

Clarification 06

19-ZP-2020 – Shale Shaker Screens

Dear Sirs,

Please find our answers for some questions asked by bidder(s):

ITEM	Bidder Question	Exalo Drilling S.A. Answer.
1.	<p>„[...] Deliveries have to be made on the terms of DDP Incoterms 2020 to territory of the Republic of Poland, to Exalo’s Drilling S.A, Warehouse (P003), al. Powstańców Wielkopolskich 167, 64-920 Piła.</p> <p>can it be changed to FOB(Incoterms 2020) or CIF (Incoterms 2020)?”.</p>	<p>The Buyer do not accept any other delivery terms than DDP Incoterms 2020 to territory of the Republic of Poland, to Exalo’s Drilling S.A, Warehouse (P003), al. Powstańców Wielkopolskich 167, 64-920 Piła.</p>
2.	<p>„[...] item k), Section 1 Clause 3.2 Payment Scheme – after each delivery based on properly issued invoice. Paid within 30 days from delivery of the invoice to the Buyer,</p> <p>Please specify payment terms.”.</p>	<p>Payment terms for successive deliveries are exact as mentioned, within 30 days after delivery of Screens and properly issued invoice</p>
3.	<p>„About your payment terms, can you elaborate? Letter of credit? Telegraphic Transfer ? D/P? or other payment methods?”.</p>	<p>All payments are made by bank transfer.</p>
4.	<p>- Clarification: In art. 1.9(b), 1.10(b) and 2.3 roles seem to have been reversed. Assume that it is for Buyer’s Representative to receive invoices and Seller’s Representative to issue invoices, not the other way around? Also it must be the obligation of Seller to supply or deliver screens, not purchase.</p>	<p>Correct, it is typing mistake. The Buyer change provisions of the Draft of Sales Agreement in accordance:</p> <p>In article 1.9 letter b) about Buyer’s Representative responsibilities, was:</p> <p>„b) commercial aspects of the implementation of the Agreement, including issuing orders and invoices is:, tel., e-mail:”</p> <p>has changed into:</p> <p>„[...] b) commercial aspects of the implementation of the Agreement, including <u>issuing orders and receiving invoices is: .[...]”</u></p>

Siedziba
Exalo Drilling S.A.
Pl. Staszica 9
64 – 920 Piła

T: (+48) 67 215 13 00
F: (+48) 67 215 13 59
www.exalo.pl

Exalo Drilling S.A.
ul. Nafłowa 3
65-705 Zielona Góra

T: (+48) 68 329 55 55
F: (+48) 68 325 64 42

		<p>In article 1.10 letter b) about Seller's Representative responsibilities, was:</p> <p>„b) commercial aspects of the implementation of the Agreement, including receiving orders and invoices is:, tel., e-mail:,“</p> <p>has changed into:</p> <p>„[...] b) commercial aspects of the implementation of the Agreement, including receiving orders and issuing invoices is: .[...]"</p> <p>As for article 2.3 about Seller's obligations, was:</p> <p>“[...]and the Seller is obliged to purchase in such quantities and their implementation.”.</p> <p>has changed into:</p> <p>“and the Seller is obliged to supply such quantities and to fulfill such orders”</p>
5.	- In art. 8, please change to English law, and delete the last two sentences of art. 8.2.	The Buyer cannot agree with the Bidder's request and the provision of Article 8 will remain in its current form, as follows: „8.1 The present Agreement is governed by and construed in accordance with the Polish laws.”.
6.	- In the very last paragraph, the English language version prevails over the Polish language version.	The last paragraph will remain in its current form. Please notice that Polish* language version of this Agreement shall prevail only, if the Seller chooses such version. Otherwise English language will prevail.
7.	<p>- In addition, please include the following provisions:</p> <p>“Limitation and Exclusion of Liability</p> <p>x.1 Notwithstanding anything to the contrary, Buyer shall release, save, indemnify, defend and hold harmless Seller from Buyer's own Consequential Loss and Seller shall release, save, indemnify, defend and hold harmless Buyer from Seller's own Consequential Loss, arising from, relating to or in connection with the performance or non-performance of this contract. For the purposes of this article ... the expression "Consequential Loss" shall mean: (i) any consequential, indirect, or exemplary loss or damage under governing law; and (ii) any loss and/or deferral of production, rig down time or standby time, loss of product, loss of use, loss and/or deferral of revenue, profit or anticipated profit (if any), in each case whether direct or indirect to the extent that these are not included in (i), and whether or not foreseeable at the effective date of the Agreement.</p> <p>x.2 Buyer's overall liability arising out of or in any way related to this Agreement or the delivery or failure to deliver any products hereunder shall be limited to an amount equal to the remuneration set out in article 3.1. This limitation of liability shall apply whether any such claim arise in contract, tort or at law, and shall apply irrespective of the expiration or earlier termination of the Agreement and shall also apply in</p>	<p>The Buyer agrees to include suggested provisions into the Draft of Sales Agreement as new article 10 „Limitation and Exclusion of Liability” with amendments to the second point as below:</p> <p>10.1 Notwithstanding anything to the contrary, Buyer shall release, save, indemnify, defend and hold harmless Seller from Buyer's own Consequential Loss and Seller shall release, save, indemnify, defend and hold harmless Buyer from Seller's own Consequential Loss, arising from, relating to or in connection with the performance or non-performance of this Agreement. For the purposes of this article 10 the expression "Consequential Loss" shall mean: (i) any consequential, indirect, or exemplary loss or damage under governing law; and (ii) any loss and/or deferral of production, rig down time or standby time, loss of product, loss of use, loss and/or deferral of revenue, profit or anticipated profit (if any), in each case whether direct or indirect to the extent that these are not included in (i), and whether or not foreseeable at the effective date of the Agreement.</p> <p>10.2 Seller's overall liability arising out of or in any way related to this Agreement or the delivery or failure to deliver any products hereunder shall be limited to an amount equal to the remuneration set out in article 3.1. This limitation of liability shall apply whether any</p>

	<p>case Buyer withdraws from the Agreement in accordance with article 4.4. Buyer shall defend, indemnify and hold Seller harmless from and against any claims in excess hereof."</p>	<p>such claim arise in Agreement, tort or at law, and shall apply irrespective of the expiration or earlier termination of the Agreement and shall also apply in case Buyer withdraws from the Agreement in accordance with article 4.4. Buyer shall defend, indemnify and hold Seller harmless from and against any claims in excess hereof." Former article 10 converts in article 11.</p>
8.	<p>„3.1. Section 3 please confirm warranty refers to shelf life (min 24 months)"</p>	<p>Warranty, minimum 24 months refers to the period from delivery of Screens. The Buyer confirms and explains that during this period the Seller is responsible for any defects disclosed in the sold Screens".</p>
9.	<p>3.2. Section 3 Appendix No. 6 – not compliant with GDPR, however we can give other clients company name</p>	<p>The Buyer agrees with Bidder request and will not require Customer Direct Contact Details in Appendix No. 6</p>
10.	<p>Do you accept digitally sign (certified signature) offer in pdf file by Bidders authorized person instead of signed and stamped by Bidders authorized person, then scanned and converted to .pdf file as mentioned in point 2.3 19-ZP-2020_Tender Invitation_Shale Shaker Screens EXALO</p> <p>"2.3 Absolutely each page of Commercial Offer and Technical Offer have to be numbered, signed and stamped by Bidders authorized person, then scanned and converted to .pdf file."</p>	<p>The Buyer will accept offers in pdf digitally signed (certified signature) by Bidders authorized person (not just certified signature for the Bidder entirely)</p>
11.	<p>Is screen samples a must for Bidding?</p>	<p>The Buyer (Exalo Drilling S.A) allows Offers without sending samples, they will not be automatically rejected as suggested by point 4.2 3) of Unlimited Tender Invitation. At the same time, the Buyer reserves that Offers without samples will not be evaluated in accordance with section 7.2. Unlimited Tender Invitation. This means that the Bidder will automatically lose 15 points, which can be maximally obtained in the criterion "Quality test results".</p>
12.	<p>What's the API number and its QTY for each screen model sample?</p>	<p>API number is something like a catalog / reference number that defines our technical requirements for a given Screens. You can refer to mesh number as well.</p> <p>QTY stands for "quantity"</p>

13.	When shall the samples arrive to Buyer? (Delivery time as in point 4.2.3 above, but in point 4.2.3, mentioned only an email for receiving technical and commercial offers)	Point 4.2.3 of the Unlimited Tender Invitation speaks of the deadline for submitting bids, which the Buyer has set for 22th of June. However, due to the fact that this deadline was extended to 6th of July 2020 , samples should be delivered according to this date
14.	Does Exalo Drilling SA accept the certified signature of Bidders authorized person with one graphic symbol on each document? For example "Certum" provides certified digital signature only with one symbol graphic of signature on each document. It means that the certified signature cannot be visible on each page (only once).	The Buyer will allow Offers with the certified signature from Certum – subject to the provisions of point 10 of these Clarifications.
15.	<p><u>Art. 1 Object of Agreement</u> <u>Please modify sub-article 1.2. as follows:</u></p> <p>The Seller undertakes to successively deliver (equip) The Buyer with Screens, in accordance with the instructions and requirements in the Agreement of the Buyer and in accordance with applicable law and relevant standards and in accordance with the Technical Specification contained in the Appendix no. 1 to this Agreement.</p>	The Buyer agrees with the Bidder's suggestion and amends Art. 1.2 as follows: "The Seller undertakes to successively deliver (equip) the Buyer with Screens, in accordance with the instructions and requirements contained in the Agreement and in accordance with the Technical Specification contained in the Appendix no. 1 to this Agreement, the Technical Offer No. dated contained (depends on the Offer) in the Appendices No. 2.1 and/or 2.2 and/or 2.3 to this Agreement and the Commercial Offer No. dated contained (depends on the Offer) in the Appendix No. 3.1 and/or 3.2 and/or 3.3 to this Agreement, all being an integral part hereof, and to deliver the Screens to the Buyer on the terms of DDP Incoterms 2020 (VAT unpaid) to the address indicated in art. 1.7."
16.	<p><u>Art. 2. Orders and delivery</u> <u>Kindly amend sub-article 2.4 as follows:</u> [...]</p> <p>a) in the case of sending the order before 12:00 (noon), the Seller will notify the Buyer the next business day at around 9:00 the same day by 15:00,</p> <p>b) in the case of sending the order after 12:00 (noon), the Seller will notify the Buyer by the next business day by 10:00 15:00.</p> <p><u>Kindly amend sub-article 2.5 as follows:</u> 2.5. In the event of lack of response from the Seller in the form of a notification within abovementioned time scope or in the event of the Seller's statement about the inability to complete the order, the order will be considered as not accepted, and the Buyer will be entitled to place the same order with another supplier, with the right to charge the Seller with any difference in the price of the Screens.</p>	<p>The Buyer agrees with the Bidder's suggestion and amends Art. 2.4 letter a and b as follows: "a) in the case of sending the order before 12:00 (noon), the Seller will notify the Buyer the next business day by 9:00, b) in the case of sending the order after 12:00 (noon), the Seller will notify the Buyer by the next business day by 15.00." Similarly, the Buyer changes the hours indicated in art. 2.6 letter a and b.</p> <p>The Buyer concludes an Agreement for an indefinite period to ensure a constant source of supply of the Screens covered by the Agreement on the clear terms of this Agreement and for the price obtained as a result of the tender, with the intention to direct the entire stream of orders to the Seller thus selected. Both the Seller and the Buyer benefit from such solution – the first obtains entire stream of orders from Exalo and the latter secures quick and easy way to acquire desired goods. By entering the tender and then to the Agreement, the Seller declares that will implement such successive supplies. The Buyer should not bear the negative</p>

	<p><i>Please insert the following at the end of sub-article 2.10: The title to the Screens shall pass to Buyer upon delivery, as per the Incoterm agreed by the Parties.</i></p>	<p>consequences of improper performance or non-performance of the Agreement by the Seller.</p> <p>The Buyer also emphasizes that the provision in Art. 2.5 introduces the right, not the obligation and can be used by the Buyer taking into account the manner in which the Seller performs the Agreement and his attitude. Singular and justified cases will be treated differently from a permanent refusal to accept orders and the need to cancel them.</p> <p>If the Seller fails to perform certain delivery, within previously established conditions (i.e. conditions being established in this tender), the Buyer could be forced to obtain same goods from different source, potentially more expensive. Thus the reason for right to charge the Seller with difference in price is justified. In the case covered by the provision in question, the Buyer will strive to make a purchase at the lowest possible price - and it is equally probable that implementation of this mechanism in practice will never happen.</p> <p>Nevertheless, as an expression of goodwill in order to establish long-term partnership business cooperation, the Buyer introduces a limit of liability in this respect to the amount of 10% of the unrealized order. As a result, Art. 2.5 in <i>fine</i> is replaced by the following: "In the event of lack of response from the Seller in the form of a notification within abovementioned time scope or in the event of the Seller's statement about the inability to complete the order, the order will be considered as not accepted, and the Buyer will be entitled to place the same order with another supplier, with the right to charge the Seller with the difference in the price of the Screens, but not higher than 10% of the value of the order."</p> <p>The Buyer agrees with the Bidder's suggestion and amends Art. 2.10 by insert of second sentence as follows: "Ownership of the Screens shall pass to Buyer upon delivery, as per the Incoterm agreed by the Parties."</p>
17.	<p>Art. 3 Price and payment <i>Kindly amend sub-article 3.7 as follows:</i> The invoice should be issued in accordance with the Agreement applicable regulations in and additionally include the contract number, order number, specification of the name of Screens, packaging designation and the quantity of Screens supplied.</p> <p><i>Kindly insert the following new sub-articles:</i> 3.9. Buyer agrees that should any portion of an invoice be disputed, Buyer shall promptly notify the Seller of the reasons for disputing all or part of that invoice within five (5) calendar</p>	<p>The Buyer remains with the current wording of the Art. 3.7. At the tender stage it is not known where the winning Bidder will come from, and it depends on what regulations will apply to invoices issued by him. The current wording of Art. 3.7 is more universal. This remark also applies to the method of determining the amount of interest in art. 3.11. below.</p> <p>The Buyer agrees for such insertion with some exceptions as follows:</p>

	<p>days of receipt of the invoice. Buyer shall pay the undisputed part of the invoice within the payment term provided above.</p> <p>Buyer and Seller shall meet in good faith but not later than ten (10) calendar days from Seller's receipt of such notice to discuss the disputed invoice. Upon settlement of the dispute, Buyer shall immediately pay all amounts agreed to be due with respect to the disputed amount(s) to Seller and Seller shall then issue a credit or debit note to Buyer for the disputed portion.</p> <p>3.10. Buyer shall have no right to withhold or offset payments with respect to a Purchase Order/the Agreement for disputed amounts or for any other type or kind of claim or disputes between Buyer and Seller.</p> <p>3.11. If an invoice is not paid in full within the payment term mentioned above, interest at the rate of 5% plus LIBOR and/or maximum rate allowable under applicable law shall apply from the due date for payment until receipt by Seller of the unpaid amount whether or not after judgment. If unpaid amounts are collected through legal proceedings or by a collection agent, Buyer shall, in addition to paying all amounts owed hereunder, pay Seller's collection costs and legal fees. Seller shall have the right to suspend all Screens delivery at any time during the term of this Agreement and as necessary, in the event the Buyer fails to make the payment of the invoices within the payment terms and conditions agreed above. Buyer will be responsible for all the costs and liabilities incurred during this suspension.</p>	<p>"3.9. Buyer agrees that should any portion of an invoice be disputed, Buyer shall promptly notify the Seller of the reasons for disputing all or part of that invoice within ten (10) business days of receipt of the invoice. Buyer shall pay the undisputed part of the invoice within the payment term mentioned in Art. 3.6. Buyer and Seller shall meet in good faith (in person or by videoconference) but not later than ten (10) business days from Seller's receipt of such notice to discuss the disputed invoice. Upon settlement of the dispute, Buyer shall immediately pay all amounts agreed to be due with respect to the disputed amount(s) to Seller after receiving from and Seller properly shall then issued invoice for the disputed portion.</p> <p>3.10. Buyer shall have no right to withhold or offset payments with respect to an Purchase order or the Agreement for disputed amounts mentioned in Art. 3.9 or for any other type or kind of claim or disputed claims between Buyer and Seller.</p> <p>3.11. If properly issued, delivered and undisputed invoice is not paid in full within the payment term mentioned in Art. 3.6, interest at the rate of 5% plus LIBOR and/or maximum rate allowable under applicable law in the amount of statutory interest for delay shall apply from the due date for payment until receipt by Seller of the unpaid amount whether or not after judgment. If unpaid amounts are collected through legal proceedings or by a collection agent, Buyer shall, in addition to paying all amounts owed hereunder, pay Seller's justified, reasonable and documented collection costs and legal fees. Seller shall have the right to suspend all Screens delivery at any time during the term of this Agreement and as necessary, in the event the Buyer at least twice fails to make the payment of undisputed invoices within the payment terms and conditions agreed above. Buyer will be responsible for all the costs and liabilities incurred during this suspension."</p>
18.	<p>Art.4. Parties' Undertakings <u>Please amend sub-article 4.4 as follows:</u></p> <p>g) if the Seller is charged at least twice by contractual penalties</p> <p><u>Please amend sub-article 4.5 as follows:</u> In the event of immediate termination of the Agreement or withdrawal from the Agreement by the Buyer, the Seller shall receive remuneration corresponding to the value of orders actually and properly delivered, received by the Buyer without comments, based on the Acceptance Protocols signed by the Parties, referred to in art. 2.8 and any direct costs incurred due to such termination/ withdrawal.</p>	<p>The Buyer agrees for deletion of art. 4.4 letter g.</p> <p>The Buyer agrees for deletion of term "immediate", but cannot agree for insertion of final phrase. The Buyer cannot bear the negative consequences of properly exercising his right to terminate or withdraw from the Agreement.</p>

<p>19.</p>	<p>Art. 6 Warranty <u>Please replace sub-article 6.3 as follows, for a more detailed warranty provision:</u></p> <p>Seller warrants that the Screens manufactured by Seller, when properly serviced by authorized service representatives and when properly used and maintained, shall be free from defects in material and workmanship for a period of twenty-four (24) months from date of shipment from Seller. Seller's obligation under this warranty shall be limited, at Seller's sole option, to the replacement or repair of the part (or parts) or Screens, which prove(s) defective in material or workmanship within the aforesaid period, provided that Buyer gives Seller prompt written notice of any defect or failure, and satisfactory proof thereof. Any defective part or parts must be returned to Seller's factory or to an authorized service center for inspection. Buyer shall prepay all freight charges to return any Screens to Seller's factory or to any other repair facility designated by Seller. Seller shall deliver replacements for defective Screens to Buyer, freight prepaid, to the destination provided for in the original order. Products returned to Seller for which Seller provides replacement under this warranty shall become the property of Seller.</p> <p>The warranty is strictly limited to the place of delivery.</p> <p>Furthermore, this limited warranty does not apply to normal wear and tear, or sub-standard performance caused by well conditions, including but not limited to abrasive materials, corrosion due to aggressive fluids, lightning, improper voltage supply, mishandling or misapplication.</p> <p>In the event that any Screen is altered or repaired by Buyer or any person other than Sellers's authorized service representative, without prior written approval by Seller, or in the event that Buyer sells or leases the Screens to a third party, all warranties are void. Screens and accessories supplied by but not manufactured by Seller are warranted only to the extent of and by the original manufacturer's warranty. A new warranty period shall not be established for any Screen(s) repaired or replaced under warranty. Such items shall remain under warranty only for the remainder of the warranty period on the original Screens.</p> <p><u>Kindly amend sub-article 6.5 as follows:</u></p> <p>6.5. In the event that the Seller delivers defective Screens, the Seller undertakes at its own expense to remove defects in Screens by either collecting the each defective batch Screen and delivering a new one or repairing the defective Screen(s) or part thereof within the timelines provided in article 2 item 2.2 at a) and b) (which shall be incorporated in the Commercial Proposal), after being notified of the defect by the Buyer.</p> <p><u>Kindly amend sub-article 6.6 as follows:</u></p>	<p>According to point 3.1 of Tender Invitation, such provisions should be part of Technical Offer – Section 3: “Terms of warranty according to Appendix No. 1 – Technical Specification, point 5:</p> <ul style="list-style-type: none"> a) scope and period of warranty for the offered products (minimum 24 months), b) time for reporting a defect from the moment it was discovered c) method of reporting defect, d) the deadline for response to the report of a defect and the deadline for removing the defect, e) defect removal method (replacement of the product with a new one, refund, etc.).” <p>In intention to accent that, the Buyer amends art. 6.3 by additional third sentence as follows: “Detailed warranty conditions are specified in the Technical Offer No. dated contained (<i>depends on the Offer</i>) in the Appendices No. 2.1 and/or 2.2 and/or 2.3 to this Agreement”.</p> <p>Please note also that in according to Art. 6.3 second sentence: “In the event of replacement of the Screens for a fault-free, the warranty period runs again from the date of delivery by the Seller to the Buyer of the Screens free from defects.” This does not mean that the warranty given is perpetual, but that for each newly supplied Screen it is granted for the same declared period.</p> <p>The Buyer, respecting that the Seller may present different ways of removing defects, in art. 6.5 deletes marked below phrase replacing it with a gap to be completed after the end of the tender, in accordance with the winning offer: “In the event that the Seller delivers defective Screens, the Seller undertakes at its own expense to remove defects in Screens by within days/weeks after being notified of the defect by the Buyer.”</p> <p>The Buyer cannot agree to change the provisions as suggested by the Bidder for the reasons detailed in point 16 of these Clarifications, referred to Art. 2.5.</p>
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	<p>In the event of failure to comply with the obligations referred to in the preceding point, notwithstanding the provisions of art. 7.1 letter a and b the Buyer reserves the right to purchase Screens from another supplier and charge the Seller a possible difference in the price of Screens, but not higher than 10% of the total value of the order containing defective Screens, referred to in preceding point.</p> <p><i>Kindly add the following sub-article 6.8:</i></p> <p>Buyer acknowledges and agrees that in respect to the Screens, there are no implied warranties of result or effectiveness or merchantability or fitness for purpose and there no other warranties, except as set forth in this article 6. The foregoing warranties, terms, representations, guarantees or abilities, whether oral, written, express, implied or statutory, and such other warranties, terms, representations, guarantees or abilities, in contract in tort, or otherwise (including without limitation strict liability and negligence) are disclaimed. Seller's warranty obligations hereunder and Buyer's remedies (except as to title) are solely and exclusively as stated in this article 6.</p>	<p>Please include such provisions in section 3 of the Technical Offer, which will be an integral part of the Agreement if Your offer will win in the tender. As for the scope of what the warranty statement should contain, please go to point 3.1 of Tender Invitation, for Technical Offer – Section 3.</p>
<p>20.</p>	<p>Art. 7. Contractual penalties</p> <p><i>Kindly remove the entire article</i></p>	<p>The Buyer cannot agree to the total resignation from the contractual penalties, but nevertheless reduces them as follows:</p> <ul style="list-style-type: none"> - in Art. 7.1 letter a reduces the penalty imposed therein from 10 to 7,5% of the net contractual remuneration. The Buyer cannot introduce a penalty equivalent to the other Party of the Agreement, because such a provision would be invalid by law. According to art. 483 § 1 of the Polish Civil Code and by a resolution of the Polish Supreme Court (file reference number: III CZP 3/19) stipulating a contractual penalty is not allowed in the event of withdrawal from the contract due to non-performance of a financial obligation. The Seller may, however, withdraw from the Agreement pursuant to art. 491 of the Polish Civil Code; - in Art. 7.1 letter b stipulates that contractual penalties will be charged backwards and collectively only when the Seller performs more than 30% of deliveries or warranty repairs within six months with a delay. As a result of the above changes: <ul style="list-style-type: none"> -the provision of Art. 4.4 letter b is replaced by the following: "within 6 months the Seller has completed more than 30% of deliveries or warranty claims with delay"; - the provision of Art. 7.1 letter a is replaced by the following: "7,5% of the net contractual remuneration referred to in art. 3.1 for withdrawal from the Agreement by any of the Parties, for reasons attributable to the Seller"; - the provision of Art. 7.1 letter b is replaced by the following: "1% of the value of the delayed delivery due to the Seller's fault for each day of culpable delay in the delivery of the Screens or in the removal of defects of

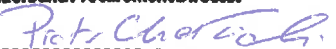
		the Screens in accordance with the terms of the Guarantee, with these penalties being charged for all delays due to the Seller's fault only when the Seller completes more than 30% of deliveries within 6 months with delay or will be in delay in removing defects in relation to more than 30% of reported defects with the terms of the Guarantee - regardless if the Buyer's exercising the right provided for in Art. 4.4 letter b."
21.	<p>Art. 9. Force Majeure</p> <p><u>Kindly amend sub-article 9.2 as follows:</u></p> <p>[...] The Party affected by the Force Majeure shall immediately, no later than within 2 7 days, inform the other Party in writing about the time needed to initiate again the performance of the Agreement after the Force Majeure termination, with a proper justification.</p> <p><u>Kindly insert at the end of sub-article 9.4:</u></p> <p>"The Buyer shall pay the Seller all the direct costs incurred in case of termination due to a Force Majeure event."</p>	<p>The Buyer agrees to amend from 2 to 7 days to inform the other Party about the time needed to initiate again the performance of the Agreement.</p> <p>The Buyer cannot agree for such insertion. Each Party should bear its own costs incurred as a result of Force Majeure event.</p>
22.	<p>New article 11</p> <p><u>Kindly add the following new article 11. Limitation and Exclusion of Liability:</u></p> <p>11.1. Notwithstanding anything to the contrary, Buyer shall release, save, indemnify, defend and hold harmless Seller from Buyer's own Consequential Loss and Seller shall release, save, indemnify, defend and hold harmless Buyer from Seller's own Consequential Loss, arising from, relating to or in connection with the performance or non-performance of this Agreement. For the purposes of this article 11 the expression "Consequential Loss" shall mean: (i) any consequential, indirect, or exemplary loss or damage under governing law; and (ii) any loss and/ or deferral of production, rig down time or standby time, loss of product, loss of use, loss and/ or deferral of revenue, profit or anticipated profit (if any), in each case whether direct or indirect to the extent that these are not included in (i), and whether or not foreseeable at the effective date of the Agreement.</p> <p>11.2. Seller's overall liability arising out of or in any way related to this Agreement or the delivery or failure to deliver any products hereunder shall be limited to an amount equal to the remuneration set out in article 3.1. This limitation of liability shall apply whether any such claim arises in Agreement, tort or at law, and shall apply irrespective of the expiration or earlier termination of the Agreement and shall also apply in case Buyer withdraws from the Agreement in accordance with article 4.4. Buyer shall defend, indemnify and hold Seller harmless from and against any claims in excess hereof."</p>	<p>The Buyer has already added the consequential loss provisions as requested by the Bidder in point 7 of these Clarifications. If there is a need to clarify or modify them, please indicate specific reservations.</p> <p>The consolidated text of the Agreement including all changes covered by the Clarifications will be published with these and eventually further Clarifications.</p>

23.	<p>New article 12</p> <p><u>Kindly add this new article 12. Intellectual Property Ownership:</u></p> <p>For the purpose of this article; "Intellectual Property" means all trademarks or trade names patents, mask works, patents, patent applications, copyrights (whether published or unpublished), trade secrets, know-how, designs, methods, processes, work-flow, inventions, proprietary information and transferable rights relating to the Screens. Seller owns all rights to the proprietary Intellectual Property embodied in the Screens or which are created in the course of providing such Screens to Buyer. Seller does not transfer any ownership rights in such Intellectual Property to Buyer; and the rights and obligations of the Parties with respect to patents or any other intellectual property rights are solely and exclusively as stated herein.</p>	<p>The Buyer agrees for addition of proposed provisions, but introduces them not as new Article 12, but as one of sub-articles in Art. 11 (Miscellaneous).</p> <p>The consolidated text of the Agreement including all changes covered by the Clarifications will be published with these and eventually further Clarifications.</p>
24.	<p>Last paragraph</p> <p><u>Kindly remove as part of clarification:</u></p> <p>This Agreement has been drawn up in in the English language and in the Polish language. In the event of any discrepancies between the English and Polish versions the English/ Polish* language version of this Agreement shall prevail.</p> <p>*Polish only, if the Seller chooses such version.</p>	<p>The Buyer remains with the current wording, because until the tender is settled it is not known where the winning Bidder will come from.</p>
25.	<p>Art. 2 Orders and delivery</p> <p><u>Please modify sub-article 2.5. as follows:</u></p> <p>In the event of lack of response from the Seller in the form of a notification within abovementioned time scope or in the event of the Seller's statement about the inability to complete the order, the order will be considered as not accepted, and the Buyer will be entitled to place the same order with another supplier; with the right to charge the Seller with the difference in the price of the Screens, but not higher than 10% of the value of the order.</p>	<p>The Buyer agrees for deletion of marked phrase.</p>

26.	<p>Art. 4 Parties' Undertakings <i>Please modify sub-article 4.4. as follows:</i></p> <p>The Buyer has the right to withdraw, upon fourteen (14) days prior notice, from this Agreement in the following situations:</p>	<p>The Buyer agrees for such insertion with some exceptions as follows:</p> <p>"The Buyer has the right to withdraw from this Agreement, upon prior seven (7) days written notice to the Seller indicating existence of grounds for exercising withdrawal from the Agreement, in the following situations:"</p>
27.	<p>Art.6 Warranty <i>Please modify sub-article 6.6. as follows:</i></p> <p>In the event of failure to comply with the obligations referred to in the preceding point, notwithstanding the provisions of art. 7.1 letter a and b the Buyer reserves the right to purchase Screens from another supplier and charge the Seller a possible difference in the price of Screens, but not higher than 10% of the total value of the order containing defective Screens, referred to in preceding point.</p>	<p>The Buyer agrees for deletion of marked phrase.</p>
28.	<p>Art. 7 Contractual penalties <i>Please amend sub-article 7.1 as follows:</i></p> <p>a) 7,5% of the net contractual remuneration of the order referred to in art. 3.1 for withdrawal from the Agreement by any of the Parties, for reasons attributable to the Seller.</p> <p>b) 10% of the net contractual remuneration referred to in art. 3.1 for each case of breach of the obligation specified in art. 11.2.</p>	<p>The Buyer cannot agree for such amendment. The contractual penalty in this case should refer to the entire contractual remuneration understood as the estimated annual value of the contract. This penalty applies to the withdrawal from the entire contract, not a single order.</p> <p>The Buyer, referring to the regulations in this matter contained in the generally applicable provisions of law and its internal corporate provisions, introduced such contractual penalty in order to maintain an appropriate level of protection of confidential information, the Company's secret. In his opinion, its amount is adequate, if not underestimated. For this reason, the Buyer cannot agree to delete the entry in question as suggested by the Bidder.</p>

Z poważaniem

Tenders and Procurement Director


Piotr Chelmiński