
TENDER

04/EU/2018/RS

REGARDING PURCHASE AND DELIVERY OF 2 REACHSACKERS

Q&A table regarding draft contract in accordance with point 5.6 of Terms of Tender.

Please also refer to point II.1.C of the Notice: Detailed technical specification (Employer's requirements) constitute an integral part of the Tender Documentation and is available in the registered office of the Ordering Party and, at Bidder's written request, shall be sent to the Bidder by post or e-mail by the expiry of the bids' submission date set out in point 6.12 of the Terms of Tender.

No	Question	Answer
2	<p>Please kindly amend 2§ 3. as follows:</p> <p>2§ 3. 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. Delay interest shall be 8 percentage points above the rate of the main refinancing facility of the European Central Bank in force on the due date of payment, calculated from the due date until the date of actual payment. In case of delayed payment by the Buyer, the Seller may suspend the performance of his contractual obligations until he receives payment.</p>	<p>2§3 has been amended as follows:</p> <p>2§ 3. 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. If the Seller does not receive the payment or part of due value of the Equipment mentioned in §1.1.1, then Buyer shall be liable to pay statutory interest on the overdue amount.</p>
3	<p>Please kindly amend 3§ 1. as follows:</p> <p>3§ 1. In the event of any delay in the delivery of the Item/Items of Equipment and Spare Parts in compliance with §4 hereof the Buyer Seller shall be entitled obligated to require perform that the Seller in favor of the Buyer one of the following, as shall be decided in the sole discretion of the Seller:</p> <p>(i) pays a contractual penalty in the amount of 0.52 1% of the value of the Subject of the Contract or part of Spare Parts which is/are in delay, depending on which is subject to delay, for each commenced week of delay;</p> <p>or</p> <p>(ii) delivers to the Buyer, at the expense and risk of the Seller, the replacement equipment or spare parts till the delivery of the Item/Items of Equipment or Spare Parts and signing of the</p>	<p>3§ 1 has been amended as follows:</p> <p>3§ 1. In the event of any delay in the delivery of the Item/Items of Equipment and Spare Parts in compliance with §4 hereof the Seller shall be obligated to perform in favour of the Buyer one of the following, as shall be decided in the sole discretion of the Seller:</p> <p>(i) pays a contractual penalty in the amount of <u>2</u> % of the value of the Subject of the Contract or part of Spare Parts which is/are in delay, depending on which is subject to delay, for each commenced week of delay;</p> <p>or</p> <p>(ii) delivers to the Buyer, at the expense and risk of the Seller, the replacement equipment or spare parts till the delivery of the Item/Items of Equipment or Spare Parts and signing of the Equipment/Spare Parts Acceptance Protocol. The replacement equipment or spare parts should</p>

	<p>Equipment/Spare Parts Acceptance Protocol. The replacement equipment or spare parts should perform all operational activities of the Equipment and Spare Parts and comply with the Specification, unless the Buyer gives consent to the replacement equipment or spare parts other than meeting the Specification. The contractual penalties set forth in the above sentence may not exceed 10% 15% of the value of the Subject of the Contract. The afore-mentioned contractual penalties (whichever is performed by the Seller) shall be the Buyer's sole and exclusive remedy for the delay in Seller's delivery. not exclude the Buyer's right to pursue claims for remedy of the damage under general principles.</p>
<p>4</p> <p>Please kindly amend 3§ 2. as follows:</p> <p>3§ 2. In the event that the delay in the delivery of the last Item of Equipment set out in § 4 reaches 4 8-6 weeks, the Buyer shall be entitled, within <u>7-14</u> days, to withdraw from the Agreement and, at the same time, require that the Seller pay a contractual penalty in the amount of 4015% of the value of the Subject of the Contract.</p> <p>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.</p>	<p>3§ 2 has been amended as follows:</p> <p>3§ 2. In the event that the delay in the delivery of the last Item of Equipment set out in § 4 reaches 6 weeks, the Buyer shall be entitled, within 14 days, to withdraw from the Agreement and, at the same time, require that the Seller pays a contractual penalty in the amount of 15% of the value of the Subject of the Contract-</p> <p>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.</p>
<p>5</p> <p>Please kindly amend 3§ 3. as follows:</p> <p>3§ 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 have the right to request the Seller to:</p>	<p>3§ 3 has been amended as follows:</p> <p>3§ 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 have the right to request the Seller to:</p>

	<p>(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 reasonable time14 days of the receipt of the request by the Seller. For purposes of clarity, the Seller shall have the right to decide which one of the abovementioned remedies (i-iii) it carries out.</p>
<p>6</p> <p>Please kindly amend 3§ 4. as follows:</p> <p>3§ 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:</p> <p>(i) impose on the Buyer a contractual penalty in the amount of 1% of the value of the Subject of the Contract for each week of delay in meeting the request (maximum 15% 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 40% of the value of the Subject of the Contract.</p>	<p>3§ 4 has been amended as follows:</p> <p>3§ 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 withdraw from the Agreement on the general terms.</p>
<p>7</p> <p>Please kindly amend 3§ 5. as follows:</p> <p>5. The contractual penalties set out in this Article shall be the Buyer's sole and exclusive remedy for the delay in Seller's delivery not exclude the possibility for the Buyer to pursue claims for remedy of the damage under general terms.</p>	<p>3§ 5 has been amended as follows:</p> <p>The contractual penalties set out in this Article shall be the Buyer's sole and exclusive remedy for the delay in Seller's delivery.</p>

8	<p>Please kindly amend 4§ 2. as follows:</p> <p>2. Prior to the delivery of the Equipment or Spare Parts the Seller shall conclude and, subsequently, maintain throughout the Equipment and Spare Parts delivery period until the signing by the Parties hereto of an Acceptance Protocol related to the Subject of the Contract, an insurance covering 100% of the value of the Equipment and Spare Parts against all and any loss and damage to the Equipment and Spare Parts, except the extent to which the said liability occurs in connection with any negligence of the Buyer, its representative or employees.</p>	<p>4§ 2 has been amended as follows:</p> <p>Prior to the delivery of the Equipment or Spare Parts the Seller shall conclude and, subsequently, maintain throughout the Equipment and Spare Parts delivery period until the signing by the Parties hereto of an Acceptance Protocol related to the Subject of the Contract, an insurance covering 100% of the value of the Equipment and Spare Parts.</p>
9	<p>Please kindly amend 4§ 3. as follows:</p> <p>3. In the event that the Contractor fails to conclude or maintain the insurance set out in the previous clauses or fails to deliver insurance certificates 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. The Seller's delivery shall be implemented according to the time schedule set forth in the proposal. The delivery term of the Equipment shall be interpreted in accordance with the 2010 edition of INCOTERMS. If the proposal does not state any term, it shall be Ex Works (INCOTERMS 2010). In case of changes in the circumstances during the Delivery, which the Seller was unable to take into account while preparing the proposal, or in case a matter in the Buyer's control causes delay or hinders the Seller's performance, the time for delivery shall be extended accordingly and the Seller is entitled to claim compensation for additional costs arising thereof, together with reasonable overhead and profit.</p>	<p>4§ 3 remains unchanged.</p>

Please kindly amend 5§ 1. as follows:

The Seller warrants that the Equipment and Spare Parts shall be free from defects in materials, design and workmanship, as specified in this Contract. The warranty period for the Equipment shall be ~~12-XX~~ months or 6000 ~~nth~~ operating hours whichever occur first 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.~~ Warranty for Spare Parts shall be 3 months from the delivery. Should the Equipment or any part of it fail to conform to this warranty, the Seller shall remedy such failure by repair or by supplying a replacement part. For the repaired and replaced parts a new warranty period of twelve (12) months shall begin under the same terms and conditions as those applicable to the original Equipment. No warranty under this Contract shall continue longer than for twenty four (24) months from the Delivery.

The foregoing warranty is conditioned upon prompt notice by the Buyer and an establishment within a reasonable time that the Equipment has been maintained and operated in accordance with good industry practice and instructions of the Seller, as well as suitability of the interconnected utilities. The Seller shall not be responsible for repairs or replacements made by the Buyer unless the Seller has given a prior written approval to the Buyer. The warranty does not cover the effects of normal wear and tear.

The foregoing warranty is exclusive and in lieu of all other conditions, guarantees or warranties, except that of title, including any warranty of merchantability or fitness for purpose. Correction of nonconformities in the manner and within the period of time provided above shall constitute the entire liability of the Seller under the warranty.

5§ 1 has been amended as follows:

The Seller warrants that the Equipment and Spare Parts shall be free from defects in materials, design and workmanship, as specified in this Contract. The warranty period for the Equipment shall be in accordance with the offer but not shorter than 12 months or 6000 operating hours whichever occur first 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.

Warranty for Spare Parts shall be in accordance with the offer, but not shorter than 12 months from the delivery. Should the Equipment or any part of it fail to conform to this warranty, the Seller shall remedy such failure by repair or by supplying a replacement part. For the repaired and replaced parts a new warranty period of twelve (12) months shall begin under the same terms and conditions as those applicable to the original Equipment. No warranty under this Contract shall continue longer than for twenty four (24) months from the Delivery.

11	<p>Please kindly amend 5§ 2. as follows:</p> <p>2. The Parties hereto have agreed that all service activities under the guarantee may be carried out by the Buyer with the use of original parts of Kalmar [NAME OF THE EQUIPMENT MANUFACTURER]. 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 reasonable time the shortest possible time limits, however, not longer than _____.</p> <p>The Buyer reserves its right to pursue claims for indemnity for any default in the performance of the repair resulting in a reduction in the handling capacity in the Buyer's terminal. 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:</p> <p>(i) return the Buyer brand new parts;</p> <p>or</p> <p>(ii) return the Buyer the amount constituting the value of the parts within 14 days of the notification by the Buyer.</p>	<p>5§ 2 has been amended as follows:</p> <p>The Parties hereto have agreed that all service activities under the guarantee may be carried out by the Buyer with the use of original parts of [NAME OF THE EQUIPMENT MANUFACTURER]. 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 reasonable time, not longer than _____. The Buyer reserves its right to pursue claims for indemnity for any default in the performance of the repair resulting in a reduction in the handling capacity in the Buyer's terminal. 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:</p> <p>(i) return the Buyer brand new parts;</p> <p>or</p> <p>(ii) return the Buyer the amount constituting the value of the parts within 14 days of the notification by the Buyer.</p>
12	<p>Please kindly amend 5§ 3. as follows:</p> <p>3. The guarantee set out in Section 1 shall be extended appropriately for the period of the breakout of the Equipment or Spare Parts.</p>	<p>5§ 3 remains unchanged.</p>

13	<p>Please kindly amend 5§ 5. as follows:</p> <p>5. The Equipment and Spare Parts 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 Specification.</p>	<p>5§ 5 remains unchanged.</p>
14	<p>Please kindly amend 7§ 2. as follows:</p> <p>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.</p>	<p>7§ 2 has been amended as follows:</p> <p>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 under the general terms.</p>
15	<p>Please kindly amend 7§ 3. as follows:</p> <p>7§ 3. The Seller shall meet all and any applicable mandatory legal 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.</p>	<p>7§ 3 has been amended as follows:</p> <p>7§ 3. The Seller shall meet all and any applicable mandatory legal 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.</p>
16	<p>Please kindly amend 8§ 2. as follows:</p> <p>8§ 2. Within 24 HOURS seven days 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</p>	<p>8§ 2 has been amended as follows:</p> <p>Within seven days 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</p>

	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.	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.
17	<p>Please kindly amend 8§ 5. as follows:</p> <p>The Equipment shall be regarded as delivered when it has been completed in accordance with this Agreement, except in minor respects that do not affect the use of the Equipment for its intended purpose as defined in this Agreement, has passed Acceptance Test Program and the Acceptance Certificate has been issued by the Buyer ("the Delivery"). Minor deficiencies that do not hinder the safe operation of the Equipment shall not prevent the issuance of the Acceptance Certificate and the payment upon it. Such items shall be recorded in a punch list and rectified by the Seller within reasonable period after the Acceptance, as agreed by the Parties If the Buyer fails either to issue the Acceptance Certificate or to reject it within the period of 7 days, he shall be deemed to have issued the Acceptance Certificate on the last day of that period. The Buyer shall not use any part of the Equipment in commercial operation unless an Acceptance Certificate has been issued in respect thereof. If nevertheless the Buyer uses any part of the Equipment, that part which is used shall be deemed to have been delivered at the date of such use. The Buyer shall on request of the Seller issue an Acceptance Certificate accordingly.</p>	<p>8§ 5 has been amended as follows:</p> <p>The Equipment shall be regarded as delivered when it has been completed in accordance with this Agreement, except in minor respects that do not affect the use of the Equipment for its intended purpose as defined in this Agreement, has passed Acceptance Test Program and the Acceptance Certificate has been issued by the Buyer ("the Delivery"). Minor deficiencies that do not hinder the safe operation of the Equipment shall not prevent the issuance of the Acceptance Certificate and the payment upon it subject to the retention of 10% of the last payment by the Buyer. Such items shall be recorded in a punch list and rectified by the Seller within reasonable period after the Acceptance, as agreed by the Parties If the Buyer fails either to issue the Acceptance Certificate or to reject it within the period of 7 days, he shall be deemed to have issued the Acceptance Certificate on the last day of that period. The Buyer shall not use any part of the Equipment in commercial operation unless an Acceptance Certificate has been issued in respect thereof. If nevertheless the Buyer uses any part of the Equipment, that part which is used shall be deemed to have been delivered at the date of such use. The Buyer shall on request of the Seller issue an Acceptance Certificate accordingly.</p>
18	<p>Please kindly amend 11§ 2. as follows:</p> <p>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. any and all disputes, controversies, claims or differences which may arise between the</p>	<p>11§ 2 has been amended as follows:</p> <p>In the event that it is impossible to reach a compromise in an amicable way, any and all disputes, controversies, claims or differences which may arise between the Parties out of or in relation to or in connection with this Agreement including any documents pertaining thereto or for the breach,</p>

	<p>Parties out of or in relation to or in connection with this Agreement including any documents pertaining thereto or for the breach, termination or validity thereof shall be finally settled by arbitration in <u>Warsaw, Poland</u> in the English language in accordance with then existing Rules of Conciliation and Arbitration of the International Chamber of Commerce by one arbitrator to be selected in accordance with the said Rules. The award rendered therein shall be final and binding upon the Parties to such arbitration proceedings.</p>
<p>19</p> <p>Please kindly amend 16§ 5. as follows:</p> <p>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. Either Party shall be entitled to terminate/withdraw the Agreement by a notice in writing if the Delivery is or will be delayed for more than six months due to Force Majeure. If the Agreement is so terminated, the Seller is entitled to receive payment for the work already made and portion of Equipment already delivered. The Buyer shall procure from the Seller the materials and semi-finished products that have been manufactured or purchased only for the Buyer's order and cannot be used in the Seller's other deliveries.</p>	<p>15§ 5 has been amended as follows:</p> <p>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. Either Party shall be entitled to withdraw the Agreement by a notice in writing if the Delivery is or will be delayed for more than six months due to Force Majeure.</p>
<p>20</p> <p>Please kindly amend 19§ as follows:</p> <p>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. The Buyer shall be entitled to use the drawings, documents and information furnished by the Seller only for the purpose of operation and</p>	<p>19§ has been amended as follows:</p> <p>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. The Buyer shall be entitled to use the drawings, documents and information furnished by the Seller only for the purpose of operation, consultancy and maintenance</p>

	<p>maintenance of the Equipment. The Buyer may disclose the information only to those employees of the Buyer who require access to the confidential information for the purposes of carrying out the Project and operation of the Equipment, against confidentiality agreement not less stringent as provided herein. The Buyer may not disclose such confidential information to a third party without prior written consent of the Seller. The confidentiality obligation shall survive the termination this Agreement.</p> <p>Nothing contained herein shall be construed as transferring any patent, trademark rights or copyrights in Equipment covered by this Agreement, and all such rights are hereby expressly reserved to the true and lawful owners thereof.</p>	<p>of the Equipment. The Buyer may disclose the information only to those employees of the Buyer or third parties who require access to the confidential information for the purposes of carrying out the Project and operation of the Equipment, against confidentiality agreement not less stringent as provided herein. The Buyer may not disclose such confidential information to a third party for other purposes than operational, consultancy and maintenance without prior written consent of the Seller. The confidentiality obligation shall survive the termination this Agreement.</p> <p>Nothing contained herein shall be construed as transferring any patent, trademark rights or copyrights in Equipment covered by this Agreement, and all such rights are hereby expressly reserved to the true and lawful owners thereof.</p>
21	<p>Please kindly amend 21§ as follows:</p> <p>To matters not provided for herein covered by this Agreement, the mandatory provisions of the Polish Civil Code and other mandatorily applicable legal provisions shall apply.</p>	<p>21§ has been amended as follows:</p> <p>To matters not covered by this Agreement, the mandatory provisions of the Polish Civil Code and other mandatorily applicable legal provisions shall apply.</p>
22	<p>Please kindly amend 25§ as follows:</p> <p>The Seller shall in no event be liable for any indirect, incidental or consequential damages, such as, but not limited to, loss of production, cost of capital, loss of profit, loss of use or increased expense of use of equipment or plant, loss of contracts, or claims of customers for loss of use or production. The remedies of the Buyer set forth in this Agreement are exclusive. In no event shall the Seller's liability under this Contract exceed fifteen (15) per cent of the total contract price. The Seller shall not be liable for any damage to property caused by the Equipment after it has been delivered and whilst it is in the possession of the Buyer, or for any damage to products manufactured by the Buyer</p>	<p>15 § 6 has been added:</p> <p>The Seller shall in no event be liable for any indirect, incidental or consequential damages, such as, but not limited to, loss of production, cost of capital, loss of profit, loss of use or increased expense of use of equipment or plant, loss of contracts, or claims of customers for loss of use or production. The remedies of the Buyer set forth in this Agreement are exclusive. In no event shall the Seller's liability under this Contract exceed fifteen (15) per cent of the total contract price. The Seller shall not be liable for any damage to property caused by the Equipment after it has been delivered and whilst it is in the possession of the Buyer, or for any damage to products manufactured by the Buyer or to products of which the</p>

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or to products of which the Buyer's products form a part. If the Seller incurs liability towards any third party for such damage to property, the Buyer shall indemnify, defend and hold the Seller harmless. The limitation of the Seller's liability shall not apply where the Seller has been guilty of gross negligence or willful act.

Either of the parties may terminate this Agreement with immediate effects if: (a) The other party breaches the Contract in a way that can be considered material and has not remedied the situation within 30 days from the receipt of written notice thereof; or (b) If the other party becomes insolvent, bankrupt, enters into reorganization or a threat thereof is evident. In case of termination due to the Seller's default, the Seller shall be paid for the value of the work completed to such date, pursuant to this Agreement. If the Seller terminates the Agreement in whole or in part due to the Buyer's fault, the Buyer shall compensate the Seller for the loss it suffers because of the Buyer's default. In such case the compensation shall cover direct costs as well as compensation for lost profits and overhead.

The Seller shall have the right, notwithstanding any other terms and conditions of this Agreement, to install remote diagnostic tools into the equipment and gather and store equipment related data during and after the term of this Agreement including but not limited to information concerning efficiency, availability, condition and downtime of the equipment. Such information may be used for optimizing the equipment or the related services as well as for Seller's internal business purposes.

Buyer's products form a part. If the Seller incurs liability towards any third party for such damage to property, the Buyer shall indemnify, defend and hold the Seller harmless. The limitation of the Seller's liability shall not apply where the Seller has been guilty of gross negligence or willful act.

Either of the parties may terminate this Agreement with immediate effects if: (a) The other party breaches the Contract in a way that can be considered material and has not remedied the situation within 30 days from the receipt of written notice thereof; or (b) If the other party becomes insolvent, bankrupt, enters into reorganization or a threat thereof is evident. In case of termination due to the Seller's default, the Seller shall be paid for the value of the work completed to such date, pursuant to this Agreement. If the Seller terminates the Agreement in whole or in part due to the Buyer's fault, the Buyer shall compensate the Seller for the loss it suffers because of the Buyer's default. In such case the compensation shall cover direct costs as well as compensation for lost profits and overhead.

The Seller shall have the right, notwithstanding any other terms and conditions of this Agreement, to install remote diagnostic tools into the equipment and gather and store equipment related data during and after the term of this Agreement including but not limited to information concerning efficiency, availability, condition and downtime of the equipment. Such information may be used for optimizing the equipment or the related services as well as for Seller's internal business purposes.

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