
TENDER

01/EU/T2/STS

REGARDING PURCHASE AND DELIVERY OF FIVE SHIP TO SHORE QUAY
CONTAINER GANTRY CRANES

Q&A table regarding legal aspects and template of the STS agreement in accordance with point 5.6 of Terms of Tender.

Please note that template of the STS agreement constitutes Annexe No. 1 to Terms of Tender and is made available as a separate file on the website of the Ordering Party (www.dctgdansk.com).

No	Question	Answer
1	<p>1.4 Law and Language as most of this project will be executed in Spanish soil, governing laws should be the Spanish laws. We suggest to change the governing laws to Spanish laws.</p>	<p>Ordering Party does not accept the amendment.</p>
2	<p>1.7 Assignment Right of assignment should be bi-directional. Otherwise, it is unfair. We suggest to change the clause to: Neither party will assign the liabilities and rights of this contract to a third party without the other's written consent.</p>	<p>Ordering Party does not accept the amendment.</p>
3	<p>1.9 Errors in the Employer's Requirements Clause is unfair to the contractor. The Employer shall be responsible for the errors made in the definition of the crane that may lead to an increase of the cost of the contractor. In no way, the contractor shall be responsible for the errors of the Employer. Any extra cost incurred by the contractor due to an error made by the Employer in the definition of the crane, shall be added to the contract amount.</p>	<p>Ordering Party does not accept the amendment.</p>
4	<p>1.10 Employer's Use of Contractor's Documents Clause is unfair to the contractor. "The contractor cannot give irrevocable consent and transfer to Employer the right to give further consent to any amendments, alterations, modifications, translations and adaptations of the Copyrighted Documents. The Contractor can only give permit to use the contractor's documentation for the only use of the Employer. Any misuse or distribution of the contractor's documentation by the Employer may incur in a violation of Law due to the patents that Contractor has in the U.S."</p>	<p>Ordering Party does not accept the amendment. Please note that the Employer's right to Derivative Works is limited only to the purposes of designing, constructing, operating, altering and up-grading the Project.</p>

5	<p>4.2 Performance Security and Advance Payment Bonds Due to the size of our company, we cannot comply to the clause. We have no problem to provide DCT with the performance security bond, but due to the size of our company, we are not in position to provide advance payment bonds. We suggest to have a 20%, (instead of the 10% required), performance bond for the whole length of the project, instead of the advance payment bonds. The bank issuing the bonds will be agreed between contractor and employer, with no necessity to comply with the requirements stated in c).</p> <p>SUMMARY:</p> <ul style="list-style-type: none"> • Advance payment bond 20% • Warranty bond of 5% • NO refund bonds <p>All bonds will have specific validity date. Both parties shall agree the wording of the bonds before entering into any contract.</p>	Ordering Party does not accept the amendment.
6	<p>7.6 Remedial work Clause is unfair to the contractor. Contractor will never pay for works carried out by an entity subcontracted by the Employer.</p>	Ordering Party does not accept the amendment.
7	<p>8.7 Contractual penalties Clause is unfair to the contractor. Due to the size of our company, we can only commit to the following amount of LD for late commissioning: - 0.02 % per week, up to a 2% of the contract amount. A grace period of 30 days shall be applied.</p>	Ordering Party does not accept the amendment. Please see the revised version of the draft Contract for amendments with respect to contractual penalties.
8	<p>8.8 Suspension of work Please add to the clause: Any cost incurred by the contractor due to the suspension of work requested by the employer/engineer, shall be added to the contract amount.</p>	Ordering Party does not accept the amendment.
9	<p>8.12 Acceleration Please add to the clause: Any cost incurred by the contractor due to the acceleration of work requested by the employer/engineer, shall be added to the contract amount.</p>	Ordering Party does not accept the amendment.
10	<p>9.4 Failure to Pass Test in Completion Clause is unfair to the contractor. The contractor shall not be liable to pay liquidated damages due to failure of test on completion.</p>	Ordering Party does not accept the amendment.
11	<p>11.B Contractor's Liability for Damages Clause is unfair to the contractor. Please delete clause entirely.</p>	Ordering Party does not accept the amendment.
12	<p>11.3 Extension of Warranty Period Clause is unfair to the contractor. Fresh warranty of elements replaced during warranty period shall not be considered.</p>	Ordering Party does not accept the amendment.

13	<p>11.4 Failure to Remedy Defects Clause is unfair to the contractor. Contractor and employee will discuss the remedy defects in order to reach an agreement.</p>	Ordering Party does not accept the amendment.
14	<p>13.1 Right to Vary Any cost incurred by the Contractor due to Employers instructions cannot be free of charge. We suggest that any change or modification of the scope has to be mutually agreed between the Contractor and DCT and the cost shall be agreed and borne by DCT.</p>	<p>In accordance with cl. 13.1.b the Contractor, upon receipt of a Variation order from the Engineer, is entitled to give notice to the Engineer stating that the Variation will result in an incremental cost or delay to the Contractor and propose adjustment of the Contract Price. In the light of the above Ordering Party does not accept the amendment.</p>
15	<p>14.2 Advance payment Clause is not applicable as we don't consider advance payment bonds. Please delete clause entirely.</p>	Ordering Party does not accept the amendment.
16	<p>14.4 Schedule of Payments We suggest the following schedule of payments. For Erection on Site delivery, the following payment terms shall apply:</p> <ul style="list-style-type: none"> - 20% Down-payment. - 20% upon certificate of 70% of steel plates stocked in the shop ready for fabrication of the steel structures. - 10% upon arrival of the main components to Site. - 20% upon finished erection established when the crane is ready for being moved to rails. - 20% upon Provisional Acceptance (minor punch list/ready for operations). - 10% upon Final Acceptance (punch list finished). <p>All contract amount except 20% down-payment (80%) shall be paid by irrevocable and confirmed letter of credit issued upon signing contract by a first class bank in Europe in favour of the Supplier and acceptable to him.</p>	Ordering Party does not accept the amendment.



17	<p>15.2 Termination by Employer Clause is unfair to the contractor.</p> <p>"If the Agreement is terminated due to the Buyer's convenience, the Seller shall be paid the value of the work done. The Seller shall also be entitled to receive:</p> <p>(a) the amounts payable in respect of any preliminary items so far as the work or service comprised therein has been carried out and a proper proportion of any such item in which the work or service comprised has only been partially carried out (b) the cost of materials or goods ordered for the Works or for use in connection with the Works, which have been delivered to the Seller or of which the Seller is legally liable to accept delivery. Such materials or goods shall become the property of and be at the risk of the Buyer when paid for by the Buyer and the Seller shall place the same at the Buyer's disposal. (c) the amount of any other expenditure which in the circumstances was reasonably incurred by the Seller in the expectation of completing the whole of the Works (d) the reasonable cost of repatriation of the Seller's Equipment from the Buyer's premise and the return thereof to the Seller's works in his country or to any other destination at no greater cost, and (e) the reasonable cost of repatriation of the Seller's staff and workmen employed wholly in connection with the Works at the date of such termination."</p>	<p>Ordering Party does not accept the amendment. Please also refer to cl. 15.4 of the Contract providing Contractor's rights after termination in accordance with cl. 15.2.</p>
18	<p>17.6 Limitation of Liability Please add to the clause: we suggest to add to the paragraph: the maximum liability of any of the two parties shall be the contract amount.</p>	<p>Ordering Party does not accept the amendment. Please refer to Particular Conditions of the Contract providing Limitation of Liability.</p>
19	<p>17.7 Consequential Loss It is clear that during the contract the Contractor is liable for any direct loss or damage caused to any part of the crane or to a third party. For that reason, we would arrange an insurance to cover that risk. We cannot accept any consequential loss or damage for any party. Our philosophy is that both companies shall be equal and we can see from the contract conditions that PSA is also not responsible for consequential/ indirect damages.</p>	<p>Ordering Party does not accept the amendment.</p>
20	<p>20.1 Contractor's Claims Please add to the clause: All claims will be dealt under the Spanish Law</p>	<p>Ordering Party does not accept the amendment.</p>

21	<p>Referring to your notice of invitation to tender with ID 01/EU/T2/STS for the purchase and delivery of 5 STS container gantry cranes we would like to clarify the following: Please confirm that the provisions of the directive of E.C. 2004/17 are applied for this tender. Furthermore that the article 54 of the same directive concerning the invocation of third parties technical and financial resources is applied for the tender.</p>	<p>Ordering Party does not confirm the information. The Tender is conducted by DCT on the basis of Article 70¹ of the Polish Civil Code of 23 April 1964 (Journal of Laws Dz. U. No. 16, item 93, as amended). DCT is not the ordering party within the meaning of the Public Procurement Law of 29 January 2004 (consolidated text of 2010, Journal of Laws Dz. U. No. 113, item 759, as amended), nor Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (L 134/1, 30.4.2004) thus, the provisions of the afore-mentioned Law shall not be applicable to the Tender.</p>
22	<p>In addition, and due to the importance of the tender we would like to ask for an extension of 45 days of the date of the submission of the offers.</p>	<p>Ordering Party does not accept the amendment.</p>
23	<p>Q1: Clause General Is it acceptable to suggest that wherever in the text there are wordings “At the satisfaction/opinion/sole discretion of the Employer” or similar are to be intended to be applicable meaning as “mutually agreed by both parties”?</p>	<p>Ordering Party does not accept the amendment.</p>
24	<p>Q2: Clause 1.1.1.7 Notice to Proceed Is it acceptable to propose to add in the end ‘If the Notice to Proceed has not been issued by 31 October 2014, either Party may by written notice to the other Party terminate the Contract with no compensation being payable. The termination of the Contract shall be effective upon the receipt of the notice.’?</p>	<p>Ordering Party accepts the amendment. Please see the revised version of the draft Contract.</p>
25	<p>Q3: Clause 1.1.1.11 Tenancy Agreement Would you please provide the Tenancy Agreement for our consideration, and discussion in the further stage?</p>	<p>Ordering Party confirms the possibility of making the Tenancy Agreement available, which shall be, however, conditional on the conclusion of the non-disclosure agreement (NDA), in accordance with the following procedure: 1. Entities interested in familiarising themselves with the Tenancy Agreement must submit a written request (this can be sent by e-mail) to the Ordering Party for the NDA to be sent to them. 2. Entities interested in familiarising themselves with the Tenancy Agreement shall inform (by e-mail) the Ordering Party about having signed the NDA and agree the date on which the Tenancy Agreement will be available for review at the Ordering Party's registered office, bringing with them the signed original of the NDA. Ordering Party will create a ‘Data room’, where it will be possible to analyse the Tenancy Agreement, however, making copies or taking photos will not be permitted. Ordering Party reserves the right not to disclose the provisions of the Tenancy Agreement containing the business secrets, and, in particular, the commercial terms of the Tenancy Agreement.</p>

26	<p>Q4: Clause 1.1.2.13 Is it acceptable to propose to change 'named in the Contract' to 'listed in the sub-contractor list as attached to the Contract'. Both parties agree that the sub-contracting of Contractor's works and the selection of the given Sub-contractor by the Contractor shall be deemed as approved by the Employer. The stipulations herein do not in any way discharge the Contractor from its obligations under this Contract. The Contractor shall, in any case, be responsible for all works done by its Subcontractor?</p>	<p>Ordering Party does not accept the amendment. The manner of appointing subcontractors and the issue of liability for subcontractors is specified in Clause 4.4.</p>
27	<p>Q5: Clause 1.1.4.1 "Accepted Contract Amount" means € (excluding Polish VAT). Is it acceptable that our quotation is based on USD and the currency for payment shall be USD also? Apart from the Polish VAT, Is it acceptable that our quotation is based on the following? Notwithstanding any other provisions in the Contract, any taxes, duties, charges, levies, fees, costs of permits or licenses, third party inspection fees or other sum or burden of fiscal or tax nature requested and the like due or otherwise payable in Poland to central or local governments or other authorities or public bodies shall be borne by Employer.</p>	<p>Ordering Party does not accept quotations in currency other than EUR. Bidder must provide quotations based on DDP DCT Gdańsk acc. to Incoterms 2010 and information provided in the Notice of Tender. Please also refer to cl. 14.1 of the Contract.</p>
28	<p>Q6: Clause 1.1.5.9 Is it acceptable to propose to add in the end 'the temporary works excludes any civil works and the like for the preparation of the installation site, access, etc., which shall be carried out and completed by the Employer before the arrival of Contractor's Equipment'?</p>	<p>Ordering Party partially accepts the amendment.</p>
29	<p>Q7: Clause 1.1.6.8 Foreseeable change in law Is it allowed to remove this clause? Because as a foreign contractor, it's not reasonable for us to foresee any change in law in Poland and absorb the relevant cost.</p>	<p>Ordering Party does not accept the amendment.</p>
30	<p>Q8: Clause 1.1.6.9 Foreseeable change in Standards. Is it allowed to remove this clause? Because as a foreign contractor, it's not reasonable for us to foresee any change in standard in Poland and absorb the relevant cost.</p>	<p>Ordering Party does not accept the amendment.</p>
31	<p>Q9: Clause 1.1.6.12A Lender Direct Agreement. Would you please provide the draft of Lender Direct Agreement? Is it acceptable to propose to discuss in the further stage the details of the Lender Direct Agreement which will affect the rights and obligation of the Contractor under this Contract?</p>	<p>Draft LDA is hereby attached. Please note that this is a preliminary draft and remains subject to Ordering Party and lender comment.</p>
32	<p>Q10: Clause 1.1.6.12B Operational Permit Please refer to our questions to 1.1.4.1(Question 5). Is it acceptable to propose that the cost and expenses for the local permits and license etc shall be on the account of Employer. The necessary documentation will be provided by the Contractor for free?</p>	<p>Ordering Party does not accept the amendment.</p>

33	<p>Q11: Clause 1.1.6.13 Profit Is it acceptable if we propose to change '5%' to '15%'?</p>	Ordering Party does not accept the amendment.
34	<p>Q12: Clause 1.4 Is it acceptable to propose to change 'Polish Law' to 'English Law'.</p>	Ordering Party does not accept the amendment.
35	<p>Q13: Clause 1.5 Is it acceptable to propose to exchange the priority of '(e)' and '(f)', the Contractor's technical Specifications in the tender document shall supersede.?'?</p>	Ordering Party does not accept the amendment.
36	<p>Q14: Clause 1.9 If any such explanation or instruction causes delay or additional costs and/or other liability to the Contractor, this will be at the Contractor's risk, and will not be a Variation or otherwise give the Contractor any entitlement to an extension of time and/or compensation. Is it acceptable to propose to change to the following? If any such explanation or instruction causes delay or additional costs and/or other liability to the Contractor, this will be at the Employer's risk, and will be a Variation or otherwise give the Contractor any entitlement to an extension of time and/or compensation. And remove the paragraph from 'without limiting the generality...or theory of law whatsoever'.</p>	Ordering Party does not accept the amendment.
37	<p>Q15: Clause 1.13 Is it acceptable to replace the clause as the following? "Notwithstanding any other provisions in the Contract, any taxes, duties, charges, levies, fees, costs of permits or licenses, third party inspection fees or other sum or burden of fiscal or tax nature requested and the like due or otherwise payable in Poland to central or local governments or other authorities or public bodies shall be borne by Employer".</p>	Ordering Party does not accept the amendment.

38	<p>Q16: Clause 2.1 Is it acceptable to add the following? “Notwithstanding other provisions in the Contract, the Contractor and the Contractor’s subcontractors shall not bear and shall not be liable as against any cost, disbursement or expense that may be imposed directly or indirectly by the Employer or any third party, such as 1) Wharfage; 2) Stevedoring charges,3) Port charges, which may otherwise be required for any incoming ships to the port of the Employer. Employer shall arrange and be responsible for providing, at its cost, a berth ready before the arrival of the vessel which is suitable for the safe and efficient unloading of the Equipment, and which is located at or right next to the Site and Employer shall ensure the berth is continuously accessible to the Contractor. The Employer must pay any demurrage / detention at the rate as indicated in the transportation contract between the Contractor and the shipping company for any additional time spent other than the free-of-charge time allowed for discharging, if any delay is caused by the Employer. The Employer shall arrange and be responsible for providing at its own cost, a sufficient and suitable installation site for at least 2 months for the installation, commissioning and testing of the RTGs”.</p>	<p>Ordering Party does not accept the amendment. Note that the Tender concerns purchase of STS cranes, not RTG cranes.</p>
39	<p>Q17: Clause 2.2 for the Contractor's applications for any permits, licenses or approvals required by the Laws of the Country: (i) which the Contractor is required to obtain under sub-clause 1.13 [Compliance with Laws]; (ii) for the delivery of Goods, including clearance through customs; and (iii) for the export of Contractor's Equipment when it is removed from the Site. Is it acceptable to propose as following? Please refer to our questions of 1.1.6.12B(Question 10). The Employer shall be responsible for the custom clearance of the RTGs. The estimated period for the customs clearance is 7 days.</p>	<p>Ordering Party does not accept the amendment. Note that the Tender concerns purchase of STS cranes, not RTG cranes.</p>
40	<p>Q18: Clause 2.4 Is it acceptable to add in the end “the details of the financial arrangement which affects the rights and obligations of the Contractor under this Contract shall be agreed by the Contractor prior to the finalization of the financial arrangement”?</p>	<p>Ordering Party does not accept the amendment.</p>
41	<p>Q19: Clause 2.5 d Is it acceptable to add in the beginning ‘Upon the mutually agreement on the amount’ ?</p>	<p>Ordering Party does not accept the amendment.</p>
42	<p>Q20: Clause 3.3 Is it acceptable to add after ‘on any matter related to the contract’ ’and mutually agreed’?</p>	<p>Ordering Party does not accept the amendment.</p>

43	<p>Q21: Clause 4.1 The Works shall include any work which is necessary to satisfy the Employer's Requirements, Contractor's Proposal and Schedules, or is implied by the Contract, and all works which (although not mentioned in the Contract) are necessary for stability or for the completion, or safe and proper operation, of the Works. Is it acceptable to propose to remove 'or is implied by the Contract'?</p>	Ordering Party does not accept the amendment.
44	<p>Q22: Clause 4.2 (C) Is it acceptable that we'll issue the bond from Bank of China, the Moody's rating of which is A1?</p>	Ordering Party is not in a position to provide its decision on the acceptance of a particular bank at this stage, as this would require lender comment.
45	<p>Q23: Clause 4.2 The Contractor shall ensure that: f) the Performance Security remains valid and enforceable until the Contractor has become entitled to receive the Performance Certificate plus additional 15 days; and (g) the Advance Payment Bond remains valid and enforceable until the amount of the Advance Payment Bond has reduced to zero in accordance with its terms by reason of the repayment of the Advance Payments to the Employer. Is it acceptable to propose to change the validity of the Performance bond and Advance Payment bond to the date of Taking-Over Certificate. After the Taking-Over Certificate, the Contractor will issue a Warranty bond with 5% of Contract Price which will be valid until the Performance Certificate (expiry of Warranty Period)?</p>	Ordering Party does not accept the amendment.
46	<p>Q24: Clause 4.4 Please refer to our question of 1.1.2.13 (Question 4)</p>	Please see our response no 26 (Q4).
47	<p>Q25: Clause 4.4(a) if a Subcontractor undertook (towards the Contractor) in respect of the work executed, Material and Plant installed and/or services supplied by such Subcontractor, any continuing obligation extending for a period exceeding that of the Warranty Period applicable to the Project, but only in relation to the benefit of such obligation for the outstanding duration thereof; Is it acceptable to propose to remove this clause?</p>	Ordering Party does not accept the amendment.
48	<p>Q26: Clause 4.8 (c) (e) Is it acceptable to propose these shall be the responsibilities of the Employer?</p>	Ordering Party does not accept the amendment.
49	<p>Q27: Clause 4.9 Is it acceptable to propose to add the following? The Inspection & Testing Protocol will be submitted by the Contractor after the signing of the Contract. The tests during the execution of the Contract shall be carried out in accordance with the ITP.</p>	Ordering Party does not accept the amendment.

50	<p>Q28: Clause 4.10 In defending any claim made by the Employer in relation to any defects occurring in or arising out of or in connection with the operation of the Works, the Contractor shall not be entitled to raise any argument connected with the adequacy of the Site. Is it acceptable to propose to change to the following? Employer shall be responsible for the accuracy of the information, data of the port and etc that provided by them. The Employer shall hold the Contractor harmless and indemnified as against any and all claims, damages and liabilities which may derive from false or inaccurate information.</p>	Ordering Party does not accept the amendment.
51	<p>Q29: Clause 4.16 Subject to the following paragraph, the Contractor shall be entitled to claim from the Employer Costs which are limited to such storage costs as are incurred by the Contractor (but excluding insurance which shall be payable in addition) and which are certified by the Engineer. Is it acceptable to propose to add 'demurrage cost if any and etc' after 'storage cost'?</p>	Ordering Party does not accept the amendment.
52	<p>Q30: Clause 5.1 The Contractor acknowledges that the design, which shall include any modifications to the design, may be required to be submitted to any Statutory Authority as may be required for any Approvals before it can be implemented. If any Statutory Authority refuses its agreement and acceptance of the design, the Contractor shall not implement the design and shall re-submit the design until the Port Authority and/or the Statutory Authority has agreed and accepted the revised design. The Contractor shall not be entitled to claim any extension of time and/or Cost incurred in connection with the submission or re-submission of the design to the Port Authority and/or any Statutory Authority or any condition imposed by such authority as a condition of grant. Would you please further clarify the process of the design verification by the Statutory Authority? Is it acceptable to propose that if any material modification to the original design is required by the Authority, the relevant cost and extension of time shall be for the account of the Employer?</p>	Ordering Party does not accept the amendment. The Contractor is responsible for the Works to comply with the relevant laws, such compliance being certified or otherwise confirmed in writing by the relevant Statutory Authority. To this end, the Contractor should not exclude the possibility that some consultations or design verification with the Statutory Authority should take place. If as a result of such consultations or verifications certain amendments to the design are required, the relevant cost and time risk shall be borne by the Contractor, not the Employer.
53	<p>Q31: Clause 5.1A Is it acceptable to propose to the following? The civil works and any other preparation works for the contractor's activities at the Employer's site shall be completed before the arrival of the cranes. The Contractor shall not be responsible for the Liquidated Damages due to the delay caused by the interruption of other Contractor or Employer, and shall be entitled for the additional cost incurred.</p>	Ordering Party does not accept the amendment.
54	<p>Q32: Clause 5.4 Is it acceptable to propose to change the last sentence to the following: The Contractor shall be entitled to the modification to the program or adjustment to the Contract Price or compensation in respect of any Foreseeable Change in Standards or Legislation, etc.</p>	Ordering Party does not accept the amendment.

55	<p>Q33: Clause 6.8 Is it acceptable to propose to remove 'and Polish'?</p>	Ordering Party does not accept the amendment.
56	<p>Q34: Clause 6.10 Is it acceptable to propose to add after 'stated in each Taking-Over Certificate' 'as mutually agreed'?</p>	Ordering Party does not accept the amendment.
57	<p>Q35: Clause 7.6 Is it acceptable to propose to add after 'notwithstanding any previous test or certification' ',before the issuance of the Taking-Over certificate, '?</p>	Ordering Party does not accept the amendment.
58	<p>Q36: Clause 7.7 Become the property of the Employer at whichever is the earlier of the following times, free from liens and other encumbrances: (a) when it is delivered to the Site or to the Engineer; (b) when the Contractor is entitled to payment of the value of the Equipment, Plant and Materials under this Contract, Is it acceptable to propose to change 'earlier' to 'latter', and change 'is entitled to' to 'has received'?</p>	Ordering Party does not accept the amendment.
59	<p>Q37: Clause 8.2 All inspections, certificates and/or other Approvals required by Contract, Law and/or Statutory Authorities relating to safety and/or occupation and/or use of the Equipment and/or the Works for their intended purpose (including the Operational Permit) have been satisfactorily completed, achieved and obtained (as appropriate), without derogation and without onerous conditions and are final. Is it acceptable to propose to add in the end of this paragraph the following? However in the event of the delay of Taking-Over Certificate caused by the same, the Contractor shall not be liable for any Liquidated Damages or any other loss.</p>	Ordering Party does not accept the amendment.
60	<p>Q38: Clause 8.4 No circumstance other than as set out in sub-paragraphs (a) to (c) above and subject always to sub-paragraphs (1) to (3) above will give the Contractor any entitlement to an extension of any Time for Completion. Is it acceptable to propose to change this paragraph to the following? The Contractor shall not be entitled for extension of time except for otherwise set forth in this Contract.</p>	Ordering Party does not accept the amendment.
61	<p>Q39: Clause 8.9 Is it acceptable to propose to add in the end the following? Notwithstanding other provisions in this Contract, in the event of suspension for more than 4 months, the Contractor shall be entitled for the affected milestone payment as per the original project schedule.</p>	Ordering Party does not accept the amendment.

62	<p>Q40: Clause 9.1 Is it acceptable to propose to change '14 days' to '2 days' and add 'in pursuant to the Technical Specifications' after 'in the following sequence'?</p>	Ordering Party does not accept the amendment.
63	<p>Q41: Clause 9.1(c) Is it acceptable to propose to change 'trial operation' to 'continuous test'? Please understand that the commercial operation shall not be carried out unless and until the Taking-Over of the Works.</p>	Ordering Party does not accept the amendment. Clause 9.1 makes it clear that trial operation shall not constitute a taking-over under clause 10.
64	<p>Q42: Clause 10.1 If the Engineer fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the period of 28 days, and if the Works or Section (as the case may be) are substantially in accordance with the Contract, the Taking-Over Certificate shall be deemed to have been issued on the last day of that period. Is it acceptable to propose to change 'the last day' to 'the first day'?</p>	Ordering Party does not accept the amendment.
65	<p>Q43: Clause 10.1A Ownership Pls refer to our question of clause 7.7(Question 36).</p>	Ordering Party does not accept the amendment.
66	<p>Q44: Clause 10.4 Except as otherwise stated in a Taking-Over Certificate, a certificate for a Section or part of the Works shall not be deemed to certify completion of any ground or other surfaces requiring reinstatement. Would you please clarify this clause?</p>	This is the FIDIC standard drafting.
67	<p>Q45: Clause 10 Is it acceptable to propose to add the following? Some of the inspections/tests in the crane inspection list that will be provided by the Employer will be conducted at the Contractor's factory before shipment. The gantry travel test and the duration test shall be carried out at the Employer's site. The Employer's inspectors shall sign off those inspections/tests documents that are conducted at the Contractor's factory. For the purpose of saving time, those factory tests which are found to be in compliance with the requirement in the Contract will not be repeated after the Cranes arrive at the Employer's site (except for some necessary verifications that are needed to be done before starting the duration test). Any minor defects that do not affect the safe operation of the Cranes shall be regarded as Punch items that can remain temporarily outstanding. The Punch items shall not be a reason for the Employer to withhold the issue of the Acceptance Certificate. The minor Punch items shall be cleared by the Contractor to the satisfaction of the Employer as soon as possible and within a time frame agreed by the Employer and the Contractor after the issue of the relevant certificate.</p>	Ordering Party does not accept the amendment.

68	<p>Q46: Clause 11.A.2 Notwithstanding any other provisions of the Contract, if a defect is of a type preventing or materially restricting handling operations, the Employer shall be entitled to immediately undertake rectification works at the Contractor's risk and expense. The Employer shall notify the Contractor about the fact and use only original Spare Parts. Is it acceptable to propose to remove this paragraph?</p>	Ordering Party does not accept the amendment.
69	<p>Q47: Clause 11.B The same shall apply to latent defects in the Works, which may appear after the lapse of the respective Warranty Period. Is it acceptable to propose to remove this sentence?</p>	Ordering Party does not accept the amendment.
70	<p>Q48: Clause 11.4(c) If the defect or damage deprives the Employer of substantially the whole benefit of the Works or any major part of the Works, terminate the Contract. Without prejudice to any other rights, under the Contract or otherwise, the Employer shall then be entitled to recover all sums paid for the Works, plus financing costs and the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor. Is it acceptable to propose to remove this clause?</p>	Ordering Party does not accept the amendment.
71	<p>Q49: Clause 11.6 Is it acceptable to propose to remove 'Tests after Completion'?</p>	Ordering Party accepts the amendment. Please see the revised version of the draft Contract
72	<p>Q50: Clause 11.7 Is it acceptable to propose to remove 'provided that the Contractor shall give the Employer not less than 3 days' notice of any such access'?</p>	Ordering Party does not accept the amendment.

73	<p>Q51: Clause 14 Is it acceptable to propose the payment terms as the following?</p> <ol style="list-style-type: none"> 1. Down payment --- 20% of the contract price 2. Commencement of fabrication in Contractor's premise --- 20% of the contract price 3. Commencement of erection at Contractor's site --- 20% of the contract price 4. Shipment --- 20% of the contract price of corresponding crane(s) 5. Taking Over --- 20% of the contract price of corresponding crane(s) <p>For the payment of the 4th and 5th milestone, an irrevocable letter of Credit (L/C) shall be opened by the Employer four (4) weeks before the due date of such payment. The Contractor shall inform the Employer via facsimile and E-mail the estimated date of the payment for this purpose. The L/C format, opening bank and advising bank shall be agreed by the Contractor. In the event of delay in the issuance of the L/C which will result in the delay of the Taking-over of the Equipment, the number of days constituting the delay shall be considered an extension of the time for the Taking Over of the Equipment. Any detention charges to be paid to the Shipping Company on account of this shall be borne by the Employer. If the payment under the L/C is rejected by the bank, such payment shall be made by the Employer by Telegraphic Transfer directly to the Contractor within twenty (20) days from the date the L/C has been rejected, otherwise the Employer will pay twice of LIBOR rate plus 600 basic points for the same time period.</p>	Ordering Party does not accept the amendment.
74	<p>Q52: Clause 14.1 (b) and Clause 14.3 Please refer to our question of 1.13 (Question 15).</p>	Ordering Party does not accept the amendment.
75	<p>Q53: Clause 14.2 The Advance Payment shall be repaid through percentage deductions in Payment Certificates. [Unless other percentages are stated in the Appendix to Tender: (a) deductions shall commence in the Payment Certificate in which the total of all certified interim payments (excluding the advance payment and deductions and repayments of retention) exceeds ten per cent (10%) of the Accepted Contract Amount less Provisional Sums; and (b) deductions shall be made at the amortisation rate of one quarter (25%) of the amount of each Payment Certificate (excluding the advance payment and deductions and repayments of retention) in the currencies and proportions of the advance payment, until such time as the advance payment has been repaid.] Would you please clarify the meaning?</p>	This is the FIDIC standard drafting.
76	<p>Q54: Clause 14.7 Is acceptable to propose to change '28 days following the approval and issue of the relevant Interim Payment Certificate' to '28 days from the completion of the milestone'?</p>	Ordering Party does not accept the amendment.

77	Q55: Clause 14.8 Is it acceptable to propose to add in the end 'The Contractor shall also be entitled to the extension of Time for Completion'?	Ordering Party does not accept the amendment.
78	Q56: Clause 14.14 Is it acceptable to propose to add in the end 'or any other liability at law'?	Ordering Party does not accept the amendment.
79	Q57: Clause 16.3 Is it acceptable to propose to add (d) 5% of the total Contract Price?	Ordering Party does not accept the amendment.
80	Q58: Clause 17.1(a) Is it acceptable to propose to remove 'sickness, disease' and 'or in the course of or by reason of'?	Ordering Party does not accept the amendment.
81	Q59: Clause 17.1(b) Is it acceptable to propose to remove 'or in the course of or by reason of'?	Ordering Party does not accept the amendment.
82	Q60: Clause 17.6 and Clause 17.7 Is it acceptable to propose to change to the following? Notwithstanding anything contained herein to the contrary, in no event shall Contractor, or any subsidiary, division or affiliate thereof be liable for incidental, consequential or other damages or losses whatsoever including, without limitation, labor costs, loss of use of other equipment, third party repairs, personal injury, emotional or mental distress, improper performance or work, penalties of any kind, loss of service of personnel, or failure of product to comply with any applicable laws and regulations. Notwithstanding anything contained in this agreement to the contrary, the aggregate liabilities of Contractor under this Contract shall not exceed 20% of the Contract price.	Ordering Party does not accept the amendment.
83	Q61: Clause 18 Insurance Is it acceptable to propose to discuss in the further stage?	Ordering Party does not accept further negotiations of the contract.
84	Q62: Clause 19.1 (v) Is it acceptable to propose to add 'tsunami and storm'?	Ordering Party does not accept the amendment.
85	Q63: Clause 19.1 (ix) Is it acceptable to propose to remove '(ix) inclement weather conditions'?	Ordering Party does not accept the amendment.
86	Q64: Clause 20.2 Is it acceptable to propose to remove 'The place of arbitration shall be Warsaw, Poland.'?	Ordering Party does not accept the amendment.

87	<p>Q64: Clause 22.1 Is it acceptable to propose to add in the end '(the spare parts to be shipped with the Works shall be ordered within 2 months after signing of the Contract)'?</p>	Ordering Party does not accept the amendment.
88	<p>Q65:Particular Conditions Clause 1.1.3.8 Is it acceptable to propose '12 months' and to add in the end the following sentences? "Notwithstanding anything contained in this agreement to the contrary, the warranties set forth in this section shall be the sole and exclusive warranties with respect to the equipment and spare parts supplied hereunder. Such warranty is expressly in lieu of and excludes all other warranties, express or implied (including the warranties of merchantability and fitness for a particular purpose) and all other obligations or liabilities on Contractor's part. Contractor neither assumes nor authorizes any other person to assume for Contractor any other liability in connection with the sale of the Contractor's equipment and spare parts hereunder. In the event of any breach by the Contractor of the warranties in section, Contractor's liability shall be limited exclusively to the remedies (at Contractor's sole option) of repair or replacement of any defective equipment covered by the warranty. in no event shall Contractor be liable for incidental, indirect, consequential or other damages or losses resulting from a breach of warranty, including, without limitation, labor costs, loss of use of other equipment, third party repairs, personal injury, emotional or mental distress, improper performance or work, penalties of any kind, loss of service of personnel, or failure of equipment to comply with any federal, state, provincial or local laws."</p>	Ordering Party does not accept the amendment.
89	<p>Q66:Particular Conditions Clause 8.7 Is it acceptable to propose to change '1%' to '0.5%', and change '10% of the Contract Price' to '5% of the corresponding Contract price of the delayed crane'. And add in the end with "The Liquidated Damages is the only and all remedy to Employer for the Contractor's delayed delivery."?</p>	Ordering Party does not accept the amendment. Please refer to Question No. 7.
90	<p>Q67:Particular Conditions Clause 11.3 Is it acceptable to propose 'NIL'?</p>	Ordering Party does not accept the amendment.
91	<p>Q68:Particular Conditions Clause 17.6 Is it acceptable to propose to change 'Contract Price' to '20% of the contract price'?</p>	Ordering Party does not accept the amendment.

92	<p>Q69: Anti-corruption and Export Control Is it acceptable to propose to add the clause of anti-corruption as below? “Employer agrees that it shall, and that any party retained by the Employer shall, comply with all applicable laws including, but not limited to, laws prohibiting public corruption and commercial bribery. Employer further agrees that it shall, and that any party retained or paid by the Employer shall, comply with all applicable export controls, economic sanctions, embargoes and regulations regarding the export, re-export, distribution and sale of the Products, including without limitation U.S. Export Control laws, regulations, policies and executive order as may be amended from time to time. Employer further agrees that it shall not, and any party retained or paid by Employer shall not, export or re-export the Products, directly, or with its knowledge, indirectly, into Sudan, Cuba or Iran or to any other country for which the United States government (or agency thereof) may require an export license or other approval or any country, person or entity to which such export or re-export may be prohibited by applicable United States law, regulation, policy or executive order. Failure to comply strictly with all applicable laws relating to embargoes, sanctions, export or re-export shall be grounds for immediate termination of this Agreement by Contractor.”</p>	<p>Ordering Party partially accepts the amendment. Please see the revised version of the draft Contract.</p>
93	<p>Q70: Form of Performance Security Is it acceptable that our bank may make some further changes when issuance of the bond?</p>	<p>Only minor amendments may be acceptable if they do not affect the nature or enforceability of the Performance Security, but they would need to be approved on a case by case basis by both Ordering Party and lenders.</p>
94	<p>Q71: Form of Performance Security Clause 7 Is it acceptable to propose to remove ‘failing which interest shall accrue daily on the unpaid balance at a rate of [five (5)%] above the base lending rate from time to time of [insert relevant reference bank] until payment is made in full by the Bank’.</p>	<p>Ordering Party does not accept the amendment.</p>
95	<p>Q72: Form of Performance Security Clause 8 Is it acceptable to propose to change ‘may assign’ to ‘shall not assign’?</p>	<p>Ordering Party does not accept the amendment</p>
96	<p>Q73: Form of Performance Security Clause 13 and 14 Is it acceptable to propose to change ‘the courts of England’ to ‘International Court of Arbitration of ICC’?</p>	<p>Ordering Party does not accept the amendment.</p>
97	<p>Q74: Form of Performance Security Is it acceptable to propose to add the clause 17:The bond shall be governed by ICC758?</p>	<p>Ordering Party does not accept the amendment.</p>
98	<p>Q75: Form of Advance Payment Bond Is it acceptable that our bank may make some further changes when issuance of the bond?</p>	<p>Only minor amendments may be acceptable if they do not affect the nature or enforceability of the Performance Security, but they would need to be approved on a case by case basis by both Ordering Party and lenders.</p>
99	<p>Q76: Form of Advance Payment Bond Clause 6 Is it acceptable to propose to remove ‘failing which interest shall accrue daily on the unpaid balance at a rate of [five (5)%] above the base lending rate from time to time of [insert relevant reference bank] until payment is made in full by the Bank’?</p>	<p>Ordering Party does not accept the amendment.</p>

100	Q77: Form of Advance Payment Bond Clause 7 Is it acceptable to propose to change 'may assign' to 'shall not assign'?	Ordering Party does not accept the amendment.
101	Q78: Form of Advance Payment Bond Clause 12 and 14 Is it acceptable to propose to change 'the courts of England' to 'International Court of Arbitration of ICC'?	Ordering Party does not accept the amendment.
102	Q79: Form of Advance Payment Bond Is it acceptable to propose to add the clause 17:The bond shall be governed by ICC758?	Ordering Party does not accept the amendment.
103	Q80: Attachment C Please refer to our question of Clause 14(Questions 51)	Ordering Party does not accept the amendment.
104	Q81: Attachment E Is it acceptable to propose to discuss the details when finalization of Inspection & Testing Protocol?	Ordering Party does not accept further negotiations to the contract. Ordering Party does not accept the amendment.
105	Regarding above mentioned tender, please find attached our questions. Is the 04.06.2014 the time limit for both: request to participate & tender closing date? If so, is there a possibility to extend the tender closing date?	Ordering Party informs that due to Update No. 1 published on 16 May 2014 bid's submission deadline changed to 11 June 2014. Ordering Party does not require formal participation letter from prospective Bidders. Therefore, Bidders are invited to submit a Bid till 11 June 2014.
106	Clause 4.2 – Performance Security and Advance Payment Bonds. We note the requirement for bank issued bonds, will Parent Company issued guarantees be acceptable?	Ordering Party does not accept the amendment.
107	Clause 1.1.4.2A / Attachment C – Advance Payment Bonds. We note the requirement for Advance Payment Bonds, we propose to issue Parent Company Advance Payment bonds for the first two (2) payments as for the final three (3) payments the cranes will be on-site in Poland.	Ordering Party does not accept the amendment.
108	Clause 19.1 – Force Majeure With respect to Force Majeure, we believe strikes and inclement weather conditions should be included.	Ordering Party does not accept the amendment.
109	Particular Conditions - 8.7 Contractual Penalties With respect to Contractual Penalties, we believe a maximum of 10% of Contract Price is excessive and propose 5% of Contract Price.	Ordering Party does not accept the amendment. Please refer to Question No. 7.