

**Agreement No. .... (the "Agreement")**

entered into as of \_\_\_\_ 2015 in Gdańsk by and between:

DCT GDAŃSK S.A. with its registered office in Gdańsk at ul. Kontenerowa 7, 80-601 Gdańsk, entered into the Register of Entrepreneurs of the National Court Register under KRS number 0000031077, Registry Court: District Court Gdańsk-Północ in Gdańsk, being a VAT payer possessing NIP (Tax Identification Number) 204-00-00-183, with share capital in the amount of 66,000,000.00 PLN, paid in full, represented by:

Włodzimierz Maciej Kwiatkowski - CEO

hereinafter referred to as the "**Buyer**"

and

.....

hereinafter referred to as the "**Seller**"

hereinafter jointly referred to as the "**Parties**"

The Parties hereto agree as follows:

§ 1

1. The Seller sells and the Buyer buys the following equipment:

1

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2

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3

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4

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5

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(in compliance with the technical specification constituting Appendix No. 1, hereinafter referred to as the "**Specification**"),

severally referred to as the "**Item of the Equipment**",

jointly referred to as the "**Subject of the Contract**".

2. The net price of the Item of the Equipment (1 item) shall be:

EUR .....

(in words: ..... euros)

3. The net price of the Subject of the Contract (33items) shall be:

EUR .....

(in words: ..... euros)

4. The payment for the Equipment listed in Section 1 shall be made to the Seller's bank account provided below:

[BANK ACCOUNT NUMBER AND TRANSFER DATA TO BE COMPLETED]

5. To the prices set out in §1 Sections 2 and 3 VAT shall be added in compliance with applicable legal provisions in force.

6. The Seller shall pay all and any taxes, duties and other charges related to the performance hereof and the launch of the Subject of the Contract onto the Polish market.

7. The price of the Subject of the Contract shall include the cost of all necessary elements and components of particular Items of the Equipment, costs of the Equipment installation and of assembly works necessary for proper and safe functioning of the Equipment, in the configuration as defined in the Specification.

8. For avoidance of any doubt, the price of the Subject of the Contract shall include the cost of training by the Seller of the Buyer's operating staff (in the scope of proper use and operation of the Equipment) and the Buyer's technical staff (in the scope of repairs and maintenance of all subassemblies and mechanisms of the Equipment) according to the Technical Specification.

## § 2

1. The Buyer shall pay the Seller an advance payment in the amount of .... of the value of the Subject of the Contract + VAT (in compliance with applicable legal provisions in force) within \_ days of signing the Agreement.

2. \_\_\_ % of the value of the Subject of the Contract shall be paid by the Buyer to the Seller's bank account on the basis of an invoice within [TO BE COMPLETED]\_\_ days of the date of:

(i) the delivery of the complete Subject of the Contract (for avoidance of any doubt - all Items of Equipment)

and

(ii) signing by the Parties hereto of an Acceptance Protocol confirming a lack of any defects in the Subject of the Contract;

and

(iii) service with the Buyer of a properly issued invoice. The invoice shall be deemed correct and proper if a copy of the Acceptance Protocol related to the Subject of the Contract is enclosed thereto.

3. The Equipment shall become the property of the Buyer at the time of signing of the Acceptance Protocol confirming a lack of any defects in the Subject of the Contract, provided that the appropriate payments have been made in full by the Buyer. ~~At the time of signing of the Acceptance Protocol confirming a lack of any defects in the Subject of the Contract the title to the Equipment shall pass to the Buyer.~~

## § 3

1. In the event of any delay in the delivery of the Item/Items of Equipment in compliance with §4 hereof the Buyer shall be entitled to require that the Seller:

(i) pay a contractual penalty in the amount of 1% of the value of undelivered equipment of the Subject of the Contract for each commenced week of delay;

or

(ii) deliver to the Buyer, at the expense and risk of the Seller, the replacement equipment till the delivery of the Item/Items of Equipment and signing of the Equipment Acceptance Protocol. The replacement equipment should perform all operational activities of the Equipment and comply with the Specification, unless the Buyer gives consent to the replacement equipment other than meeting the Specification. The contractual penalties set forth in the above sentence may not exceed 105 % of the value of the Subject of the Contract. ~~The afore-mentioned contractual penalties shall not exclude~~

~~the Buyer's right to pursue claims for remedy of the damage under general principles.~~ If the Seller does not deliver the replacement equipment till the delivery time plus 3 days, the Buyer is entitled to rent the replacement equipment at the cost and risk of the Seller. Those costs are limited up to 40% of the contract value.

2. In the event that the delay in the delivery of the last Item of Equipment set out in § 4 reaches 4 weeks, the Buyer shall be entitled, within 7 days, to withdraw from the Agreement and, at the same time, require that the Seller pay a contractual penalty in the amount of ~~40~~10% of the value of the Subject of the Contract. In the event that the Buyer withdraws from the Agreement on the basis of the requisites set out in the previous sentence, the Seller shall forthwith collect the delivered Equipment from the premises of the Buyer within 14 days of the delivery of the notice.

3. In the event that any irregularities (shortages/defects) of the Equipment are found during the trial operation in compliance with § 8 Section 3, prior to signing the Equipment Acceptance Protocol confirming a lack of any defects in the Equipment, the Buyer shall request the Seller to:

(i) supplement the shortages in the Equipment;

or

(ii) remove any defects in the Equipment;

or

(iii) deliver the Equipment free from any defects/shortages in the event that the said defects/shortages may not be removed/supplemented in the original Equipment;  
within 14 days of the receipt of the request by the Seller.

4. If, upon the expiry of the time limits set out in Section 3, the Seller fails to meet the Buyer's request, the Buyer shall be entitled to:

(i) impose on the Buyer a contractual penalty in the amount of 1% of the value of the Subject of the Contract value for undelivered equipment for each week of delay in meeting the request (maximum ~~10~~5% of the value of the Subject of the Contract) and to remove defects/shortages at the expense and risk of the Seller;

or

(ii) withdraw from the Agreement and, at the same time, require that the Seller pay a contractual penalty in the amount of ~~14~~0% of the value of the Subject of the Contract.

5. In no event shall the Seller be liable, whatever the cause thereof for loss of business, goodwill, revenue, profits, data, production or any indirect, special punitive or consequential damage. The aggregate liability of the Seller shall always be limited to ten percent (10%) of the total value of this Agreement.

#### § 4

1. Time limits for the delivery of the Subject of the Equipment:

Complete Subject of the contract should be delivered latest till 30.09.2016.

2. Prior to the delivery of the Equipment the Seller shall conclude and, subsequently, maintain throughout the Equipment delivery period until the signing by the Parties hereto of an Acceptance Protocol related to the Subject of the Contract, an insurance against all and any loss and damage to the Equipment, except the extent to which the said liability occurs in connection with any negligence of the Buyer, its representative or employees.

3. In the event that the Contractor fails to conclude or maintain the insurance set out in the previous clauses or fails to deliver sufficient evidence, policies or receipts, the Buyer shall be entitled to conclude the missing insurances or pay premiums and set off the costs incurred thereon against dues to the Contractor, without prejudice to any other rights or remedies.

#### § 5

1. Quality Guarantee:

– min. [TO BE COMPLETED] months of the date of signing of the Acceptance Protocol related to the Subject of the Contract confirming a lack of any defects. The Manufacturer's terms of the guarantee shall apply. In the event of any discrepancy between the guarantee set out in the previous sentence and the Agreement, the provisions hereof shall prevail.

2. The Parties hereto have agreed that all service activities under the guarantee may be carried out by the Buyer with original parts used or installed in the equipment. . The Parties agree to the purchase of spare parts from other suppliers than the Seller, provided that they are original parts, in compliance with the provided technical specification. The guarantee activities set out in the previous sentence shall not release the Seller from its obligation to provide services under the guarantee. In the event of the Buyer's request, the Seller shall make a repair as part of the guarantee within the shortest possible time limits, however, no longer than two weeks. If the repairs are not carried out within a reasonable timeframe set by the Buyer and the consequence of the above is the inability to use any Item of the Equipment, the Buyer shall be entitled to require that the Seller pay a contractual penalty in the amount of 0,1% of the value of each Item of the Equipment for each commenced day of delay for each Item of the Equipment.. In the event that the Buyer installs during the guarantee period, i.e. in compliance with Section 1, any parts owned by the Buyer, the Seller, depending on the Buyer's decision:

(i) return the Buyer brand new parts;

or

(ii) return the Buyer the amount constituting the value of the parts within 14 days of the notification by the Buyer.

3. The guarantee set out in Section 1 shall be extended appropriately for the period of the breakout of the Equipment.

4. The Equipment shall comply with all requirements of the Polish law and the law of the European Union, including CE sign and requirements of the environmental protection. The Seller should obtain all and any applicable permits, licences and approvals.

5. The Equipment being the subject hereof should be designed and performed so that it meets all requirements related to the intended use thereof and the criteria provided in the Technical Specification as well as Tender requirements.

## §6

1. Delivery conditions: DDP GDANSK as per Incoterms 2010.
2. The Seller is obliged to organize delivery on its cost and risk. For avoidance of any doubt, the price of the Subject of the Contract shall include the cost of delivery.
3. If the Seller wishes to perform delivery using the Buyer infrastructure, handling costs would be invoiced on the Seller.

## § 7

1. The Seller shall deliver the Equipment to the Buyer's registered office. The Seller shall deliver minimum 10 and maximum 15 of the Items of the Equipment in each time. Each delivery shall be made no sooner than seven days after the previous delivery. The Seller may deliver Subject of the Contract at once prior the written consent of the Buyer. The Equipment shall be stored in the place designated by the Buyer, which shall be appropriate for the assembly and start-up thereof. The Buyer shall ensure protection of the Equipment on a 24/7 basis. The Seller shall be liable for the actions of its personnel (employees and associates). The Seller hereby declares that it has been notified by the Buyer of the planned place of the Equipment assembly and start-up and makes no reservations thereto.

2. If, as a result of the Equipment assembly works conducted in the Buyer's terminal, any part of the Buyer's infrastructure is damaged by the Seller for the reasons for which the Seller is liable, the Seller

shall restore the damaged infrastructure to the previous condition at its own expense and risk within the shortest possible time limits, however not longer than 14 days under the conditions § 5 p.2.

3. The Seller shall meet all and any applicable provisions regarding safety and shall ensure safety and proper insurance to all persons designated by it for staying in the area of start-up and assembly of the Equipment.

## § 8

1. After each delivery of an Item of the Equipment in compliance with § 4 hereof and the assembly of the Item of the Equipment in compliance with § 7 hereof, the Seller shall forthwith start up the Equipment at the presence of the Buyer's representatives. The Buyer reserves its right to perform an endurance tests for each Item of the Equipment for no longer than 48 hours.

2. Within 24 hours of the start-up of the Equipment, the Seller shall take all its outfit and remove all waste and temporary installations from the Buyer's premises. In the event of the Seller's failure to remove the afore-mentioned objects within the time limits set out in the above sentence, the Buyer shall be entitled to sell/remove the left objects and clear the premises at the Seller's expense and risk.

3. The Equipment Acceptance Protocol shall be signed as soon as possible upon successful performance by the Buyer of each of the following:

(i) initial verification and confirmation of the compliance of the delivered Equipment with the terms and conditions hereof;

(ii) trial operation of the Equipment for the period of 7 days and confirmation of the compliance of the Equipment with the terms and conditions hereof;

The Buyer reserves its right to use any Item of the Equipment in the normal operating conditions during the trial period. For avoidance of any doubt, if the Equipment delivered requires registration in UDT/TDT, the trial operation shall be performed by the Buyer upon the registration thereof. The trial registration shall consist in handing over the Equipment for the performance of works in compliance with its intended use, on the premises of the Buyer's terminal.

4. The Equipment Acceptance Protocol shall constitute an Annexe to the Acceptance Protocol related to the Subject of the Contract.

## § 9

1. When manufacturing first 10 Items of the Equipment, the Buyer would perform Preliminary Verification of the Items of the Equipment, further called PVE. The same procedure will be repeated after the rest of the Equipment was manufactured, i.e. 23 Items.

2. The PVE of the Items of the Equipment would take place in the Seller's registered place of production and will last for 1 working day per each starting batch of ten Items. The Seller is obliged to provide a proper place and personnel to perform the PVE of the Items of the Equipment and cover all costs related to it and incurred by his staff and factory site.
3. The PVE of the Items of the Equipment may take place from Monday till Friday within working hours.
4. The Seller shall notify the Buyer about the possibility of the fulfilment of the PVE of the Items of the Equipment a month in advance.
5. The PVE of the Items of the Equipment shall take place minimum two weeks before performing delivery to the Buyer's registered office in accordance with § 6.
6. After each PVE of the Items of the Equipment, a PVE Protocol shall include all noticed discrepancies or defects and be signed by both Parties upon verification . In case of any defect regarding any Item of the Equipment, the Seller shall confirm completion of adjustments or compliance with comments submitted by the Buyer.
7. The PVE does not release the Seller from any responsibilities resulting from this contract and does not mean either any Acceptance or Takeover.
8. The Buyer will cover all travel and accommodation costs of his employees performing the PVE. However, if part of the batch of the Items do not pass the PVE, next PVE of this particular part of batch should be performed at the cost of Seller, including travel and accommodation for up to four people.
9. The Buyer is entitled to reject without any further justification the part of the delivery to his Site which do not pass the PVE at Seller's factory or manufacturing place.

#### § 9

All and any changes, amendments or modifications hereto shall require consent of both Parties and shall be made in writing, otherwise they shall be deemed null and void.

#### § 10

The Seller may not assign to any third party any rights or obligations hereunder without the Buyer's written consent, including without limitations the Seller's receivables from the Buyer hereunder.

#### § 11

1. In the event of occurrence of any dispute or conflict between the Parties hereto, the Parties should make efforts to settle it in an amicable way.
2. In the event that it is impossible to reach a compromise in an amicable way, the disputes shall be solved before a common court appropriate for the Buyer's registered office.

#### § 12

1. The Agreement shall be construed and governed by in accordance with the Polish law.
2. In the event that particular provisions hereof are found invalid or unenforceable in the whole or a part for any reason whatsoever, the other provisions hereof shall remain in full force and effect. In the afore-mentioned event the Parties hereto shall replace the invalid or unenforceable provisions with other provisions so as to meet the purpose of the Agreement as closely as possible.

#### § 13

The Parties hereto agree and acknowledge that the Agreement supersedes all prior arrangements made by the Parties in the course of negotiations and completely regulates the Parties' rights and obligations in the scope of the Subject of the Contract.

#### § 14

All Schedules shall constitute an integral part hereof.

#### §15

1. The Parties hereto shall not be held liable for non-performance or undue performance hereof in the event that the said non-performance or undue performance is a consequence of force majeure as defined in Section 2 hereof.
2. Force Majeure shall be understood by the Parties hereto as an event that could not be predicted with the use of diligence required in professional relations (Article 355 § 2 of the Polish Civil Code) which is external both as regards the Buyer and the Seller and which they were not able to prevent by

acting with due diligence.

3. Within the meaning of the Agreement Force Majeure events shall include without limitations a strike, except a strike of the Parties' employees, an earthquake, floods and other acts of God.

4. A loss of powers necessary for the performance of the Agreement or cancellation or expiration of possessed permits or other powers required for proper performance of the Agreement or relevant authorities' refusal to grant the said permits or other powers shall not constitute a Force Majeure event.

5. The party suffering from Force Majeure shall immediately notify the other Party of the occurrence of a Force Majeure event and define the influence of Force Majeure on the performance of the Agreement.

#### § 16

1. All statements and notices related to the performance hereof shall be provided to the other Party with acknowledgement of receipt by registered letter, courier service, e-mail or served in person. A statement or notice sent by e-mail shall be effective at the time of the other Party's confirmation, by e-mail, of the receipt thereof.

2. The following persons shall be authorised to make and accept statements and notices related to the performance hereof:

a) for the Seller- [first name and surname TO BE COMPLETED]:

b) for the Buyer- [first name and surname TO BE COMPLETED]:

with a reservation of each Party's right to change the person authorised by it, save that the said change shall be effective at the time of written notification of the other Party.

#### §17

1. The Parties hereto agree that no employee of any Party hereto may give or accept financial or personal gains in relation with the performance hereof.

2. For the purpose of the Agreement the Parties hereto agree that giving or accepting of a financial or personal gain by any employee of any Party hereto for the purpose of influencing the content, conclusion and performance of the Agreement shall constitute a breach of the provisions of Section 1 hereof and a material breach of the Agreement.

3. In the event of any breach by either Party of the provisions of this Article, the Parties hereto shall take immediate measures aimed to remove any negative consequences of the other Party's actions,

and in the event of the Parties' failure to reach a compromise within 21 days of the date of revealing of the activity defined in Section 2 hereof, either Party shall be entitled to terminate the Agreement with the immediate effect.

#### §18

1. The Parties hereto undertake to protect the good name of the other Party in contacts with third parties. Neither Party may, without a prior written consent of the other Party, make or present any public statements related to the Agreement, except for situations when the a foregoing is required by legal provisions in force.
2. The scope of promotion, advertising and use by either Party of the other Party's company name, trademarks or logo shall require prior consent of the other Party.

#### §19

The Parties hereto shall treat confidentially the content hereof and all information on the other Party disclosed in connection with the performance hereof. The Party shall be only released from the said obligation in the event of a request of national authorities.

#### § 20

The Parties undertake that as a result of the conclusion and performance hereof no third party rights shall be infringed, and in the event of any claims or accusations for or of infringement of third party rights covered by the above undertaking, filed or made against a Party, the Party liable for the said infringement shall take, at its own expense, means of protection against the said claims or accusations and shall hold the other Party harmless of the said claims or accusations and shall cover all and any costs incurred, provided that it is immediately notified of the said claims or accusations and all information related to this infringement possessed by the Party is provided.

#### § 21

To matters not provided for herein, the provisions of the Polish Civil Code and other applicable legal

provisions shall apply.

§ 22

In the event of any conflict or inconsistency between the provisions hereof and the content of the Schedules, the content of the Schedules shall prevail.

§ 23

This Agreement has been drawn up in two identical copies, with one provided to each Party.

Schedules:

Schedule No 1 - Technical Specification.

Seller

Buyer