

**AGREEMENT No. TI / 6 / 2018**

concluded on . . . . .2018 in Gliwice, hereinafter referred to as the “**Agreement**” between:

**Instytut Metali Nieżelaznych** with registered office in Gliwice (address: ul. Sowińskiego 5, 44-100 Gliwice) entered into the Register of Entrepreneurs of the National Court Register kept by the District Court in Gliwice, 10<sup>th</sup> Commercial Division of the National Court Register under No. 0000051588, with NIP No. 6310200771, REGON No. 000027542, represented by:

1. ....
2. ....

hereinafter referred to as the **Ordering Party**

and

..... with registered office in ..... (address: .....), entered into the Register of Entrepreneurs of the National Court Register kept by the District Court in [●] [●] Commercial Division of the National Court Register under No. [●], with the paid up share capital of [●], with NIP No. ...., REGON No. ...., represented by:

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

hereinafter referred to as the **Contractor**

[or  
 .....(full name)..... conducting business activities under the name ..... in  
 .....(town)..... (address: .....) with NIP No. ...., REGON No.  
 .....

hereinafter referred to as the Contractor]

together hereinafter referred to as the “**Parties**”

The Agreement was concluded as a result of the public procurement procedure conducted under an open tender procedure based on the Act of 29<sup>th</sup> January 2004 *Public Procurement Law* (consolidated text: Journal of Laws of 2017, item 1579 as amended).

**§1.  
 Object of Agreement**

1. The Object of the Agreement is the **Purchase and delivery of a magnetic separator for wet work in a high electromagnetic field** (hereinafter referred to as the “**Separator**”) in accordance with:
  - 1) Terms of Reference along with the Description of the Object of Agreement which constitute Annex No. 1 to the Agreement (hereinafter referred to as “**ToR**”),
  - 2) the Contractor’s Tender Bid of .....2018 which constitutes Annex No. 2 to the Agreement (hereinafter referred to as the Tender Bid).

2. The Unit must be factory-new (no used parts may be used) and must comply with the applicable standards of Polish and European law, including, in particular, health and safety standards, as well as the highest standards resulting from the current state of technical knowledge.
3. The Object of the Agreement also includes in particular:
  - 1) delivery of the Separator with the necessary accessories to the place of performance of the Agreement,
  - 2) delivery of the CE declaration of conformity and any other necessary certificates (together hereinafter referred to as the “**Documentation**”),

## § 2.

### Parties' obligations

1. The Parties shall agree on the following specific obligations of the Contractor in connection with the delivery of the Separator:
  - 1) delivery of the Separator to the Ordering Party's plant at ul. Sowińskiego 5 together with complete Documentation – until **15-10-2018**.
  - 2) The Separator shall be transported at the cost and risk of the Contractor, by the carrier designated by the Contractor to the premises of the Ordering Party at ul. Sowińskiego 5 in Gliwice.
  - 3) Shipping and shipping insurance is the responsibility of the Contractor.
2. The Parties shall agree on the following specific obligations of the Ordering Party in connection with the delivery of the Separator:
  - 1) Acceptance of the Separator manufactured in a proper manner and in accordance with the Agreement;
  - 2) Timely payment for the performance of the Object of the Agreement;
  - 3) Unilateral signing of the Final Acceptance Protocol after verifying compliance of the Separator with the Agreement by the Ordering Party within ... days from the day of acceptance of the Separator.
3. The Ordering Party shall not have any obligations to the Contractor other than those specified in this Agreement and the provisions of generally applicable law.
4. For direct cooperation, i.e. supervision and implementation of the provisions of this Agreement, the Parties shall authorise the following persons:
  - 1) on the Ordering Party's side – .....
  - 2) on the Contractor's side – .....
5. Persons mentioned in point 4 of this paragraph may not change or introduce new provisions to this Agreement.

## § 3.

### Subcontracting

1. The Contractor may entrust the execution of a part of the works to subcontractors indicated in the Contractor's Offer, constituting Annex No. 2 to the Agreement, provided that they are qualified to perform them. If a part of the Contract is subcontracted during its implementation, the Contractor, at the request of the Ordering Party, shall submit declarations or documents confirming no grounds for exclusion against this subcontractor.
2. If the Ordering Party finds that there are grounds for exclusion for a given subcontractor, the Contractor shall be obliged to replace this subcontractor or resign from entrusting the performance of a part of the Agreement to the subcontractor.
3. The provisions of points 1 and 2 of this paragraph shall also apply to sub-subcontractors.
4. Entrusting the performance of a part of the Agreement to subcontractors does not relieve the Contractor from the responsibility for the proper performance of this Agreement.
5. The Contractor, subcontractor or sub-subcontractor intending to conclude a subcontracting agreement for the delivery of the Separator is obliged to submit the draft agreement to the Ordering Party, and the

- subcontractor or sub-subcontractor is obliged to attach the Contractor's consent to conclude a subcontracting agreement with the content in accordance with the draft agreement. The agreement or draft agreement between the Contractor and the subcontractor should in particular stipulate that the subcontractor meets the requirements related to the quality guarantee and the warranty for defects. The agreement between the Contractor and the subcontractor should be concluded in writing under pain of nullity.
6. The Ordering Party, within 14 days, shall submit a written objection to the draft subcontracting agreement, if the draft agreement:
    - 1) does not meet the requirements specified in ToR;
    - 2) if it provides for payment date longer than specified in point 9 of this paragraph.
  7. Failure to submit written objections to the submitted draft subcontracting agreement within 14 days from the date of delivery of the draft to the Ordering Party shall be deemed acceptance of the draft agreement by the Ordering Party.
  8. The Contractor, subcontractor or sub-subcontractor are obliged to submit to the Ordering Party a certified copy of the concluded subcontracting agreement within 7 days from the date of its conclusion. The Contractor is responsible for the implementation of this obligation by their subcontractors.
  9. The deadline for payment of remuneration to a subcontractor or sub-subcontractor provided for in the subcontracting agreement may not be longer than 30 days from the date of delivery to the Contractor, subcontractor or sub-subcontractor of an invoice or receipt confirming the performance of the delivery or service by the subcontractor or sub-subcontractor.
  10. The Contractor, subcontractor or sub-subcontractor is obliged to submit to the Ordering Party a certified copy of the subcontracting agreement for the delivery of goods or services within 7 days from the day of its conclusion, excluding subcontracting agreements with a value less than PLN 50,000.00.
  11. In the case referred to in point 9 of this paragraph, if the payment deadline is longer than specified in point 9, the Ordering Party informs the Contractor and calls upon them to amend the agreement under pain of applying for payment of a contractual penalty.
  12. The provisions of points 1-11 of this paragraph shall apply accordingly to amendments to this subcontracting agreement.
  13. The Contractor is obliged to pay the remuneration due to the subcontractor on their own, within the payment deadlines specified in the agreement with the subcontractor. The Ordering Party shall pay direct remuneration payable to the subcontractor or sub-subcontractor who have concluded a subcontracting agreement accepted by the Ordering Party in case of evading the obligation to pay by the Contractor, subcontractor or sub-subcontractor of the Agreement.
  14. The remuneration referred to in point 13 of this paragraph applies only to due payments arising after the Ordering Party has accepted the subcontracting agreement or after submitting a certified copy of the subcontracting agreement to the Ordering Party.
  15. Direct payment includes only the due remuneration, without interest, due to the subcontractor or sub-subcontractor.
  16. Before making direct payment, the Ordering Party shall request the Contractor to submit comments in writing in respect of the appropriateness of direct payment of remuneration to the subcontractor or sub-subcontractor within a period not shorter than 7 days from the date of delivery of this request. If the Contractor submits comments on the date indicated by the Ordering Party, the Ordering Party may:
    - 1) not pay the remuneration directly to the subcontractor or sub-subcontractor if the Contractor proves that such payment is unjustified, or
    - 2) submit to the court a deposit in the amount necessary to cover the remuneration to the subcontractor or sub-subcontractor in the event of the principal doubt of the Ordering Party as to the amount due or the entity to whom the payment is due, or
    - 3) pay the remuneration directly to the subcontractor or sub-subcontractor if the subcontractor or sub-subcontractor demonstrates the legitimacy of such payment.

17. In the case of direct payment to the subcontractor or sub-subcontractor referred to in point 13 of this paragraph, the Ordering Party shall deduct the amount of remuneration paid from the remuneration due to the Contractor. At the same time, the Contractor declares that this action of the Ordering Party is regarded as performance of this Agreement in the scope of payment of the Contractor's remuneration, and exempts the Ordering Party from the obligation to provide in this respect.
18. Subcontracting does not absolve the Contractor from liability for performance of obligations under the agreement and applicable law. The Contractor is responsible for the actions and omissions of subcontractors as for their own.

#### § 4.

#### Payment

1. The Parties agree that the Contractor's remuneration for the performance of this Agreement (hereinafter referred to as the "**Payment**") shall be the net amount of PLN ..... (in words: PLN .....) plus applicable VAT. The Parties allow the possibility of increasing or changing the Contractor's gross payment in the event of an increase or change in the applicable VAT rates. In the case of intra-Community acquisition of goods, the Ordering Party shall pay 23% VAT to the Tax Office.
2. This Payment is a lump sum remuneration for the Contractor for performing all obligations under this Agreement. All costs for the provision of warranty and service are borne by the Contractor and are included in the total Contractor's Payment.
3. The Ordering Party shall make the Payment to the Contractor in the following manner:  
100% of the Payment – 30 days from the date of delivery of a VAT invoice, issued after delivery, to the Ordering Party  
or:
  - 1) An advance of 50% of the Payment referred to in point 1 of this paragraph, i.e. the amount of ..... – shall be paid within 14 days from the delivery of a VAT invoice to the Ordering Party, issued after signing the Agreement, and the delivery by the Contractor of a security of the advance payment in accordance with point 4 of this paragraph.
  - 2) The second/last payment of 50% of the Payment referred to in point 1 of this paragraph, i.e. the amount of ..... .. – shall be paid within 14 days from the date of delivery of a VAT invoice, issued on the day the Separator is sent, to the Ordering Party.
4. The Ordering Party shall make the advance payment referred to in points 3.1 and 3.2 of this paragraph on the condition that the Contractor secures the return of the advance payment in the form of a bank or insurance guarantee in the event of improper or late execution or failure to fulfil the Agreement. The guarantee must show that it is granted in accordance with Polish law and is subject to the jurisdiction of Polish courts irrevocably and unconditionally, and the amount resulting from the guarantee document shall be paid to the Ordering Party on the basis of a written declaration of the Ordering Party on non-performance or improper performance of the Contract by the Contractor. The duration of the guarantee must be 15 months or until 30 days after the Ordering Party has signed the Final Acceptance Protocol without any reservations, whichever is longer. Withdrawal from the Agreement by either Party may not cause the warranty to expire.
5. The Payment shall be made within 14 days from the date of delivery of the VAT invoice correctly issued by the Contractor to the Contractor's bank account No. ....
6. The Ordering Party shall make the Payment due on the condition that the evidence of payment of due remuneration to subcontractors and sub-subcontractors, referred to in § 3 of the Agreement, participating in the agreement, is presented.
7. If the Contractor fails to present all payment receipts referred to in point 6 of this paragraph, the Ordering Party shall withhold the Payment due to the amount of remuneration payable to subcontractors. If, within 14 days from the date of suspension of the Payment, the Contractor fails to deliver the confirmation of payment

to subcontractors to the Ordering Party, the Ordering Party shall make payments directly to subcontractors or sub-subcontractors on the terms specified in § 3 of the Agreement.

8. The settlement date is the date the Ordering Party's account is debited.
9. If the Ordering Party delays the payment of a legitimately and properly issued invoice, the Contractor is entitled to charge statutory interest, but is not entitled to stop the performance of warranty and service obligations.
10. In the case of unjustified invoice issuance or if the invoice does not meet the conditions set out in this Agreement or by the law, the Ordering Party is entitled to withhold payment of the amount indicated on the invoice, of which the Contractor shall be notified in writing within 7 days from the receipt of the invoice. The date of payment of the adjusted invoice is counted from the day of its receipt by the Ordering Party.

**§ 5.  
Warranty**

1. The Contractor shall ensure that the delivered Separator is fully in accordance with the Agreement, in particular operational, meeting all parameters and properties required by the law in force in Poland, standards, decisions and permits in force on the date of signing the Final Acceptance Protocol without any reservations and necessary for its correct operation with maintaining the parameters and properties specified in ToR.
2. The Contractor guarantees compliance with the Agreement and reliability of all works performed under the Agreement and all elements of the Separator, including materials, components, devices, parts, and equipment for the warranty period of .... months counting from the date of delivery and signing of the Final Acceptance Protocol without any reservations and irrespective of warranty periods granted by the manufacturers of individual components (hereinafter referred to as: **“Warranty Period”**). The warranty does not cover defects resulting from operation that does not comply with the instructions provided to the Ordering Party as part of the Documentation.
3. The Contractor is obliged to remove defects at their own expense covered by the Contractor's warranty in accordance with point 1 of this paragraph (hereinafter jointly referred to as: **“Warranty Defects”**) in the Warranty Period, in particular: inherent in the delivered items resulting from incorrect construction solutions, faulty assembly, incorrect selection of materials and material defects, and improper quality of performance that do not meet the assumptions set out in ToR.
4. The Contractor undertakes to remove Warranty Defects in the shortest possible time but not longer than 5 days (hereinafter referred to as the **“Response Time”**), counting from a written fax, email, or telephone (confirmed by fax or email) notification about the defect or failure, or otherwise mutually agreed upon by the Parties in writing, resulting from technical and technological conditions.
5. In the event of failure to take actions specified for the Response Time, failure to comply with the period set out for the removal of a Warranty Defect or in the case of its improper removal, the Contractor shall authorise the Ordering Party to remedy the defect or failure in order to restore the Separator's functionality, at the expense and risk of the Contractor, without the loss of the right to warranty, contractual penalties and compensation. The Ordering Party shall notify the Contractor of such fact in writing. The Ordering Party shall charge the Contractor with the costs of removing the Warranty Defect. In the event of a defect or failure due to reasons not attributable to the Contractor, the Ordering Party has the right to remedy the defect or failure in consultation with the Contractor or in accordance with the Documentation without losing the right to the warranty.
6. The Warranty Period set out in point 2 of this paragraph shall be extended by the time counted from the Ordering Party's defect notification until the date of its removal, but in no case longer than 6 months from the end of the Warranty Period.
7. In the Warranty Period, warranty claims shall be submitted by the Ordering Party to the Contractor's:
  - 1) telephone number.....

- 2) fax No.: .....
- 3) email: .....
- 8. Claims and arrangements made by telephone must be confirmed in writing (fax, email).
- 9. The granted warranty does not violate or exclude the Ordering Party's rights under the warranty. The parties agree that the warranty period is 24 months from the date of signing the Final Acceptance Protocol without any reservations and the deadline for reporting a detected defect is set by the parties to 30 days after the defect was discovered.
- 10. The removal of the Warranty Defect is deemed to have been completed within the time specified in the Warranty Defect removal protocol signed by the Parties.

**§ 6.**

**Termination of the Agreement**

- 1. The Ordering Party may withdraw from the Agreement (with effect for the entire Agreement) only in the following cases of breach of the Agreement by the Contractor:
  - 1) The Contractor's delay in keeping to the schedule of performance of the Agreement, as specified in § 2 point 1 of the Agreement for reasons attributable to the Contractor exceeding 30 days,
  - 2) If the Separator did not obtain the parameters specified in ToR, despite the expiry of 30 days from the Ordering Party's request to the Contractor to remove the defects,
  - 3) Liquidation of the Contractor for reasons other than for the purposes of transforming an enterprise or merger with another enterprise,
  - 4) The Contractor has failed to perform the Agreement, which means an interruption in the performance of the Agreement lasting longer than 14 days (unless the interruption results from reasons beyond the Contractor's control, in particular due to force majeure or the right to suspend work specified in the Agreement).
- 3. The condition of effective withdrawal from the Agreement in the above-mentioned cases is to call upon the Contractor to cease the violation or fulfil obligations, to set a deadline of not less than 3 days, and its ineffective expiry. The call may also be made by email and fax. The Ordering Party may submit a declaration of withdrawal from the Agreement within 60 days from the ineffective expiry of the deadline set out for the Contractor.
- 4. The Contractor may withdraw from the Agreement (with effect on the entire Agreement) only in the following cases of breach of the Agreement by the Ordering Party: for reasons attributable to the Ordering Party, there shall be a delay in complying with the implementation schedule specified in § 2 point 1 of the Agreement for a period exceeding 30 days, in particular in the event of failure to provide information necessary to perform the Agreement, despite the Contractor's prior written request and setting a time limit of at least 14 days for the Ordering Party.
- 5. The condition of effective withdrawal from the Agreement in the above-mentioned cases is to call upon the Ordering Party to cease the violation or fulfil obligations, to set a deadline of not less than 14 days, and its ineffective expiry. The Contractor may submit a declaration of withdrawal from the Agreement within 60 days from the ineffective expiry of the deadline set out for the Contractor.
- 6. In the event of withdrawal from the Agreement or its termination by mutual agreement or otherwise, the Contractor and the Ordering Party shall bear the following specific obligations:
  - 1) The Contractor shall remove the Separator from the Ordering Party's premises, as well as all necessary accessories being the subject of delivery of the Separator. The removal shall take place at the expense of the Contractor in the event of withdrawal from the Agreement by the Ordering Party or at the expense of the Ordering Party in the event of withdrawal from the Agreement by the Contractor.
- 7. To be effective, withdrawal from the Agreement requires a written form and justification in each case.

**§ 7.****Liability of the Parties and contractual penalties**

1. The Contractor is liable for all damages caused as a result of breach of the obligation to ensure safety during the performance of the Agreement. The Contractor shall release the Ordering Party from any claims for damages of third parties for which the Contractor is responsible in connection with the implementation of this Agreement. This paragraph does not apply to claims of subcontractors, which are satisfied in the manner specified in § 3 of the Agreement. The exemption, under this paragraph, means that:
  - 1) The Contractor must satisfy claims of third parties addressed to the Ordering Party, arising in connection with the performance of the object of the Agreement by the Contractor.
  - 2) The Contractor is to return the Ordering Party the obligations which the Ordering Party has made to satisfy claims of third parties submitted to the Ordering Party, and
  - 3) The Contractor must compensate the Ordering Party for all costs, expenditures and damages that arise as a result of the investigation, fulfilment of claims or the repudiation of claims of third parties.
2. The Contractor shall pay contractual penalties to the Ordering Party in the following cases and amounts:
  - 1) in the case of a delay in the realisation of the Object of Agreement, set out in § 2 point 1 of the Agreement – 0.1% of the net Payment for each day of delay in relation to the dates provided for in the Agreement,
  - 2) if the Contractor fails to meet the deadline set for the removal of defects within the period indicated in the Final Acceptance Protocol – in the amount of 0.1% of the net Payment for each day of delay in remedying defects,
  - 3) if the Contractor fails to meet the deadline set for the removal of Warranty Defects during the Warranty Period – in the amount of 0.1% of the net Payment for each day of delay in remedying Warranty Defects,
  - 4) in the case of termination of the Agreement or withdrawal from the Agreement by the Ordering Party for reasons attributable to the Contractor – 10% of the net Payment,
  - 5) if a draft subcontracting agreement was not submitted for approval – 0.1% of the net Payment, as defined in § 4 point 1 of the Agreement, for each day of delay in relation to the dates provided for in the Agreement,
  - 6) if a certified copy of a subcontracting agreement or its amendment was not submitted – 0.1% of the net Payment, as defined in § 4 point 1 of the Agreement, for each day of delay in relation to the dates provided for in the Agreement,
  - 7) no amendment in the subcontracting agreement in relation to the date of payment – 0.1% of the net Payment, as defined in § 4 point 1 of the Agreement, for each day of delay in relation to the dates provided for in the Agreement.
3. The sum of contractual penalties calculated pursuant to points 2.1) – 7) of this paragraph may not exceed 20% of the net Payment specified in § 4.1 of the Agreement, however, if the Ordering Party's damage resulting from the events referred to in points 2.1) – 7) of this paragraph exceeds the amount of agreed contractual penalties, the Ordering Party has the right to claim supplementary compensation on general terms.
4. The Ordering Party shall be obliged to pay contractual penalties to the Contractor in the following cases and amounts:
  - 1) in the case of termination of the Agreement or withdrawal from the Agreement by the Contractor for reasons attributable to the Ordering Party – 10% of the net Payment specified in § 4 point 1 of the Agreement.
5. The sum of contractual penalties calculated pursuant to point 4.1 of this paragraph may not exceed 20% of the net Payment specified in § 4.1 of the Agreement, however, if the Contractor's damage resulting from the events referred to in points 4.1 of this paragraph exceeds the amount of agreed contractual penalties, the Contractor has the right to claim supplementary compensation on general terms.
6. The contractual penalty should be paid by the Party that has breached the terms of the Agreement within 5 days from the date on which the other Party requested payment. After this date, the Ordering Party may deduct a contractual penalty from the claim resulting from the VAT invoice issued by the Contractor, to which the Contractor hereby agrees.

7. For the avoidance of doubt, the Parties agree that withdrawal from this Agreement by either Party or its termination does not deprive the other Party of the right to seek contractual penalties under the Agreement.
8. In the case of accumulation of contractual penalties (that is, in a situation where more than one running penalty may be charged on a given day, and the source of its calculation is a specific breach of this agreement by the Contractor, whose subsequent violations are only a natural consequence) for a given day, the higher contractual penalty provided for in the Agreement shall be due; running penalties and one-time penalties are calculated separately.

### § 8.

#### Confidentiality

1. The Parties declare that any oral, written or electronic information concerning their mutual cooperation exchanged between the Parties is confidential and that the written consent of the Parties is required for its disclosure.
2. At the request of either Party, the provision of confidential information shall be documented by a proper protocol that may contain additional terms of use of confidential information other than those contained in this Agreement.
3. The Parties are responsible for maintaining the confidentiality of the information provided by their subcontractors, representatives, employees and partners. In particular in contracts with subcontractors, the Contractor shall include provisions requiring subcontractors to maintain confidentiality in the scope not less than in this Agreement.
4. During the term of this Agreement and within 60 months of the date of its termination or withdrawal by one of the Parties, either Party:
  - 1) undertakes to keep all information concerning the activities of the other Party secret,
  - 2) may use confidential information obtained from the other Party solely for the purpose of carrying out and developing joint ventures,
  - 3) may disclose confidential information obtained from the other Party to their employees, partners and advisers only to the extent necessary for the implementation of joint ventures and after appropriate instruction of the employees on the obligations under the Agreement,
  - 4) may not disclose any confidential information received from the other Party to any third party (i.e. any person who is not a Party to the Agreement) without a prior written consent of the other Party.
5. No restrictions on the transfer or use of confidential information contained in this Agreement shall apply to confidential information that:
  - 1) became publicly available without violating the terms of this Agreement,
  - 2) were previously known to the Parties or obtained legally from other sources,
  - 3) must be disclosed under the law or at the request of courts or competent public administration authorities, provided that the Party providing the confidential information has been warned about the need for such disclosure and that the Party which discloses it has taken all permitted measures to ensure that the confidentiality of such information will also be retained after disclosure.
6. The Parties undertake not to make any public notices, advertisements or communications relating to the Agreement or actions taken in connection with the execution of joint ventures without prior agreement with the other Party.
7. In the event of a circumstance justifying the application of mandatory rules for the protection of classified information, each Party shall immediately inform the other Party in writing, specifying the type of classified information to which they have access and its classification.
8. In the event of circumstances justifying the application of the provisions of the *personal data protection law* concerning the transmission of personal data, each Party shall immediately inform the other Party in writing.

## § 9

### Protection of personal data

1. In the event of circumstances justifying the application of the provisions of the Act of 29<sup>th</sup> August 1997 on the *Protection of Personal Data* concerning the transmission of personal data, each Party shall immediately inform the other Party in writing.
2. Each event of processing of personal data shall be subject to a separate agreement, concluded in accordance with the requirements set out in the Act of 29<sup>th</sup> August 1997 on the *Protection of Personal Data*, in particular pursuant to Art. 31 of this Law and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27<sup>th</sup> April 2016 *on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC* (General Data Protection Regulation).

## § 10

### Force Majeure

1. **Force Majeure**, within the meaning of the Agreement, is an event, independent of the Party, external, unforeseeable on the date the Agreement has become applicable or unpreventable in spite of the utmost care exercised after the date the Agreement has become applicable, that prevents a given Party from fulfilling their obligations under the Agreement.
2. Force Majeure does not include a change of market conditions or financial situation of a Party.
3. Failure to perform or improper performance of obligations by the Contractor due to the occurrence of Force Majeure relieves them of the performance of their obligations under the Agreement only in so far as it was caused by the circumstances that constitute the Force Majeure.
4. A Party affected by Force Majeure shall notify the other Party without delay, not later than within 7 days after the date of the occurrence of Force Majeure. A Party who has not made the above notice shall be liable for failure to perform or improper performance of the Agreement.
5. The burden of proof of the occurrence of Force Majeure and the extent to which it prevents proper performance of contractual obligations of a Party shall lie with the Party invoking Force Majeure.
6. Each Party bears the costs of remedying the effects of Force Majeure. The Party affected by Force Majeure shall immediately take all economically justified measures aimed at limiting the influence of Force Majeure on the performance of this Agreement. That Party shall continue to fulfil their obligations under the Agreement to a feasible extent, taking into account the legitimate economic interest of that Party.
7. In the event of Force Majeure, the affected party is entitled to demand a change of date of Commissioning suitably to the time of the effect of Force Majeure and its direct consequences.
8. If the Force Majeure prevents the performance of the Agreement to a significant extent for a period exceeding 90 (ninety) consecutive days, each Party shall be entitled to withdraw from the Agreement *ex tunc*, by a written declaration delivered to the other Party. In such a situation, the provisions of § 7 point 6 of the Agreement shall apply.

## § 11

### Amendments to the Agreement

1. All amendments and additions to the content of this Agreement require an annex drawn up in writing under pain of nullity.
2. The Ordering Party provides for the possibility of introducing significant changes to this Agreement:
  - 1) In the event of a change in the commissioning date of the Separator being the object of the Agreement in connection with:
    - a) Force Majeure, or
    - b) withholding the performance of the Agreement by the Ordering Party or the competent authority for reasons not attributable to the Contractor, or
  - 2) In case of making necessary changes in the schedule of the performance of the Agreement.

- 3) Changes in the scope of commissioning of additional services or works from the current contractor, not included in the basic order, if they have become necessary and the following conditions have been met, are acceptable:
  - a) the change of contractor cannot be made for economic or technical reasons, in particular regarding the interchangeability or interoperability of equipment, services or installations ordered under the basic order,
  - b) the change of contractor would cause significant inconvenience or a significant increase in costs for the Ordering Party,
  - c) the value of each subsequent change does not exceed 50% of the value of the order originally specified in the Agreement.
- 4) Changes are provided for if the following conditions have been met:
  - a) the necessity to amend the Agreement is caused by circumstances which the Ordering Party, acting with due diligence, could not have foreseen,
  - b) the value of each amendment does not exceed 50% of the value of the order originally specified in the Agreement.

## § 12

### Dispute settlement

1. All disputes arising from this Agreement shall be resolved by amicable settlement.
2. If the Parties fail to reach an agreement, either Party may submit a dispute to a common court competent for the registered office of the Ordering Party.

## § 13

### Final provisions

1. The Agreement is subject to Polish law.
2. Neither Party may, without the prior written consent of the other Party, transfer its rights or obligations under the Agreement in whole or in part to a third party under pain of invalidity.
3. If any provision of the Agreement becomes invalid, unless the parties agree to a supplementary provision, the Agreement shall remain in effect to the remaining extent.
4. All documents required under this Agreement, except for correspondence carried out in an operational manner, relating to the day-to-day management of the performance of the Agreement, shall be delivered in person, by a courier, post (by registered post only), fax or email to the address of the other Party as set out below. Documents sent by fax or email shall be sent immediately by registered mail, courier or personally with acknowledgement of receipt under pain of ineffectiveness and shall be deemed received on the day of delivery.
5. If delivery occurs on a business day within hours other than 8:00 a.m. – 3:00 p.m., on a Saturday or on a non-working day (delivery time is based on the time of the addressee's seat), delivery shall be deemed effective at 8:00 a.m. on the first working day following the day of delivery.
6. Each Party shall be obliged to notify the other Party in writing of a change in its postal address, fax number or email address for receiving correspondence. In the absence of such notification, delivery shall be deemed effective at the previous address of which the sender was notified by the other Party.
7. All correspondence related to this Agreement should be directed to the addresses of the Parties listed below:
  - 1) The Ordering Party's address (for correspondence):  
.....fax:.....,  
email:.....

- 2) The Contractor's address (for correspondence):  
.....fax:.....,  
email:.....
8. This Agreement has been drawn up in Polish in 2 (two) identical copies, 1 (one) copy for each Party.
9. Correspondence between the Ordering Party and the Contractor shall be conducted only in Polish. All documents submitted by one of the Parties to the other Party in execution of the Agreement shall be prepared in Polish.
10. A list of representatives of the Parties authorised to act on their behalf (but not to amend the Agreement) constitutes Annex No. 4 to the Agreement. Amendments to this Annex shall not constitute an amendment to the Agreement and shall be made by each Party in relation to its representatives based on unilateral written declarations of each Party.

**§ 14**  
**Annexes**

The annexes listed below constitute integral parts of this Agreement. In the event of a discrepancy between the contents of an annex and the wording of this Agreement or between the annexes, priority shall be based on the following hierarchy of validity:

- 1) Terms of Reference along with the Description of the Object of Agreement,
- 2) The Contractor's Tender Bid,
- 3) Letters of authority of the representatives of the Ordering Party and the Contractor,
- 4) List of Parties' representatives.

Ordering Party:

Contractor: