

**SPECIFICATION OF ORDER CONDITIONS (SWZ)  
IN PROCEEDINGS CONDUCTED  
IN FORM OF AN UNLIMITED TENDER**

**FOR**

**PURCHASING INTERMODAL ROLLING STOCK  
FOR RAIL POLSKA SP. Z O.O.**

**BY**

**Rail Polska Sp. z o.o.  
Willowa Street 8-10 Apartment 11  
00-790 Warsaw**

**WARSAW ..... 2013**

## **1. CUSTOMER**

Rail Polska Sp. z o.o., Willowa Street 8-10 Apartment 11, 00-790 Warsaw

## **2. ORDER OF ACTION**

1. The proceedings are conducted as an unlimited tender, according to article 70<sup>1</sup> to 70<sup>5</sup> of the Civil Code and Specification of Order Conditions (further referred to as "Specification" or SWZ).
2. The proceedings are not subject to the law of 29 January 2004 - Public Order Law (Journal of Laws of 2010, Number 113, position 759, with changes).

## **3. DESCRIPTION OF THE SUBJECT OF THE ORDER**

1. The subject of the order is the purchase of 84 5-platform articulated wagons, to be used by Rail Polska Sp. z o.o. in provision of intermodal transport services – freight railway transport of containers.
2. Bidder shall attach to its offer a statement describing origin of equipment and declare that the equipment was not purchased in course of the last seven years with use of any national or EU subsidy and that the equipment (rolling stock) has technical characteristics necessary to realize the undertaking and meets obligatory norms and standards.
3. In case of offering second-hand wagons, their price cannot exceed their market value and has to be lower than a price of similar new wagons.
4. A detailed description of the subject of the order is presented in Attachment Number 1 to the Specification.

## **4. CONDITIONS OF TAKING PART IN PROCEEDINGS AND DESCRIPTION OF ASSESSMENT OF CONFORMITY WITH CONDITIONS**

1. In the proceedings, offers may be submitted by Bidders who meet requirements regarding:
  - a) possession of authorizations to perform a specific activity and actions, if the possession is required by legal regulations,
  - b) possession of relevant knowledge and experience, i.e.:
    - 1) in case of offering new wagons, Bidder must prove that in the course of the last 5 years prior to the start of the proceedings, he/she executed properly at least 1 contract for delivery of at least 50 new railway wagons to carry 40'-45' containers,
    - 2) in case of offering second-hand and/or modernized wagons, Bidder must prove that in the course of the last 5 years prior to the start of the proceedings, he/she executed properly at least 1 contract for delivery of at least 50 second-hand and/or modernized railway wagons to carry 40'-45' containers and/or in the course of the last 5 years prior to the start of the proceedings executed properly at least 1 contract for modernization of at least 50 second-hand railway wagons to carry 40'-45' containers;
  - c) Economic-financial situation:
    - 1) Bidder is obliged to prove that he/she possesses cash or credit capacity not lower than 1 500 000.00 EUR,
    - 2) Bidder is obliged to possess Civil Liability insurance due to conducted operations at an amount not lower than 10 000 000.00 PLN.
    - 3) Bidder is obliged to prove that he/she pays health and social insurance premiums on time,
    - 4) Bidder is obliged to prove that he/she pays taxes on time.
2. It shall be assessed if Contractor meets conditions of participation in the proceedings:
  - a) with regard to conditions defined in item 1 with a "meets", "does not meet" methodology, on the basis of information presented in documents referred to in item 5.
  - b) Bidder who does not meet conditions defined in item 1 shall be excluded from the proceedings.

3. Customer shall exclude from the proceedings:
  - a) Bidder towards whom a liquidation procedure started and whose bankruptcy was announced, except for Bidder who, after bankruptcy announcement signed an agreement approved by the verdict of a court with relevant jurisdiction, if the agreement does not envisage creditors' reimbursement by means of a liquidation of bankrupted assets,
  - b) Bidder who does not pay on time taxes, fees or social and health insurance premiums, except for cases when he/she obtained a legal exemption, deferral or spread of overdue payments into instalments or a total stoppage of execution of a decision of a relevant body,
  - c) Bidder who performed directly actions related to preparation of the bid and/or who in course of offer development made use of persons involved in these actions, unless participation of these contractors in the proceedings does not disturb fair competition,
  - d) Bidder who presented untrue information affecting or capable of affecting the outcome of the bid,
  - e) Bidder who did not prove conformity with criteria of taking part in the bid defined in item 1.

## **5. INFORMATION ABOUT STATEMENTS AND DOCUMENTS TO BE SUBMITTED BY BIDDERS**

1. Bidder is obliged to submit an offer according to a draft presented in attachment number 2 to SWZ.
2. Bidder is obliged to submit a statement about meeting conditions of taking part in the proceedings in a form compatible with attachment number 3 to SWZ.
3. Bidder is obliged to submit a statement that he/she is not subject to exclusion from the proceedings, in a form compatible with attachment number 4 to SWZ.
4. In order to confirm that the condition defined in item 4, point 1, letter a) of SWZ is met, Bidder is obliged to submit a license or a consent, if laws require their possession in the scope relevant to/covered by the order.
5. Bidder is obliged to submit a statement that liquidation proceedings were not opened towards Bidder and/or his/her bankruptcy was not announced, in a form compatible with attachment number 5 to SWZ.
6. Bidder is obliged to submit a valid extract from a relevant register or a current certificate of inclusion in the register of economic activity, if separate regulations require inclusion into the register or registration in the register of economic activity, issued not earlier than 6 months prior to the deadline for submitting the offer and, if the place of Bidder's domicile or headquarters is situated outside the Republic of Poland, counterpart documents (issued in the state of domicile or headquarters) and, if such documents are not available, a relevant declaration (submitted in front of a relevant administrative body, court or a notary) saying that Bidder's liquidation procedure did not start and its bankruptcy was not announced.
7. A valid certificate from the head of a relevant tax office and a relevant ZUS (Social Security Office) Division and/or a Cash Desk of Agricultural Social Insurance, confirming, respectively, that Bidder pays taxes, fees and health and social insurance premiums on time (issued not earlier than 3 months prior to the deadline for submitting the offer) and, if Bidder's place of domicile or headquarters is situated outside the Republic of Poland, counterpart documents (issued in the state of domicile or headquarters) and, if such documents are not available, a relevant declaration (submitted in front of a relevant administrative body, court or a notary) saying that Bidder pays taxes, fees and health and social insurance premiums on time
8. In order to confirm that a condition defined in item 4, point 1, letter b) is met, Bidder is obliged to submit a list of orders (compatible with the subject of the order, as far as their type and value is concerned) realized in the course of 5 years prior to the day of starting the proceedings and quote their subject, date of execution and recipients, according to a draft constituting attachment 6 to SWZ, and attach documents confirming proper execution of the orders.
9. In order to confirm that a condition defined in item 4, point 1, letter c) was met, Bidder is obliged to submit:
  - a) information or an opinion from the bank in which he/she has a bank account, confirming that he/she possesses resources and/or credit capacity at the amount defined in item 4.1.c.1 (issued not earlier than 3 months prior to the deadline for submitting the offer),
  - b) a copy of a valid civil liability insurance policy due to conducted operations at an amount of at least PLN 10 000 000.00 plus confirmation of payment of the premium.

10. If Bidder submits a document, a statement (in order to prove conditions of participation in the proceedings) which indicates amounts in currency different than PLN, Customer shall recalculate them into PLN, according to an average exchange rate of the National Bank of Poland of the day of publishing the notice about the order in the EU Official Journal. If the date of publishing is Saturday or a holiday, Customer shall accept as the recalculation exchange rate the average exchange rate of the National Bank of Poland on the first working day following publication of the notice about the order in the EU Official Journal.

## **6. INFORMATION ON METHOD OF COMMUNICATION BETWEEN CUSTOMER AND BIDDERS AND DELIVERY OF STATEMENTS AND DOCUMENTS, INDICATION OF PERSONS AUTHORIZED TO COMMUNICATE WITH CONTRACTORS**

1. A person authorized to contact Contractors is:  
Mr Mirosław Tusiński, tel. +48 338429055, fax +48 22 646 54 66, e-mail: [miroslaw.tusinski@railpolska.pl](mailto:miroslaw.tusinski@railpolska.pl); railpolska@railpolska.pl  
at Customer's headquarters from Monday to Friday from 09:30 – 15:30.
2. Declarations, conclusions, questions, notices and information is provided by means of facsimile, email and/or letters to the following address:  
Rail Polska Sp. z o.o., ul. Willowa 8-10 Lok 11, 00-790 Warszawa  
Facsimile: +48 22 646 54 66, e-mail: railpolska@railpolska.pl
3. Before the deadline for submitting the offer, Bidder may ask Customer for explanation of the contents of Specification.
4. Customer provides a response or explanations if a question or request is submitted not later than 6 days prior to the deadline of submitting the offer.
5. Customer shall provide all Bidders whom he/she provided with the specification with his/her response without disclosing the source of questions and shall publish the response on his/her web page.

## **7. REQUIREMENTS REGARDING DEPOSIT**

1. As collateral of a submitted offer, Bidder is obliged to pay a deposit of PLN 2 000 000.00 in form of a bank guarantee or an insurance guarantee, irrevocable, unconditional, paid upon the first call, for the period of validity of the offer, or in another form accepted by Customer.
2. Customer shall keep the deposit if:
  - a) Bidder refused to sign an agreement subject to public procurement under conditions defined in his/her offer,
  - b) Bidder did not pay the required bid bond,
  - c) It was impossible to sign an agreement subject to public procurement because of Contractor.
3. Customer shall return a deposit upon an expiry of an offer binding period or upon signing the agreement and paying a collateral of a proper execution of the agreement.

## **8. OFFER VALIDITY**

1. Bidder is bound by a submitted offer for a period of 60 days after the deadline for submitting the offer.
2. Customer may ask Bidders to extend the offer binding period by 30 days.

## **9. DESCRIPTION OF OFFER DEVELOPMENT**

1. Bidder may submit only one offer covering the whole of the subject of the order, by completing Offer Form (in accordance with the draft presented in attachment Number 2 to this specification) and signing it by a duly authorised person.
2. Offer must be submitted in writing, otherwise it may be considered invalid.

3. In addition to the Offer Form, completed and signed according to principles of representation indicated in a relevant register or the register of economic activity, Bidder is obliged to submit documents defined in item 5, points 2 - 9 of this Specification and:
  - a) the original document confirming payment of a deposit,
  - b) a proxy to submit an offer, if an offer is submitted by a person different from a person authorized to act on behalf of Bidder according to contents of an extract from a relevant register or a valid certificate of inclusion in the register of economic activity.
4. The Offer must be made in Polish and/or English.
5. The offered price must be quoted in Polish currency, and has to define the Bidder's total fee for execution of the subject of the Order including all due taxes and charges.
6. The pages must be permanently bound and numbered consecutively.
7. Each amendment to the contents of the offer must be initialled by the person who signs the offer.
8. If documents submitted with an offer include a company's confidential information, as understood by article 11, item 4 of the law of 16 April 1993 about preventing unfair competition (Journal of Laws of 2003 Number 153, position 1503, with changes), Bidder is obliged to indicate in a way which does not evoke any doubt, which information is confidential for the company.
9. Offer and attached documents should be submitted in an envelope closed in a way which does not allow reading the contents without damaging it.
10. The envelope should be marked with the Bidder's name (company) and address and described as follows:
 

"Offer for purchasing intermodal rolling stock for Rail Polska Sp. z o.o.

Do not open before [date], [hour]."
11. Before the deadline for submitting the offer, Bidder may withdraw his/her offer or amend it. A statement about withdrawal or amendments should be delivered to Customer in writing, otherwise it may be considered invalid, before the deadline for submitting the offer. A statement should be wrapped as an offer and the wrapping should be marked with the additional words: "WITHDRAWAL" or "CHANGE".
12. Customer does not accept partial or variant offers.

## **10. DESCRIPTION OF METHOD OF ASSESSING THE PRICE**

1. Contractor shall quote offer's price as presented in the Offer Form in the Attachment number 2 to SWZ.
2. VAT rate is defined according to the law of 11 March 2004 about tax on goods and services (the Journal of Laws Number 54, position 535 with subsequent changes).
3. All values shall be quoted in PLN. The offer price shall be presented as a number (with digits) and in words with an accuracy of two positions following the decimal point.
4. The offer price shall include all Contractor's costs related to provision of the subject of the agreement and it shall include other charges, as well as taxes resulting from execution of the agreement, potential reductions and discounts.

## **11. DESCRIPTION OF CRITERIA CUSTOMER MUST FOLLOW IN SELECTING AN OFFER, INCLUSIVE OF PRESENTATION OF SIGNIFICANCE OF THE CRITERIA AND THE METHOD OF ASSESSING AN OFFER**

Customer shall obey the following criteria and their significance in selecting the best offer and he/she shall assess offers according to specific criteria in the following way:

<b>l.p.</b>	<b>criterion</b>	<b>number of points (importance)</b>
1.	Price	
2	Warranty period (18 months the minimum)	
3	Timetable of deliveries	
<b>TOTAL</b>		<b>100</b>

In the case of the „Price” criterion, the biggest number of points (60) shall be given to an offer containing the lowest gross price, and each other offer in order of ranking shall receive points according to the following formula:

$$K_C = \frac{K_{CN}}{K_{CB}} \times 60$$

Where:

$K_C$  – means price criterion

$K_{CN}$  – the lowest price presented in offers

$K_{CB}$  – price of any submitted offer

In the case of the “warranty period” criterion, the biggest number of points (20) shall be given to the offer with the highest number of months under warranty, and each other offer in order of ranking shall be awarded points according to the following formula:

$$K_G = \frac{K_{GB}}{K_{GN}} \times 20$$

Where:

$K_G$  – means warranty period criterion

$K_{GN}$  – the biggest number of months under warranty

$K_{GB}$  – number of month in any submitted offer

The offer with the highest number of points shall be selected according to the following formula:

$K_C + K_G$  = number of points of an offer

In the case of the „timetable of deliveries” criterion, the highest number of points (20) shall be given to the offer with the most wagons delivered by 31.12.2014, and each other offer in order of ranking should be awarded points according to the following formula:

$$K_H = \frac{K_{HB}}{K_{HN}} \times 20$$

Where:

$K_H$  – means timetable of deliveries criterion

$K_{HN}$  – the highest number of wagons delivered by 31.12.2014

$K_{HB}$  – number of wagons of any submitted offer delivered by 31.12.2014

The offer with the highest number of point shall be selected according to the following formula:

$K_C + K_G + K_H$  = number of points for an offer

## 12. PLACE AND DATE FOR SUBMITTING THE OFFER AND OPENING

1. Offers shall be submitted by 16-06-2014 at 2:00 PM in Customer's headquarters at Willowa Street 8-10 apartment 11, 00-790 Warsaw.
2. Offers shall be open on 16-06-2014 at 3:00 PM in Customer's headquarters, Willowa Street 8-10 apartment 11, 00-790 Warsaw.
3. Opening of offers is public.
4. In course of offer opening, Customer shall present names (companies) and addresses of Bidders, as well as information on price.
5. Customer shall inform all Bidders about the result of the proceedings and place information resulting from offer opening on its web page.

## 13. OFFER ANALYSIS AND ASSESSMENT

1. Customer shall assess offers according to criteria defined in item 11 of SWZ.
2. In case of recognizing formal deficiencies in any submitted offer, Customer may invite Bidder to complete it by a date he/she selects.
3. In case of unclear or ambiguous contents of an offer, Customer may invite Bidder to provide an explanation by a date he/she selects.

4. Customer may ask Bidder to present factors affecting the level of a price in order to find out if an offer includes a grossly low price in comparison to the subject of the order.
5. In making an assessment of Bidder's explanations, Customer shall consider especially the economy of the method of executing the order, selected technical solutions, exceptionally favourable conditions of executing the order available to Bidder and the impact of public aid provided on the basis of separate regulations.
6. If Bidder does not submit corrections or explanations defined in items 2 – 4 or if an assessment of explanations confirms that an offer includes a grossly low price in comparison to the subject of the order, Customer shall reject an offer of the Bidder.
7. If it is not possible to select the best offer due to submission of offers including the same price, Customer shall invite the Bidders who submitted the same offers to submit additional offers but additional offers must not quote a higher price.

#### **14. OFFER REJECTION, BIDDER EXCLUSION**

1. Customer shall reject an offer which is incompatible with the contents of the Specifications, unless the incompatibility is irrelevant/insignificant
2. Customer shall reject an offer submitted by an act of unfair competition, as understood by regulations about preventing unfair competition.
3. Customer shall reject an offer submitted by a contractor ruled out of the tender
4. Customer shall rule out Bidder who did not prove that he/she met conditions of participation in proceedings defined in item 4 of SWZ
5. Customer shall rule out Bidder who did not submit corrections or explanations defined in point 13, items 2. – 4. of SWZ
6. Customer shall rule out Bidder who did not pay a deposit.

#### **15. INFORMATION ABOUT FORMALITIES WHICH SHOULD BE MET AFTER OFFER SELECTION IN ORDER TO SIGN AGREEMENT**

Before signing the agreement Contractor shall contribute a collateral of a proper execution of the agreement, according to principles and at an amount defined in item 16 of SWZ.

#### **16. REQUIREMENTS FOR COLLATERAL FOR PROPER EXECUTION OF THE AGREEMENT**

1. Before signing the agreement Contractor is obliged to pay a collateral for proper execution of the agreement at an amount of 20% of the offer price, calculated inclusive of VAT.
2. Collateral of a proper execution of the agreement can be paid in one of the following forms:
  - a) Cash,
  - b) Bank guarantee,
  - c) Insurance guarantee.
3. If a collateral of a proper execution of the agreement is paid in:
  - a) cash - an appropriate amount shall be paid into Customer's bank account:  
BPH-PBK S.A I Oddział Oświęcim, 81 10600076 0000 3200 0035 7080
  - b) other acceptable forms, a document for a collateral shall be submitted to Customer's headquarters.
4. A document of bank/insurance guarantee should indicate in a clear cut way that payment of receivables from the collateral shall be made irrevocably, unconditionally, upon Customer's first call.
5. An effective contribution of a collateral in cash takes place at the moment of a receipt of resources at the bank account defined in item 3, letter a) or when Customer receives the original of a relevant document.

## **17. CRUCIAL PROVISIONS OF AGREEMENT / DRAFT AGREEMENT**

Crucial provisions of the agreement /draft agreement constitute attachment number 7 to SWZ.

## **18. CHANGING SWZ**

1. Customer may change the contents of SWZ before the deadline for submitting the offer.
2. Customer shall publish, immediately, information about changes in SWZ on Customer's web page and, if the change in SWZ accounts for changing contents of the notice, Customer shall provide an announcement about changing contents of the notice for publication in TED.
3. Customer shall provide Bidders provided with SWZ with information about changed SWZ, if they made their contact data available.

## **19. COMPLETION OF PROCEEDINGS**

1. Customer retains the right to terminate the bid without selecting any offer without giving reasons.
2. Customer shall inform Bidders, immediately, in writing, about termination of the bid and selection of the best offer or termination of the bid without selecting any offer and publish the information on Customer's web page and an announcement board in Customer's headquarters.
3. Customer does not reimburse costs of taking part in the proceedings.

### **Attachments:**

1. Detailed Description of the Subject of the Order
2. Draft Offer Form
3. Declaration about Meeting Conditions of Taking Part in Proceedings
4. Declaration about not Being a Subject of Exclusion
5. Declaration regarding Liquidation and Bankruptcy
6. List of Executed Orders
7. Crucial Provisions of the Agreement / Draft Agreement



## DETAILED DESCRIPTION OF THE SUBJECT OF THE ORDER

The proceedings concern the purchase of 84 pieces of 5-platform open wagons to carry containers.

1. A wagon of loading capacity on each platform:
  - a) of one or two 20' long containers (weight restriction is admissible);
  - b) one container 30' or 40' long and 8' or 8' 6" wide.
2. A wagon shall be adjusted to loading and unloading with cranes or Reach-stackers.
3. Technical parameters of a wagon:

Wagon type	Articulated 5 platform wagon. Mechanical designation: intermodal articulated wagon (standard, low profile) Equipment designation: intermodal low profile wagon. Series: „Sggoorss”. S – low profile wagon; gg – adjusted to transport of containers of a total length above 60 feet; oo – four or more platforms; ss – transport speed up to 120 km/h.
Series of wagon (Sggrss, Sggnss, Laagss etc.)	Defined upon European homologation.
Number of axles	12
Bogie standard	According to requirements of a relevant TSI norm (section 5.4.2.1)
Type of brake inserts	High friction composition brake shoe
Brake system	Brake inserts of K type or of an equivalent function
Norms	According to "TSI"
Kinetic gauge	UIC 505-1 gauge
Level of interoperability	According to norms defined in TSI-WAG
Construction guidelines	According to requirements of a relevant TSI norm
Wagon's weight	Not more than 78 500 kg
Maximum loading capacity	185 610 kg
Length of wagon with buffers	The minimum, depending on loading capacity
(Total) Length of undergear	The minimum, depending on loading capacity
Maximum height of platform	1 155mm
Maximum axle load	22,5 tonnes
Maximum gauge between wheel sets in bogie	1 435 mm
Wheel diameter in wheel's tread	920 mm or less
Type of coupling apparatus	415Z or equivalent
Maximum speed of an empty wagon	120 km/h
Maximum speed of a loaded wagon	120 km/h
Minimum radius for a single wagon	80 m

4. Each wagon purchased within the Project shall meet requirements of relevant norms and provisions of Commission Regulation (EU) No 321/2013 of 13 March 2013 concerning the technical specification for interoperability relating to the subsystem 'rolling stock — freight wagons' of the rail system in the European Union and repealing Decision 2006/861/EC (1).

(stamp with Contractor's address)

**Rail Polska Sp. z o.o.**

ul. Willowa 8-10 apartment 11

00-790 Warszawa

## OFFER

### CONTRACTOR'S DATA:

Name and address:

.....

tel.: ..... fax.: ..... e-mail: .....

NIP: ..... REGON: .....

Number of bank account: .....

By submitting this Offer in an unlimited tender for [name]:

1. We offer realization of the subject of the order at a price of:

Gross (inclusive of VAT): .....

(written in words: .....)

VAT ..... %: .....

(written in words: .....)

net: .....

(written in words: .....)

2. We offer a guarantee for the subject of the order in a dimension of: ..... months.
3. We offer delivery of ..... wagons by 31.12.2015 (date of payment for the last delivery should fall on this day, at the latest)
4. We believe to be bound by the offer for time indicated in SWZ, i.e. 60 days.
5. We declare that we accept SWZ conditions and we have no reservation about them.
6. We declare that the offered price includes all costs of execution of the order and realization of the future contracted service/provision.
7. We declare that we accept conditions included in provisions of the agreement and, if you select our offer, we undertake to sign an agreement under conditions presented in SWZ, at place and time indicated by Customer but not later than by the end of the offer binding period.
8. We pay a deposit in form of: .....
9. We submit required documents according to the contents of Specification of Written Unlimited Tender:
- 1) .....
- 2) .....
- 3) .....
- 4) .....
10. We submit an Offer on ..... numbered pages.

.....  
.....  
*(Place and date)*

.....  
*(Signature(s) of person(s) authorized  
to represent Contractor in a registration document  
or in a proper proxy/authorization)*

(stamp with Contractor's address)

**Rail Polska Sp. z o.o.**

ul. Willowa 8-10 apartment 11

00-790 Warszawa

**STATEMENT ABOUT MEETING CONDITIONS  
OF TAKING PART IN PROCEEDINGS**

I, the undersigned:

.....

(name and surname)

Acting on behalf and in aids of:

.....

(name (company) Bidder's detailed address)

Declare that:

.....

(name (company) Bidder's detailed address)

Meets conditions of taking part in proceedings defined in item 4, point 1 of SWZ

.....

.....

(Place and date )

.....

(Signature(s) of person(s) authorized  
to represent Contractor in a registration document  
or in a proper proxy/authorization)

(stamp with Contractor's address)

**Rail Polska Sp. z o.o.**

ul. Willowa 8-10 apartment 11

00-790 Warszawa

**STATEMENT ABOUT NOT BEING A SUBJECT OF EXCLUSION**

I, the undersigned:

.....

(name and surname)

Acting on behalf and in aids of:

.....

(name (company) Bidder's detailed address)

Declare that towards:

.....

(name (company) Bidder's detailed address)

There are no reasons for exclusion from proceedings defined in item 4, point 3 of SWZ.

.....

.....

*(Place and date)*

.....

*(Signature(s) of person(s) authorized  
to represent Contractor in a registration document  
or in a proper proxy/authorization)*

(stamp with Contractor's address)

**Rail Polska Sp. z o.o.**  
ul. Willowa 8-10 apartment  
00-790 Warszawa

**DECLARATION ON LIQUIDATION AND BANKRUPTCY**

I, the *undersigned*:

.....  
(name and surname)

Acting on behalf and in aids of:

.....  
(name (company) Bidder's detailed address)

Declare that towards:

.....  
(name (company) Bidder's detailed address)

No liquidation proceedings started and no bankruptcy was announced.

.....  
.....

(Place and date)

.....

(Signature(s) of person(s) authorized  
to represent Contractor in a registration document  
or in a proper proxy/authorization)

(stamp with Contractor's address)

**Rail Polska Sp. z o.o.**

ul. Willowa 8-10 apartment 11

00-790 Warszawa

**AGREEMENT LIST OF REALIZED ORDERS**

I.p.	Subject of order	Date of execution from - to	Name and address of receiver
1.			
2.			
3.			
4.			

.....  
.....  
(Place and date)

.....  
  
(Signature(s) of person(s) authorized  
to represent Contractor in registration documents  
or in a proper proxy/authorization)



## CRUCIAL PROVISIONS OF AGREEMENT / DRAFT AGREEMENT

Umowa sprzedaży [ ] wagonów [typu]  
zawarta pomiędzy:

Sale Agreement concerning.....wagons [type]  
concluded between

### [Wykonawca:]

Konto bankowe:  
Numer rachunku:  
IBAN:  
NIP:  
Wpis do Rejestru Handlowego:

Reprezentowany przez:

w dalszym ciągu Umowy zwanym "Wykonawcą"

a

Rail Polska Sp. z o.o. z siedzibą w Warszawie przy ul. Willowej 8/10 lok. 11, 00-790 Warszawa, wpisaną do Rejestru Przedsiębiorców Krajowego Rejestru Sądowego prowadzonego przez Sąd Rejonowy dla m. st. Warszawy w Warszawie, XIII Wydział Gospodarczy, pod nr KRS 0000026872

Konto bankowe: BPH-PBK S.A I Oddział Oświęcim  
Numer rachunku:  
81 10600076 0000 3200 0035 7080  
**NIP UE: NIP PL: 521-30-39-201**

reprezentowanym przez:

w dalszym ciągu Umowy zwanym "Klientem"

zwane łącznie w dalszej treści umowy Stronami

### § 1.

1. Przedmiotem Umowy jest dostawa [ ] sztuk wagonów [typu], {warianty wagonów zostaną wyszczególnione} produkcji [ ] na wózkach [typu], zdolnych do wykorzystania w międzynarodowych przewozach kolejowych na podstawie Technicznej Specyfikacji Interoperacyjności. Podstawowy opis wagonów będących przedmiotem umowy zawiera Załącznik nr 1 do niniejszej Umowy.
2. Wykonawca oświadcza, iż wagony:
  - a) Są przeznaczone do transportu kontenerów
  - b) Spełniają wszystkie wymagania wynikające z TSI oraz z technicznych i handlowych Kart UIC, Umowy RIV 2000 w brzmieniu na dzień 30 czerwca 2006, wszelkich ustaleń wynikających z Ogólnej Umowy o Użytkowaniu Wagonów Towarowych (AVV)
  - c) Konstrukcja wagonu wykonana jest ze stali
  - d) Każdy wagon wyposażony jest w system pneumatycznego hamulca typu „Knorr bremsen”

### [CONTRACTOR]

Bank account:  
Bank account number:  
IBAN:  
NIP:  
Commercial Register Number (KRS):

represented by:

hereinafter referred to as "Contractor"

and

Rail Polska Sp. z o.o., RAIL Polska Sp. z o.o. based at 8/10 Willowa Str., app. 11, 00-790 Warszawa, recorded in the Register of Entrepreneurs of the National Register Court, held by the District Court for the Capital City of Warsaw, the 13<sup>th</sup> Business Division, under number KRS 0000026872,

Bank account: BPH-PBK S.A I Oddział Oświęcim  
Bank account number:  
81 10600076 0000 3200 0035 7080  
**NIP UE: NIP PL: 521-30-39-201**

represented by:

hereinafter referred to as "Customer"

and together the Parties

### § 1.

1. The subject of this agreement is the delivery of [...] units of wagons [type], {variants will be specified} manufactured by [...] on bogies [type] capable of working in international rail movements on the basis of the Technical Specifications for Interoperability.. A basic description of the wagons, being the subject of this Agreement, is attached as Annex 1 to this Agreement.
2. Contractor declares that the wagons:
  - a) are designated for transportation of containers
  - b) Meet all the requirements resulting from TSI, technical and commercial UIC cards, RIV 2000 Agreement (its wording of June 30<sup>th</sup> 2006), and all arrangements resulting from the General Agreement on Freight Wagon Use (AVV).
  - c) Wagon construction is made of steel.
  - d) Each wagon is equipped with a pneumatic brake system type Knorr Bremse
  - e) 100% of delivered wagons will be equipped with a hand parking brake capable of being operated from

- e) 100% dostarczanych wagonów będą wyposażonych w hamulec ręczny postojowy z możliwością jego obsługi z obydwu stron wagonu
- f) Wagony są wyposażone w zderzaki o skoku 105 mm z przekładkami gumo-metalowymi
- g) Wagony są przystosowane do prędkości 120km/h
- h) Wagony są wyposażone w linki uziemiające zapewniające bezpieczeństwo eksploatacji (pudło-rama wózka; rama wózka – maźnica)
- i) Malowanie i opis wagonów według rysunku Nabywcy

### 3. Sprzedający oświadcza, iż :

- a) jest właścicielem wagonów, o których mowa w ust. 1
- b) wagony będące przedmiotem niniejszej Umowy posiadają świadectwo sprawności technicznej wydane przez komisarza.
- c) zestawy kołowe z naciskiem 22.5 t na oś są typu monoblokowego z nowymi kołami monoblokowymi i spełniają wymagania kart UIC

Wykonawca jest zobowiązany dostarczyć Klientowi następującą dokumentację dotyczącą wagonów:

- a) Rysunek zestawieniowy
- b) Rysunek ramy
- c) Rysunek pudła
- d) Rysunek wózków
- e) Schemat hamulca wraz z obliczeniami systemu hamulca
- f) Dokumentację mechanizmu ciągnikowo-zderzakowego
- g) Techniczny opis wagonu
- h) Arkusze pomiarowe wagonu / kompletna dokumentacja remontowa
- i) Protokoły odbiorów hamulca
- j) Protokoły ważenia wagonów

- 4 Wykonawca wyda Klientowi wagony będące przedmiotem Umowy pomalowane z zewnątrz przez Sprzedającego w kolorystyce i z logo, które Klient dostarczy Wykonawcy terminie dwóch tygodni po podpisaniu Umowy.

## § 2 Cena

Cena netto (bez VAT) dostawy jednego wagonu [ ] na nowych kołach monoblokowych będących przedmiotem niniejszej Umowy wynosi [ ]. Warunki dostawy: DDP stacja Dwory Monowice 07748 7 (Włosienica 32-642), wg Incoterms 2000.

## § 3 Warunki płatności

- 1. Strony ustalają, iż cena dostawy wagonu określona w § 2 Umowy będzie płatna na rachunek bankowy wskazany przez Wykonawcę, przelewem bankowym na podstawie dostarczonej Klientowi faktury VAT, w terminie 7 dni od dnia wystawienia faktury. Oryginały faktur Wykonawca powinien doręczyć Klientowi listem poleconym lub pocztą kurierską.

both sides of the wagon.

- f) The wagons are equipped with bumpers with a 105 mm stroke with rubber-metal separators.
- g) The wagons are adjusted a speed of 120km/h.
- h) The wagons are equipped with earthing cables assuring safety of operation (body - bogie frame; body frame - axle box).
- i) Wagon painting and description according to Customer's drawings
- 3. Contractor declares that:
  - a) Is the owner of the wagons referred to in paragraph 1.
  - b) The wagons, being the subject of this Agreement have a certificate of technical condition, issued by a car inspector authorized by Purchaser.
  - c) Wheel sets with a 22.5 t axle load are of monobloc type with new monobloc wheels and meet UIC cards requirements.

Contractor is obliged to provide Customer with complete technical documentation concerning the wagons, in particular:

- a) Assembly drawing
- b) Frame drawing
- c) Body drawing
- d) Bogie drawing
- e) Brake scheme together with brake system calculations
- f) Documentation of a coupling bar mechanism
- g) Technical description of the wagon
- h) Wagon measurement sheets / complete repair documentation
- i) Brake acceptance protocols
- j) Wagon weighing protocols
- 4. Contractor will deliver the wagons, being the subject of this Agreement, to Customer, painted outside by the Vendor in colours and with a logo provided by Customer to Contractor within two weeks after the Agreement has been signed.

## § 2 Price

The net delivery price (excl. VAT) of one wagon [...] on new monobloc wheels, being the subject of this Agreement, amounts to [...]. Terms of delivery: DDP Dwory Monowice station 07748 7 (Włosienica 32-642), according to Incoterms 2000.

## § 3 Terms of Payment

- 1. The Parties agree that the delivery price of one wagon, referred to in § 2 of the Agreement will be paid to a bank account indicated by Contractor as a bank transfer, based on a VAT invoice, delivered to Customer, within 7 days after the invoice has been issued. Contractor should deliver original invoices to Customer either by a registered letter or by courier.
- 2. The day of crediting Contractor's bank account with a due amount shall be recognized as a day of payment of the VAT invoice, referred to in item 1.
- 3. The wagons will be despatched within 5 working days after the payment has been made.

2. Przez zapłatę faktury VAT, o której mowa w ust. 1, rozumie się dzień uznania rachunku bankowego Wykonawcy kwotą zapłaty.
3. Nadanie wagonów do transportu nastąpi do 5 dni roboczych po dokonaniu zapłaty.
4. Wykonawca jest zobowiązany do dołączenia do faktury VAT protokołu zdawczo-odbiorczego wagonów, których faktura dotyczy, podpisanego przez Strony.

#### § 4

##### Termin dostawy wagonów

1. Wagony, o których mowa w § 1 niniejszej Umowy, składające się z niżej wymienionej liczby platform, będą dostarczane zgodnie z następującym harmonogramem:  
  
6 wagonów do 30.09.2014  
6 wagonów do 31.12.2014  
18 wagonów do 31.03.2015  
18 wagonów do 30.06.2015  
18 wagonów do 30.09.2015  
18 wagonów do 30.12.2015
2. Wcześniejsze i częściowe dostawy są dopuszczalne.
3. [Ilość każdego wariantu wagonu zostanie uzgodniona z Wykonawcą]
4. O gotowości wydania wagonów Sprzedający poinformuje na piśmie albo elektronicznie za zwrotnym potwierdzeniem odbioru co najmniej na 5 dni przed wyznaczonym terminem odbioru wagonów.

#### § 5

##### Wydanie i odbiór wagonów

1. Wydanie i odbiór wagonów następować będzie na podstawie protokołu zdawczo-odbiorczego podpisanego przez obie Strony. Podpisanie przez Klienta protokołu zdawczo-odbiorczego nastąpi po stwierdzeniu, że wagony spełniają warunki umowy, w szczególności § 1 niniejszej umowy. Podpisany przez Strony protokół zdawczo-odbiorczy stanowi podstawę do wystawienia faktury.
2. Miejscami przekazania wagonów będą bocznice kolejowe zakładu naprawczego we Włosienicy.

#### § 6

##### Przejście ryzyka i prawa własności wagonów

1. Przejście ryzyka związanego z posiadaniem, uszkodzeniem lub utratą wagonu z Wykonawcy na Klienta nastąpi po podpisaniu protokołu zdawczo-odbiorczego wagonu i wydaniu wagonu Odbiorcy.
2. Przeniesienie prawa własności w odniesieniu do poszczególnego wagonu z Wykonawcy na Klienta nastąpi z chwilą zapłaty ceny za dostarczony pojedynczy wagon zgodnie z niniejszą umową.

#### § 7

##### Gwarancja

4. Contractor is obliged to attach the acceptance report for the wagons the invoice refers to, signed by the Parties, to the VAT invoice

#### § 4

##### Time of Wagon Delivery

1. The wagons, referred to in § 1 of this Agreement, consisting of the below-mentioned number of platforms, will be delivered according to the following schedule:

6 wagons by 30.09.2014  
6 wagons by 31.12.2014  
18 wagons by 31.03.2015  
18 wagons by 30.06.2015  
18 wagons by 30.09.2015  
18 wagons by 30.12.2015

2. Earlier an partial deliveries are acceptable
3. [Numbers of each variant will be agreed with Contractor]
4. Contractor will notify in writing or via e-mail of the readiness of the wagons for acceptance at least 5 days prior to the established date of wagon acceptance.

#### § 5

##### Wagon Delivery and Receipt

1. Wagon delivery and receipt will take place based on a delivery-acceptance report signed by both parties. Customer will sign the report after having confirmed that the wagons meet contractual terms, especially the provisions of § 1 of This Agreement. The delivery-acceptance report is the basis for invoice issue.
2. The wagons will be taken over at railway sidings of the repair plant in Włosienica.

#### § 6

##### Transfer of Risk and Wagon Ownership Right

1. Transfer of risk, connected with wagon ownership, damage or loss from Contractor to Customer will take place after the delivery-acceptance report has been signed and the wagon has been taken over.
2. Transfer of ownership right to a specific wagon from Contractor to Customer will take place when the price of a single wagon, delivered in accordance with this agreement, has been paid.

#### § 7

##### Warranty

1. Contractor grants Customer a warranty for the acquired wagons for a period of ... months, counting from a date of takeover of each wagon by Customer. Contractor is obliged to organize a repair service and

1. Wykonawca udziela Klientowi gwarancji na nabyte wagony na okres ... miesięcy, licząc od daty odbioru każdego wagonu dokonanego przez Klienta. Wykonawca jest zobowiązany do zorganizowania serwisu naprawczego i zapewnienia prawidłowego działania wagonów w okresie gwarancji oraz dokonywania w tym okresie wszelkich napraw wynikających z usterek technicznych wagonów, które powstały na skutek niewłaściwego wykonania przedmiotu Umowy na swój koszt, oraz wymiany wszystkich uszkodzonych części na jego koszt. W przypadku sporu lub wątpliwości dotyczącej przyczyny usterki – rozstrzygnięcia w tym zakresie dokona komisja złożona z przedstawicieli Wykonawcy i Klienta oraz ewentualnie strony trzeciej (np. przewoźnika, użytkownika bocznic kolejowej).
2. W razie stwierdzenia wady/usterki/uszkodzenia, Klient zawiadamia Wykonawcę na piśmie lub elektronicznie; Wykonawca jest zobowiązany do ich usunięcia w terminie sześciu dni na terenie Polski i piętnastu dni za granicą Polski.

### **§ 8**

#### **Postanowienia końcowe**

1. Zmiany i uzupełnienia niniejszej Umowy wymagają dla swej ważności aneksu w formie pisemnej pod rygorem nieważności.
2. Załączniki do Umowy stanowią jej integralną część.
3. Prawem właściwym dla niniejszej Umowy jest prawo angielskie.
4. Wszelkie spory mogące wyniknąć przy realizacji postanowień niniejszej Umowy będą rozstrzygane przez strony polubownie. W przypadku niemożności polubownego załatwienia sporu zostanie on poddany rozstrzygnięciu sądowi arbitrażowemu właściwemu miejscowo dla Klienta.
5. Umowę sporządzono w 2 jednobrzmiących egzemplarzach w języku polskim po jednym egzemplarzu dla każdej ze stron.

to assure proper wagon operations during the warranty period and to carry out, during this period, any repairs resulting from technical failures of the wagons, which occurred as a result of improper manufacturing of the subject of the Agreement at its expense, and to replace all the damaged parts at its cost. In the case of a dispute or doubts concerning the cause of the defect, a commission consisting of representatives of Contractor and Customer, and of the third party, if needed (for instance of a carrier or a railway siding user), will resolve the dispute.

2. Should a defect/ flaw/ damage be found, Customer notifies Contractor in writing or via e-mail; Contractor is obliged to remove within a period of 6 days in Poland and fifteen days outside Poland.

### **§ 8**

#### **Final Provisions**

1. Any changes or supplements to this Agreement are to be made as a written annex, otherwise will be deemed invalid.
2. Annexes to this Agreement form its integral part.
3. This Agreement shall be governed by the English law.
4. Any disputes that might result from the performance of the provisions of this Agreement will be resolved amicably by the Parties. Should amicable resolution be impossible, the dispute will be resolved by the Arbitration Court, appropriate for the place of Customer's headquarters.
5. The Agreement has been made in Polish, in two identical copies, one for each Party

W \_\_\_\_\_

In \_\_\_\_\_

Dnia \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
Wykonawca/ Contractor

\_\_\_\_\_  
Klient / Customer

**Annexe No. 1 to the Agreement [ ] between [ ] and RAIL POLSKA**

**Basic Technical description**

in .....on .....

in ..... on .....

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**Supplier**

-----

**Receiver**

## **Annexe 2**

### **Annexe No. 2 to the Agreement between [Standard Terms and Conditions]**

#### **Rail Polska Sp. z o.o.**

##### **General conditions**

##### **1. Safety & Quality**

Rail Polska operates safety and quality management systems to meet Polish and international norms, for example ISO 9001 and 18001. Contractors are required to have safety and quality management systems which achieve the same ends.

##### **2. Environmental Protection**

Rail Polska operates an environmental protection system to meet international norms, ISO 14001. Contractors are required to have a similar environmental management system.

##### **3. Permits and Licenses**

Contractor is obliged to obtain and maintain at its own expense all necessary permits and licenses in order to be able to perform this contract.

##### **4. Equal Opportunity**

- 4.1 Rail Polska is an equal opportunity employer and requires its contractors to implement the same policy. Contractor shall not discriminate against any employee or applicant for employment on the basis of race, religion, sex or marital status as required by applicable laws. Subject to the requirements of particular job positions, Contractor shall not discriminate against any employee or applicant for employment on the basis of age, physical or mental disability or pregnancy as required by applicable laws.
- 4.2 Contractor will require its sub-contractors to follow the same requirements and will include this in its Terms and Conditions of contracts.
- 4.3 Failure to meet the obligations of this paragraph constitutes a material breach of the contract.

##### **5. Inspection and Reports**

Rail Polska may visit Contractor's facility at any time in order to inspect the work in progress on the vehicles to be supplied. The term and content of progress reports will be agreed during the negotiation of the contract.

##### **6. Contractual Conditions**

##### **6.1 Cancellation/Termination**

- 6.1.1 Rail Polska may at any time cancel the contract in whole or in part at its sole discretion having given the Contractor thirty days written notice. Rail Polska will pay for completed wagons on the basis of the appropriate fraction of the total price. For work in progress Rail Polska will pay Contractor only for the direct cost of work under this contract. Payments will not exceed the total contract price.



- 6.1.2 Under no circumstances will Rail Polska be liable for incidental, consequential or punitive damages, overhead or other direct or indirect costs or lost profits.
- 6.1.3 If Contractor refuses or fails to perform in a timely manner the obligations set out in this contract and does not cure this defect in ten days after Rail Polska has so notified it, Rail Polska may terminate the contract without financial penalty. In this case Rail Polska may take over the work and complete it by contract or otherwise and take possession of and use any materials, tools and machinery on the work site necessary for completing the work. Contractor will be liable for any damage to Rail Polska for failing to complete the work or to complete the work on time. This liability includes any increased costs incurred by Rail Polska in completing the work.
- 6.1.4 An unconditional and irrevocable performance bond will be required in the form of a cash deposit or instrument from an appropriate bank or insurance institution at the value of 20% of contract value. The performance bond will contain evidence of the right of the signatory to enter into the bond. 100% of the value of the bond will be maintained until 30 days after completion of the contract. 50% of the value of the bond will be maintained until 30 days after the end of the warranty period.

## 6.2 No assignment or delegation

Contractor may not assign or delegate this contract in whole or in part or rights to payment under this contract without the prior consent of Rail Polska in writing.

## 6.3 Fixed Price

- 6.3.1 The price of the goods contracted is fixed at the time of contract signature. Additional payments will only be made if agreed in advance by Rail Polska in writing.
- 6.3.2 If settlement is made in other than the Polish currency, the exchange rate used will be the National Bank of Poland's average rate for the day on which the notice was published in the Official Journal of the EU. If the date of publication is a Saturday or holiday, Customer shall accept as the recalculation exchange rate the average exchange rate of the National Bank of Poland on the first working day following the publication.

## 6.4 Taxes

Contractor will continue to pay all taxes in a timely fashion throughout the period of execution of this contract. Contractor will ensure that any sub-contractors also comply with this condition.

## 7. Conflicts of Interest

- 7.1 No official of the Government of Poland or of the European Commission and no director or employee of Rail Polska will benefit in any financial or other way from the award of this contract. Contractor must comply with the OECD Anti-Bribery Convention.
- 7.2 Contractor and its employees, agents, sub-contractors and their relations will not act in any way which could result in a conflict with the best interests of Rail Polska. In particular no actions will be taken which would induce employees and directors of Rail Polska to act other than in the company's best interests.

## 8. Non-disclosure of Confidential Information

Contractor will hold private and not divulge except as required by law any information or data in any form belonging to the Contract which it learns in the course of the execution of this contract.

## 9. Labour Disputes

Contractor will inform Rail Polska of any labour dispute or the likelihood of such a dispute which could disrupt performance of this contract.

In the event of such a dispute, Rail Polska has the right to terminate the contract without notice.  
Contractor will include similar provisions in contracts with sub-contractors.

## 10. Packing, shipping and delivery

10.1 All goods must be properly packed to prevent damage or deterioration during shipment and to obtain the lowest transport cost.

10.2 Goods must be packed in accordance with the European Union regulations, including phyto-sanitary regulations in force at the time of shipment.

10.3 All documentation used for shipping the goods (including but not limited to packing slip, bill of lading, invoice) and any correspondence must include the contract number and destination of the goods.

10.4 A waterproof master packing slip must accompany each shipment either in a package which is marked "Master Packing List Inside" or otherwise prominently displayed.

10.5 Each shipment must be accompanied by a final invoice for customs and VAT purposes.

10.6 The original bill of lading and invoice must be sent separately to the contact person named in the contract.

10.7 Failure to meet the delivery schedule stated in the contract will, unless the reasons are beyond Contractor's control (see paragraph 12, Force Majeure, below), may result in termination of the contract without notice. Rail Polska may request expedited shipping or agree a new delivery schedule. Contractor will at all times inform Rail Polska about any delay or expected delay in delivery.

10.8 The contract allows for earlier delivery. If Contractor believes earlier delivery can be achieved it must agree with Rail Polska in advance earlier delivery dates.

10.9 Notwithstanding any inspection which took place before departure, goods will be inspected within a reasonable time of arrival at Rail Polska. If Rail Polska rejects the goods for any reason, Rail Polska will invite Contractor or its nominated representative to re-inspect the goods jointly and to determine where defect which caused the rejection was likely to have originated and to recommend resolution of the issue. Remedies to the issue may include shipping the goods back to Contractor at its expense.

10.10 The fixed price of the contract includes packing and shipping costs. Any request for an increase in the price of the contract as a result of these costs will only be considered at the end of the contract in order to take account of movements in shipping costs over the life of the contract. If Contractor believes it will want to make such a claim, it must provide evidence of the increase in the course of the contract.

## 11. Warranty

11.1 Contractor warrants that the goods supplied are

11.1.1 of good quality and free from all defects and deficiencies in workmanship, material and design

11.1.2 conform to the specifications in the contract and are fit and suitable for purpose and will operate in that role

11.1.3 components and any services provided conform to these requirements

11.1.4 are free from all liens, encumbrances etc and without any defect in their title.

11.2 The Contractor will meet all warranties and guarantees offered by suppliers of goods and services used in the construction of the goods.

11.3 The Contractor will not outsource, sub-contract or otherwise delegate its warranty obligations to any third party without the written consent of Rail Polska. Such delegation will only be allowed if the Contractor can demonstrate that the entity to perform warranty obligations is suitably qualified and has resources required to meet the warranty obligations.

## 12. Force Majeure





- 12.1 Contractor shall be excused from, and shall in no event be liable for, default or delays in performance occasioned by any cause beyond its reasonable control, where such performance is prevented or delayed by any event of Force Majeure. The term "Force Majeure" shall, for purposes of this document, be defined as, by way of example, and not by way of definition:
- (i) any acts of God, natural disasters, or wars, riots or civil disturbances, fires, public calamity, governmentally-imposed rules
  - (ii) any shortage or curtailment of fuel, energy, material or transportation
  - (iii) any act or mission of any government authority
  - (iv) any other cause beyond the reasonable control of Contractor.
- 12.2 In the event that the Force Majeure event continues for more than six (6) months, parties hereto will negotiate in good faith with all options being available including contract termination.
- 12.3 Upon the occurrence of an event of Force Majeure, Contractor shall promptly notify Rail Polska and shall take such steps as are reasonably necessary under the circumstances to overcome and mitigate such event of Force Majeure.
13. Final Provisions
- 13.1 These terms and conditions together with the specific agreement for the supply of goods constitute the entire agreement between the Parties and supersedes all prior agreements between them on the subject of the contract. Any proposed amendments to the contract must be duly signed by the Parties.
- 13.2 Contractor shall indemnify, hold harmless and defend Rail Polska and its employees against any claims resulting from injuries or damage sustained by any third party or third party property as a result of negligence, error, omission or wrongful act by Contractor or its sub-contractors or associates.
- 13.3 Contractor will keep full and accurate records and accounts of all its activities in connection with this contract. Sub-contractors, agents and affiliated or associated companies are required to do the same.
- 13.4 Failure or delay by Rail Polska to insist on conformity to the terms of these conditions or the contract will not result in any loss of rights or remedies.