

**Agreement No. 04/EU/2018/RS (the "Agreement")**

entered into as of \_\_\_\_ 2018 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 67,000,000.00 PLN, paid in full, represented by:

Cameron Thorpe – CEO

Adam Żołnowski - CFO

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:

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1.1

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1.2.

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1.3.

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

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 Spare Parts shall be:

EUR .....

(in words: ..... euros)

4. The net price of Training shall be:

EUR .....

(in words: ..... euros)

5. The net price of the Subject of the Contract shall be:

EUR .....

(in words: ..... euros)

6. The payment for the Subject of the Contract listed in Section 1 shall be made to the Seller's bank account provided below:

[BANK ACCOUNT NUMBER AND TRANSFER DATA TO BE COMPLETED]

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

8. 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. Delivery terms and conditions are based on DDP GDANSK formula acc. to INCOTERMS 2010.

9. The price of the Subject of the Contract shall include the cost of all necessary elements, in particular 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.

10. The supplier declares that the issued invoices will be included in the sales register kept for VAT purposes, and the VAT tax due will be settled in the VAT return.

## § 2

1. The Buyer shall pay the Seller an advance payment in the amount of 20% of the value of the Equipment mentioned in §1.1.1 + VAT (in compliance with applicable legal provisions in force) within \_ days of signing the Agreement.

2. The remaining amount will be settled according to the following payment schedule:

a) 80 % of the value of the Equipment mentioned in §1.1.1 and

b) 100% of the value of the Spare Parts and Training mentioned in § 1.1.2 – 1.1.3

shall be paid by the Buyer to the Seller's bank account on the basis of three separate invoices (each for Equipment, Spare Parts and Training) within [TO BE COMPLETED]\_\_ days of the date of:

(i) the delivery of the complete Equipment and Spare parts )

and

(ii) signing by the Parties hereto of an Acceptance Protocol confirming a lack of any defects in the Equipment and Spare Parts;

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 Equipment and Spare Parts is enclosed thereto.

3. At the time of signing of the Acceptance Protocol confirming a lack of any defects in the Item of the Equipment and Spare Parts the title to the Equipment and Spare Parts 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.

## § 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 in favour of the Buyer one of the following, as shall be decided in the sole discretion of the Seller; that the Seller:~~

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(i) pays a contractual penalty in the amount of ~~21~~% 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;

or

(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 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 ~~105~~ % 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.~~

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2. In the event that the delay in the delivery of the last Item of Equipment set out in § 4 reaches ~~64~~ weeks, the Buyer shall be entitled, within ~~147~~ days, to withdraw from the Agreement and, at the same time, require that the Seller pay a contractual penalty in the amount of ~~1540~~% 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 ~~1430~~ 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.~~

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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.

~~(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.~~

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. The contractual penalties set out in this Article shall not exclude the possibility for the Buyer to pursue claims for remedy of the damage under general terms.

#### § 4

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

Complete Subject of the Contract should be delivered latest till [TO BE COMPLETED].

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.

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:

—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.

~~min. [TO BE COMPLETED] months or 600 mth whichever occur first of the date of signing of the Acceptance Protocol related to the Equipment and Spare Parts 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 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~~within the shortest possible time limits~~, however, 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:

(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 or Spare Parts.

4. The Equipment and Spare Parts 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 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.

§6

Delivery conditions: DDP GDANSK as per Incoterms 2010.

§ 7

1. The Seller shall deliver the Equipment and the Spare parts to the Buyer's registered office. The Equipment and Spare Parts 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 and Spare Parts 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 ~~under the general terms, however not longer than 14 days.~~

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.

§ 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.

2. Within ~~seven days 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 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;

For avoidance of any doubt, ~~if the Equipment delivered requires, the delivered Equipment shall be registered in UDT/TDT by the Seller. Therefore,~~ the trial operation shall be performed by the Buyer upon the registration thereof. The trial ~~registration-operation~~ 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.

5. 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.

§ 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 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, 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, termination or validity thereof shall be finally settled by arbitration in Warsaw, Poland 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.~~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. 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.~~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.~~

6. 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 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.

§ 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 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 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. 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 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. 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.~~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~~ covered by the Agreement, the mandatory provisions of the Polish Civil Code and other applicable mandatorily 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