations, Permits and standards applicable to or connected with the Project or the performance by the Parties of their obligations arising under the Agreement.
- 1.1.19 "**Fee**" means the net fee payable to the Contract Engineer pursuant to Clause 10.
- 1.1.20 "**Defects Liability Security**" means a bank guarantee or insurance guarantee that the Contract Engineer is obliged to provide to the Client in accordance with Clause 15.2.
- 1.1.21 "**Contract Engineer's Team**" means the persons listed in Schedule 3, as well as any other persons employed by the Contract Engineer at any time pursuant to the Agreement.
- 1.1.22 "**Project Team**" means the Client, Contract Engineer, the Contractor.

1.2 Interpretation

- 1.2.1 In this Agreement any reference to:
 - (a) the "**Agreement**" means this Agreement,

- (b) a "**Clause**" means a reference to a clause of the Agreement,
 - (c) a "**Schedule**" means a reference to a schedule to the Agreement,
 - (d) a "**third party**" means individuals, legal entities and organisational units without legal personality,
 - (e) "**construction works**" also includes design, manufacturing, delivery, assembly, erection, commissioning, registration of STS cranes as well as all services relating to the Project to be performed by the Contractor based on the Contractor Agreement,
 - (f) "**opinions**", "**standpoints**" etc. means such opinions, standpoints etc. in writing,
 - (g) a task that is to be performed "**forthwith**" means that such task should be performed no later than three (3) Business Days after the day the obligation to perform it arose, unless the Agreement expressly provides otherwise,
 - (h) a provision of law means a reference to the current wording of such provision or the current wording of a provision that has replaced it as to substance,
 - (i) the expression "**shall procure**" (and its derivatives) in relation to the Contract Engineer's duties means the Contract Engineer's duty to check whether a given task has been performed and to take any necessary action within the Contract Engineer's powers to procure its performance,
 - (j) a word in the singular also denotes the plural and vice versa.
- 1.2.2 The headings of the individual Clauses of the Agreement have been inserted for ease of reference and shall not affect the interpretation of its provisions.
- 1.2.3 Schedules to the Agreement constitute an integral part hereof.
- 1.2.4 Any reference to "writing" or "written" shall include any copies in a permanent and tangible form, but shall not include faxes (without exception) or e-mail messages (except for scanned copies of signed documents in *.jpg, *.pdf format or in any other universally recognisable format, subject to confirmation of receipt of the e-mail), text messages (SMS or MMS) and other forms of distance communication by electronic means. Any notices or documents to be sent by the Parties electronically (i.e. as an attachment to an e-mail message) must be subsequently delivered to the recipient in accordance with Clause 19 in order for the notice to be legally effective. For the avoidance of any doubt, the confirmation of receipt of an e-mail, referred to above, means the response from the recipient to the e-mail confirming receipt thereof.
- 1.2.5 Any contractual penalties provided for in the Agreement shall not limit the right of the Party entitled to them to seek damages exceeding the amount of such contractual penalty arising from the actual losses suffered by that Party in excess of the contractual penalty in question, however, Parties shall not be liable towards each other for the loss of profits.
- 1.2.6 The documents comprising the Agreement must be treated as mutually complementary. The documents comprising the Agreement shall rank as follows:
- (a) the main content of the Agreement;

- (b) the Services (**Error! Reference source not found.**Schedule 2);
- (c) the Offer (Schedule 4);
- (d) other Schedules to the Agreement.

2. REPRESENTATIONS OF THE PARTIES

2.1 The Contract Engineer hereby represents and warrants to the Client that:

- 2.1.1 it has the relevant knowledge and authorisations provided for in the Legal Requirements, and the qualifications and skills necessary for the correct performance of the Services;
- 2.1.2 it is authorised to carry out the activity covered by this Agreement and to conclude the Agreement and perform the obligations arising hereunder in accordance with the Legal Requirements;
- 2.1.3 there are no proceedings or procedures pending against the Contract Engineer before any courts, administrative bodies or arbitration tribunals which could affect the Contract Engineer's ability to perform its obligations arising under the Agreement, nor, to the Contract Engineer's knowledge, is there any threat of such proceedings or procedures being commenced in future;
- 2.1.4 it has experience in providing services similar to the Services in connection with projects of a similar size, scope and complexity as the Project.

2.2 The Client represents and warrants to the Contract Engineer that:

- 2.2.1 it has obtained the required consents of its corporate bodies for the conclusion of this Agreement;
- 2.2.2 is concluding this Agreement following the adoption of all the required resolutions.

2.3 The Parties represent that they have concluded the Agreement in full reliance on their mutual representations and warranties covered by the terms of, respectively, Clause 2.1 and Clause 2.2. Should it turn out that any of the above-mentioned representations and warranties is untrue or incomplete, the Party that made it shall be liable vis-à-vis the other Party on a risk basis.

3. SERVICES

3.1 General provisions

- 3.1.1 The subject of the Agreement is the provision by the Contract Engineer of the Services commissioned by the Client in order to complete the Project in accordance with the material and financial time schedule and other terms of the Contractor Agreement.
- 3.1.2 The Services shall be provided by the Contract Engineer at the Site and in other places of performance of the design, manufacturing and construction works by the Contractor, as well as in places of the manufacture of materials and plant for the Project, and in places of acceptance procedures and inspections, including in testing laboratories notified to the Contract Engineer by the Contractor in consultation with the Client. The Contract Engineer undertakes to procure, by itself, as part of the Fee, the equipment necessary to provide the Services at all places of performance of the

Services, except for the equipment that is to be provided to the Contract Engineer by the Contractor.

- 3.1.3 The Contract Engineer must take all the actions included in the scope of the Services at such a time that facilitates the timely, continuous and proper implementation of the Project by the Contractor.

3.2 General duties of the Contract Engineer

Subject to any other terms of the Agreement, the Contract Engineer undertakes to:

- (a) supervise the Contractor, including the verification of the design documentation presented by the Contractor during the Project Period;
- (b) fulfil the role of a Contract Engineer during the Project Period and during the Warranty Period, including the provision of project supervision services on behalf of the investor in accordance with the provisions of the Building Law;
- (c) approve any documentation relating to the Project, submitted to the Client by the Contractor within the financial, technical, formal and legal scope;
- (d) represent the Client in connection with the implementation of the Project on the terms set out in this Agreement; and
- (e) provide any other services or perform tasks not expressly listed in the Agreement, necessary in order to ensure the proper performance of the subject of the Agreement in accordance with Clause 3.1.1.

3.3 Detailed duties of the Contract Engineer

Subject to any other terms of the Agreement and the scope of Services specified in Schedule 2, the Contract Engineer undertakes, in particular, to:

- (a) check that any Contractor's documentation have been prepared correctly as regards the scope, requirements, completeness and correctness of the solutions applied, in accordance with the Employer's requirements (as defined in the Contractor Agreement), Permits, Legal Requirements and principles of technical knowledge, and to opine on or present comments and objections to the design documentation by preparing written opinions as regards its correctness and completeness, and also to carry out analyses of the design documentation taking into account potential savings, including specifying equivalent materials and alternative solutions; the Contract Engineer is obliged to check and opine on all the design documentation within 10 (ten) Business Days of receiving it;
- (b) read and follow the terms of the Contractor Agreement (in each case excluding the terms containing information that constitutes company secrets);
- (c) carry out on-going monitoring of the compliance of the Project with the design documentation, Employer's requirements (technical specifications), Permits, Legal Requirements and principles of technical knowledge;
- (d) carry out on-going monitoring of the Project's implementation costs and whether they have been incurred correctly and reasonably;
- (e) protect the Client's interests during the implementation of the Project, including, in particular, the performance of the supervision duties in accordance with the

Contractor Agreement;

- (f) notify the Client and the Contractor forthwith of any Construction Defects detected during the monitoring of the design works and construction works relating to the Project, and also make the appropriate arrangements with them in this regard, obtain explanations and enforce remedial works and amendments to the design documentation or construction works;
- (g) carry out on-going monitoring of the quantity and quality of the manufacturing and construction works during their performance and thereafter, in-built materials and products, devices and tools used, and in particular prevent the use of any materials and products that are defective and not permitted to be marketed and used in the industry;
- (h) carry out the acceptance of any works to be covered up or hidden as well as technical and partial tests and acceptance procedures, including the technical approvals of each stage of the scope of works, with the participation of the Contractor and the Client, at the time specified by the Contractor or defined in the Contractor Agreement, and if no such time is specified by the Contractor, within 3 (three) Business Days of the date of receipt of a written notice from the Contractor;
- (i) notify the Client suitably in advance of the date and place of any acceptance procedures relating to the Project;
- (j) check that the acceptance documents are complete and correct and confirm readiness for the acceptance, as appropriate, of each stage and the final acceptance of the subject of procurement within 10 (ten) Business Days of the date the Contractor submits such documents to the Contract Engineer and, in the event of any comments on the acceptance documents, check forthwith any acceptance documents corrected and supplemented by the Contractor;
- (k) cooperate during the supervision of the Project implementation with the environmental protection, other contractors and consultants engaged by the Client and the regulatory /administrative authorities;
- (l) verify and approve any attachments to the invoices issued by the Contractor as regards their compliance with the timetables and other provisions of the agreements concluded by them with the Client within the time limit specified by the Client or arising from the Contractor Agreement;
- (m) monitor the timely performance of the design works as well as manufacturing and construction works relating to the Project, provided that the Contract Engineer must submit, as appropriate, to the Contractor and the Client, a written confirmation of completion of such works or a written notification of non completion of such works within one (1) Business Day of the expiry of their completion deadline in accordance with the Contractor Agreement;
- (n) before payment of any part of the fee by the Client to the Contractor, check and confirm to the Client whether the works have actually been performed in accordance with the Contractor Agreement and do not contain any Construction Defects and whether other obligations of the Contractor to the Client have been performed, relating to the payment of the fee to the Contractor, within the time limits specified by the Client or arising from the Contractor Agreement;
- (o) carry out on-going monitoring of the technical documentation kept by the Contractor,

- reflecting the progress in the construction works (including photographic evidence);
- (p) carry out on-going supervision over the supplies of materials and their compliance with the Contractor Agreement and the Legal Requirements;
 - (q) inform the Client of the progress in the implementation of the design works and construction works relating to the Project, in particular by means of reports and within the time limits referred to in Clause 5;
 - (r) inform the Client forthwith of any potential or actual occurrence of (i) any errors, discrepancies or inconsistencies in the documentation relating to the Project, including, in particular, the Contractor Agreement, (ii) the circumstances necessitating the suspension or halting of the implementation of the Project or performance of duties by the Contractor, or (iii) any circumstances otherwise having a negative impact on the implementation of the design works and the manufacturing and construction works relating to the Project, in each case specifying the reasons for their occurrence, the consequences of the proposed remedies and the standpoint of the Contractor, obtained by the Contract Engineer, along with the assessment of that standpoint by the Contract Engineer;
 - (s) carry out on-going monitoring of the studies prepared by the Contractor as regards the operating instructions for the facilities and equipment;
 - (t) check and opine on the Contractor's requests relating to any change of the method of performance of the construction works as compared to the design documentation (replacement works) and relating to any additional works, and also determine the optimum method of performance of such works, technically and as regards costs, within 3 (three) Business Days of the date of receipt of such request from the Contractor;
 - (u) assess the correctness of all the detailed calculations (including as regards any additional and replacement works) submitted to the Client by the Contractor within the time limits set by the Client or arising from the Contractor Agreement;
 - (v) opine on the reasonableness of any claims made by the Contractor against the Client within five (5) Business Days of the date of receiving them;
 - (w) provide the Client with opinions relating to any Construction Defects within five (5) Business Days of the date of their discovery;
 - (x) provide the Client with opinions relating to the deadlines for remedying the Construction Defects, proposed by the Contractor, and submit requests to the Client to reduce the fee of the Contractor as a result of the Construction Defects determined by the Contract Engineer to be incapable of remedy, within five (5) Business Days of date of receiving the standpoint of the Contractor;
 - (y) monitor the remedying of the Construction Defects by the Contractor and notify the Client forthwith that the Construction Defects have been remedied or have not been remedied within the prescribed time limits;
 - (z) notify the Client suitably in advance of the date and place of the warranty inspections relating to the Project in which the Client is to participate;
 - (aa) carry out the tasks relating to the acceptance of the construction works and perform such acceptance procedures with the participation and subject to the approval of the

Client, on dates specified by the Client or arising from the Contractor Agreement;

- (bb) carry out on-going monitoring of any changes in the implementation of the Contractor Agreement and notify the Client forthwith of any need to adjust the content of those agreements to the amended changed terms of implementation of the Project;
- (cc) monitor the completeness and correctness of the as-built documentation prepared by the Contractor and its compliance with the Client's requirements and inform the Client forthwith of any defects or shortcomings found in the as-built documentation and the method of and deadline for the remedy thereof by the Contractor;
- (dd) carry out on-going monitoring of the documentation necessary to obtain the Permits, and if any formal or substantive irregularities are found in such documentation, inform the Client thereof forthwith and submit proposed changes;
- (ee) carry out a financial reconciliation of the Project by no later than the commencement date of the final acceptance procedures and as at the date of the final acceptance, including presentation of the data relating to the transfer of fixed assets (OT/PT);
- (ff) prepare, as at the final acceptance date of the Project, a time schedule for the mandatory warranty inspections;
- (gg) carry out, during the guarantee or warranty period granted by the Contractor, at least once every six months, in accordance with the warranty inspection schedule and every time within 10 (ten) Business Days of receiving the Client's request, guarantee inspections with the participation of the Contractor and the Client and prepare a protocol forthwith, specifying the defects and shortcomings discovered during the inspection, as well as the method of and deadline for the remedy thereof by the Contractor;
- (hh) carry out a post-execution review one (1) year after the final acceptance date of the Project and participate in any surveys and research for the purposes of the institutions co-financing the Project;
- (ii) monitor the quality and correct removal of the Construction Defects by the Contractor during the guarantee and warranty period and provide the Client with information on the removal or lack thereof within three (3) Business Days of the date scheduled for their removal;
- (jj) in the event of untimely removal of the Construction Defects by the Contractor during the guarantee and warranty period arising from the Contractor Agreement, provide the Client forthwith with all the information and data necessary to calculate the contractual penalties in this respect;
- (kk) if the Construction Defects are not removed by the Contractor during the guarantee and warranty period arising from the Contractor Agreement, prepare for the Client the data necessary to conduct a tender procedure to select a substitute contractor to remove such Construction Defects (including the preparation of the preliminary estimate of the works and the investor cost analysis) within the time limit set by the Client; and monitor such works and accept them; and
- (ll) provide on-going advisory services to the Client in connection with the implementation of the Project.

4. STANDARD OF THE SERVICES

- 4.1 The Contract Engineer shall provide the Services with the utmost diligence and using its best skills, experience and knowledge, efficiently and professionally, in particular in accordance with the Agreement, applicable engineering practice and all Legal Requirements.
- 4.2 The Contract Engineer shall cooperate with the Project Team in good faith and with due diligence.
- 4.3 During the performance of the Services, the Contract Engineer will follow the Client's instructions carefully, but if the Client's instructions would have a negative impact on the Project (including, in particular, from the point of view of its timeliness, quality, costs or compliance with the Statutory Requirements) or would result in the Contract Engineer's violating the obligations arising under the Agreement, the Contract Engineer shall submit its objections in that respect forthwith in writing, setting out a detailed technical and financial justification thereof. The Client must reply to the Contract Engineer's objections forthwith, by within no more than seven (7) days of the date of delivery of the Contract Engineer's objections. If the Client upholds the instructions or fails to adhere to the above deadline for replying to the Contract Engineer's objections, the Contract Engineer shall be released from liability for any consequences of complying with the Client's instructions, including, in particular, any loss sustained or any breach of the provisions of the Agreement.

5. MONITORING THE IMPLEMENTATION OF THE PROJECT AND REPORTING

- 5.1 The Client reserves the right to monitor the implementation of the Project at each stage, including in particular the right to obtain any information and data regarding the progress in the design works and construction works from the Contract Engineer. If the Client submits to the Contract Engineer any comments or objections regarding the implementation of the Project, the Contract Engineer will be obliged to present forthwith to the Client the Contract Engineer's standpoint and the information on any action taken by the Contract Engineer, aimed at achieving the removal of such irregularities.
- 5.2 The Contract Engineer undertakes, not less than once per month during design, manufacturing and delivery of each out of five STS cranes by the Contractor and not less than once per week during assembly, erection, tests, commissioning and registration of STS cranes by the Contractor, to submit to the Client a written report on the on-going progress in the implementation of the Services and design works and construction works by the Contractor. The Contract Engineer's reports shall describe all the material circumstances that may affect the timely and cost-optimal implementation of the Project, and in the event of any delays in the implementation of the Project, the reasons for such delays and the remedies undertaken by the Contract Engineer in order to remove them. All reports shall be presented in English. An electronic version of the report in PDF format and in an editable format shall be sent to the Client to the address: ryszard.kula@dctgdansk.com.
- 5.3 The Contract Engineer undertakes to present to the Client written final reports on the implementation of the design works and construction works by the Contractor, within time limits that enable the Client to make a decision regarding the acceptance of the works completed by the Contractor, as the case may be.
- 5.4 At the Client's reasonable request, the Contract Engineer must also present to the Client other written reports, in particular reports relating to the requirements of the institutions financing or providing insurance for the Project.
- 5.5 The Client has the right to reject any of the Contract Engineer's reports and request the Contract Engineer to supplement or correct the report within the time limit set by the Client. The Contract Engineer must supplement or correct the report within that time limit as part of

the Fee.

6. COOPERATION OF THE CONTRACT ENGINEER WITH OTHER ENTITIES

6.1 The Contract Engineer's Representative shall act as the Client's representative vis à vis the Project Team members to the extent relating to the Services, provided that, unless the Agreement stipulates otherwise, the Contract Engineer is not authorised to:

6.1.1 make any declarations of will on behalf of the Client or present himself as a person authorised to make such declarations, and in particular to execute any binding agreements with third parties in any form or to take any other acts in law on the Client's behalf without a detailed power of attorney granted to it by the Client in writing;

6.1.2 release any of the Project Team members from any duties arising from the tasks entrusted to them.

6.2 The Contract Engineer shall not act on behalf of the Client in any matters extending beyond the scope of the Agreement, or pass himself as a person authorised to act in such capacity, unless he receives from the Client written instructions to do so. For the avoidance of any doubt, any changes in the implementation of the design works or the construction works by the Contractor as to substance, in relation to the fee or completion dates, depending on the Contract Engineer's acceptance, shall require the Client's prior written consent in order to be valid.

6.3 To the extent necessary to implement the subject of the Agreement, as part of the Fee the Contract Engineer undertakes to represent the Client before the relevant authorities, including participation in administrative or combined court administrative proceedings. To this end, the Client shall grant to the Contract Engineer or, in the case of administrative proceedings or combined court and administrative proceedings, an individual appointed by the Contract Engineer and approved by the Employer, relevant powers of attorney to act in such capacity, provided that:

6.3.1 the Contract Engineer shall not make any decisions or make any financial undertakings binding upon the Client without the latter's prior consent;

6.3.2 the Contract Engineer shall inform the Client of any contact with the relevant authorities on behalf of the Client and shall submit to the Client copies of the correspondence with such authorities forthwith upon sending, submitting or receiving the same.

7. **CONTRACT ENGINEER'S TEAM AND SUBCONTRACTORS**

- 7.1 The Contract Engineer shall appoint the Contract Engineer's Representative in order to ensure proper coordination of the provision of the Services to the Client.
- 7.2 The Contract Engineer undertakes to procure that all the Contract Engineer's Team members remain at the Client's disposal from the date of this Agreement.
- 7.3 The Contract Engineer undertakes to procure that all the Contract Engineer's Team members have throughout the term of the Agreement full qualifications and capabilities to perform the Services in accordance with the Agreement and the Legal Requirements. The Contract Engineer must notify the Client forthwith in writing of any case of loss of the required authorisations by any of the Contract Engineer's Team members and of the commencement of any disciplinary, criminal or administrative proceedings before the relevant professional self-governing bodies or public authorities, which could result in the loss of the authorisations by any of the Contract Engineer's Team members.
- 7.4 The Contract Engineer shall ensure that the Contract Engineer's Team members participate in the provision of the Services personally and shall not replace any of the Contract Engineer's Team members with any other person without the Client's prior written consent. If it is necessary to replace any of the Contract Engineer's Team members with another person, the Contract Engineer shall submit a request to the Client for that purpose, containing information on such person to the extent set out in Schedule 3. The Client may not refuse its consent to the above without a valid reason, but shall be entitled to verify the qualifications of such person, including demanding that the Contract Engineer submit additional documents confirming the qualifications of that person.
- 7.5 The Client may, for valid reasons, demand from the Contract Engineer in writing a change of any of the Contract Engineer's Team members. In such case, the Contract Engineer must replace such person forthwith with a person holding at least the same qualifications. Clause 7.4 shall apply accordingly.
- 7.6 Without obtaining the Client's prior written consent, the Contract Engineer shall not employ or commission any subcontractor to perform any works as part of the Services. The Client may not refuse its consent to the above, provided that the following conditions are satisfied jointly:
- 7.6.1 the total value of the works subcontracted by the Contract Engineer must not exceed 50% of the Fee; and
- 7.6.2 the Contract Engineer must submit to the Client a final draft of the subcontractor agreement, which will provide for:
- (a) the detailed scope of the works commissioned to the subcontractor,
 - (b) the amount of remuneration payable to the subcontractor, which must not be higher than the value of the same scope of Services commissioned to the Contract Engineer by the Client pursuant to the Agreement,
 - (c) the deadlines for the completion of works by the subcontractor,
 - (d) the subcontractor's representations referred to in Clause 2 of the Agreement to the extent relevant to the scope of the works commissioned to the subcontractor, including, in particular, a declaration that the subcontractor has the knowledge, authorisations, qualifications and skills necessary to

perform those works correctly,

- (e) the names of the persons responsible on behalf of the subcontractor for the performance of the design works, together with their declarations that they have the authorisations required by the regulations,
- (f) a prohibition of any further subcontracting,
- (g) provisions relating to the subcontractor's performance bond (also during the guarantee or warranty period).

7.7 The Contract Engineer shall be liable to the Client for any actions and omissions of its subcontractors as for his own actions, which means in particular that the Contract Engineer may not be discharged from responsibility to the Client for any non-performance or inadequate performance of the obligations arising under the Agreement by stating that such non-performance or inadequate performance has occurred for reasons for which the subcontractor is responsible.

8. **PROJECT TEAM AND THIRD PARTIES**

8.1 With regard to any matters relating to the Services, the Contract Engineer shall provide the Client with all reasonable assistance in any disputes with any of the Project Team members relating to the Project.

8.2 The Contract Engineer acknowledges that the Client will conclude the agreement(s) in relation to the financing and construction of the Project. The Contract Engineer shall take into account, as appropriate, the Client's obligations to third parties arising from the above agreements to the extent relating to the Project to which the Client informs the Contract Engineer of such agreements in writing or provides him with copies or relevant sections thereof. If, in the Contract Engineer's opinion, to take into account the Client's obligations to third parties would have an impact on the timeliness or quality of the Services provided by the Contract Engineer, the Contract Engineer shall forthwith, but within no more than seven (7) Business Days of the date of the Client's delivering to it such information or copies or sections of the agreements, inform the Client thereof, presenting the relevant detailed justification. If the Client upholds the demand that the Contract Engineer take into account the Client's obligations towards the third parties, the Contract Engineer shall be released from liability for any loss occurring as a result of complying with such demand. The same shall apply to the Client's obligations towards the insurer providing insurance cover for the Project.

8.3 As part of the Services, the Contract Engineer shall be responsible for ensuring the coordination of works between the Project Team members and third parties to the extent necessary to ensure that all the required Permits and administrative approvals for the Project are obtained. The Contract Engineer shall inform the Client of any case of another Project Team member's evading cooperation with the Contract Engineer within five (5) Business Days from the occurrence of such case, or shall be liable for any loss resulting from such lack of cooperation.

9. **OBLIGATIONS OF THE CLIENT**

Subject to any other terms of the Agreement, the Client undertakes to:

- (a) pay the Fee to the Contract Engineer;
- (b) provide the Contract Engineer with a copy of the Contractor Agreement, excluding any information constituting company secrets;

- (c) make decisions regarding the implementation of the notified substitute works or additional works within 15 (fifteen) Business Days from the date of receiving the complete documents relating to such works from the Contractor and the Contract Engineer;
- (d) participate in the acceptance procedures and warranty reviews relating to the Project in accordance with the relevant notification received from the Contract Engineer; and
- (e) notify comments to or approve the financial reconciliation of the construction of the Project carried out by the Contract Engineer within 14 (fourteen) Business Days of the date of receiving the financial reconciliation from the Contract Engineer.

10. FEE AND PAYMENTS

- 10.1 The Client undertakes to pay the Contract Engineer a lump-sum Fee of EUR [●] (in words: [●] euro), as full remuneration for the proper performance of the Services and other obligations arising under the Agreement. No Fee will be payable to the Contract Engineer for any of the Services or other obligations of the Contract Engineer arising under the Agreement that have not been performed by the Contract Engineer in accordance with the Agreement.
- 10.2 Since the Fee for the Service is a lump-sum fee, it covers all variations, modifications, additions, and corrections, etc. not explicitly referred to in the Agreement, but not extending beyond the scope set out in the Agreement.
- 10.3 The Fee shall constitute the only payment for the Services, covering all the costs and expenses incurred by the Contract Engineer in connection with the Services provided, including the costs of travel and any accommodation, Documentation printing costs etc. The Fee shall remain unchanged throughout the term of the Agreement, irrespective of the content of or any amendments to the terms of the Contractor Agreement, actual acceptance dates of the design works or construction works, the scope and value of the Client's orders for the Contractor to perform additional works and substitute works, as well the number of Construction Defects during the guarantee and warranty period arising from the Contractor Agreement.
- 10.4 The Fee shall be paid to the Contract Engineer in equal monthly instalments. First invoice shall be delivered to the Client not earlier than one month after signing of this Agreement.

If any part of the Services is not provided, the Fee shall be adjusted in order to reflect the value of the Services actually provided by the Contract Engineer.

- 10.5 Together with each invoice, the Contract Engineer shall present to the Client a breakdown of the Services provided in relation to the Fee.
- 10.6 Within 10 (ten) Business Days of the receiving the above-mentioned breakdown, the Client shall provide to the Contract Engineer a notice of the proposed deductions from the amounts due under the Agreement, including justification thereof. After the aforementioned period of 10 (ten) Business Days expires, the Contract Engineer shall have the right to issue an invoice for any amounts not questioned by the Client. This Clause shall be without prejudice to any other rights vested in the Parties pursuant to the Agreement.
- 10.7 An invoice issued by the Contract Engineer must be marked properly with number 03/EU/T2/CESTS.
- 10.8 The Client shall make payment within 28 (twenty eight) days of the date of receiving an invoice correctly issued by the Contract Engineer, for the amount corresponding to the value of the Services actually provided by the Contract Engineer and approved by the Client in the given settlement period, by bank transfer to the Contract Engineer's bank account number [●].
- 10.9 Any sums due under the Agreement shall be invoiced and paid in euro.
- 10.10 Any sums arising under the Agreement are net amounts, exclusive of VAT, and therefore VAT at the relevant rate applicable on the date of issue of the invoice shall be added.
- 10.11 If there is any delay in the payment of the Fee due to the Contract Engineer, the Contract Engineer shall be entitled to charge statutory interest.
11. **PENALTIES**
- 11.1 If the Contract Engineer does not provide any of the Services within the time limit stipulated in the Agreement, the Client will be entitled to demand payment from the Contract Engineer of a contractual penalty of 0.05% of the Fee for each day of delay (*złotoka*) for the first 10 (ten) days of the delay, counted from the day on which a given Service was to be provided, and thereafter 0.1% of the Fee for each subsequent day of delay, counted until the day preceding the day on which a given Service is duly provided.
- 11.2 The aggregate liability of the Contract Engineer to the Client for the contractual penalties referred to in this Clause 11 is limited to 30% (thirty per cent) of the Fee.
- 11.3 The Client may, without prejudice to any other method of recovering amounts due in respect of penalties, set off the amount of such contractual penalty against any amount due and payable to the Contract Engineer.
- 11.4 Payment or set-off of penalties due to a delay in the provision of Services does not release the Contract Engineer from its obligation to provide such services.
12. **TERMINATION**
- 12.1 The Client may terminate the Agreement by giving the Contract Engineer notice of 30 (thirty) days in writing. In such a case, the Client will pay the Contract Engineer all the amounts which became outstanding on the date on which the notice was delivered to the Contract Engineer or prior to that day, for Services which were duly provided by the day on which the notice to terminate the Agreement was given.
- 12.2 The Client may terminate the Agreement with immediate effect by giving the Contract Engineer notice in writing, if the following circumstances occur:

- 12.2.1 a bankruptcy petition is filed against the Contract Engineer or the Contract Engineer files a petition with the intention of taking advantage of provisions on recovery proceedings, liquidation, composition or similar, and the Contract Engineer does not provide the explanations requested by the Client of its readiness to continue providing the Services notwithstanding such circumstances, such explanations are provided by the Contract Engineer after the date set by the Client or are not convincing for the Client;
- 12.2.2 the Contract Engineer does not fulfil its obligations in accordance with the terms of the Agreement, notwithstanding the lapse of the five-day period set for the Contract Engineer by the Client to remedy such a breach, or where the breach cannot be remedied, or is a breach of the same general nature as a breach in respect of which the Client has in the past served on the Contract Engineer at least two notices under this Clause;
- 12.2.3 the Contract Engineer does not identify a Construction Defect, which may, in the Client's opinion, affect the timely and cost-optimal implementation of the Project;
- 12.2.4 the Contract Engineer does not comply with the Legal Requirements, notwithstanding the expiry of the five-day period set for the Contract Engineer to remedy the breach caused by its failure to comply with the Legal Requirements, unless it is impossible to remedy the breach;
- 12.2.5 any other breach of the Agreement by the Contract Engineer (including non-performance or inadequate performance of any of the obligations arising from the Agreement, failure to exercise due care, submission of untrue or incomplete representations and warranties under the Agreement and the breach of the separate businesses principle referred to in Clause 19), notwithstanding the lapse of the five-day period set for the Contract Engineer by the Client to remedy such a breach, or where the breach cannot be remedied, or is a breach of the same general nature as a breach in respect of which the Client has in the past served on the Contract Engineer at least two notices under this Clause.

In such a case, the Client will pay the Contract Engineer all the amounts which became due on the day on which the notice to terminate the Agreement was delivered to the Contract Engineer or before such day for Services which were duly provided by the date on which the notice was given, and the Contract Engineer will be obliged to pay the Client a contractual penalty of 10% of the Fee, to which Clause 11.3 and Clause **Error! Reference source not found.** will apply.

- 12.3 The Contract Engineer may terminate the Agreement by giving the Client notice of 30 (thirty) days in writing if the Client does not pay any part of the Fee which is due to the Contract Engineer within 28 (twenty eight) days of the date on which it became outstanding, notwithstanding prior notification of the Client of such intention giving an additional term of 28 (twenty eight) days to pay the overdue part of the Fee. In such a case, the Client will pay the Contract Engineer all the amounts which became outstanding on the day on which the notice was delivered to the Client or before such day for Services which were duly provided until the day on which the notice to terminate the Agreement was given.
- 12.4 After notice to terminate the Agreement is given by either of the Parties, irrespective of the reasons therefore, the Contract Engineer, at the discretion of the Client, will either cease providing the Services or continue providing the Services until the lapse of four weeks from the date the notice was given, if the notice was given in accordance with Clause **Error! Reference source not found.**
- 12.5 Termination of the Agreement, irrespective of the reason, will be without prejudice to any rights or remedies available to either of the Parties in connection with non-performance or inadequate performance of any of the obligations by the other Party before the date of termination of the Agreement.
- 12.6 If the Agreement is terminated by either Party, performances rendered up to that date shall not be returned. In the case of Services provided by the Contract Engineer by the date of termination of the Agreement and Services provided by the Contract Engineer pursuant to Clause 12.4 above, they will be settled pursuant to the terms of this Agreement, applied accordingly.
13. **SUSPENSION**
- 13.1 The Client may at any time after the date hereof notify the Contract Engineer in writing that it requires the Contract Engineer to suspend the provision of the Services and the Contract Engineer shall comply with such notice. In such a case, in order to determine the amount the Client is to pay to the Contract Engineer after such suspension, Clause 12.1 and Clause 12.6 above will apply accordingly.
- 13.2 Within 18 months of the date of suspension, the Client may require the Contract Engineer to resume the provision of the Services and the within two weeks thereof the Contract Engineer resume the provision of the Services. If the Client does not require the Contract Engineer to resume the provision of the Services during that period, then either Party may terminate the Agreement, and to the extent Clause 13.1 did not apply to the Services provided up to the date of suspension of performance of this Agreement Clause 12.1 and Clause 12.6 above will apply accordingly.
14. **HEALTH AND SAFETY IN THE WORK PLACE**
- 14.1 The Contract Engineer (including the Contract Engineer's Team) will comply with the regulations on safety and other regulations determined by the Client or the Contractor or a third party engaged by the Client in relation to the Client's premises within the scope within which they relate to the Services it is providing.
- 14.2 The Contract Engineer undertakes to ensure that each person providing Services attends training provided by the Client on the principles of safety on the Site.
- 14.3 The Contract Engineer and the subcontractors of the Contract Engineer are obliged to comply with the Client's procedures specified in Schedule 6.
- 14.4 Before commencing the Services on the Site, the Contract Engineer is obliged to provide a

statement to the Client confirming that all its employees and staff and the employees of its subcontractors have been duly trained within the scope of regulations on health and safety at the work place, they have passed current medical check-ups and have appropriate qualifications and certificates. At the request of the Client, the Contract Engineer shall present to the Client for inspection appropriate documents confirming the above.

- 14.5 The Contract Engineer is obliged to assess the professional risk associated with the activities being performed on the Client's premises and to prepare necessary instructions in relation to the safe provision of Services as well as work post occupational risk assessment charts with a statement that they have been acknowledged by employees (for the Client's review).
- 14.6 In the course of works performed at the DCT Gdańsk S.A. terminal and other Client's premises, the Contract Engineer is obliged to equip all its employees and staff and to ensure that the employees of its subcontractors have appropriate work or protective clothing in compliance with regulations and norms, footwear, vests, industrial safety helmets and other personal protection means appropriate for the specific nature of the Services being provided within Client's premises.
- 14.7 The Contract Engineer is obliged to ensure appropriate supervision of its employees and staff and to designate persons for direct contact with the management instructing the performance of a given task on the Client's premises and with the health and safety in the work place unit.
- 14.8 The Contract Engineer shall actively participate in the supervision of all the Project Team members' compliance with regulations on health and safety in the work place.
- 14.9 The Contract Engineer shall promptly notify the Client of all the potential accident events, breakdowns and work accidents which occurred while the tasks entrusted were being carried out at the terminal of DCT Gdańsk S.A. and other Client's premises.
- 14.10 The Contract Engineer is obliged to present a list of names of employees and staff (which must be updated on an on-going basis) and a list of basic machinery and equipment brought to the Client's premises, together with appropriate documents from the Technical Inspection Authority [UDT] for the relevant machinery, in accordance with the Client's Procedure specified in Schedule 6.
- 14.11 All the employees and staff of the Contract Engineer and of its subcontractors entering the Client's premises must have an identity document with a photograph and an inspection list, which they will receive on the first day after they complete training on the applicable rules of health and safety in the work place.
- 14.12 Each vehicle entering Client's premises should have a copy of the Instructions for service companies, which the Contract Engineer must complete and remit to the Officer in charge of security of the DCT port facility (PFSO) before the provision of Services on the Client's premises commences. In the event of a gross infringement of the rules and regulations on health and safety in the work place by an employee or staff of the Contract Engineer or its subcontractor, the Client will be entitled to take back the inspection list and refuse such person entry to the Client's premises in accordance with the procedure described in Schedule 6.
- 14.13 In the event of an accident at work involving an employee or a staff member of the Contract Engineer or its subcontractor, the circumstances of and reasons for the accident shall be determined by a post-accident team appointed by the employer of the injured employee. The reasons for and circumstances of the accident may be determined in the presence of a representative of the health and safety in the work place service units of the Client.
- 14.14 The Client and the Contract Engineer undertake to co-operate with each other within the scope of and in order to ensure that the employees and staff working at the same place have

an appropriate level of safety at work (occupational health and safety coordinator).

15. PERFORMANCE BOND, DEFECTS LIABILITY SECURITY AND RETAINED AMOUNTS

15.1 Performance Bond

15.1.1 Subject to Clause 15.3, the Contract Engineer will obtain and maintain (at its own cost) a Performance Bond in order to secure the proper performance of the Agreement in the Project Period. The Performance Bond shall secure, in particular, the proper performance of obligations of the Contract Engineer, the payment of contractual penalties, and any claims of the Client against the Contract Engineer in connection with the Agreement. The Client may draw on the Performance Bond in order to secure or recover any costs or losses in respect of damage suffered due to an infringement of the contractual obligations by the Contract Engineer.

15.1.2 The Performance Bond will be in the form of an unconditional, divisible, transferable and irrevocable bank guarantee or an insurance guarantee payable on the first demand of the Client and will be issued by, as the case may be, a bank or an insurer with its seat in Poland, substantially in the form set out in Schedule 5(A) or any other form approved by the Client at its discretion.

15.1.3 The Performance Bond will be issued for an amount equal to 10% of the Fee.

15.1.4 The Contract Engineer will provide the Performance Bond to the Client within 30 (thirty) days of the signing of the Agreement.

15.1.5 The Contract Engineer will ensure that the Performance Bond is valid and may be drawn on until a day falling no earlier than one (1) month after the Completion Date. The Client will return the Performance Bond to the Contract Engineer within 14 (fourteen) days of the expiry thereof.

15.1.6 If for any reason the Completion Date is postponed, the Contract Engineer at its own cost will extend the validity of the Performance Bond by such number of days that corresponds to the postponement. If the postponement is for more than 30 (thirty) days and is caused by circumstances for which the Client is solely responsible, the costs of such postponement only for the period for which the Client is at fault will be borne by the Client. Failure to extend the validity of the Performance Bond at least 30 (thirty) days in advance of its expiry entitles the Client to draw the entire amount of the Performance Bond and to retain it as a cash deposit instead of the Performance Bond.

15.2 Defects Liability Security

15.2.1 Subject to Clause 15.3, the Contract Engineer will obtain and maintain (at its own cost) Defects Liability Security in relation to the proper performance of the Agreement in the Warranty Period. The Defects Liability Security will secure, among other things, the proper performance of the obligations of the Contract Engineer in the Warranty Period, payment of contractual penalties, and any claims of the Client against the Contract Engineer in connection with the Agreement. The Client may use the Defects Liability Security in order to secure or recover any costs or losses in respect of damage it suffers due to an infringement of the contractual obligations by the Contract Engineer.

15.2.2 The Defects Liability Security will have the form of an unconditional, indivisible, transferable, irrevocable bank guarantee or an insurance guarantee payable on the

first demand of the Client and will be issued by, as the case may be, a bank or an insurer with its seat in Poland, substantially in the form set out in Schedule 5(B) or any other form approved by the Client at its sole discretion.

- 15.2.3 The Defects Liability Security will be issued for an amount equal to 5% of the Fee (i.e. EUR [●] (in words: [●] euro)).
- 15.2.4 The Contract Engineer will provide the Defects Liability Security within 14 (fourteen) days from the beginning of the Warranty Period. The Defects Liability Security will come into force on the first day after the date the Performance Bond expires. Failure to provide the Defects Liability Security by the deadline entitles the Client to draw on the Performance Bond an amount equal to the Defects Liability Security and to retain it as a cash deposit instead of the Defects Liability Security.
- 15.2.5 The Contract Engineer will ensure that the Defects Liability Security is valid and enforceable until a day that is no earlier than one (1) month after the day on which the Warranty Period ends. The Client will return the Defects Liability Security to the Contract Engineer within 14 (fourteen) days of its expiry.

15.3 Retained Amounts

- 15.3.1 No later than 15 Business Days before the Completion Day, the Contract Engineer has the right to inform the Client in writing that it intends to secure the proper performance of the Agreement in the Warranty Period by means of the Retained Amounts. If the Contract Engineer does not exercise the right referred to in the preceding sentence, it will be obliged to deliver to the Client an Defects Liability Security on the terms and conditions set out in Clause 15.2. If the Contract Engineer exercises the right referred to above, Clauses 15.3.2 – 15.3.4 will apply.
- 15.3.2 The Contract Engineer will be obliged to pay to the Client an amount equal to 5% of the Fee (i.e. EUR [●] (in words: [●] euro)), as security for the proper performance of the Agreement by the Contract Engineer in the Warranty Period. The Client is entitled to set off payment of the Retained Amount against the part of the Fee referred to in Clause 10.4.4.
- 15.3.3 Provided that all the current claims of the Client against the Contract Engineer have been satisfied or secured, the Client will return the Retained Amounts to the Contract Engineer within 30 (thirty) Business Days of the end of the Warranty Period.
- 15.3.4 The Client may use the Retained Amounts to secure or recover all the costs or losses in respect of the damage suffered due to an infringement of this Agreement by the Contract Engineer, on the same principles as in the case of the Client's using the Indemnity for the Defects. The Contract Engineer is obliged to reinstate the Retained Amounts each time they have been used by the Client, as described in Clause 15.3.2, so that in the Warranty Period the Retained Amounts always amount to 5% of the Fee.

16. INSURANCE

- 16.1 During the term of the Agreement, the Contract Engineer undertakes to have and maintain an agreement for third party liability insurance within the scope of the business activity carried out by the Contract Engineer, for up to a guarantee sum no lower than EUR 1 million (in words: one million euro).
- 16.2 Within 30 days of signing the Agreement the Contract Engineer will present evidence to the Client that the insurance referred to in Clause 16.1 has been taken out and the due premiums have been paid (in the form of a policy or other documents confirming payment of the premium). During the term in which the Services are being provided, at each request of the Client, the Contract Engineer will promptly, within no more than five (5) days of receiving such a request, present to the Client for its review the documents confirming that the insurance referred to in Clause 16.1 is maintained.
- 16.3 If the Contract Engineer, notwithstanding the reason, does not take out the insurance referred to in Clause 16.1, does not keep it in force or does not provide the Client with satisfactory evidence that it has been taken out and is being kept in force (in the form of a policy or other documents confirming the conclusion of insurance and evidence that premiums have been paid), the Client will be entitled, without prejudice to any other right or remedy, at its discretion, to:
- 16.3.1 conclude such insurance and pay the due premiums; in such a case, the Client can claim a refund of the costs of concluding insurance from the Contract Engineer and set them off against each amount payable or which becomes payable to the Contract Engineer pursuant to the Agreement; or
- 16.3.2 send the Contract Engineer an additional request in writing to conclude the insurance agreement or to present evidence of its conclusion and maintenance within five Business Days of the presentation of such a request to the Contract Engineer, with the provision that that after such term lapses to no effect, the Client will be entitled to terminate the Agreement with immediate effect; in such a case Clause 12.2 shall apply accordingly.

17. INTELLECTUAL PROPERTY RIGHTS

- 17.1 The Contract Engineer transfers to the Client the ownership title to any carriers on which the Documentation is fixed. However, the Contract Engineer may retain one copy of all the documents produced by the Contract Engineer in the performance of the Services.
- 17.2 The Contract Engineer transfers to the Client the economic copyrights to the Documentation within the following fields of exploitation (the "**Fields of Exploitation**"):
- 17.2.1 recording;
- 17.2.2 reproduction by printing, reprographic and digital techniques;
- 17.2.3 digitalisation, inputting and recording the Documentation in the memory of a computer;
- 17.2.4 inputting into IT networks, in particular the Internet, in order to distribute (broadcast) the Documentation through such networks, so that anybody can have access to them at the place and time of their choosing;
- 17.2.5 distribution of the Documentation, in particular its display and making it publicly

available in the mass media;

- 17.2.6 introducing copies of the Documentation to trading;
- 17.2.7 lending the original Documentation or copies thereof for use or leasing them;
- 17.2.8 using the Documentation for developing project documentation, for the purposes of construction and extension of the Project;
- 17.2.9 using the Documentation for the purposes of carrying out repair works in the Project, as well as maintaining the Project in the proper state of repair;
- 17.2.10 using the Documentation for advertising, promotional and marketing purposes, in particular for the promotion of the activities of the Client; and
- 17.2.11 using the Documentation for the purpose of further amendments of any permit related to the Project,

both in Poland and abroad, whereas the transfer of the rights to each work (*utwór*) that is a part of the Documentation occurs automatically without the need to make any separate declarations in this respect.

- 17.3 The Contract Engineer gives its irrevocable consent and transfers to Client the right to give further consent to any amendments, alterations, modifications, translations and adaptations of the Documentation and any documentation related to it in all the Fields of Exploitation (the "**Derivative Works**") and to use such Derivative Works. The Parties confirm that the economic copyrights to the Documentation and the Derivative Works will belong exclusively to the Client in all the Fields of Exploitation, and give their consent to the Client's having both the Documentation and the Derivative Works at its disposal and using it at its own discretion in its business activity only for the purposes of designing, constructing, operating, altering and up-grading the Project.
- 17.4 The Contract Engineer represents and undertakes to ensure that the enforcement of the terms of this Clause 11 does not violate any third party rights. The Contract Engineer will use its best efforts to ensure the acquisition by the Client of the rights specified above.
- 17.5 On the basis of Art. 392 of the Civil Code, the Contract releases the Client from the obligation to make performances for third parties if any claims are raised against the Client in connection with the violation of a copyright, patent, registered design, trade mark, trade name or other intellectual or industrial property right, if such claim or proceedings are related to the Documentation.
- 17.6 The Contract Engineer shall ensure that any individual who is an author of the Documentation does not exercise his/her moral (osobiste) rights to the work in bad faith or in any other way that could be detrimental to the Client's interests connected with the completion, maintenance, repair, modernisation or alteration of the Project or further adaptations/developments of the Documentation.
- 17.7 If any part of the Documentation includes an invention, utility model, design, geographical indication, topography of integrated circuits or any other solution/technology protected by law, in particular by the Law of Industrial Property of 30 June 2000 (*Prawo własności przemysłowej*) or an international treaty, the Contract Engineer should inform the Client about that fact when delivering such Documentation for the Client's review.
- 17.8 The Fee for the transfer of economic rights, the ownership title to the carriers on which the Documentation is recorded, the granting of permits and consents and the performance of other obligations of the Contract Engineer referred to in this Clause 17 is covered in full by the Fee. At the same time, the Contract Engineer consents to the Client's having the Documentation and the Derivative Works at its disposal and using them within the scope provided for by the Agreement without additional remuneration for the Contract Engineer.
- 17.9 If the Agreement is no longer binding for any reason, including, in particular, the termination of the Agreement by either of the Parties, the Client will retain all the rights acquired on the basis of this Clause 17.
18. **SEPARATE BUSINESSES**

The Contract Engineer has no capital or personal links with the Contractor.

19. NOTICES

- 19.1 Subject to Clause 1.2.4 and excluding current operational information which may be exchanged between the Parties in the form of e-mails, all other notices delivered by the Parties in connection with the performance of the terms of the Agreement must be made in writing and must be signed by the persons authorised to represent the Party sending the notice, including, in particular, the Representative of the Client or the Representative of the Contract Engineer, as the case may be.
- 19.2 Notices may be delivered personally, by registered mail or by courier, to the following addresses:
- 19.2.1 for the Client:
- Dział Techniczny DCT Gdańsk S.A.
- ul. Kontenerowa 7,
- 80-601 Gdańsk
- Attn.:
- Ryszard Kula
- 19.2.2 for the Contract Engineer:
- [•]
- 19.3 The notices will be deemed properly delivered in the case of personal delivery, by courier or by registered mail, upon delivery.
- 19.4 If either of the Parties changes its the address or telephone number, that Party will notify the other Party thereof in writing. Such notice will be made by no later than the last day preceding the change. If no notice of such change is given, correspondence sent to the previous address will be deemed delivered.
- 19.5 A notice sent in accordance with this Clause 19 and received by the addressee on a day which is not a Business Day or received on a Business Day after 3 p.m. will be deemed delivered on the following Business Day.

20. CONFIDENTIALITY

- 20.1 Subject to the other terms of this Clause 20, the Contract Engineer undertakes to:
- 20.1.1 keep the Confidential Information strict confidential; in particular, it undertakes not to disclose the Confidential Information to any third parties;
- 20.1.2 use the Confidential Information only for providing the Services;
- 20.1.3 protect the Confidential Information with due care, in accordance with the Contract Engineer's professional standards, against loss, theft, damage, deterioration of their condition and access by third parties unauthorised to obtain the Confidential Information;
- 20.1.4 promptly inform the Client if the Contract Engineer: (i) learns or suspects that his obligations were breached within the scope of this Agreement or any unauthorised

disclosure of the Confidential Information has occurred for which the Contract Engineer would be responsible in accordance with the terms of this Agreement; or (ii) is required to disclose the Confidential Information, in which case the Contract Engineer will inform the Client about this requirement before disclosing the Confidential Information;

- 20.1.5 promptly return to the Client, on its demand, all the Confidential Information that it holds or ensure that all copies, reproductions and other documents created as a result of a disclosure of the Confidential Information are destroyed and all electronic information is deleted.
- 20.2 The Confidential Information may be disclosed:
- 20.2.1 if this is necessary for the proper fulfilment by a Party of the rights or obligations resulting from the Agreement,
 - 20.2.2 on the basis of generally applicable provisions of law,
 - 20.2.3 with the prior consent of the other Party, or
 - 20.2.4 in connection with court or administrative proceedings conducted with the participation of a Party, if this is required by the authority conducting the proceedings.
- 20.3 The obligation of the Contract Engineer not to disclose the Confidential Information does not apply to:
- 20.3.1 Confidential Information which became generally accessible as a result of actions that do not constitute a violation of the Agreement,
 - 20.3.2 the disclosure of Confidential Information to technical, legal or tax advisers of a Party, provided that those advisers are obliged to comply with professional secrecy or undertake to the Parties to comply with the terms of confidentiality set out in the Agreement.
- 20.4 In the case of a failure to perform or improper performance of any of the obligations of the Contract Engineer set out in this Clause 21, the Contract Engineer will pay the Client a contractual penalty of EUR 50,000 (fifty thousand euro) for each instance of a failure to perform or improper performance of an obligation of the Contract Engineer specified in this Clause 20. Clause 11.3 and Clause 11.4 apply accordingly.

21. **EXTERNAL RELATIONS AND PROMOTION**

- 21.1 The Parties undertake to protect the reputation of each of the Parties with vis-a-vis third parties.
- 21.2 Without the prior written consent of the Client, the Contract Engineer will not issue or make any public statements concerning the Agreement or the Project.
- 21.3 All actions relating to promotion and advertising taken by the Contract Engineer in connection with the Agreement or the Project must be agreed each time in advance by the Parties in writing.

22. **ANTI-CORRUPTION CLAUSE**

Each of the Parties undertakes to use all its efforts to prevent the members of the Party's

authorities and its employees, subcontractors and representatives of the Party, and also other entities performing this Agreement on behalf of a given Party, from committing any deed which could be the offence of corruption in commercial transactions within the meaning of Art. 296a §1 and § 2 of the Criminal Code.

23. **ASSIGNMENT**

- 23.1 Neither Party may assign their rights or obligations resulting from this Agreement without the prior written consent of the other Party.
- 23.2 Subject to the above, the Contract Engineer hereby gives its consent to the transfer of all the rights or obligations resulting from this Agreement (along with the rights under insurance policies) to each owner in time of the Project or the entity financing the implementation of the Project.

24. **GOVERNING LAW**

The Agreement and all obligations resulting from it will be governed by the laws of Poland.

25. **SETTLEMENT OF DISPUTES**

- 25.1 The Parties will settle any disputes resulting from the execution and performance of the Agreement amicably by negotiations held for a period of 30 (thirty) days from a Party's receiving from the other Party written notice of a dispute that has arisen.
- 25.2 If the Parties do not settle the dispute within the period referred to in the preceding Clause, then the dispute between them resulting from or in connection with this Agreement will be settled in accordance with the Rules of the Court of Arbitration at the Polish Confederation of Private Employers Lewiatan in Warsaw (the "**Arbitration Court**") (the "**Rules**") by three arbitrators appointed in accordance with the Rules in force on the day the arbitral clause was made. The Arbitration Court will apply Polish law. The arbitration proceedings will be conducted in Polish.

26. **ENTIRE AGREEMENT**

The Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any previous arrangements between the Parties within the scope regulated by this Agreement.

27. **SEVERABILITY**

If any terms of the Agreement becomes invalid or ineffective for any reason, neither the validity or effectiveness of the remaining terms will be affected. In such a situation, the Parties will use their best efforts to achieve the intention and aim of the invalid and ineffective term by substituting it with a new term with an economic or legal effect comparable to the effect of the invalid or ineffective term.

28. **AMENDMENTS**

Any amendments to the Agreement must be made in writing under pain of nullity and must be prepared in the form of consecutively numbered annexes to the Agreement and a date stamp.

29. **NO WAIVER OF RIGHTS**

Subject to generally applicable provisions of law and the terms of this Agreement, no any delay in the exercise by either Party of any right under this Agreement will be interpreted as a

rescission or waiver of such exercise, release from debt or waiver of such rights, regardless of the period of such delay. Subject to the terms of the Agreement, no rights, entitlements arising from the provisions of law, or claims and obligations resulting from this Agreement will limit the possibility of exercising the rights resulting from the Civil Code and other regulations.

30. **TERM**

This Agreement enters into force on the day of its conclusion and is binding until 31 March 2021.

31. **COUNTERPARTS AND LANGUAGE**

This Agreement has been executed in two (2) identical counterparts in English language, one counterpart for each of the Parties.

This Agreement was made on the date set out in the introduction.

Client

Contract Engineer

SCHEDULE 1 PROJECT

The aim of the Project is to purchase and deliver to DCT, on the basis of the Contractor Agreement, newly built five ship to shore quay container gantry cranes compliant with DCT's Employer's requirements (technical specification) and provide DCT with all required by law permits and approvals issued by relevant statutory authorities (in particular but not limited to authorities supervising technical quality of handling equipment i.e. Transportowy Dozór Techniczny, <http://www.tdt.pl/>).

Delivery of the five ship to shore quay container gantry cranes shall be for the purpose of performing cargo handling operations at DCT's to-be constructed deep-water landing pier and adjacent stacking yards comprising a container terminal with a target annual handling capability of 1,500,000 TEU, allowing container storage and the servicing of ocean ships with a capacity of 15,000+ TEU.

Main characteristics and parameters of the five ship to shore quay container gantry cranes:

- Cranes will load and discharge container vessels and will handle containers, hatch covers and lashing gear
- Cranes will be able to operate with I.S.O. Containers of 20ft., 30ft., 40ft. and 45ft as well as 2 x 20ft lengths

Employer's requirements (technical specification) related to the five ship to shore quay container gantry cranes constitutes Attachment D to the Contractor Agreement.

Further details of the Project are presented in the STS CRANE SUPPLY CONTRACT – PORT OF GDAŃSK concluded with the Contractor selected through Tender No. 01/EU/T2/STS – Purchase and delivery of five ship to shore quay container gantry cranes (Contractor Agreement).

**SCHEDULE 2
SERVICES**

Schedule 2 (Services) corresponds to Annexe No. 4 to the Notice of Tender (CESTS Detailed Scope of Work) and is available as a separate file on the Client's website: www.dctgdansk.pl

SCHEDULE 3
MEMBERS OF THE CONTRACT ENGINEER'S TEAM

First name and surname	Title/ Specialisation	Education and building qualification	Key experience
	Project Manager		
	Structural Engineer		
	Welding Engineer		
	Mechanical Engineer		
	Electrical Engineer		

**SCHEDULE 4
OFFER**

SCHEDULE 5
FORM OF PERFORMANCE BOND AND DEFECTS LIABILITY SECURITY

(A)
PERFORMANCE BOND

To:

[●] ("**Client**")

From:

[●] ("**Bank**"/"**Insurer**")

Issued at the order of:

[●] ("**Contract Engineer**")

Value: 10% of the Fee, i.e. EUR [●]

We received information that on [●] 2014 you concluded with the Contract Engineer an agreement to provide contract engineer services for the sea container terminal construction project (the "**Agreement**").

Under the Agreement, the Contract Engineer is obliged to deliver a performance bond to you in the form of a bank guarantee/insurance guarantee for 10% of the Fee.

With respect to the above, we _____
(detailed address)

hereby immediately, irrevocably and unconditionally, with no reservations, objections or recourse claims, will pay the following amount to you:

EUR _____ (in words: _____),

on your first written demand described below.

Each of your written demands will be made in accordance with the terms of this Bond and delivered to our registered office in [●] before the date of expiry of the Bond. Otherwise, it will be rejected.

For identification purposes, please deliver the payment demand through the bank maintaining your bank account. This bank will confirm that the signatures on the payment demand were made by persons authorised to incur liabilities on your behalf.

Each of your payment demands will contain the number of our Bond, the amount claimed and your statement that the Contract Engineer failed to fulfil its obligations to you under the Agreement (such as, among other things, the undertaking to properly perform the Services, the obligation to pay contractual penalties, other claims of the Client against the Contract Engineer in connection with the Agreement) or that the Contract Engineer became insolvent. The Bank/Insurer is not authorised to verify the correctness of the basis for the claim or to make any calculations.

In the event of any dispute between the Client and the Contract Engineer, the Bank/Insurer will not be authorised to transfer any amounts claimed under the Bond to a court deposit.

This Bond is valid until [●] and will expire automatically and in full if your payment demand is not delivered to the Bank/Insurer on such date at the latest, irrespective of whether this Bond and any

amendments hereto were returned to the Bank/Insurer.

The assignment of rights under this Bond requires the prior written consent of the Bank/Insurer.

Our liability under the Bond will be decreased by the amount of each payment made hereunder.

All rights and obligations under this Bond are governed by Polish law, and all disputes will be resolved by a competent court in Warsaw.

_____ on _____

[Bank/Insurer]

(B)
DEFECTS LIABILITY SECURITY

To:

[●] ("**Client**")

From:

[●] ("**Bank**"/"**Insurer**")

Issued at the order of:

[●] ("**Contract Engineer**")

Value: 5% of the Fee, i.e. EUR [●]

We received information that on [●] 2014 you concluded with the Contract Engineer an agreement to provide contract engineer services for the sea container terminal construction project (the "**Agreement**").

Under the Agreement, the Contract Engineer is obliged to deliver a performance bond to you in the form of a bank guarantee/insurance guarantee for the amount of 5% of the Fee.

With respect to the above, we _____,
(detailed address)

hereby immediately, irrevocably and unconditionally, with no reservations, objections or recourse claims, will pay the following amount to you:

EUR _____ (in words: _____),

on your first written demand described below.

Each of your written demands will be made in accordance with the terms of this Bond and delivered to our registered office in [●] before the date of expiry of the Bond. Otherwise, it will be rejected.

For identification purposes, please deliver the payment demand through the bank maintaining your bank account. This bank will confirm that the signatures on the payment demand were made by persons authorised to incur liabilities on your behalf.

Each of your payment demands will include the number of our Bond, the amount claimed and your statement that the Contract Engineer failed to fulfil its obligations to you under the Agreement during the Warranty Period or that the Contract Engineer became insolvent. The Bank/Insurer is not authorised to verify the correctness of the basis for the claim or to make any calculations.

In the event of any dispute between the Client and the Contract Engineer, the Bank/Insurer will not be authorised to transfer any amounts claimed under the Bond to a court deposit.

This Bond is valid until [●] and will expire automatically and in full if your payment demand is not delivered to the Bank/Insurer on such date at the latest, irrespective of whether this Bond and any amendments hereto were returned to the Bank/Insurer.

The assignment of rights under this Bond requires the prior written consent of the Bank/Insurer.

Our liability under the Bond will be decreased by the amount of each payment made hereunder.

All rights and obligations under this Bond are governed by Polish law, and all disputes will be resolved by a competent court in Warsaw.

_____ on _____

[Bank/Insurer]

SCHEDULE 6
CLIENT'S PROCEDURES

- Notification procedure
- DCT_SOPS_SC_12.05_Procedura kontroli ruchu osobowego i samochodowego */Pedestrian and Vehicle Traffic Control Procedure/*
- DCT_DOC_79.03 Przewodnik bezpieczeństwa */Security Guide/*
- DCT_SOP_SC_17.02_Procedura dotycząca podwykonawców i firm usługowych */Procedures for Subcontractors and Service Providers/*
- DCT_SOP_SC_25.01_Procedura dotycząca prac niebezpiecznych pożarowo */Procedures for Fire-hazardous Works/*
- DCT_SOP_SC_20.01_Materiały wybuchowe */Explosives/*
- DCT_SOP_SC_23.01_Procedura nadzoru nad podwykonawcami */Procedure for Supervising Subcontractors/*
- DCT_SOP_SC_23.01_Załącz.4_Warunki świadczenia usług */Conditions of Service Provision/*