**AGREEMENT No ……………/GLT/2024**

**(the "Agreement")**

**concluded in Brzeg Dolny, on ............... 2024, *effective from this date, hereinafter the (“Agreement Signing Day”)* by and between:**

**PCC MCAA sp. z o.o.** with headquarters in Brzeg Dolny, Sienkiewicza 4, entered into the register of entrepreneurs kept by the District Court for Wrocław-Fabryczna in Wrocław, IX Commercial Division of the National Court Register under the number KRS 0000366820, NIP 988-02-85-375, REGON 021363663, share capital 205 266 000,00 PLN, BDO no.: 000085187, hereinafter referred to as the “**Ordering Party**” or the “**Employer**”, represented by:

1. ……………………. - …………………
2. ……………………. - …………………

and

**…………………….**, hereinafter referred to as the “**Contractor**”**,** represented by:

1. …………………. - …………………
2. …………………. - …………………

also referred to the Agreement individually as the “**Party**” and jointly as the “**Parties**”.

Whereas:

The Ordering Party intends to order Delivery of Devices, and taking into consideration that the Ordering Party has tender documentation, and taking into account that the Ordering Party has delivered such documentation to the Contractor in order to enable the Contractor a complete valuation of the Subject of the Agreement and subsequent complete performance of the Subject of the Agreement in compliance with the documentation and Technical Specification, and further considering the fact that the Contractor confirms that it has obtained from the Ordering Party all the information necessary to complete the Subject of the Agreement, including it confirms its experience in performance of similar tasks.

The Ordering Party wishes to carry out the task entitled

1. Delivery of **the PU-4015 Scrubber pakage of a monochloroacetic acid solidification installation for PCC MCAA sp. z o.o. in Brzeg Dolny** as a result of the procedure **No.** ....................... conducted by the Ordering Party.
2. Delivery of **the PU-4015 Scrubber pakage** shall be understood as delivery of complete Devices described in detail in Annex no. 1 to the Agreement, pursuant to INCOTERMS 2020 DDP Brzeg Dolny, ul. Sienkiewicza 4, subject to provisions of the Agreement.

The Contractor declares that:

1. it sustains the entire Contractor’s representation made in the tender documents on the Contractor’s powers and potential to perform the Subject of the Agreement,
2. it shall complete the Subject of the Agreement in accordance with all applicable standards, guidelines and regulations, including industry standards, guidelines and regulations and good engineering practice, as well as in accordance with the standards and guidelines set out in the tender documentation and tender procedure, as well as in accordance with the regulations and safety procedures (“**Compendium**”) applicable at Ordering Party’s company and at PCC Site, including:
3. knowledge compendium available at:

<https://en.pcc.rokita.pl/safety-rules/health-and-safety/compendium-on-health-and-safety/>

1. Safety at work and fire protection available at:

https://en.pcc.rokita.pl/safety-rules/introductory-information/

1. Regulation of the General Director of PCC Rokita SA no. 46/2010 of 20 December 2010 regarding the Standards for Technical Documentation in PCC Rokita SA,
2. Regulation of the General Director of PCC MCAA Sp. z o.o. no. 12/2016 of 7 December 2016 regarding the General Specification for Execution and Acceptance of Designing Works, Technical and Design Documentation, Rules for the Organisation and Supervision
3. Regulation of the General Director of PCC MCAA sp. z o.o. no. 36/2013 of 03 July 2013 on safety information for persons staying at the premises of PCC, available at:

https://en.pcc.rokita.pl/safety-rules/health-and-safety/information-for-visitors-and-auditors

1. PBT.I03 Technical Equipment Standard SUT E - Electrical discipline available at:

https://en.pcc.rokita.pl/technical-equipment-standards/electrical-industry/

1. PBT.I04 Technical Equipment Standard SUT M - Mechanical discipline available at: https://en.pcc.rokita.pl/technical-equipment-standards/mechanical-standard/
2. Instruction PBT.I01 Technical Equipment Standard SUT C – Control & Instrumentation available at:

https://en.pcc.rokita.pl/technical-equipment-standards/constrol\_instrumentation/

1. Technical Equipment Standard – Ventilation and Air Conditioning:

https://pcc.rokita.pl/wp-content/uploads/2021/12/Standard-wentylacji.pdf/

1. Regulation of the Minister of Infrastructure of 20 December 2021 on the detailed scope and form of design documentation, technical specifications for the execution and acceptance of construction works and functional program.

The contents of all ordinances and internal regulations valid at the Ordering Party’s were shared with the Contractor at the stage of tender procedure preceding signing of the Agreement, which the Contractor hereby confirms.

1. it understands the scope and purpose of the Subject of the Agreement and has knowledge and material resources and experience sufficient to complete it; including - but not limited to - sufficient personnel in terms of its number and qualifications, technical facilities and financial resources, and as a professional provider of services covered by the Subject of the Agreement – undertakes to complete the Subject of the Agreement in compliance with the professional character of its business, with due diligence, the current level of knowledge and technology, and in compliance with the requirements existing in the legal regulations.
2. it is aware of the expectations and demand of the Ordering Party for performance of the Subject of the Agreement.
3. it has read and understood the tender documentation and information provided during the tender procedure, the Technical Specification and does not find any errors or deficiencies therein that could hinder the proper performance of the Subject of the Agreement and has cleared up any related doubts;
4. it shall perform the Subject of the Agreement in accordance with the terms of Article 4 sec. 1 of the Agreement, taking into account weather conditions that may occur during the term of the Agreement, and that it has taken into account the costs of preventing and minimizing of their effects, all within the lump sum defined in Article 6 sec. 1 hereof,

*The representatives of the Parties declare that their powers of attorney have neither expired nor have been limited and, therefore, they are fully authorized to enter into this Agreement.*

# PRELIMINARY PROVISIONS AND DEFINITIONS

## Interpretation of terms used in this Agreement shall include, in particular, the following definitions:

Technical Documentation - shall mean any type of documentation required by the Agreement, including that listed in the tender bid no. ............ of ......................... and in the Technical Specification. The Technical Documentation shall include the documentation necessary for Final Acceptance of the Subject of the Agreement, including documentation confirming proper functioning of the Subject of the Agreement, as well as documentation required pursuant to internal regulations existing on the premises of the Ordering Party (if any).

Detailed Design Documentation - shall mean documentation precisely describing the functions, operation and structure of the Device include among others: technical descriptions, design calculations, drawings with detailed design solutions of the Device. Detailed Design Documentation requires prior approval of the Ordering Party before to the start of production of the Device. Scope of Detailed Design Documentation defined in Annex no. 7 to this Agreement.

Delivery - shall mean design, performance and delivery of Devices by the Contractor. The Delivery shall also include preparing and providing the Technical Documentation by the Contractor and performance of all Contractor’s additional activities, such as packaging and protecting the subject of Delivery, transportation, and in particular proper planning and organization of transportation, appropriate marking and protection of transportation in accordance with the applicable laws and regulations, taking all responsibility for the delivery (including loading, transportation, unloading and organization thereof), unloading, customs clearance including payment of customs duties and other import and insurance charges, etc. The Delivery shall also include delivery of the documentation required under the Agreement, including the Technical Documentation.

Agreement Signing Day - as defined in the Recitals hereof.

Guaranteed Parameters - the technical and environmental parameters specified in Annex No. 1 to the Agreement.

Operation Manual - shall mean an instruction approved by the Ordering Party, specifying the rules and procedures of Device safe operation.

Investment - shall mean investment carried out by the Ordering Party Construction of the new solidification plant for PCC MCAA sp. z o.o., located in Brzeg Dolny (Poland).

Final Acceptance - shall mean acceptance of the entire Subject of the Agreement by the Ordering Party, as referred to in Article7 of the Agreement, confirmed by signing the Final Acceptance certificate by the Ordering Party.

Subcontractor - shall mean an individual, a legal person or an organizational entity that has a legal relationship with the Contractor, whose subject is to perform any part of works or deliveries under the Subject of the Agreement.

Subject of the Agreement - shall include Delivery of Devices, as well as performance of other activities set out in the Agreement.

Force Majeure - as defined in Article 14 of this Agreement.

Technical Specification - Annex no. 1 to this Agreement.

Party - shall mean either the Ordering Party or the Contractor.

Parties - shall mean both the Ordering Party and the Contractor.

PCC Site - a site in Brzeg Dolny belonging to the companies from the PCC group.

Process Commissioning - shall mean all activities taken up by the Contractor in order to start the Devices and to confirm correctness of execution and assembly and connections to ensure the system performs as anticipated and to correct any remaining problems prior to Investment Operational Start-up

Device - shall mean the PU-4015 Scrubber package includedventuri/jet scrubber with tank, - absorption column with filling, and spray nozzles and demister, OPTIONALLY - and V-4016 filling column tank odescribed in detail in the Technical Specification.

Agreement - as defined in the Recitals hereof.

Lump-Sum Value of the Agreement - shall mean the lump-sum total of the net remuneration, unchanged during the term of this Agreement, referred to in Article 6 sec. 1 of this Agreement.

Contractor - as defined in the Recitals hereof.

Ordering Party - as defined in the Recitals hereof.

FAT – (ang. *Factory Acceptance Test*)a test of Device before it installation, which is always performed on newly manufactured equipment, to examine whether the Device satisfy in particular the performance and function requirements or not, according to this Agreement.

Installation Supervision – means a set of activities of the Contractor, undertaken in order to supervise the correctness of the installation of the Devices and to provide advice and solve technical problems during the installation, including providing a manufacturer's representative during the installation of the Devices

Commissioning Supervision – means a set of Contractor's activities undertaken in order to supervise checking the correctness of the operation of the Devices and providing advice and solving technical problems during commissioning, including providing a manufacturer's representative during commissioning of the Devices, as well as training the Ordering Party's employees and participating in a 72-hour Test Run.

Test Run – a 72-hour performance test of the Investment, performed at full installation loads, aimed at confirming achievement of the Guaranteed Parameters and the full efficiency of the designed installation.

Guaranteed Parameters – technical parameters of the Devices guaranteed by the Contractor until the end of the warranty period, specified in Annex No. 1 to the Agreement entitled Technical specifications, scope of works and deliveries and industry price list

# SUBJECT MATTER

1. The Contractor, having proper qualifications, economic and human potential, experience and technical knowledge at its disposal is obliged to carry out activities set out in this Agreement, and in particular:
   1. Delivery, including the provision of Technical Documentation and Detailed Design Documentation,
   2. at the request of the Ordering Party - Installation Supervision,
   3. at the request of the Ordering Party - Commissioning Supervision.:
2. The Subject of the Agreement should meet the requirements, be of standard not lower and not narrower than set out in the Technical Specification constituting Annex no. 1 hereto and in the orders in force at the Ordering Party’s company and at the PCC Site referred to in the preamble of this Agreement. The Subject of the Agreement, in particular the Device, should be in compliance with the Contractor’s tender offer (including in terms of the specified manufacturers, if applicable), and concurrently the Subject of the Agreement should meet the requirements set out in the Technical Specification. Any derogations from this principle are possible with the express consent of the Ordering Party.
3. The Contractor is obliged to carry out, at its own expense, any performance necessary for proper, compatible with applicable regulations, standards and technical knowledge completion of the Subject of the Agreement, including to provide all the necessary materials, equipment and services.
4. All materials used to perform the Subject of the Agreement shall be brand new, unused and with no defects. The Contractor shall be obliged to provide all the materials necessary to perform the Subject of the Agreement unless the Agreement expressly indicates otherwise.
5. To the matters not provided for by the Agreement, the Contractor is obliged to fulfil its obligations in accordance with the rules of technical knowledge and technical conditions of performance and Final Acceptance of the works, the applicable general provisions of law, in particular the requirements of the directives of European Union for a particular type or machine/device or a set of machines/devices, performing assessment of compliance and if legally required, CE marking based on the directives and delivering an EU declaration of compliance. In particular all materials used to perform the Device must comply with the harmonized standards and in the event if they are not compliant with the appropriate harmonized standards or with European Approval for Materials, they must have appropriate admissions issued by a Notified Body. The Contractor shall deliver a list of materials used to the Ordering Party. The Contractor is also obliged to realize its obligations in compliance with the Polish Standards, if applicable, and to this extent, deliver required certificates of compliance. The Contractor is also obliged to deliver material certificates, certificates for safety mark, protocols from performed tests and trials.
6. All benefits, burdens and risks, including the risk of losing and damaging the Device, and the risk of damage done by the Device is transferred onto the Ordering Party not earlier than upon performance of the Final Acceptance , confirmed with an appropriate protocol signed by the Ordering Party. If dangerous goods are subject of delivery under the Agreement, their ownership is transferred onto the Ordering Party at the earliest upon performance of the Final Acceptance, confirmed with an appropriate certificate signed by the Ordering Party.

# OBLIGATIONS OF THE CONTRACTOR

1. The Contractor performing the Subject of the Agreement is obliged, in particular, to carry out the following activities and works:

## to deliver to the Ordering Party Technical Documentation in 3 copies in the paper version and 1 copy in the electronic version, upon the moment of Delivery at the latest.

* 1. to deliver to the Ordering Party Detailed Design Documentation in accordance with the Agreement,.

## to deliver all brand-new and unused materials, necessary for the performance of the Subject of the Agreement,

## to deliver the Operation Manual and warranty documents in Polish, valid in the territory of Poland, with respect to the Subject of the Agreement– in accordance with Directive PED 2014/68/UE.,

### Having conducted such training, the Contractor shall provide the Ordering Party with the signed training completion protocol together with the list of trained people.

## to enforce fulfilment of its Subcontractors obligations and make timely payments for their performance. For the avoidance of doubt, the Parties confirm that failure to fulfil this obligation by the Contractor shall be improper performance of the Agreement and the Contractor shall be liable for damages towards the Ordering Party arising therefrom,

## providing additional (except for Operation and Maintenance Documentation) guidelines regarding assembly of Device,

## if applicable, performance of the works by the Contractor and any possible Subcontractors in accordance with the OH&S and fire-fighting regulations, including the Compendium, in force at the Ordering Party’s; the Contractor in particular shall ensure that its employees and sub-suppliers shall have and use gas masks with filter cartridges for acid gases (EN141:2000 - ABEK) safety uniform (Protective Clothing Category III Type 3B: EN 14126, Type 3: EN 14605, Type 4: EN 14605, Type 5: EN ISO 13982-1, Type 6: EN 13034, EN 1149-5, EN 1073-2, EN-14126 for a liquid and dust or safety uniform Protective Clothing Category III Type 5B: EN ISO 13982-1:2004+A1:2010, Type 6B: EN 13034:2005+A1:2009, EN 1149-5:2018 EN 1073-2:2002 EN 14126:2003+AC:2004 only dust) and protective helmets, in the case of toxic hazard during the work on the construction site.

## to carry out the work through employees or other people used by the Contractor, who have valid qualification certificates in the scope corresponding to the performed work,

## to compile, prepare and hand over to the Ordering Party the documentation necessary for Final Acceptance .

1. The Device delivered without the Technical Documentation or with incomplete Technical Documentation, including documentation not meeting the terms of the Agreement, shall be considered Device not delivered, in particular delay in delivery of such complete Documentation shall be treated as a delay in delivery of Device.
2. The Contractor is obliged to submit Detailed Design Documentation to be accepted by the Ordering Party, prior to performance of the Device, within the time limit allowing to meet the deadline set in Article 4 sec. 1 of the Agreement.
3. The Contractor is obliged to deliver parts indicated in Annex no. 5 hereto, at prices listed therein, within the period of …. from the date of Final Acceptance , should such an order be placed by the Ordering Party. This provision does not constitute the Ordering Party’s commitment to purchase these elements. Provisions of the Agreement related to the Device shall be applied to the elements, with the reservation of provisions of Annex no. 5 hereto.

# COMPLETION DEADLINES

1. The Parties agree that the performance of the Subject of the Agreement shall occur by …………….2025r., with the reservation of deadlines specified in the financial and material schedule constituting Annex no. 3 to the Agreement, and deadlines for delivery of parts referred to in Annex no. 5 hereto, at the place indicated by the Ordering Party, pursuant to INCOTERMS 2020 DDP Brzeg Dolny, ul. Sienkiewicza 4. Application of INCOTERMS does not exclude the Contractor’s further liability and obligations set out hereunder.
2. In the case the Contractor offers completion of the Subject of the Agreement or parts thereof before the deadlines set in the Agreement, the Ordering Party shall be entitled, but not obliged, to accept the Subject of the Agreement or parts thereof before such deadlines. If the Ordering Party accepts the Subject of the Agreement or any part thereof before the expiry of the deadline set in the Agreement, the Ordering Party shall be entitled, but not obliged, to suspend the payment of the Contractor's remuneration and in this case, for the purpose of the schedule of payments, it shall be assumed that the completion of the Subject of the Agreement took place not earlier than on the date specified in the Agreement. This does not exclude the obligation to meet the terms of a particular payment.
3. The Delivery shall be deemed to have been completed upon approval of the Device on the day of delivery, referred to in Article 7 sec. 1 of this Agreement and providing entire documentation required under this Agreement.
4. The Contractor shall be obliged to notify the Ordering Party in writing of the day of the Device’s’ delivery, at least 1 week in advance. Irrespective of the obligation arising from the preceding sentence, the Contractor undertakes to provide the shipping documents 1 week prior to the planned date of delivery.
5. The Contractor shall perform the Installation Supervision and Commissioning Supervision on the date specified by the Ordering Party, assigned to the Contractor no later than 7 days from the planned assembly/start-up. The Ordering Party is not obliged to order these services from the Contractor.
6. In the case of untimely performance of a part or the whole of the Subject of the Agreement, including in the case of delay in starting the work, or in the case of suspending, without reasonable cause, the performance of the work for more than 3 days, the Ordering Party may take action, at the expense and risk of the Contractor, aimed at removing such delay, including to order performance of the whole or part of the work from a third party, after ineffective expiry of an additional, at least 7-day time period set electronically or in writing to the Contractor by the Ordering Party to remove the delay, start or restart the work. Exercising of this right by the Ordering Party does not release the Contractor from any obligations set out in this Agreement.
7. The deadlines to perform the Subject of the Agreement may be changed only due to:
8. the Force Majeure preventing performance of the Subject of the Agreement,
9. the Ordering Party’s gross negligence in performance of its obligations set out in this Agreement,
10. issue of decisions, provisions or other administrative acts by the competent administrative authorities, ordering directly to suspend works, within the scope directly affecting the performance of the Subject of the Agreement.

# REPRESENTATIVES OF THE PARTIES

1. ..........….. shall be the Contractor’s representative authorized to all substantive contacts with the Ordering Party within the scope covered by the Subject of the Agreement and to sign all protocols provided by this Agreement.
2. Mr. Bartłomiej Bukowski shall be the Ordering Party’s representative authorized to all substantive contacts with the Contractor within the scope covered by the Subject of the Agreement and to sign all protocols provided by this Agreement.
3. Except as expressly indicated in the power of attorney to certain action, none of the people listed in this paragraph shall have any rights to amend the terms and conditions of this Agreement, to incur liabilities or to exempt any of the Parties from any liability.
4. Any changes of the representatives of the Parties shall require notifying the other Party in writing, otherwise null and void, and shall not require any amendments to the Agreement.

# REMUNERATION OF THE CONTRACTOR

1. For proper performance of the entire Subject of the Agreement, with the exception of remuneration for elements referred to in Attachment 8 and the remuneration referred to in section 2 below, the Parties agree the Contractor’s net lump-sum remuneration in the amount of **EUR/PLN net ............... (say: net .............................)**
2. The remuneration for the Installation Supervision and Commissioning Supervision will be paid on the basis of the days actually worked and the rate for one (1) working day …………………………………………………EUR/PLN net (in words: ….) and confirmed by the attendance list presented to the Ordering Party for approval.
3. The net remuneration shall be increased by the applicable VAT rate payable in accordance with the provisions in force on the day of the invoice. All invoices should be sent electronically to the following email address: faktury\_zakup\_pccp4@pcc.eu with the proviso that in one e-mail message, only one invoice with the necessary attachments (if required) may be sent as an attachment. The invoice number should be provided in the subject of the message.
4. Without prejudice to further payment terms set out in the Agreement, the remuneration due to the Contractor for the performance of the works shall be paid by the Ordering Party within ….. days from the date of issue of a correct VAT invoice, including one that meets the conditions of the Agreement. The invoice shall be issued on the basis of the Final Acceptance protocol. The invoice shall be issued for 100% of the remuneration referred to in paragraph 1 and shall constitute the basis for payment of 90% of the net value of the invoice and 100% of VAT. Documents required by the Agreement to make payment of a given VAT invoice, including documents whose failure to submit entitles the Ordering Party to withhold payment to the Contractor, should be delivered no later than 7 days before the due date of the Contractor's invoice, unless the detailed provisions of the Agreement expressly specify other deadlines for their delivery. If the Contractor fails to provide all documents required by the Agreement to make payment of a given VAT invoice (at all or within the deadlines specified in the Agreement), including documents whose failure to submit entitles the Ordering Party to withhold payments to the Contractor, the payment deadline for the VAT invoice shall be automatically extended by 7 days from the moment the Ordering Party receives and verifies (within a reasonably justified deadline) the last of all required documents. The remainder part of the remuneration not paid to the Contractor, referred to in sec. 3 above, shall constitute security (interest-free warranty deposit) for fulfilment by the Contractor of obligations related to faults and defects in the Subject of the Agreement, including payment of contractual penalties which, subject to sec. 6 and shall be transferred to the Employer’s deposit account and paid to the Contractor after the expiry of the warranty period + 30 days, however the payment shall be done not earlier than at a written request of the Contractor within 30 days counting from the date of its delivery to the Employer). To avoid any doubts Parties confirm that provisions of sec. 9 shall apply to this part of the remuneration.
5. The remuneration for the parts delivered to the Ordering Party, referred to in §3 section 10, shall be payable after their delivery. The invoice payment deadline is \_\_ days from the date of a correctly issued invoice, including one that meets the terms of the Agreement.
6. With the Employer’s prior consent given in writing or in the electronic form, and after the Final Acceptance , the Contractor, instead of security in the form of a guarantee deposit, referred to in section 4 hereinabove, can deposit the performance bond guaranteeing Contractor’s performance of obligations arising from defects of the Subject of the Agreement during the warranty period, including payment of contractual penalties, in the form of an unconditional, irrevocable and first demand bank guarantee or insurance guarantee equal to the amount of the guarantee deposit, valid for the warranty period + 30 days. The Contractor shall provide the Employer with the original copy of the above-mentioned bank guarantee or insurance guarantee after prior Employer’s acceptance of its content and the entity granting it. Payment of the guarantee deposit shall be within 30 days from delivery of such original copy of the guarantee.
7. If the bank or insurance guarantee handed over by the Contractor is issued for a period shorter than indicated in the Agreement or its amount does not meet the terms of the Agreement, also following conclusion of annexes to the Agreement, performance of additional works, etc., the Contractor is obliged to present immediately such an annex to the said guarantee or a new bank or insurance guarantee (after prior approval of the contents by the Employer) under the pain of the Employer withholding payment of remuneration or its part. All costs associated with obtaining the above-mentioned the annex to the guarantee or a new guarantee shall be borne by the Contractor.
8. The Employer has the right to use the above securities in order to satisfy any claims against the Contractor, in particular in order to satisfy its receivables arising from non-performance or improper performance of the Subject of the Agreement by the Contractor, including failure to pay amounts due to the Subcontractors, non-performance or improper performance of obligations under the warranty and/or statutory warranty, including non-removal or improper removal of defects, and contractual penalties. The Employer shall be entitled to set-off mutual claims, including from contractual remuneration and contractual securities, on the basis of a unilateral declaration of will, also before expiry of the time limits for payment of the claims of both Parties.
9. The Contractor’s lump-sum Remuneration set out in section 1 and the rates of remuneration referred to in section 2 above are fixed and is not subject to any changes during the whole term of this Agreement.
10. The Contractor ensures under the Supplier’s lump-sum remuneration fulfilment of all works and services for which a separate remuneration was not planned, including fulfilment of deliveries comprising the Subject of the Agreement,. Any expenses associated with the performance of this Agreement, unless expressly reserved to the Employer, shall be borne by the Contractor. The Contractor’s remuneration set out in this Agreement includes all Contractor’s costs necessary for proper performance hereof.
11. Payments to the Contractor by virtue of transactions subject to Polish VAT (i.e. when Polish VAT is charged on the invoice) will be realized to a bank account listed on a so-called white list of VAT taxpayers. The Employer has the right to withhold payment to the Contractor if - with regard to transactions subject to Polish VAT and at the moment of making the payment - the Contractor’s account is not listed on the so-called “white list of VAT taxpayers”; in the event of suspension of the payment section 4 above, the last sentence shall apply accordingly. Otherwise, i.e. in the case of transactions not subject to VAT taxation in Poland it is agreed that payments to the Contractor shall be made to the bank account in …. (bank name) with the number …….
12. The payment day shall be considered the day the Employer’s bank account is debited.
13. The Contractor represents that it is an active payer of the value added tax (VAT) in the understanding of the provisions about VAT and shall inform the Employer immediately after this status changes.
14. If due amounts paid to the Contractor based on the Agreement are subject to withholding tax collected pursuant to the act on corporate income tax, taking into account agreements on avoiding double taxation, provisions of Annex no. 6 “Provisions regarding withholding tax” shall apply.
15. Remuneration for parts delivered to the Employer, referred to in Attachment 8 shall be payable after their delivery to the Employer. Payment term for an invoice shall be \_\_ days from the date of issuing a correct VAT invoice, including one that meets the terms of the Agreement.

# TAKING-OVER AND CONDITIONS OF FINAL ACCEPTANCE

1. Performance of this Agreement shall be subject to taking-overs mentioned below in this article.
2. The Subject of the Agreement is subject to taking-over:
3. of the Detailed Design Documentation - the Contractor shall document completion of the Detailed Design Documentation by submitting to the Employer a statement on completeness of the delivered documentation. Taking-over of the Detailed Design Documentation shall be confirmed by the signing of the taking-over certificate for the Detailed Design Documentation within \_\_\_ days from the date of the Agreement Signing Day. If reservations or comments are reported by the Employer regarding the Detailed Design Documentation, the Contractor is obliged to remove them immediately, after a prior arrangement between the Parties of the deadline for removal of these defects, under the pain of the Employer’s not signing the taking-over certificate. If the Parties do not agree on the deadline for defects removal, it is assumed that this deadline is \_\_ business days.
4. of delivery of the Device on the day of the Delivery that comprises checking the completeness of the delivered Device with documents provided by the manufacturer and Technical Documentation and completeness of the Technical Documentation. The reason for the Ordering Party’s refusal to start or finish Taking-Over may be, among other things: discovering that the shipment is incomplete, finding signs of any external impact, shock, chipping paint or other damage that may arise during the transportation, lack of complete equipment or its improper fastening. Starting unloading or receipt of the shipment does not exclude the Contractor’s liability by virtue of the Agreement, in particular by virtue of incompleteness of the Devices or defects which occurred during transport. All openings in the Device should be closed with flanges or suitable materials and durable packaging.
5. technical acceptance, which will take place after the completion of the Installation Supervision, which will confirm readiness to perform start-up, including the performance of a 72-hour trial run. After the completion of the Installation Supervision, the Contractor shall notify the Ordering Party of its readiness to sign the technical acceptance protocol. The Ordering Party shall accept the protocol in writing within 14 days of its receipt, and in the event of refusal to accept it within this period, the Contractor shall provide the Contractor with the reasons for the refusal in writing. In particular, the reason for refusing to sign the protocol is failure to comply with the obligation to provide the documentation required by the Agreement.
6. Final Acceptance – which will take place after the successful completion of the Installation Supervision and successful completion of the Process Commissioning (including achievement of the Guaranteed Parameters)– the course and performance of the Final Acceptance shall be documented with the written Final Acceptance protocol, the template of which shall be established in accordance with the standards adopted by the Ordering Party. Final Acceptance can begin after acceptance of Technical Acceptance.
7. If there is any doubt as to the condition of the Device, or if parts of the Device are moving, or have signs of damage during transportation, the Ordering Party shall notify the carrier in writing, on the documents presented by the carrier for receipt of shipment and on the acceptance protocol.
8. In particular, a reason for refusal to sign the Final Acceptance protocol is failure to comply with the obligation to provide the documentation required under the Agreement. In respect of carrying out the Final Acceptance , the Parties shall draw up the Final Acceptance protocol in writing, otherwise null and void. If a complete Technical Documentation is not presented, the Ordering Party shall not carry out the Final Acceptance, indicating in the certificate the causes of not carrying out the taking-over. After removal of the reasons for not carrying out the Final Acceptance, the Contractor shall notify the Ordering Party about removing the obstacles for Final Acceptance, and the relevant provisions concerning the Final Acceptance shall apply for further proceedings.
9. Inspection, tests, Final Acceptance of the Subject of the Agreement shall take place, in particular based on the Technical Documentation, standards, norms, including industry and environmental protection norms, good engineering practice, OHS provisions and in compliance with the internal regulations valid on the premises of PCC.
10. Within the scope of the Subject of the Agreement, all costs in form of auxiliary materials, consumables, measurements, small rework, etc. which may appear during the Installation Supervision and Commissioning Supervision shall be incurred entirely by the Contractor.
11. Process Commissioning
    1. Process Commissioning will be carried out while the Investment is in operation on the target utilities.
    2. The Employer provide conditions for the execution of the Process Commissioning (production of the finished product) within the timeframe in accordance with the Material and Financial Schedule attached as Annexe No. 4 to the Agreement. If the date of carrying out and launching the Investment is postponed, the Contractor will be informed at least 14 days in advance.
    3. Process Commissioning will be carried out by the Employer, and the Contractor has the right to participate in it. The costs of participation of the Contractor's representatives in the Process Commissioning shall be borne entirely by the Contractor.
    4. Instructions for performing Process Commissioning will be carried out by the Employer in consultation with the Contractor.
    5. The Employer shall notify the Contractor in writing or via electronic means 7 days in advance of the date of the Process Commissioning.
    6. As part of the Process Commissioning, the guarantee measurements shall be conducted, which will verify compliance the Guaranteed Parameters;
    7. In the event that, as a result of the first guaranty measurements, the Guaranteed Parameters are not achieved the Contractor undertakes, within the timeframe set by the Ordering Party, to take action to achieve the Guaranteed Parameters. If the Guaranteed Parameters are not achieved, the measurements will be repeated twice (on dates agreed by the Parties).
    8. If the Process Commissioning are repeated due to non-achievement of the Guaranteed Parameters the costs of a second and third Process Commissiong will be covered by the Contractor.
    9. If the Guaranteed Parameters are not achieved as a result of three Process Commissioning attempt the Ordering Party shall have the right to withdraw from the Agreement due to the fault of the Contractor, indicating whether it withdraws from the Agreement for the part that has not yet been performed or from the whole Agreement (ex tunc).

**Art. 7a INSPECTION AT THE CONTRACTOR’S**

**AND FACTORY ACCEPTANCE TEST (FAT)**

1. The Ordering Party or its representatives and appropriate certification authorities (if required) shall have the right to a free-of-charge inspection and/or testing of the Device at any time during the production, in order to check the compliance with the Agreement, including Technical Specification.
2. If the Ordering Party intends to carry out such inspection or test, it shall notify the Contractor by e-mail, not later than five (5) days before the date of the inspection or test reported by the Contractor.
3. All costs of travel, accommodation, subsistence costs incurred by the Ordering Party’s representatives during such inspections shall be borne by the Ordering Party.
4. The Contractor shall issue free-of-charge a certificate of inspection or test, for example: a report of non-destructive testing (NDE), workshop test data, and a certificate concerning materials that shows inspection or test results and proves that the relevant parts or elements of the Device are in compliance with the Agreement. If any part or element of the Device are not in compliance with the terms and conditions of this Agreement, such defects shall be replaced or repaired at the expense of the Contractor within due time allowing to meet a deadline determined in Article 4 sec. 1 of the Agreement and the repaired or replaced parts of the Device shall be subject to further inspections by the Ordering Party or its representatives, or appropriate certification authority (if required) at the expense of the Contractor and in particular the Contractor shall incur expenses referred to in sec. 3 above.
5. The Ordering Party or its representatives shall have the right to a free-of-charge attendance in FAT of the Device. The Contractor shall inform the Ordering Party of planned FAT performance 2 weeks before it.
6. All costs of travel, accommodation, subsistence costs incurred by the Ordering Party’s representatives during FAT shall be borne by the Ordering Party.
7. All costs of FAT performance shall be borne by the Contractor.

# EFFECTS OF AND LIABILITY FOR IMPROPER PERFORMANCE OF THE AGREEMENT

## The Contractor is obliged to exercise due diligence when carrying out the Subject of the Agreement, taking into account the professional character of its business. In the event of non-performance or improper performance (defect in the Subject of the Agreement) of the Agreement by the Contractor, the Contractor is obliged to pay damages. The claim to pay damages is independent from other the Ordering Party’s claims due under this Agreement. The rights and legal remedies enjoyed by the Ordering Party under this Agreement are cumulative and not exclusive of other rights and legal remedies enjoyed by the Ordering Party under the law, and in particular, do not exclude the Ordering Party’s rights arising from the statutory warranty or from the liability for damages.

## Whenever this Agreement refers to defects in the Subject of the Agreement (including lack thereof), it should be understood as defects of the Subject of the Agreement understood as a functional whole, and physical and legal defects of the individual components thereof, i.e. in particular, devices, apparatus, etc.

## The physical defects shall be considered, in particular, defects resulting from the use of defective materials or components in the Subject of the Agreement. A defect is not normal wear and tear of devices or components thereof, or damage resulting from the use contrary to the intended purpose or if damage occurred as a result of changes or repairs made in the Device by the Ordering Party without the prior authorization of the Contractor in writing or electronic form. Physical defects, which are Contractor’s liability (including under liability for damages, warranty and statutory warranty), shall be considered, in particular, defects resulting from the use of defective material or elements in the Subject of the Agreement, errors in performance of construction and installation work. Normal wear and tear of Devices or their components is a defect which is not the Contractor’s liability.

## The obligation to prove circumstances excluding specific deficiency, event, irregularity, etc. from the category of physical and legal defects – is the Contractor’s responsibility. The obligation to prove circumstances of specific deficiency, event, irregularity, etc. from the category of physical and legal defects for which the Contractor is liable (including under liability for damages, warranty and statutory warranty) – is Ordering Party’s responsibility.

## The Ordering Party shall not be liable for any damage caused by the Contractor during performance of the Subject of the Agreement, as well as any damage caused by the Contractor and not related to the performance of the Agreement. The Contractor shall be liable for such damage.

## The Contractor shall be fully liable for performance of the Subject of this Agreement, including for any activities of the Contractor, its Subcontractors and any persons acting on behalf of the Contractor.

## The acceptance by the Employer of any documentation provided by the Contractor shall not release the Contractor from liability for its defects (including for its incompleteness) and for any resulting delays in the performance of the Agreement, nor does it release the Contractor from the liability for the proper performance of the Subject of this Agreement, nor does it limit such liability nor constitute its acceptance. Acceptance by the Employer of any documentation or the whole or a part of the Subject of the Agreement does not result in expiry of its rights arising from the warranty for defects, which expires pursuant to the general rules of the Polish Civil Code, unless the Agreement expressly provides otherwise.

# WARRANTIES

## The Contractor warrants that the Subject of the Agreement (including Device, all and any supplied materials, installations, systems,etc.) provided under this Agreement shall be made in accordance with the scope arising from this Agreement, assumptions and Technical Documentation, the best technical knowledge and shall be complete. The Contractor warrants that the supplied Subject of the Agreement (including Devices, any supplied materials, installations, etc.) is a new, unused, free from defects, including defects in materials, design and manufacturing, legal defects arising from the quality of workmanship and other defects. Further, the Contractor warrants that the structure and quality of materials used in the Subject of Agreement is in line with the current state of knowledge and the highest quality, safety and environmental protection standards applicable to materials and workmanship. The Contractor warrants that the Subject of the Agreement shall obtain parameters compatible with the Technical Specification and other documentation required under this Agreement and with their intended use and at least the parameters specified by the manufacturer of the Device and also warrants the highest quality of work performed by the Contractor.

## The Contractor gives a warranty for the Subject of the Agreement for a period of 36 months from the date of signing the Final Acceptance protocol .

## The Contractor shall bear the costs of removing the defective components in the Subject of this Agreement, or the entire Subject of the Agreement.

## If during the period of warranty defects or failures in the Subject of the Agreement are revealed, the Ordering Party has the right to demand, at its discretion, removal of the defect or delivery of the Subject of the Agreement or its part free from defects, to demand reduction of the purchase price or its return, or to demand a supplementary service or provision of other services. In the event of removal of the defect or delivery of the Subject of the Agreement free from defects, the Contractor shall be obliged to remove them at the cost and risk of the Contractor and at the place of defect occurrence, including to make repair or provide the Ordering Party with and install a component free from defects, at Contractor’s cost, instead of the defective component. As part of the warranty the Contractor is also obliged to remove damages in the Subject of the Agreement caused by the defect and to remove failure of the Subject of the Agreement arising from the defect or failure. The Contractor is obliged to perform its obligations arising from the warranty within the time limits set out in the following paragraph, upon the Ordering Party’s relevant request sent by registered letter to the address indicated in the Recitals hereof, or by e-mail to the following address ……

## If the Contractor fails to proceed on with the removal of defect or damage caused by a defect or failure, or failure caused by a defect or failure within 3 days from receipt of the relevant request in writing or by electronic means or by fax and fails to remove them in the technically reasonable shortest possible time, the Ordering Party is authorized to make the necessary repair or replacement at the expense and responsibility of the Contractor, without the need to obtain the Court authorization. In this situation, the Ordering Party does not lose the warranty rights, however, is obliged to inform the Contractor beforehand about Ordering Party’s making of the repair or replacement at the expense of the Contractor. In the absence of other arrangements between the Parties, it is assumed that the maximum time for defect removal is 10 days from receipt of the notice in writing or by electronic means or by fax by the Contractor.

## If the Contractor introduces major changes in the Subject of the Agreement or produces a new object to replace the damaged object during performance of its obligations arising from the warranty, the duration of the warranty period shall run anew from the date receipt by the Ordering Party of such repair or production of a new Subject of the Agreement. In other cases, the warranty period shall be extended by the time during which the Ordering Party, following the defect, could not use the Subject of the Agreement.

## In the case of two complaints concerning the same part of the Subject of the Agreement, the Contractor shall be obliged to deliver a new part free from defects.

## The provisions of this article do not exclude the Ordering Party’s rights under the statutory warranty.

## The Contractor shall attach original warranty documents provided by the manufacturer, if the manufacturer has granted such warranties, to materials, devices and installations and any other elements provided under this Agreement. Provision of the manufacturer’s warranty by the Contractor does not exclude the Ordering Party’s rights arising from this article.

## The Contractor may not refuse to remove a defect, including to make dismantling and correct installation as part of works performed under the warranty or statutory warranty without regard to the cost thereof. .

## This Agreement constitutes the warranty document.

## The Contractor will appoint a company performing maintenance services, warranty services and post-warranty repairs of the Device.

## If the Contractor is obliged to remove a defect on any grounds whatsoever, and such defect removal requires replacement of a particular element of the Subject of the Agreement to a new one, the Contractor is obliged, in return for the Lump-Sum Value of the Agreement set out in this Agreement, to ensure a replacement element of the Subject of the Agreement during the period of defect removal (including its installation and start-up for the duration of the defect removal in such a way as to ensure the proper functioning of the Investment).

## The Contractor shall enclose original copies of the guarantee granted by the manufacturer of the equipment and the Equipment supplied hereunder.

# INSURANCE OF COMPLETION OF THE SUBJECT OF THE AGREEMENT

## The Contractor is obliged to take out and maintain a general liability insurance policy throughout the term of the Agreement, related to the conducted business and manufactured product (covering at least the Subject of the Agreement, including made by the Subcontractors) including coverage of personal injury and property damage and consequential damages in form of lost profits.. The insurance should include tort and contract liability. A copy of the insurance policy or documents that exhaustively confirm the terms of the policy are given in Annex no. 2 to this Agreement.

## The amount of cover shall be not less than **EUR 1 000 000,00** for one and all events.

## In addition, the insurance shall cover at least:

* civil liability for damage caused by the subcontractors, if any activities under this Agreement are carried out by the subcontractors,
* civil liability for product or service,
* civil liability for damage occurring after the hand-over of the Subject of the Agreement (completed operations),
* civil liability for damages in existing devices or installations,
* civil liability for sudden and unexpected contamination of the environment.

## In the case of an insurance policy for the amount of cover denominated in a currency other than indicated above, compliance with the above-mentioned limit shall be assessed according to the currency’s average exchange rate of the National Bank of Poland announced on the day of concluding this Agreement.

## The Contractor declares that as of the Date of Signing of the Agreement, no events have occurred that have been reported or require reporting under the above-mentioned liability policy. At the same time, the Contractor is obliged to promptly inform the Ordering Party of any liquidation of damages proceeded under the aforementioned liability policy.

## The Contractor undertakes to continue the insurance under conditions not worse than those indicated above throughout the term of this Agreement understood by the Parties as the period from the Agreement Signing Date to the Final Acceptance and the subsequent warranty period referred to in Article 9 of the Agreement and shall be obliged to provide the Ordering Party with the insurance documents and evidence of insurance premiums payment at each request.

## If the Contractor fails to provide the Ordering Party with the proof of entering into the above-mentioned insurance contract and evidence of insurance premiums payment, and if necessary (in particular caused by the expiry of the insurance term before the date of Subject of the Agreement completion), within 14 days from the occurrence of such need, without a separate request – fails to provide the evidence of continuing the insurance contract along with evidence of insurance premiums payment, the Ordering Party shall be entitled to withhold the payment of the remuneration due to the Contractor until these conditions are fulfilled. The Contractor may not amend the insurance contract to the extent specified in this article without the prior approval of the Ordering Party.

## In the absence of meeting the obligation to provide the above documents specified in the above paragraphs concerning conclusion of the insurance contract and continuation thereof by the Contractor, the Ordering Party is entitled to enter into the insurance contract at the expense and risk of the Contractor.

# WITHDRAWAL FROM THE AGREEMENT

## Without limiting the rights of the Ordering Party to withdraw from the Agreement for other reasons set out in the legal provisions and this Agreement, the Ordering Party may withdraw from the Agreement for reasons attributable to the Contractor, if:

1. The Contractor has failed to perform the Subject of the Agreement or its another stage pursuant to the Material and Financial Schedule constituting Annex no. 3 and has failed to undertake the work despite Ordering Party’s additional request for a period of 7 days from the date of receipt of such an additional request. In this case, the withdrawal from the Agreement may be effected within 45 days from the last day of the deadline set for the definitive start of works,
2. The Contractor has stopped performance of the Subject of the Agreement and has not been performing it for 7 days and has failed to start performing it despite Ordering Party’s additional request for a period of 7 days from delivery of this additional request, unless the interruption in the performance of the Subject of the Agreement arises from the Force Majeure. In this case, the withdrawal from the Agreement may be effected within 45 days, counting from the last day of the deadline set in the request,
3. If it is found that the Subject of the Agreement is performed contrary to the Agreement or the technical regulations or if the Contractor performs its contractual obligations improperly, and despite a relevant request, fails to stop such activities within 7 Days from the date of receipt of such a request and has failed to bring the already completed Subject of the Agreement to conformity with the Agreement and the technical regulations; delay in completion of the Subject of the Agreement by more than 10 days in relation to any of the contractual deadlines, including deadlines specified in the Material and Financial Schedule constituting Annex no. 3 to the Agreement should be also understood as performance of the Subject of the Agreement contrary to the Agreement, if such a delay has been caused by reasons attributable to the Contractor. In this case, the withdrawal from the Agreement may be effected within 45 days from the last day of the deadline set for removal of the infringement,
4. The Contractor has submitted a false statement during the tendering procedure or performance of the Agreement – in this case, the withdrawal from the Agreement may be effected within 45 days from the date on which the Ordering Party has become aware of the above.
5. e) in the event that it is determined that the deviation from the Guaranteed Parameters is greater than that specified in the Polish Standard PN-Z-04030-7:1994 "Air purity protection - Dust content tests - Measurement of dust concentration and mass flow in exhaust gases using the gravimetric method." and the EN 12619 "Stationary source emissions -- Determination of mass concentration of total gaseous organic carbon -- Continuous measurement method with flame ionization detection and the Guaranteed Parameters are not achieved after third Process Commissioning attempt as described in Article 7.7 letter i) of the Agreement In this case, the withdrawal from the Agreement may be effected within 45 days from the third Process Commissioning attempt.

## In the case of withdrawal from the Agreement in the course of performance hereof by any of the Parties for reasons attributable to the Contractor, the Contractor shall return the remuneration to the Ordering Party and pay all the costs incurred by the Ordering Party.

## Withdrawal from this Agreement shall be in writing, otherwise null and void.

## In each case, the withdrawal from this Agreement for any reason:

* + 1. shall not release the Contractor from its obligations under this Agreement, which remain in force after termination of this Agreement, on express or implied basis, including the warranty obligations;
    2. shall not adversely affect the scope of the provisions on resolution of disputes;
    3. shall not release the Contractor from its obligations or liability for loss or damage incurred by the Ordering Party as a result of the Contractor’s acts or omissions prior to the date of withdrawal or resulting from such a withdrawal;
    4. shall not cause the Ordering Party’s or the Contractor’s loss of rights to contractual penalties, payable in accordance with this Agreement and arising due to the circumstances occurring prior to the date of withdrawal or in connection with it;
    5. shall be without prejudice to the Ordering Party’s right to withhold the payments for work done from the date of withdrawal or for the work continued after the date of withdrawal as agreed between the Parties, in situations, in which the Ordering Party has such a right in accordance with this Agreement. If the Ordering Party withholds the payment, the Contractor shall not be entitled to assert any claims against the Ordering Party arising from suspension of payment.

# CONTRACTUAL PENALTIES

## The Ordering Party may require the following contractual penalties from the Contractor:

1. for withdrawal from the Agreement by any of the Parties for reasons attributable to the Contractor – in the amount of 10% of the Lump-Sum Value of the Agreement,
2. for each started day of delay in performance of any part of the Subject of the Agreement in the amount of 0.5% of the Lump-Sum Value of the Agreement, but not more than 20% of the Lump-Sum Value of the Agreement,
3. for each day of delay in removal of failures or defects in the Subject of the Agreement (including failure to obtain Guaranteed Parameters by the Contractor or the manufacturer/supplier, for example in terms of the ensured energy or water consumption parameters, etc.) of a damage caused by a defect or failure, of breakdown caused by a defect or failure – in the amount of 0.2% of the Lump-Sum Value of the Agreement, but not more than 20% of the Lump-Sum Value of the Agreement counting from the day, agreed by the Parties, in which such defects or failures, damages or breakdowns of the Subject of the Agreement were supposed to be removed. If the Parties have failed to agree on another deadline for defects’ removal, it is assumed that the period of delay in defect removal shall begin to run upon expiry of 10 calendar days from the date the defect has been notified to the Contractor. A delay in the removal of defects or faults in the Subject of the Agreement referred to in this section shall also be considered a delay in the removal of defects and faults in the Subject of the Agreement reported during the execution of the Subject of the Agreement;
4. for the lack of current insurance referred to in § 10 of the Agreement - in the amount of PLN 1,000. If such a state persists for more than 14 calendar days, the Ordering Party has the right to withdraw from the Agreement due to the Contractor's fault and charge a contractual penalties in accordance with point a) above.

## The aggregate of contractual penalties referred to in sec. 1(b) and (c) above imposed by one Party on the other Party may not exceed 40% of the Lump-Sum Value of the Agreement in total.

## In the case of non-compliance with OH&S, fire-fighting, environmental protection and internal regulations by Contractor’s employees or any other people that are used by the Contractor in the performance of the Agreement, the Parties jointly agree on a contractual penalty for such a misconduct in the amount of PLN 1,000 (say: one thousand zlotys) for each case of infringement of such regulations, which the Contractor undertakes to pay to the Ordering Party.

1. The Ordering Party may demand from the Contractor payment of contractual penalties the amount of PLN 10,000 for each case of using a Subcontractor to perform the Subject of the Agreement without the Ordering Party’s consent.

## The Ordering Party shall pay the contractual penalty to the Contractor in the case of Contractor’s withdrawal from the Agreement by fault of the Ordering Party – in the amount of 10% of the net remuneration for the non-performed part of the Agreement.

## The Ordering Party’s claims for contractual penalties for withdrawal from the Agreement do not exclude claims for contractual penalties set out in this Agreement for other reasons.

# APPLICABLE REGULATIONS AND NATIONAL STANDARDS, OH&S

1. The Contractor shall be responsible for safety of performed work, in particular for the safe movement of vehicles, employees, and third parties within the area of performed work.
2. The Contractor represents that, neither it nor any of its Related Parties, does not breach and complies with any restrictive, limiting or discriminatory measures in trade or economic fields adopted by a Sanction Authority with the aim to force to changer ones policies or specific actions (“**Sanctions**”), implemented in relation to any of the following categories: (i) states, (ii) groups of states, (iii) natural persons, (iv) legal entities (“**Sanctioned Persons**”). Sanctions can be expresses in particular by virtue of partial or total import/export ban, entry/exit ban to a specific territory, asset freeze, prohibition of financial settlements or investments in/with Sanctioned Persons. For the purpose of these General terms a “**Sanction Authority**” means (i) any supranational organization as well as its institution bodies, which has not been listed in the following subitems, (ii) any states not listed in the following subitems, (iii) the European Union and its institutions, (iv) the United States of America and its federal institutions.
3. In particular, the Contractor will not use any components for the perform of the Agreement intended for the Employer, nor will he deliver the Subject of the Agreement that has been manufactured or made in violation of the Sanctions.
4. The Contractor undertakes to indemnify the Employer from any liability including from fines, penalties or expenses (including, among others, court fees) that the Employer may incur due to the Contractor or its affiliates breaching the Sanctions and - if possible - commence such proceedings if it was initiated against the Employer. In the case of imposing the above-mentioned fines, penalties or expenses, Contractor shall promptly reimburse the Employer for their value.
5. In case the performance of the Agreement by the Party would violate the Sanctions or it could be understood as violating/circumventing the Sanctions, the Employer is entitled to, at its sole discretion, to inform the other party about:
   * 1. suspension of the performance of the Agreement;
     2. termination of the Agreement with immediate effect, if it can be asserted in a justified manner that the Sanction will be in force for a period of time which makes the performance of the Agreement not possible or useless for the Employer. In case the Employer will be obligated to make any payments to the other Party for the already performed part of the Agreement, that the Employer’s obligation to make such payment shall be: (i) suspended until making of such payment shall cease to be in violation of the Sanctions or (ii) the Employer may withdraw also from that part of the Agreement within 12 months from the time it was made aware of the Sanctions and return of performed part of the Agreement to the Contractor. In any case the Employer shall not be liable to the Contractor for any actions made by the Employer to abide with the Sanctions.
6. In the event that the Subject of the Agreement or any part thereof is a dual-use product (pursuant to Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021, as amended) or a product specified in the Convention on the prohibition of research, production, storage and use of chemical weapons and the destruction of their stocks, the Contractor shall immediately inform the Employer about this fact in writing. The Contractor will also inform the Employer about the classification of the product sold, which results from the above-mentioned regulation or convention.

# FORCE MAJEURE

## Neither Party shall be held responsible for non-performance or improper performance of this Agreement if it comes as a result of Force Majeure.

## Force Majeure shall be understood as external and extraordinary circumstances, which occurred after conclusion of this Agreement, impossible for the Party to predict, prevent or avoid, and which objectively prevent or impede the performance of this Agreement, in particular such as: war, riots, floods, earthquake or other random events, including acts of public authorities and industry or general strikes, and failures of the Ordering Party’s installation, machines or devices, hereinafter the (“**Force Majeure**”).

## Phenomena and weather appropriate for the time of year, as well as the falling rain, snow, frost and heat cannot be treated as Force Majeure.

## The Party which is not able to fulfil its obligations due to Force Majeure, should notify the other Party of this fact within 7 days. The other Party should be also notified when the Force Majeure circumstances cease. If the Force Majeure circumstances last longer than 1 month, the Parties should mutually agree on whether to continue this Agreement, subject to the following paragraph.

## The Ordering Party is entitled to withdraw from the Agreement in the case, when due to the events considered Force Majeure, the performance of the Agreement has been suspended for a period of more than 2 weeks. Withdrawal from the Agreement can be effected within 3 months from the date of the Force Majeure event. Withdrawal from the Agreement in such a case does not entail any right to request a contractual penalty by either Party.

# OBLIGATION OF SOBRIETY/THEFT/SMOKING

1. The Ordering Party represents and the Contractor understands and acknowledges that the obligation of sobriety must be complied with on PCC Site. The obligation of sobriety comprises as follows: prohibition to bring and consume alcohol, drugs and other intoxicants at the PCC Site, prohibition to come to work under the influence of alcohol, understood by the Parties as the contents of alcohol exceeding appropriately 0.00‰ in blood or 0.00 mg in exhaled air or under the influence of drugs or other intoxicants. Further, the Contractor acknowledges that on the premises of PCC smoking is prohibited outside clearly marked zones. The Contractor guarantees that it shall oblige all its employees and other persons employed by the Contractor to carry out the work that is the Subject of this Agreement, to comply with the obligation of sobriety on the premises of PCC and to comply with the ban on smoking outside the clearly marked zones and warrants that such persons shall comply with these obligations on the premises of PCC.
2. If it is found that an employee and/or any third party employed by the Contractor to carry out the work that is the Subject of this Agreement is intoxicated or is in the state after using drugs or other intoxicants, depending on the circumstances in which such a state is discovered, such person shall not be allowed to the premises of enter PCC or shall be removed from the premises. The Contractor shall be obliged to withdraw the person referred to hereinabove from performance of work that is the Subject of this Agreement, without delay, meaning from the moment this person has infringed the obligation, because this person shall be strictly prohibited to enter and stay on PCC Site.
3. The Ordering Party shall have the right to charge a contractual penalty of PLN 10,000 (say: ten thousand Polish zloty) for each case of infringement of the sobriety obligation by Contractor’s personnel with respect to the issues related to alcohol, referred to in sections 1 and 2 hereinabove, subject to provisions of section 5 hereinbelow.
4. The Ordering Party shall have the right to charge a contractual penalty of PLN 10,000 (say: ten thousand Polish zloty) for each case of infringement of the ban on smoking on the premises of PCC outside clearly marked zones by the Contractor’s personnel (including all people whom the Contractor uses to perform the Subject of the Agreement), referred to in section 1 hereinabove.
5. The Ordering Party shall have the right to charge a contractual penalty of PLN 20,000 (say: twenty thousand Polish zloty) for each case of infringement of the sobriety obligation by Contractor’s personnel with respect to the issues related to drugs and other intoxicants referred to in sections 1 and 2.
6. The provision of this paragraph shall apply accordingly to cases when any employee or other person employed by the Contractor to carry out the work that is the Subject of this Agreement has committed or attempted to commit theft/appropriation of Ordering Party’s property or property of any other entity running business on PCC Site. In such a case the Ordering Party shall have the right to charge a contractual penalty of PLN 10,000 (say: ten thousand Polish zloty) for each case of theft/appropriation or attempted theft/appropriation of the Ordering Party’s property or property of any other entity running business on PCC Site. The Contractor shall be obliged to withdraw the person referred to hereinabove from performance of work that is the Subject of this Agreement, without delay, meaning from the moment this person has infringed the obligation, because this person shall be strictly prohibited to enter and stay on PCC Site. In case of suspicion of committing or attempting to commit on the PCC Territory theft/appropriation of property or other acts of criminal nature, the Contractor shall immediately report this fact to the Security Manager at e-mail address: mariusz.radoliski@pcc.eu and notify the Police of the incident.
7. In the cases referred to in this article, the Ordering Party shall inform the Contractor about the situation – requesting the Contractor to improve discipline among its employees and other persons employed by the Contractor to perform the works. If despite informing the Contractor two times about such situations, referred to in this article, the Contractor's employees or other persons employed by the Contractor to perform the work still fail to comply with the work discipline existing on PCC Site, the Ordering Party shall be entitled to withdraw from the Agreement within 7 days from the date of being aware of the next misconduct, with immediate effect by fault of the Contractor.

# DISPUTE RESOLUTION

1. This Agreement shall be governed by the Polish law and jurisdiction of Polish courts..
2. The Contractor and the Ordering Party represent that they shall make every effort to settle any disputes, which may arise in the performance of this Agreement, amicably.
3. If amicable dispute resolution is not possible, the disputes arising from the content of this Agreement (including its validity, importance, effectiveness or termination) shall be settled in accordance with the Polish law by the court of jurisdiction competent for the registered office of the Ordering Party.
4. The Parties jointly agree that applicability of the United Nations Convention on Contracts for the

International Sale of Goods (Vienna, 1980) shall be excluded.

# ADDITIONAL PROVISIONS

1. The key issues regarding the ethical culture and business responsibility of the PCC Group have been included in the Sustainable Purchasing Policy (https://files.pcc.pl/SustainablePurchasingPolicy) and the Supplier Code of Conduct (<http://files.pcc.pl/CodeofEthicalConductSuppliers>). The PCC Group therefore expects all Suppliers to respect the principles set out in the aforementioned document. Respecting the values and principles set out therein is an extremely important aspect of mutual cooperation, which should be based on mutual respect, transparency and accepted ethical standards and values
2. If any provisions of this Agreement are or become invalid, the Parties shall replace such invalid provisions with new, valid provisions. If such provisions cannot be formulated, the invalidity of any provisions of this Agreement shall not invalidate the Agreement as a whole, unless the invalid provisions are so essential to this Agreement that it should be reasonably assumed that the Parties would not conclude this Agreement without such invalid provisions.
3. The Contractor shall not have the right to assign its rights or obligations under this Agreement to any third parties without the prior written, otherwise null and void, consent of the Ordering Party.
4. Any amendments of the Agreement must be made in writing, otherwise null and void, in the form of mutually signed annex and only such amendments shall become an integral part of this Agreement.
5. The Parties allow the possibility to pursue compensation by the Ordering Party that exceeds the amount of the contractual penalties reserved in the Agreement.
6. If the Ordering Party withholds the payment in accordance with the Agreement, the Contractor shall not be entitled to assert any claims against the Ordering Party arising from suspension of payment.
7. None of the provisions of the Agreement limits the Ordering Party’s right to deduct debts arising from the provisions of the law.
8. All Annexes hereto listed in the content of this Agreement form an integral part hereof. In the event of contradiction of the provisions of the Agreement with provisions of the Annexes, provisions of the Agreement shall prevail, however in the event of contradiction of provisions of the Agreement with Annex no. 1, provisions of Annex no. 1 shall prevail.
9. The Contractor undertakes to treat as confidential any information (hereinafter: “Confidential Information”) obtained by the Contractor in connection with the conclusion and performance of this Agreement, regardless of the name and method of obtaining it. “**Confidential information**”). Therefore, the Contractor undertakes to keep Confidential Information strictly confidential and represents that it shall not disclose the Confidential Information to any third parties without the prior written consent of the Employer or use Confidential Information for any purpose other than the performance of this Agreement. The obligation to keep Confidential Information confidential lasts as long as this information constitutes Confidential Information for the Employer, within the meaning of applicable law, but not less than for a period of 15 years after the performance, termination or expiration of this Agreement. The obligation to maintain the confidentiality of the Confidential Information shall also include the fact of concluding this Agreement and the terms and conditions hereof.
10. The obligation to maintain confidentiality of the Confidential Information shall not apply to situations, when the Contractor shall be obliged to disclose this information at the request of an authority, which in accordance with the mandatory provisions of law shall be entitled to require the disclosure of such Information. In such case, however, before the disclosure of Confidential Information, the Contractor shall be required to inform the Employer in writing about the authority submitting such request and the scope of information demanded.
11. The restrictions to maintain confidentiality of the Confidential Information shall not apply to the information that:
12. has been known to the Contractor prior to obtaining it, or
13. has been widely known before it has been obtained, or
14. has become publicly known after obtaining it, or
15. has been disclosed to the Contractor by a third party without violation of the law, or
16. there is evidence that it has been developed by the Contractor, who has not previously known the information disclosed by the Employer.
17. The Contractor warrants that the obligation to maintain confidentiality of Confidential Information shall be complied with by all persons employed for or performing any activities in the implementation of this Agreement.
18. The Agreement does not limit the Employer's right to disclose any information related to the Agreement, including that received from the Contractor, in particular it does not limit the Employer's right to disclose this documentation and information, e.g. cooperating with the Employer or the PCC capital group, third parties and companies from the PCC group.
19. The Contractor acknowledges that the Integrated Management System based on ISO standards has been implemented at the Ordering Party's premises, including the Quality Management System, Environmental Management System, Occupational Health and Safety Management System and Energy Management System, described at https://pcc.rokita.pl/o-firmie/ and undertakes to comply with the requirements of these systems.
20. The Ordering Party is the controller of data of e.g. contact persons and employees/ collaborators, shared with it by the Contractor in relation to conclusion and performance of the Agreement. Details regarding processing of personal data by the Ordering Party can be found on the company’s website at the address: [http://odo.pcc.pl](http://odo.pcc.pl/). The Contractor declares that its employees and collaborators whose personal data it shared, read the contents of this notice.
21. **The Ordering Party declares that it has the status of a large entrepreneur within the meaning of the Act of 8 March 2013 on preventing excessive delays in commercial transactions.**
22. The Parties unanimously declare that the liability of the Ordering Party is limited solely to the payment of the remuneration specified in the Agreement.
23. Without prior written consent of the Ordering Party the Contractor cannot entrust performance of the Subject of the Agreement with third party entities providing services of auditing financial statements or members of such entities’ networks within the meaning of Art. 2 item 14 of the Act of 11 May 2017 on chartered accountants, audit companies and public supervision, or with entities related to such entities.
24. If the Contractor comprises several entities (the Consortium), the consortium members shall be responsible for the obligations under this Agreement jointly and severally.
25. This Agreement constitutes an exhaustive arrangement between the Parties concerning the subject hereof and shall replace all previously concluded agreements and arrangements between the Parties, both in writing and verbally, in regard to the subject hereof.
26. No Contractor’s general terms and conditions of contracts or contractual templates shall apply to this Agreement.
27. This Agreement has been made in the English language in two uniform copies, one copy for each Party.

# LIST OF ANNEXES

Annex no. 1 Technical specification , scope of deliveries and Guaranteed ParametersAnnex no. 2 Insurance policy and other documents confirming taking out of insurance

Annex no. 3 Material and Financial Schedule

Annex no. 4 *not applicable*

Annex no. 5 List of spare and consumable parts

Annex no. 6 Provisions regarding withholding tax

Annex no. 7 Scope of Detailed Design Documentation

|  |  |
| --- | --- |
| THE CONTRACTOR | THE ORDERING PARTY |

**Annex no. 1**

*Will be developed based on the ToR and the Contractor’s offer submitted during the tender procedure.*

**1. Technical specification and scope of deliveries**

**2. Packaging and labeling of the delivered Equipement**

The Supplier is obliged to pack and secure and properly label the shipment for the duration of transportation and storage in accordance with the requirements below. The Equipment should be delivered in packaging suitable for the means of transport used and allowing the use of

handling equipment appropriate for the weight and dimensions of the shipment, such as cranes, hoists, etc. Equipment before packing, if required, should be protected against corrosion and against the influence of atmospheric conditions for the duration of transport and storage. All parts that are movable or exposed to possible damage during transport must be properly fastened, and holes

plugged. Marking of the consignment should be permanent and legible in order of easy identification and appropriate handling. In the event that the goods being delivered are unusual and/or require special treatment during transport, the packaging should also contain information on how to handle the transported goods (e.g., top of shipment, beware of fragile materials, do not allow to get wet, etc.).

The unit will be mounted on one common chassis, meaning one skid with dimensions 6 m x 2 m. Skid will be unloaded from truck/positioned using the skid understructure (requires forklift that can carry 2.5 ton and that has forks of 2 m length) or with a crane using the lifting lugs on top of the tank

**3. Guaranteed Parameters and Guarantee Measurements**

The Contractor guarantees to achieve the following Guaranteed Parameters of the Investment:

**SCRUBBER EMISSION LEVELS**

|  |  |
| --- | --- |
| **Fresh demineralize water consumption** | **3,5-6m3/h** |
| **Pressure drops** | **max 30 mbar** |
| **Gas velocity in the emitter** | **max 20m/s** |
| **Wastegass mass flow at the outlet of the emitter** | **11 548 kg/h** |
| **MCAA concentration at the outlet of the emitter** | **5mg/Nm3 LZO (15,75mg/Nm3 MCAA)** |

The Guarantee Measurements to verify that the Device meets the above-mentioned Guaranteed Parameters will be carried out in accordance with the PN-EN 15259:2011 "Air quality - Measurement of stationary source emissions - Requirements for measurement sections and sites and for the measurement objective, plan and report", the Polish Standard PN-Z-04030-7:1994 "Air purity protection - Dust content tests - Measurement of dust concentration and mass flow in exhaust gases using the gravimetric method." and the EN 12619 "Stationary source emissions -- Determination of mass concentration of total gaseous organic carbon -- Continuous measurement method with flame ionization detection"**Annex no. 3**

**Material and financial schedule**

|  |  |  |  |
| --- | --- | --- | --- |
| Stage | Scope of works | Value in PLN, net | Date of execution |
| 1. | Submission of Design Documentation |  |  |
| 2. | Factory Acceptance Tests ("Partial Acceptance") |  |  |
| 3. | Delivery of the Devices to the place indicated by the Ordering Party together with its protection and providing the Ordering Party with the Technical Documentation of the Equipment as specified by Technical Specification ("Taking-Over delivery of the Device ") |  |  |
| 4. | Installation Supervision of completion of the Installation of all Equipment within the scope of the Agreement ("Technical  Acceptance") |  |  |
| 5. | a) Supervision over Start up  b) Successful completion of the Start up, including the Test Run |  |  |
| 6. | a) Successful completion of Process Commissioning  (including Guarantee Measurements)  b) Submission of complete Technical Documentation  c) Final Acceptance of the Subject of the Agreement |  |  |

Annex no. 5

**List of spare and consumable parts**

.................................

Company stamp

# List of spare and consumable parts (applicable in situations not covered by warranty, i.e. repair/replacement in case of misuse by the Ordering Party or the Ordering Party's decision to purchase spare parts for stock).

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Lp. | NAME OF THE ELEMENT | HS CODE | COUNTRY OF ORIGIN OF THE GOODS | NET UNIT PRICE |
| 1 |  |  |  |  |
| 2 |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

THE SUPPLIER STATES THAT THE PRICES OF THE INDIVIDUAL ELEMENTS LISTED ABOVE WILL BE CHANGED FOR A PERIOD OF 3 YEARS FROM THE DATE OF SUBMITTING THE OFFER, ONLY BY THE INFLATION INDICATOR PUBLISHED BY THE POLISH CENTRAL STATISTICAL OFFICE (GUS).

|  |  |
| --- | --- |
| ............................................ | .............................................................. |
| Place and date | Signature and stamp of the tenderer or person authorized to act on behalf of the Bidder |

**Annex no. 6**

**Provisions regarding taxes**

1. The Contractor declares that it is not carrying on and does not plan to carry on business through a permanent establishment in a country or on a territory applying harmful tax competition[[1]](#footnote-2) or, if such a statement cannot be made due to business being carried on or planned to be carried on, the Contractor declares that in the transaction with the Employer, the aforementioned permanent establishment does not and will not take part in its execution.

A permanent establishment should be understood as:

1. a fixed place of business through which the business of an enterprise of one state is wholly or partly carried on the territory of another state, particularly a branch, an office, a factory, a workshop, a place of exploration, exploitation or extraction of natural resources or
2. a building site or construction or installation project carried on in one state by an entity having residence or place of management on a territory of another state or
3. a person that is acting on behalf of an enterprise of one state in the other state if that person has and habitually exercises an authority to conclude contracts on behalf of the enterprise,

- unless the applicable double tax treaty states otherwise.

1. The Contractor also declares that due to accrual and payment of remuneration due from the Employer under this contract, any case of hybrid mismatches within the meaning of the Council Directive (EU) 2016/1164 of 12 July 2016 (consolidated text as of 01.01.2020) will not arise and received payments will not directly or indirectly fund deductible expenditures giving rise to a hybrid mismatch through a transaction or series of transactions between associated enterprises or entered into as part of a structured arrangement.
2. In case of any changes to abovementioned circumstances described in paragraphs 1 and 2 resulting in declarations being no longer valid during the term of the Agreement, the Contractor is obliged to immediately notify the Employer. Furthermore, the Contractor declares that in case of requests by tax authorities of the country of residence of the Employer to prove correctness of made declarations, the Contractor will cooperate with the Employer and submit necessary evidence supporting the declared facts.
3. In the event that excise goods will be used in the performance of the Agreement, the Contractor declares that all obligations in the field of excise duty in relation to the excise goods used in the framework of cooperation are incumbent on the Contractor as a taxpayer, consuming entity or consuming economic entity within the meaning of the provisions of the Excise Duty Act, in particular:

a) the excise goods will not be delivered separately outside the scope of the agreed cooperation, i.e. outside the Subject of the Agreement for the Employer (the devices at the time of delivery to the Employer will contain excise goods - e.g. liquids / oils / consumables that were previously used by supplementing them this device - in particular, these products will not be delivered in separate packages for self-supplementing devices);

b) in the case of shipment of excise goods to the address of the Employer, these goods will be received and collected directly by the Contractor, the Employer is not entitled to receive and collect these goods;

c) will not be handed over to the Employer under or after the end of cooperation as a separate product.

1. If the declaration proves to be untrue, the Contractor shall be liable to the Employer in the scope of excise duty (in particular, the Employer has the right to recourse to the Contractor, in the event of the Employer being liable for breach of obligations under the Excise Duty Act).

1. 1) Andorra; 2) Anguilla; 3) Antigua and Barbuda; 4) Sint-Maarten, Curaçao; 5) Bahrain; 6) British Virgin Islands; 7) Cook Islands; 8) Dominica; 9) Grenada; 10) Sark; 11) Hongkong; 12) Liberia; 13) Macau; 14) Maldives; 15) Marshall Islands; 16) Mauritius; 17) Monaco; 18) Nauru; 19) Niue; 20) Panama; 21) Samoa; 22) Seychelles; 23) Saint Lucia; 24) Tonga; 25) United States Virgin Islands; 26) Vanuatu. [↑](#footnote-ref-2)