

AGREEMENT

Of the supply, installation and start of the production line

concluded on [date] in Gorlice ("the Agreement") between:

the company under the business name **Gór-Stal Limited Liability Company** based in Gorlice, ul. Przemysłowa 11, 38-300 Gorlice, entered into the Register of Entrepreneurs of the National Court Register under no. 0000166841 by the District Court for Krakow-Śródmieście, 12th Commercial Division of the National Court Register, having REGON statistical No. 852712117 and TIN (NIP) No. 738-19-45-154,

represented by:

- a) President of the Management Board - Franciszek Kluba;
- b) Vice President of the Management Board - Adam Górski;
- c) Member of the Management Board - Jarosław Wilk

Hereinafter referred to as "Gór-Stal" or "the Contracting Entity" in the Agreement,

and

[Name, surname/company], based in ul. [street/number] in [city], entered into the Register of Entrepreneurs of the National Court Register / Central Registration and Information on Business under No. [number] having REGON statistical No. [number] and TIN (NIP) No. [number]

represented by: [Name and surname]

hereinafter referred to as the "**the Contractor**",

The Investor and the Contractor will henceforth be collectively referred to as "**the Parties**".

§ 1. Definitions

The Parties agree that the time limits specified below in this Agreement and written with a capital letter shall be interpreted as having the importance indicated below:

- 1) **Day** - calendar day;
- 2) **Confidential information**:
 - a) Any information or data recorded in writing or in any other way, in particular in the electronic form concerning the matters, plans, business activity (including in particular the business activity carried out by the Contracting Entity within the Plant) or enterprises of one of the Parties and in particular the technical, technological, organizational, financial, legal information or other information having economic value and information obtained from the analysis or processing of the information provided, regardless of how they were disclosed to the other Party, and
 - b) the fact of any talks or negotiations by the representatives of the Parties, and
 - c) Any information, talks and negotiations, carried out with a third party by or at the request of the Contracting Entity.

Confidential Information also includes the content fulfilling the conditions described in points "a"- "c" and coming from the entities other than the given Party and passed by this Party to the other Party. If in doubt, any information relating to the Plant, Line or the method of their use, disclosed by one Party to the other Party shall be treated as Confidential Information unless that information will be accompanied by a clear written statement "Unclassified Information" by the disclosing Party;

- 3) **Bid** - Bid of the Contractor of [date], no. [number], to Request for Quotation No 6/2017;
- 4) **Line** - complete, new process line for the production of wall sandwich panels between steel skin sheets with a PIR core and mineral wool elements with transport and installation, its characteristics are detailed in **Annex No. 2**,
- 5) **Force Majeure** – an extraordinary and unique event which is external to the Party, beyond its control and independent from it, and which the Party could not have foreseen or prevented even by exercising due diligence, in particular events of the nature of natural disaster like flood, hurricane, storm with superior strength, tornadoes, earthquakes, extremely intense and prolonged downpours, as well as the

war, insurrection, revolution, riots, terrorist attacks. Within the meaning of the Agreement the Force Majeure does not include in particular a shortage of equipment, staff, material, labor disputes, strikes of the personnel of the Parties financial difficulties or a cumulation of such factors;

- 6) **Agreement** - this Agreement.
- 7) **Plant** - the Contracting Entity's Plant located in [city] [(postal code)] under the adress [adress].

§ 2. Subject of the Agreement

1. The subject of the Agreement is to define the mutual rights and obligations of the Parties relating to: (I) manufacturing the Line by the Contractor for the Contracting Entity, (ii) delivery of the Line to the Plant, (iii) installation of the Line in the Contracting Entity's Plant, (iv) starting of the Line and verification of the accuracy of its operation and (v) training of the Contracting Entity's employees on the operation and maintenance of the Line.
2. The Contractor is obliged to comply with the legal obligations under this Agreement:
 - a.i.a) In a manner consistent with the Bid;
 - a.i.b) With the utmost care;
 - a.i.c) Having regard to the intended purpose of using the Line by the Contracting Entity;
 - a.i.d) Having regard to the guidelines and the needs of the Contracting Entity and in a way most closely to the realization of the intended purpose of using the Line by the Contracting Entity.

§ 3. Representations and warranties of the Parties

1. The Contractor hereby represents and warrants that:
 - a) He is professionally engaged in conducting business activity which covers in its scope the production of process lines used for the production of sandwich panels and installation and starting of the lines and the training of the employees, users of such devices in terms of their operation and maintenance;
 - b) He acquainted himself with the location of the Plant, its technical condition, technical, usage and functional parameters and other information that is relevant from the point of view of the proper manufacturing of the Line and its proper installation in the Plant, which he considers to fully allow to manufacture the Line and install it in due manner and in accordance with the ideas and demands of the Contracting Entity;
 - c) Before the conclusion of the Agreement, he thoroughly verified the actual state, documentation and specifications in order to determine whether they are sufficiently complete, coordinated, practicable and in any other way adequate to cover all the works, labor and materials required for the completion of the work scope under the Agreement;
 - d) He knows the demands and the idea of the Contracting Entity regarding the intended features and the method to use the Lines, which he considers to be fully possible to implement within the compliance with his obligations under the Agreement;
 - e) has all the powers, authorizations, consents etc., resulting from the provisions of law, necessary for the manufacturing of the Line, its installation and start;
 - f) Has the practical experience, substantive preparation, knowledge and skills necessary to comply with the obligations under the Agreement for the Contracting Entity on proper level and in a manner consistent with the intended purpose of using the Line by the Contracting Entity;
 - g) He acquainted himself with the full documentation concerning the Plant, including in particular the construction documentation, which he considers to allow to manufacture the Line and its installation in accordance with the purpose and intended use of the Line by the Contracting Entity;
 - h) The transfer of the rights to the Line to the Contracting Entity in accordance with the Agreement shall not in any way be limited or excluded, and shall be without prejudice to any rights or legitimate interests of any third party;
 - i) He holds a civil liability insurance covering his business activity, including the scope under the Agreement, with the amount of the insurance not less than EUR 5,000,000, and the insurance

protection within the mentioned scope is valid on the date of conclusion of the Agreement and will last for at least three years from the date of signature of the Final Report by the Contracting Entity which does not contain any mention of defects, faults, errors or deficiencies;

- j) He is vested with any copyright, industrial property rights and other intellectual property rights to all elements used within the Line, including any technical, technological, commercial, aesthetic etc. solutions used within the Line;
 - k) At the date of conclusion of the Agreement, no bankruptcy proceedings and no other proceedings relating to the insolvency have been initiated against the Contractor, neither are there no circumstances specified in the provisions of the law applicable to the Contractor that justify the lodging of an application for a declaration of bankruptcy or the initiation of a similar procedure concerning the Contractor;
 - l) At the date of conclusion of the Agreement no proceedings relating to the liquidation of the Contractor have been initiated, and there are no circumstances justifying liquidation of the Contractor;
 - m) To the best of his knowledge, no litigation, arbitration or administrative proceeding is currently carried out which could have a negative impact on the financial situation of the Contractor or his ability to comply with the obligations to the Contracting Entity arising from the Agreement;
 - n) The conclusion and performance of the Agreement, in particular the transfer of the ownership of the Line or its various elements to the Contracting Entity shall be without prejudice to any rights or legitimate interests of any entities, including in particular the Contractor's creditors;
 - o) It is not necessary to obtain any approvals, permits, licenses, resolutions etc. by any of the Contractor's authorities or any third party or public authorities to conclude the Agreement;
 - p) He is represented at the conclusion of the Agreement in a way that enables to conclude it in a valid and effective way.
2. The Contracting Entity represents that:
- a) He has financial resources of not less than 2 000, 000 euro necessary for the due implementation of the obligations to the Contractor under the Agreement;
 - b) He has received all intra-corporate consents needed for the conclusion of the Agreement;
 - c) At the date of conclusion of the Agreement no bankruptcy proceedings have been initiated against the Contracting Entity, or there are no circumstances specified in the provisions of the law applicable to the Contracting Entity that justify the lodging of an application for a declaration of bankruptcy concerning the Contracting Entity;
 - d) At the date of conclusion of the Agreement no proceedings relating to the liquidation of the Contracting Entity have been initiated, and there are no circumstances justifying the liquidation of the Contracting Entity;
 - e) To the best of his knowledge, no litigation, arbitration or administrative proceeding is currently carried out which could have a negative impact on the financial situation of the Contracting Entity or his ability to comply with the obligations to the Contractor arising from the Agreement;
 - f) He is represented at the conclusion of the Agreement in a way that enables to conclude it in a valid and effective way.
3. In order to avoid any doubt, the Parties unanimously explain that the representations made by them in paragraphs 1 and 2 should be treated as guarantee representations in relation to the compliance of the state described by them with the actual state.
4. By concluding and performing the Agreement, the Parties rely on the truth, accuracy and completeness of the representations made by them in paragraphs 1 and 2.

§ 4. Obligations of the Contractor

1. Within the implementation of the subject of the Agreement, the Contractor shall - at their own risk and expense:
- a) transfer the ownership of the Line to the Contracting Entity, which is understood as the transfer of

ownership to the Contracting Entity of the ownership of all of the Line elements, etc. as well as the creation and provision to the Contracting Entity of a license of the software used to ensure the operation and control of the Line;

- b) deliver the Line to the Plant and unload it in the Plant;
 - c) install the Line in the Plant, including the installation of all the software required for its correct operation;
 - d) configure the Line in the Plant, including the configuration of all the installed software;
 - e) check the Line and its capacity to start production and then start the Line in the Plant;
 - f) verify the correct operation of the Line;
 - g) train the employees of the Contracting Entity on the operation and maintenance of the Line, including the operation of the software referred to in § 12;
 - h) provide a warranty and guarantee for the Line.
2. The Parties unanimously agree that in a situation in which within the manufacturing of the Line or after its manufacturing, in particular after its installation and starting in the Plant, it is found that to ensure the proper functioning of the Line it is necessary or at least it is appropriate to provide any modifications in the Line, including: supplementing it with additional components or devices, the Contractor shall make such modifications or additions at his own expense, without the right to additional remuneration, i.e. above that indicated in § 6(1).
3. The Contractor represents that the Line, including each of its elements:
- a) Shall be brand new, full value and not bearing any marks of any use, in particular not refabricated, not regenerated and unrepaired;
 - b) Shall fulfill all of the safety and energy consumption requirements defined in the applicable law of the Republic of Poland;
 - c) Shall not have any physical or legal defects, as well as shall not have any other features restricting its correct use;
 - d) Shall be admitted to trading in the territory of the Republic of Poland at the moment of their starting;
 - e) Shall have all necessary certificates, authorizations, licenses, permissions etc. authorizing their application or the application of products manufactured using them in the European Union;
 - f) Shall have all necessary certificates, authorizations, licenses, permissions etc. for their use on the territory of the Republic of Poland, in particular due to the compliance with the rules of the protection of the environment, health and safety at the workplace, fire protection, permissible standards of noise, radiation, vibration etc. levels.
4. The Line, including any of its components or devices shall be delivered to the Plant together with any necessary elements for their functioning (cabling, switches etc.) and documents (manuals, permissions, licenses, consents etc.).
5. The Contractor represents that the Line and all of its components, shall be free at the time of their issue to the Contracting Entity from physical and legal defects, shall comply with all standards in terms of quality and security required by the provisions of law and shall be in accordance with the characteristics described in the Bid.
6. The Contractor represents and warrants that the Line and all its components at the time of their issue to the Contracting Entity shall not be burdened with any rights in rem or in personam to any third party (private or public), no enforcement, judicial or arbitral proceedings shall be brought against them and they shall not be subject to any security. The Contractor also represents that there are no other circumstances which could restrict the rights of the Contracting Entity arising from the Agreement.
7. The Contractor is obliged to provide user manuals in Polish, in writing and in an electronic medium (CD/DVD/pendrive) together with the Line.
8. Within the obligation referred to in § 4 (1) ("g") the Contractor shall provide a training to persons [number] indicated by the Contracting Entity concerning the operation and maintenance of the Line. The way to carry out the training shall be developed by the Contractor in such a way that persons

participating in the training are able to perform the duties taught through the training. The Contractor shall submit the training plan to the Contracting Entity and shall take into account the Contracting Entity's possible observations in this regard. The fact that the training has been conducted shall be confirmed by the Parties in the Final Report, within the acceptance procedure described in § 5 of the Agreement.

9. The Contractor at his cost and risk, shall ensure an adequate number of his employees' participation in the delivery, installation, configuration, checking, starting and acceptance of the Line and his employees shall have all the necessary formal qualifications, practical experience and substantive knowledge necessary for the proper (including: timely) performance of the Agreement. The Contractor shall be chargeable to any associated costs, including travel, accommodation, food, salaries, insurance, etc. of the listed persons.

§ 5. Performance date

1. The Contractor shall perform all services referred to in § 4(1)("a" - "g") of the Agreement within year[_____]. A detailed schedule of services covered by the Agreement are set out in **Annex No 1** to the Agreement.

2. After the Contractor has performed all the services indicated in § 4 (1) ("a"- "g") of the Agreement, the Contractor - at least 15 (fifteen) days before the scheduled date of acceptance - shall report in writing to the Contracting Entity his readiness to carry out the procedure of acceptance of the Line. The application of accepting the Line by the Contractor means that he submits a statement that the line in its condition at the date of commencement of its acceptance procedure is fully correct, complete and complies with the requirements of the Agreement.

3. The acceptance of the Line shall be confirmed by the Final Report of Acceptance signed by the representatives of the Parties ("**the Final Report**"). The Final Report shall contain the mention of defects or faults of the Line or its individual components, errors in their installation or configuration or other discrepancies between the way the Contractor has performed the works indicated in § 4 (1) ("a" - "g") of the Agreement and the Agreement or Bid. The Parties unanimously agree that no indication of defects, faults, errors or irregularities in the performance of the obligations by the Contractor in the Final Report shall neither exclude nor in any way limit the possibility to indicate them at a later date or refer to them or their consequences at a later date by the Contracting Entity.

4. The Contractor within the time limit defined in the Final Report, but not longer than 7 (seven) days from the date of signing of the Final Protocol, shall correct any defects, fault, errors and discrepancies indicated in the Final Protocol at his own expense and shall report the readiness to re-acceptance to the Contracting Entity. If in the course of the re-acceptance the Contracting Entity shall indicate the defects or faults of the Line or its individual components, errors in their installation or configuration or other discrepancies between the Contractor's performance of the work indicated in § 4 (1)("a" - "g") of the Agreement or Bid, the Contractor shall correct them within the time limit defined in the Final Report.

5. Further iterations of the acceptance procedure shall be implemented in accordance with the provisions of para. 4.

6. The date of completion of the services referred to in § 4 (1) ("a" - "g") of the Agreement shall be the date of signing the Final Protocol not containing any mention of faults, defects, errors or deficiencies.

7. In order to avoid any doubt the Parties agree that:

- a) The fact that the Parties signed the Final Report without any objections does not mean that the Contracting Entity knew of any defects, faults, discrepancies, irregularities etc. of the Line or its components that were not included in the Final Report;
- b) The release of the Line and its various components, the transfer to the Contracting Entity of the risk of loss or damage and the transfer to the Contracting Entity of their ownership shall be at the time of signing the Final Protocol not containing any mention of faults, defects, errors or

deficiencies by the Parties.

8. If the Contractor exceeds any of the time limits indicated in para. 1, the Contractor shall pay to the Contracting Entity a contractual penalty of 0,1 % of the remuneration indicated in § 6 (1) for each started day of delay.

§ 6. Remuneration; settlement

1. Due to the correct (i.e. complete and timely) performance of all the obligations laid down in the Agreement by the Contractor, the Contracting Entity shall pay to the Contractor the remuneration of PLN [amount number] ([amount in letters]) net (i.e. without tax on goods and services - VAT), plus a tax on goods and services (VAT) charged at the rate applicable on the date of issue of the relevant VAT invoices.
2. The remuneration referred to in para. 1 was calculated by the Contractor taking into account all relevant factors, in particular it takes into account e.g. all costs relating to the performance of the Agreement, including manufacturing, delivery, installation, configuration, checking and starting of the Line, the costs of the software development and software licensing to the Contracting Entity within the scope defined by the Agreement, the costs of the training of the Contracting Entity's employees concerning the operation and maintenance of the Line, the costs of performing the Contractor's obligations to the Contracting Entity under the guarantee and warranty and the costs of the provision of maintenance services. The remuneration referred to in para. 1 also contains the Contractor's fair profit.
3. The remuneration referred to in para. 1 above is a flat fee, therefore the Contractor does not have any claim against the Contracting Entity to increase the amount of remuneration or additional remuneration in respect of the implementation of the work that is not explicitly indicated in the Agreement or Bid, but prove to be necessary or at least appropriate for the proper performance of the Contractor's obligations in a manner consistent with the Bid and Agreement.
4. The remuneration referred to in paragraph 1 shall be payable to the Contractor as follows:
 - a) The amount of 30 % (thirty percent) of the remuneration referred to in para. 1 ("**Advance 1**") - paid as an advance within 14 days of the date of receipt by the Contracting Entity of the latter of the listed documents (i) an advance invoice on Advance 1 and (ii) an irrevocable and unconditional bank guarantee, payable at the first written request and governed exclusively by Polish law, from which all disputes will be resolved exclusively by the common court competent for the location of the Plant, issued by the renowned Polish bank which shall guarantee to return to the Contracting Entity the full amount of Advance1 - drawn up according to the pattern accepted by the Contracting Entity, valid at least until 31.12.2018;
 - b) The amount of 60 % (sixty percent) of the remuneration referred to in para. 1 ("**Advance 2**") - paid as an advance within 14 days of the date of receipt by the Contracting Entity of the latter of the listed documents (i) an advance invoice on Advance 2, (ii) a report proving the delivery of the Line to the Plant and (iii) an irrevocable and unconditional bank guarantee, payable at the first written request and governed exclusively by Polish law, from which all disputes will be resolved exclusively by the common court competent for the location of the Plant, issued by the renowned Polish bank which shall guarantee to return to the Contracting Entity the full amount of Advance 2 - drawn up according to the pattern accepted by the Contracting Entity, valid at least until 31.12.2018;
 - c) The settlement of advances and the payment of the rest of the remuneration referred to in para. 1 - within 14 days of the date of the occurrence of the later of the following events: (I) signing of the Final Report that does not contain any comments or objections by the Contracting Entity and (ii) provision of the Bank Guarantee to Remove Faults and Defects to the Contracting Entity by the Contractor.
5. The Contractor is obliged to issue any necessary accounting documents, in particular advance VAT invoices to enable the Contracting Entity the correct accounting of made payments and their correct tax settlement. In the event that the Contractor has issued any document in an incorrect

way or has not issued any necessary document, he shall be obliged to, regardless of his liability for damages, to correct the incorrect document and provide the correct document to the Contracting Entity or to issue and deliver to the Contracting Entity the document that has not been issued within 3 (three) days of the date of receipt of the notice from the Contracting Entity.

6. The remuneration shall be paid by transfer to the Contractor's bank account, number [____], by the bank [_____]. The date on which the Contracting Entity's account is debited is the date of payment.

7. In the event of a delay in the payment of any of the parts of the remuneration indicated in § 6 (1), the Contractor will be entitled to request statutory interest for the delay time.

8. In the case of a partial withdrawal from the Agreement by the Contracting Entity or the Contractor, the remuneration payable to the Contractor will be equal to the difference between the remuneration referred to in § 6 (1) above and the sum of (i) the costs of the performance of the remainder of the subject of the Agreement by another entity and (ii) the compensation for the improper performance of the Agreement by the Contractor due to the Contracting Entity. In such a situation the remuneration payable to the Contractor shall be paid within 14 (fourteen) days after the remainder of the services referred to in § 4 (1) of the Agreement has been provided and the costs of their provision and the height of the compensation due to the Contracting Entity have been fixed.

9. The Parties unanimously represent that if the remuneration of the Contractor is a flat fee and after paying it, it is found that the Contractor has not performed or has improperly performed the obligations under the Agreement, the Contractor shall be obliged to repay the Contracting Entity the entire amounts or the relevant part of the amounts received as the advances, and the return of the relevant amounts shall be made to the Contracting Entity within 5 (five) days from the date of receipt by the Contractor of the notice for their return.

§ 7. Cooperation; contact persons; subcontractors; assignment

1. Each Party shall cooperate and ensure the cooperation of their employees and colleagues with the other Party in order to enable the proper performance of the Agreement.

2. The Contractor shall provide to the Contracting Entity, on his request - within 5 (five) days of receipt of the request (unless other provisions of the Agreement provide for a shorter time) - all information and documents, plans and diagrams in the possession of the Contractor, insofar as they are necessary or at least appropriate to the proper performance of the Agreement, including the proper use or maintenance of the Line.

3. The persons responsible for the performance of the Agreement are the following:

- a) On the part of the Contractor: _____
- b) On the part of the Contracting Entity: _____

4. All statements, notifications, information, etc. submitted by the Parties shall be directed to the persons indicated in para. 3 to the following addresses:

	Contracting Entity	Contractor
Address	ul. Przemysłowa 11 38-300 Gorlice	_____
Email address	_____	_____
telephone no.	_____	_____
Fax no.	_____	_____

5. The amendment of the data of responsible persons indicated in para. 3 or the address for the service indicated in para. 4 shall require notification of the other Party, in the form of a written statement, under pain of nullity, served at the address indicated in para. 4, or otherwise the service of the notice shall be deemed ineffective, to the last address of the Party, and the change is not a revision of the contract, and such an amendment does not constitute an amendment to the Agreement.

6. The Parties unanimously agree that any statements, notices, information, etc. submitted by one of the Parties to any other of them and delivered to the addressee after 5 PM CET on a given day shall be treated as received the next working day at 8:30 PM CET, and the working days mean days from Monday to Friday excluding days recognized as public holidays in accordance with the applicable law of the Republic of Poland.
7. The Contractor is not authorized, without prior Contracting Entity's consent, in writing under pain of nullity, to entrust the performance of all or part of his obligations under the Agreement to any third party other than his employees.
8. No Party shall be authorized, without prior consent of the other Party, in writing under pain of nullity, to transfer any right or claim arising from the Agreement to the other Party to any third party.
9. The Contracting Entity shall have the right to control the Contractor or his subcontractors in the Plant, after agreeing with the Contractor, on the inspection date, content and quality during manufacturing as well as the completeness of the Line or parts of it before it is sent to the Plant. Moreover, the Contracting Entity may control in particular whether all the used materials, details and the Line components are in accordance with the standards, drawings and technical conditions specified in the Agreement.

§ 8. Guarantee

- a.1.** The Contractor shall provide to the Contracting Entity the guarantees of quality and regularity of manufacturing (including: the conformity with the Agreement and Bid) of the Line and its installation and starting and the failsafe operation of the Line (including: all of its elements) for a period of [number of] months starting from the date of signing by the Contractor of the Final Report not containing any mention of faults, defects, errors or deficiencies. In particular the Contractor guarantees:
 - a) That the quality of the Line corresponds to the highest level of technology and the highest standards that exist in the country of the Contractor or the Contracting Entity (depending in which of the listed countries there is a higher level of technology) for this kind of equipment at the time of the conclusion of the Agreement;
 - b) The appropriate selection of high quality of the materials used for the manufacturing of the Line, the highest level of their processing and the high quality of the Line manufacturing and installation.
- a.2.** Under the guarantee, the Contractor shall, in accordance with the request made by the Contracting Entity - by which the Contractor is bound - eliminate the irregularities by:
 - a.2.a) replacement of the incorrect Line element with the new one, free from irregularities, or;
 - a.2.b) repair of the Line element that has failed or has been damaged;
 - a.2.c) reinstallation or reconfiguration of the Line if the irregularities in the installation or configuration are the cause of the improper operation of the Line.
- a.3.** The Contractor is obliged to perform the guarantee services referred to in § 8 (2) and correct the irregularities within 5 (five) days from the date of receipt of the notification of irregularities from the Contracting Entity. The period referred to in the preceding sentence may be extended to up to 10 (ten) days, if the Contractor immediately provides and installs the replacement part, of the parameters not worse than the faulty element of the Line and which permits the normal operation of other pieces of equipment within the Line.
- a.4.** The failure may be reported by the Contracting Entity using the address data indicated in § 7 (4) of the Agreement, as well as by reporting the failure to the representative of the Contractor, by telephone or email on other addresses/phone numbers than those indicated in § 7 (4).

- a.5. If the time limit to correct the irregularities is exceeded, the Contracting Entity may have them corrected by another entity on the expense and risk of the Contractor - without having to obtain the judicial authorization, to which the Contractor hereby agrees. The provisional correction of irregularities does not limit the Contractor's liability for the guarantee in the future.
- a.6. The duration of the guarantee or warranty on the faulty part of the Line shall be extended by the time equal to the duration of repair of that element. In the event of replacing a faulty component of the Line under the warranty or guarantee, the new period of guarantee and warranty covering this part shall start anew from the day following the date of its replacement.
- a.7. The Contractor shall perform the guarantee and warranty services described above in a way that minimizes their inconvenience for the Contracting Entity and that minimizes their impact on the proper use of the Line and the normal operation of the Plant.
- a.8. As part of the performance of the guarantee and warranty services by the Contractor, the Contractor shall allow the persons designated by the Contracting Entity to participate actively in the Contractor's work for the purpose of training appropriate skills and competences by those persons.
- a.9. Irrespective of the guarantee entitlements, the Contracting Entity has the right to use the warranty for defects of the Line, its individual components and work in the form of installation and configuration of the Line. The provisions of § 8 (3- 8) shall apply to the performance of the warranty obligations.
- a.10. The Parties contractually extend the statutory warranty for the defects of the Line, its individual components and work in the form of installation and configuration of the Line for the duration of the guarantee on the Line (including its individual components) under paragraph 1 above.
- a.11. The guarantee and warranty does not cover:
- a.11.a) Defects resulting from failure to comply with the manuals of operation and maintenance provided to the Contracting Entity;
 - a.11.b) Normal wear of the Line parts or components subject to wear;
 - a.11.c) Defects arising due to the impact of the chemical, mechanical, thermal and electrical agents referred to as not permitted in the manuals of operation and maintenance provided to the Contracting Entity;
 - a.11.d) Defects arising from the use of supplies, components, fuels and media referred to as not permitted in the manuals of operation and maintenance provided to the Contracting Entity;
 - a.11.e) Defects resulting from any modifications, alterations, repairs or improvements made by the Contracting Entity and contrary to the rules set out by the Contractor or arising from the manuals of operation and maintenance provided to the Contracting Entity;
 - a.11.f) Defects arising from the Force Majeure.
- a.12. In order to secure any claims of the Contracting Entity against the Contractor due to defects or faults of the Line and its installation, including those covered by the guarantee and warranty, the Contractor shall issue to the Contracting Entity - not later than on the date of signing of the Final Report - an irrevocable and unconditional bank guarantee, payable at the first written request and governed exclusively by Polish law, from which all disputes will be resolved exclusively by the common court competent for the location of the Plant, issued by the renowned Polish bank which shall guarantee to pay the Contracting Entity any receivables due to the Line faults or defects or its installation - drawn up according to the pattern accepted by the Contracting Entity, valid to at least the date of expiry of the guarantee + 60 days] (**"The Bank Guarantee to Remove Faults and Defects"**).
- a.13. The Contractor after the warranty period guarantees the availability of spare parts of the Line within 7 days from the date of the notification by the Contracting Entity of a failure and the need to install spare parts. On the date of commissioning of the Line, the Contractor is obliged to provide a list of spare parts dedicated (manufactured) exclusively to the Line which is the subject of the contract and

the wait time for these spare parts is from 8 days to 5 weeks.

- a.14.** The Contractor warrants the availability of all spare parts of the Line for a period of at least 12 years from the installation and starting of the Line confirmed by the Final Report.

§ 9. Liability

1. The Contractor shall be liable to the Contracting Entity or third parties for any damage caused by his employees or colleagues inside or outside the Plant.
2. If any third party submits a claim against the Contracting Entity relating to the Line or its individual components, resulting from actions or omissions of the Contractor (including: arising from false representations and warranties by the Contractor), the Contracting Entity shall inform the Contractor of the fact. Within 7 (seven) days from the date of receipt of the notification referred to in the previous sentence, the Contractor should refer to the allegations raised by a third party in writing.
3. The Contractor, free of charge, shall exclude the Contracting Entity from liability for infringement of any rights or personal property of any third party associated with the Line or its individual components, including their use by the Contracting Entity, resulting from actions or omissions of the Contractor (including: arising from false representations and warranties by the Contractor), and in the case of damages incurred by the Contracting Entity, the Contractor shall pay for them in their entirety.
4. The Contractor is obliged, at his own expense, to gain the right to the continued use of the Line or its individual components that are the subject of a claim referred to in § 9 (2 - 3) above for the Contracting Entity, or replace them with the other elements satisfying the requirements of the Contracting Entity to the extent of not less than the hitherto used components.

§ 10. Withdrawal from the Agreement

1. Apart from the cases provided for by the law, the Contractor shall have the right to withdraw from the Agreement in cases where:
 - a) A petition for bankruptcy of the Contractor is filed or the liquidation of the Contractor commences;
 - b) The Contractor delays with the performance of his obligations under the Agreement so far that the Contracting Entity may have reasonable doubts as to the possibility of completion of work by the Contractor within the time limit indicated in § 5 (1) of the Agreement or in intermediate dates indicated in **Annex 1**;
 - c) The Contractor works in a manner inconsistent with the Agreement or rules of the art or technical knowledge;
 - d) The Contractor has exceeded (i) the date of termination of the work as specified in § 5 (1) of the Agreement, by at least 15 (fifteen) days or (ii) any of the intermediate time limits, indicated in **Annex No. 1**, by at least thirty (30) days;
 - e) Despite the indications in the Final Report of defects, faults, deficiencies, errors or other discrepancies between the work carried out and the requirements set out in the Agreement or Bid, they were not removed and they were indicated after re-drawing up the Final Protocol (§ 5 (4) sentence 2 of the Agreement).
2. Before the withdrawal from the Agreement, the Party who shall have the right to withdraw from the Agreement is obliged to inform of the intention to the other Party in the form of a written statement, under pain of nullity, containing an indication of the reasons justifying the withdrawal. In the cases referred to in § 10 (1) ("c" and "e") the notice indicated in the previous sentence shall also include the designation of an additional time limit, of not less than 5 (five) days, to correct the irregularities, and after the irregularities have not been corrected within this time limit, the Contracting Entity shall be entitled to withdraw from the Agreement.
3. In the cases referred to in § 10 (1) ("b", "c", and "e") above, the Contracting Entity may - only at his own discretion - withdraw from the entire Agreement or only from the non-performed or unduly

performed part of the Agreement. In the event of withdrawal from the Agreement, the Parties shall accept the remainder of the Agreement.

4. The withdrawal from the Agreement shall be made by submitting a written statement by the Party entitled, under pain of nullity.
5. In the case of withdrawal from the part of the Agreement in accordance with § 10 (3) the Contractor shall also be obliged to:
 - a) Draw up a detailed inventory protocol of work in progress at the time of the submission of the statement to withdraw from the Agreement by the Contracting Entity within 3 (three) days from the date of submission of such a statement;
 - b) Secure the interrupted work at his own expense.
6. In the case of the partial withdrawal from the Agreement by the Contracting Entity, the Contractor shall perform the guarantee services according to the rules indicated in § 8 of the Agreement and the warranty services in relation to the part of the Line that was done and delivered to the Contracting Entity before the date of the withdrawal from the Agreement.

§ 11. Confidentiality obligation

1. The Parties hereby agree to each other to safeguard the confidentiality and not to disclose the Confidential Information of the other Party to any third party, in particular their employees or colleagues.
2. Each Party in particular shall:
 - a) Keep in strict confidence all Confidential Information of the other Party;
 - b) Use the Confidential Information of the other Party only in order to perform the Agreement;
 - c) not utilize, copy, adapt, change, disclose, abandon the possession, or use the Confidential Information of the other Party for any other purpose than the purpose set out in point "b" above;
 - d) At any time, regardless of the progress of the implementation of the Agreement, not copy, not disclose or not share in another way without a clearly expressed consent in writing under pain of nullity of the other Party, any Confidential Information of the other Party to third parties other than those of its members of the Management Board, employees or colleagues (including consultants) for whom it is necessary to receive or read the Confidential Information of the other Party, with the stipulation that each Party at the time of signing of the Agreement shall ensure that before receiving or reading the Confidential Information of the other Party, the members of its Management Board, its employees or colleagues who are to receive the Confidential Information, are informed about the provisions of the Agreement concerning confidentiality, agree to the obligations resulting from the Agreement and undertake to comply with them;
 - e) Ensure a suitable and safe way to store all Confidential Information of the other Party received in the material or electronic form at the time when it is in its stock or under its control;
 - f) At the request of the other Party, immediately return or destroy at its own expense any materials containing any Confidential Information of the other Party with all the copies in its possession or in the possession of the members of the Management Board, employees and colleagues.
3. Each Party shall have a regularly updated list of employees and other persons referred to in § 11 (2), who have access to the Confidential Information of the other Party.
4. In addition to the cases referred to in § 11 (2), each Party shall have the right to disclose the Confidential Information of the other Party to a third party exclusively after a prior obtaining by the Party intending to disclose the Confidential Information of the other Party, the other Party's clear consent to such disclosure in writing, under pain of nullity.
5. The obligations of the Parties set out in this Agreement shall not apply to the Confidential Information of the other Party:
 - a) Which on the date of disclosure are publicly owned (are disseminated to the public, i.e. in accordance with the law, an indefinite number of people may have access to, e.g. data in the publicly available registers, publications, etc.);

- b) In respect of which the Party shows that it was in their possession or that had knowledge of it in connection with its use, existence in its acts, computer recordings or on other storage media before receiving it from the other Party, or which was developed for the disclosing Party or by the Party itself regardless of and without the use of the Confidential Information made available by the other Party;
 - c) The disclosure of which is required from the Party under the provisions of the law, however, the disclosing Party shall immediately and not later than 4 (four) days from the date of disclosing, inform the other Party in writing, with an indication of the extent of disclosure of the Confidential Information of the Contracting Entity and the date of disclosure, the entity to which the Confidential Information was disclosed and legal base justifying the disclosure;
 - d) Which the Contracting Entity is obliged to disclose in connection with obtaining financial support for the purchase of e.g. the Line;
- 6. Each Party acknowledges and agrees that it shall not be entitled to purchase, even implicitly or in any other way, any rights to the Confidential Information provided by the other Party or received from it.
 - 7. The confidentiality obligation of the Parties to maintain confidentiality of the Confidential Information of the other Party under this paragraph shall remain in force for a period of 5 (five) years from the expiry of the time limit indicated in § 5 (1).

§ 12. Software Licensing

- 1. Within the remuneration referred to in § 6(1) the Contractor also represents to: (I) create a software designed to ensure the operation and control of the Line (“**Software**”) and (ii) license the software to the Contracting Entity according to the rules set out in this paragraph.
- 2. The Parties agree that on the date indicated in § 12 (4) (hereinafter referred to as “**the Licensing Date**”) the Contractor shall provide to the Contracting Entity and the Contracting Entity acquires a non-exclusive license to use the software without limitations in time or space, for the following:
 - a) Use of the software to control the Line or its elements;
 - b) Displaying, transmission and storage of the software regardless of its format, system or standard;
 - c) Recording and permanent or temporary reproduction of the Software in whole or in part by any means and in any form, regardless of the format, system or standard, including entering it into the memory of the computer or other devices used in the Line and the permanent or temporary recording or reproduction of such records, including drawing up their copies;
 - d) Translation, adaptation, changing the layout or any other alterations of the Software; Dissemination in closed networks in so far as is necessary for the use of the Line.
- 3. The software license provided to the Contracting Entity is not subject to quantitative, territorial or time limitations.
- 4. The Licensing Date shall be the date of signing by the Contracting Entity of the Final Report not containing any mention of defects, faults, errors or deficiencies.
- 5. The Parties agree that from the date of receipt of the copies of Software by the Contracting Entity, the Contractor transfers on the Contracting Entity, and the Contracting Entity acquires - within the remuneration referred to in § 6 (1) - the ownership of the material media on which the Software is recorded. The Contractor is obliged to provide the Software (i) installed in the devices included in the Line and (ii) on the electronic media to the Contracting Entity. Together with the software, the Contractor is also obliged to provide to the Contracting Entity all codes, keys, passwords etc. for the Software or connected with its usage within the Line.
- 6. The Contracting Entity is authorized to make a backup of the Software as well as to use it simultaneously with the Software.

§ 13. Final Provisions

- 1. The provisions of Polish law, notably those of the Civil Code shall apply to any issues not regulated by this Agreement.
- 2. The competent court for the settlement of disputes arising from the Agreement is the Polish common

court of competent and actual jurisdiction for the location of the Plant.

3. All amendments and supplements to this Agreement shall be made in writing or else shall be null and void.
4. This Agreement was drawn up in two identical copies, one for each of the Parties.
5. Each of the provisions of the Agreement which is void or ineffective shall have no effect on the validity or effectiveness of the remaining provisions of the Agreement. The Parties hereby shall replace all invalid, to the extent permitted under the provisions of the law, or ineffective provisions of the Agreement with the new valid and effective provisions of the content as close as possible, within the limits of the applicable law, to the content of the invalid or ineffective provisions and to the intentions of the Parties contained in those invalid or ineffective provisions of the Agreement. The provisions of the preceding sentence shall be applied accordingly if it is established that any of the Parties has concluded the Agreement in the ineffective or invalid way and also when the ineffectiveness is detected during the term of the Agreement.
6. In the case referred to in paragraph 5, the Parties shall conclude an annex to the Agreement which shall define a provision replacing an invalid or ineffective provision of the Agreement and the goal of which shall be similar or analogous to the invalid or ineffective provision.
7. The Parties unanimously agree that their mutual will and intention is that the Agreement does not constitute a civil company between them.
8. No Party shall be liable for any failure to perform or improper performance of its obligations under the Agreement if the failure to perform or improper performance of these obligations is the result of the Force Majeure. The Party who refers to the occurrence of the Force Majeure shall, under pain of losing this right, inform the other Party in writing within 24 (twenty-four) hours of the event of the Force Majeure and attach the evidence of occurrence of these events.
9. If one of the Parties does not insist that the other Party comply closely with the provisions of the Agreement, it shall not be understood as a waiver by the Party of the right to demand the performance of these provisions.
10. The Agreement enters into force on the day it is signed by both Parties.
11. The payment by the Contractor of any of the contractual penalties reserved for the Contracting Entity shall not exclude or restrict the right of the Contracting Entity to claim compensation in line with the general principles if the amount of the incurred damage exceeds the amount of the contractual penalty.
12. This Agreement has been prepared in two identical copies, one for each Party.
13. The following are annexes attached hereto:
 - a) Annex No. 1 - a detailed schedule of services covered by the Agreement;
 - b) Annex No. 2 - a detailed description of the Line.

Contracting Entity Represented by:	Contractor Represented by: