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**CONTRACTING AUTHORITY/PURCHASER**

**Name and address:** Luka Koper d.d., Vojkovo nabrežje 38, 6501 Koper, Slovenia

**VAT ID No.:** SI 89190033

**Registration No.:** 5144353

**Bank Account No.:** SI56 1010 0000 0001 935; Bank Koper, d.d.

**SWIFT:** BAKOSI2X

**Phone No.:** +386 5 66 56 100

**E-mail:** Portkoper@luka-kp-si

**Contract administrator:** G. Danjel Zobec

**Signatory:** president of the Management Board Mr. Dimitrij Zadel

**Signatory:** member of the Management Board Mr. Metod Podkrižnik

(the "Purchaser")

and

**TENDERER/VENDOR/SUPPLIER**

**Name and address:** FLSmidth Wadgassen GmbH

**VAT ID No.:** DE 814 790 647

**Registration No.:** HRB 16364

**Bank Account No.:** DE 06 5121 0600 4220 4610 18

**Phone No.:** +49 6123 975 300

**E-mail:** wadgassen@flsmidth.com

**Contract administrator:** Thomas Jobs

**Signatory:** Managing Director Mr. Hendrik Rehage

(the "Vendor")

and

**NEW TENDERER/VENDOR/SUPPLIER**

**Name and address:** Nantong Rainbow Heavy Machineries Co., Ltd., No.88, Rongsheng Road,  
Nantong Marine Equipment Industrial Zone, Nantong, Jiangsu, China

**VAT ID No.:** 91320600798612830Q

**Registration No.:** 91320600798612830Q

**Bank Account No.:** 3205 0164 2336 0903 3766

**Phone No.:** +86 13511586806

**E-mail:** Emily.wu@rainbowco.com.cn

**Contract administrator:** Ms. Wu Jilan (Emily Wu)

**Signatory:** President Mr. Wu Jian

(the "New Vendor")

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(the Purchaser, the Vendor and the New Vendor together as the "Parties") as well as

**KOCH SOLUTIONS**

**Name and address:** Koch Solutions GmbH, Karl-Koch-Straße 1, 66787 Wadgassen, Germany

**VAT ID No.:** DE 320 497 928

**Registration No.:** HRB 104899

**Bank Account No.:** DE37 5904 0000 0600 2422 00

**Phone No.:** +49 6834 470 0

**E-mail:** Benjamin.becker@koch-solutions.com

**Contract administrator:** Mr. Benjamin Becker

**Signatory:** Managing Director Mr. Jürgen Maier

(the "Koch Solutions")

conclude the following

**ANNEX No. 1**

**to PURCHASE CONTRACT No.: JN 242/2018/5217003/45 – 123886**

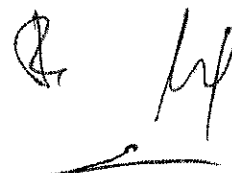
**PRELIMINARY PROVISIONS**

**Article 1**

The Parties initially and jointly establish that:

- The Purchaser implemented the public procurement procedure for the award of public contract "PURCHASE OF NEW GRAB UNLOADER", posted on the Public Procurement Portal on 19.11.2018, under publication number JN007976/2018-F01;
- The Vendor was selected in a negotiated procedure without prior publication in accordance with point a) of the first paragraph of Article 46 of the Public Procurement Act (Official Gazette of the Republic of Slovenia, No.: 91/15 and 14/18, (the "PPA-3"));
- The Purchaser and the Vendor concluded Purchase Contract No.: JN 242/2018/5217003/45 – 123886 on 27.12.2018 (the "Purchase Contract") with the subject-matter to supply grab unloader;

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- After conclusion of the Purchase Contract concluded between the Purchaser and the Vendor, the Vendor sold its bulk material handling business (lifts and the like, including grab unloaders) (the "Business") by way of an asset deal, to the New Vendor and Koch Solutions.

**Article 2**

The Parties establish that after the conclusion of the Purchase Contract between the Purchaser and the Vendor, the latter sold the Business to Koch Solutions and the New Vendor.

By signing of this Annex the Vendor and the New Vendor confirm that a part of the Business (that is the entire Balkan business including *inter alia* the Slovenian business (the "Balkan Business")) was sold to the New Vendor. One part of the Balkan Business is the Purchase Contract and which as such was sold and shall be transferred from Vendor to the New Vendor by way of partial succession.

By signing of this Annex the Purchaser, Koch Solutions, the Vendor and the New Vendor confirm that the transfer of the Purchase Contract as described above shall be legally defined as partial succession.

**LEGAL CONTEXT**

**Article 3**

The Parties are fully aware, that the PPA-3 in Article 95, paragraph 1, point 4, determines as follows:

*"Article 95*

*(Modification of contracts during their term)*

*(1) In accordance with this Act, contracts and framework agreements may be modified without a new procurement procedure in any of the following cases:*

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4. where a new contractor replaces the one to which the contracting authority initially awarded the contract as a consequence of either:

- an unequivocal review clause or option in accordance with point 1 of this paragraph;
- universal or partial succession to the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established and complies with quality assurance standards and environmental management standards and to which the initial grounds for exclusion do not apply, provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of the provisions of this Act;

/.../."

Furthermore, the contracting parties are fully aware that the Slovenian Obligations Code (Official Gazette of the Republic of Slovenia, No.: 97/07 – official consolidated text, 64/16 – decision Constit. Court and 20/18 – OROZ631) in Article 122, paragraph 1, 2 and 3 determines that for the transfer of the bilateral contract the other party must give a consent:

*"Conditions for transfer (Article 122)*

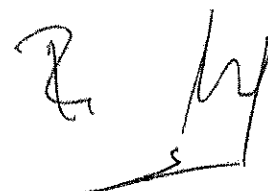
*(1) Either party to a bilateral contract may transfer the contract to a third person, who shall thereby become the holder of all the former's rights and obligations deriving from the contract, if the other party consents thereto.*

*(2) Via the transfer of a contract the contractual relationship between the transferring party and the other party shall pass to the recipient and the other party when the other party consents to the transfer; if the consent is given in advance the transfer shall be deemed to take place when the other party is notified of the transfer.*

*(3) Consent to the transfer of a contract shall only be valid if given in the form prescribed by law for the conclusion of the transferred contract.*

/.../."

*David R. R. R.*



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Taking into account the above-mentioned legal context, the Parties with this Annex determine all the relevant obligations and rights related to the transfer of the Purchase Contract from the Vendor to the New Vendor.

STATEMENT

Article 4

With conclusion of this Annex, the Purchaser and the New Vendor confirm that as at the date of this Annex all the criteria for the modification of the Purchase Contract as determined in Article 95 of PPA-3 are met, including but not limited to:

- entry of the New Vendor to the Purchase Contract is a consequence of partial succession to the position of the initial contractor and it is in accordance with Article 95 of PPA-3;
- the New Vendor fulfils all the criteria for qualitative selection initially established and complies with quality assurance standards and environmental management standards and the initial grounds for exclusion do not apply, all in accordance with the tender dossier;
- subject-matter of this Annex does not entail other substantial modifications to the Purchase Contract (as defined under paragraph 4 of Article 95 of ZIN-3);
- modification subject-matter of this Annex is not aimed at circumventing the application of the provisions of PPA-3.

TRANSFER OF CONTRACT

Article 5

The Parties, with conclusion of this Annex, agree that the Purchase Contract shall be modified in a way that the New Vendor as a new contractor replaces the Vendor as the current contractor, subject to fulfilment of the suspensive conditions set forth in Article 14, first paragraph, hereof. The date of fulfilment of the last suspensive condition pursuant to

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Article 14, first paragraph, shall hereinafter be referred to as the "Effective Date of the Transfer".

By conclusion of this Annex, and subject to occurrence of the Effective Date of the Transfer, the New Vendor takes over and assumes any and all rights and obligations of whatever nature and legal title held by and/or imposed on the Vendor under and/or in connection with the Purchase Contract until and including the Effective Date of the Transfer, thereby fully replacing the Vendor as the contracting partner of the Purchaser under the Purchase Contract. For the avoidance of any doubt, it is expressly set forth that as from the Effective Date of the Transfer, the New Vendor shall be solely and exclusively responsible for fulfilling all Vendor's obligations under and/or in connection with the Purchase Contract and the Vendor shall be deemed fully released from all such obligations and shall not bear any liability whatsoever under and/or in connection with the Purchase Contract any more. For the avoidance of doubt, the New Vendor shall remain liable for all claims and/or obligations which have been created or effected prior to the Effective Date of the Transfer and the Purchaser shall remain entitled to make such claims against the New Vendor after the Effective Date of the Transfer on the same terms and conditions as if the Purchase Contract had not been transferred to the New Vendor. Additionally, Koch Solutions shall be jointly and severally liable as a solidary debtor along with the New Vendor for all claims and/or obligations which have been created or effected prior to the Effective Date of the Transfer and the Purchaser shall remain entitled to make such claims against the Koch Solutions after the Effective Date of the Transfer on the same terms and conditions as if the Purchase Contract had not been transferred to the New Vendor.

The Purchaser hereby consents to the transfer of the Purchase Contract from the Vendor to the New Vendor in accordance with the provisions of this Annex, subject to occurrence of the Effective Date of the Transfer.

If after the conclusion of this Annex it is established, that the facts, based on which the confirmations in Article 4 were made, were not true as at the date of this Annex, the New Vendor and/or Koch Solutions as solidary debtors shall indemnify and hold harmless the Purchaser from and against any and all damages in relation thereto.

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**OBLIGATIONS OF THE NEW VENDOR**


**Article 6**

The New Vendor takes over and assumes any and all rights and obligations of the Vendor under the Purchase Contract in accordance with Article 5 hereof, including but not limited to:

- deliver the equipment (subject-matter of the Purchase Contract) in delivery terms as determined in the Purchase Contract, with a professional care and in accordance with the provisions of the Purchase Contract and tender dossier;
- ensure that equipment will operate perfect and is without factual and legal errors, and complies with all applicable CE-Certificate standards in the Republic of Slovenia and technical requirements and all standards regarding security and work safety, quality and capacity, etc.;
- keep the Purchaser informed and updated about everything that could affect the quality and timely fulfilment of obligations under the Purchase Contract;
- offer and provide appropriate guarantees in accordance with Articles 4, 7b and 13 of the Purchase Contract,
- penalties for delay in accordance with Article 9 of the Purchase Contract;
- quantity and quality acceptance in accordance with Articles 10 and 11 of the Purchase Contract;
- documentation in accordance with Articles 12a and 12b of the Purchase Contract;
- warranty in accordance with Articles 13, 14, 15 and 16 of the Purchase Contract.

At the delivery of goods in Port of Koper, the New Vendor is liable to guarantee the prescribed accompanying documentation. For these purposes a responsible person shall be appointed for the management of the goods entrance/exit of in resp. from the Port of Koper.

After the delivery, the New Vendor undertakes to guarantee the assistance for the smooth test performance of Grab unloader at least during 15 working days.

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New Vendor shall inform the Purchaser monthly on the progress of works on the production and erection of Grab unloader monthly, thus to enable the Purchaser to effect timely quality control in compliance with article 10 of the Purchase Contract.

**PAYMENT TERMS**

**Article 7**

Payment terms as defined in Article 4 of the Purchase Contract remain unchanged and fully apply also in relation to the New Vendor. However, all the payments already paid to the Vendor are fully taken into account and shall be considered as amount, which was already paid in accordance with the Purchase Contract.

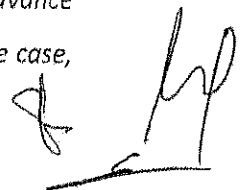
**ADVANCE PAYMENT BANK GUARANTEES**

**Article 8**

The Purchase Contract in Article 4 determines that the Purchaser undertakes to pay the purchase price as per Article 3 of the Purchase Contract after receiving a commercial invoice for said amount and an irrevocable, unconditional advance payment bank guarantee in the following mode:

*"20% of the total contract price at the signature of this contract in the amount of 2.986.000,00 EUR shall be paid for crane after receiving a commercial invoice for said amount and an irrevocable, unconditional advance payment bank guarantee in the amount of 2.986.000,00 EUR, with validity 3 months after the agreed delivery time, which the Vendor shall remit to the Purchaser before the completion of this payment. It is a condition for claims and payments to be made under this guarantee that the said payment has been received to the account of the Vendor. The advance payment demand guarantee shall be returned to the Vendor promptly after the signature of acceptance certificate, by means of which the Purchaser shall entirely take over the subject of this contract (Grab unloader). In case a partial delivery should take place, the Vendor shall prolong the validity of the advance payment demand guarantee till the term, agreed jointly with the Purchaser. In opposite case,*

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*the Purchaser shall be entitled to utilize the advance payment demand guarantee.*

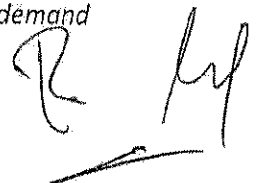
*The advance payment bank guarantee shall be prepared in accordance with Uniform Rules for Demand Guarantees (URDG) revision 2010, ICC publication no. 758 (The submitted demand guarantee shall contain a provision stating that the submitted demand guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) revision 2010, ICC publication no. 758).*

*10% of the total contract price after submission of basic engineering drawings in the amount of 1.493.000,00 EUR shall be paid for crane after receiving a commercial invoice for said amount and an irrevocable, unconditional advance payment bank guarantee in the amount of 1.493.000,00 EUR, with validity 3 months after the agreed delivery time, which the Vendor shall remit to the Purchaser before the completion of this payment. It is a condition for claims and payments to be made under this guarantee that the said payment has been received to the account of the Vendor. The advance payment demand guarantee shall be returned to the Vendor promptly after the signature of acceptance certificate, by means of which the Purchaser shall entirely take over the subject of this contract (Grab unloader). In case a partial delivery should take place, the Vendor shall prolong the validity of the advance payment demand guarantee till the term, agreed jointly with the Purchaser. In opposite case, the Purchaser shall be entitled to utilize the advance payment demand guarantee.*

*The advance payment bank guarantee shall be prepared in accordance with Uniform Rules for Demand Guarantees (URDG) revision 2010, ICC publication no. 758 (The submitted demand guarantee shall contain a provision stating that the submitted demand guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) revision 2010, ICC publication no. 758).*

*10% of the total contract price against order placement to sub-suppliers for major equipment or components in the amount of 1.493.000,00 EUR shall be paid for crane after receiving a commercial invoice for said amount and an irrevocable, unconditional advance payment bank guarantee in the amount of 1.493.000,00 EUR, with validity 3 months after the agreed delivery time, which the Vendor shall remit to the Purchaser before the completion of this payment. It is a condition for claims and payments to be made under this guarantee that the said payment has been received to the account of the Vendor. The advance payment demand*

*R. Matc*



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*guarantee shall be returned to the Vendor promptly after the signature of acceptance certificate, by means of which the Purchaser shall entirely take over the subject of this contract (Grab unloader). In case a partial delivery should take place, the Vendor shall prolong the validity of the advance payment demand guarantee till the term, agreed jointly with the Purchaser. In opposite case, the Purchaser shall be entitled to utilize the advance payment demand guarantee.*

*The advance payment bank guarantee shall be prepared in accordance with Uniform Rules for Demand Guarantees (URDG) revision 2010, ICC publication no. 758 (The submitted demand guarantee shall contain a provision stating that the submitted demand guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) revision 2010, ICC publication no. 758).*

*20% of the total contract price at starting of steel fabrication in the workshop in the amount of 2.986.000,00 EUR shall be paid for crane after receiving a commercial invoice for said amount and an irrevocable, unconditional advance payment bank guarantee in the amount of 2.986.000,00 EUR, with validity 3 months after the agreed delivery time, which the Vendor shall remit to the Purchaser before the completion of this payment. It is a condition for claims and payments to be made under this guarantee that the said payment has been received to the account of the Vendor. The advance payment demand guarantee shall be returned to the Vendor promptly after the signature of acceptance certificate, by means of which the Purchaser shall entirely take over the subject of this contract (Grab unloader). In case a partial delivery should take place, the Vendor shall prolong the validity of the advance payment demand guarantee till the term, agreed jointly with the Purchaser. In opposite case, the Purchaser shall be entitled to utilize the advance payment demand guarantee.*

*The advance payment bank guarantee shall be prepared in accordance with Uniform Rules for Demand Guarantees (URDG) revision 2010, ICC publication no. 758 (The submitted demand guarantee shall contain a provision stating that the submitted demand guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) revision 2010, ICC publication no. 758).*

*20% of the total contract price at start of offshore assembly the grab unloader in the amount of 2.986.000,00 EUR shall be paid for crane after receiving a commercial invoice for said*

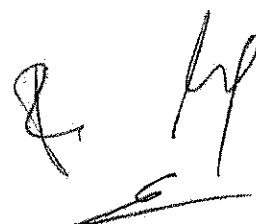
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amount and an irrevocable, unconditional advance payment bank guarantee in the amount of 2.986.000,00 EUR, with validity 3 months after the agreed delivery time, which the Vendor shall remit to the Purchaser before the completion of this payment. It is a condition for claims and payments to be made under this guarantee that the said payment has been received to the account of the Vendor. The advance payment demand guarantee shall be returned to the Vendor promptly after the signature of acceptance certificate, by means of which the Purchaser shall entirely take over the subject of this contract (Grab unloader). In case a partial delivery should take place, the Vendor shall prolong the validity of the advance payment demand guarantee till the term, agreed jointly with the Purchaser. In opposite case, the Purchaser shall be entitled to utilize the advance payment demand guarantee. The advance payment bank guarantee shall be prepared in accordance with Uniform Rules for Demand Guarantees (URDG) revision 2010, ICC publication no. 758 (The submitted demand guarantee shall contain a provision stating that the submitted demand guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) revision 2010, ICC publication no. 758). 10% of the total contract price at issuing the booking note for the heavy lift vessel which will deliver the Grab unloader to Koper in the amount of 1.493.000,00 EUR shall be paid for crane after receiving a commercial invoice for said amount and an irrevocable, unconditional advance payment bank guarantee in the amount of 1.493.000,00 EUR, with validity 3 months after the agreed delivery time, which the Vendor shall remit to the Purchaser before the completion of this payment. It is a condition for claims and payments to be made under this guarantee that the said payment has been received to the account of the Vendor. The advance payment demand guarantee shall be returned to the Vendor promptly after the signature of acceptance certificate, by means of which the Purchaser shall entirely take over the subject of this contract (Grab unloader). In case a partial delivery should take place, the Vendor shall prolong the validity of the advance payment demand guarantee till the term, agreed jointly with the Purchaser. In opposite case, the Purchaser shall be entitled to utilize the advance payment demand guarantee. The advance payment bank guarantee shall be prepared in accordance with Uniform Rules for Demand Guarantees (URDG) revision 2010, ICC publication no. 758 (The submitted demand guarantee shall contain a provision stating that the submitted demand guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) revision 2010, ICC publication no. 758).

*Tamim R. Raza*

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*The last 10% of the total contract price in amount of 1.493.000,00 EUR shall be paid 15 days after the date of acceptance certificate signed at Luka Koper from both sites per crane, receiving a commercial invoice and a Warranty Bond as per article 13 of this contract."*

The Vendor has already provided advance payment bank guarantees in accordance with Article 4 of the Purchase Contract (for the payment amounts which are already due), that is advance payment bank guarantee in the amount of 2.986.000,00 EUR, issued on 27.12.2018. However, the New Vendor undertakes to provide new advance payment bank guarantees in accordance with Article 4 of the Purchase Contract within 15 days after the signing of this Annex. Already provided advance payment bank guarantees by the Vendor remain valid (and will not be returned) until Purchaser receives new advance payment bank guarantees in accordance with this paragraph and in accordance with the Purchase Contract from the New Vendor. Once the Purchaser has received the new advance payment bank guarantees from the New Vendor in accordance with this paragraph, the advance payment bank guarantees already provided by the Vendor shall automatically become void and shall immediately be returned by the Purchaser to the Vendor, whereby the Purchaser may not raise any claims under such advance payment bank guarantees any more. The Purchaser shall immediately inform the Vendor in writing, once replacement of the advance payment bank guarantees has taken place in accordance with this paragraph.

The New Vendor also undertakes the obligation to provide further appropriate advance payment bank guarantees (for the payment amounts which are not yet due) in accordance with Article 4 of the Purchase Contract.

**PERFORMANCE BOND**

**Article 9**

Purchase Contract in Article 7b determines the following:

*"1) The Vendor shall, within 21 working days from the receipt of signed copy of this contract, provide the Purchaser with a Performance Bond as a condition for the contract validity.*

Type of Performance Bond:

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*Original bank guarantee for the fulfilment of contract obligations prepared in accordance with Uniform Rules for Demand Guarantees (URDG) revision 2010, ICC publication no. 758.*

*The submitted demand guarantee shall contain a provision stating that the submitted demand guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) revision 2010, ICC publication no. 758.*

*Value and currency:*

*10 % of the contractual amount from article 3 excl. VAT*

*Validity:*

*3 months after the agreed delivery time*

*The Purchaser may invoke the Performance Bond if the Vendor does not fulfil his contractual obligations in agreed quality, quantity and time limits defined in this contract.*

*The Performance Bond shall be returned to the Vendor promptly after the signature of acceptance certificate, by means of which the Purchaser shall entirely take over the subject of this contract (Grab unloader) and after receiving a Warranty Bond as per article 13 of this contract.*

*In case a partial delivery should take place, the Vendor shall prolong the validity of each bank guarantee till the term, agreed jointly with the Purchaser. In opposite case, the purchaser shall be entitled to utilize the Performance Bond."*

The Vendor has already provided Performance Bond in accordance with Article 7b of the Purchase Contract, that is Performance Bond in the amount of 1.493.000,00 EUR, issued on 27.12.2018. However, the New Vendor undertakes to provide a new Performance Bond in accordance with Article 7b of the Purchase Contract within 15 days after the signing of this Annex. Already provided Performance Bond by the Vendor remains valid (and will not be returned) until the Purchaser receives new Performance Bond in accordance with this paragraph and in accordance with the Purchase Contract from the New Vendor. Once the Purchaser has received a new Performance Bond from the New Vendor in accordance with this paragraph, the Performance Bond already provided by the Vendor shall automatically become void and shall immediately be returned by Purchaser to the Vendor, whereby

*Thomas R. Kraft*





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In the case that the New Vendor does not present to the Purchaser the Warranty Bond as determined in the Purchase Contract and this Article, the Purchaser is legitimate to redeem a Performance Bond.

**SUBCONTRACTOR**

**Article 11**

To fulfil its obligations under the Purchase Contract, the New Vendor may subcontract all or some of the works related with the subject matter of the Purchase Contract to a subcontractor Koch Solutions GmbH (hereinafter as "**Subcontractor**").

The New Vendor must fully observe the obligations referred to in Article 94 (Subcontracting) of the PPA-3 and the requirements given in the tender dossier. Subcontractor must meet all conditions and requirements of the contracting authority in relation to subcontractors, which are stated in the tender dossier and fill in all the stated appendices, which relate to the fulfilment of conditions of subcontractors.

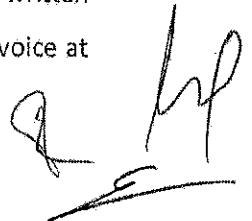
In relation to the contracting authority, the New Vendor is fully liable for the proper execution of contractual obligations, irrespective of the number of Subcontractors.

In accordance with Article 94, paragraph 4 of ZJN-3, the contracting authority shall reject any subcontractor in respect of which there are grounds for exclusion referred to in 3.1.1 (Exclusion grounds) of the tender dossier. For each individual Subcontractor, supplier must submit equal proofs for the fulfilment of conditions, specified in the previous sentence, as they are required to submit for themselves.

A Subcontractor may request for direct payment in accordance with Article 94 of PPA-3. However, in case of Koch Solutions, the latter with a written statement, which is appendix No.1 to this Annex, declares that it will not demand direct payment in accordance with Article 94 of PPA-3. Purchaser shall pay all the payments directly to the New Vendor.

Since Koch Solutions as a Subcontractor will not request direct payment, contracting authority will ask the New Vendor to provide its own written statement and a written statement of Koch Solutions within 60 (sixty) days from the payment of the final invoice at

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the latest that the latter has received payment for performed works, which are directly connected to the subject-matter of the contract.

**ANTI-CORRUPTION CLAUSE**

**Article 12**

Any contract in which a person promises, offers or gives any undue advantage to the representative or agent of a public sector body or organisation on behalf or for the account of another Party for the purpose of:

- obtaining business;
- concluding business under more favourable terms and conditions;
- omitting due supervision over the implementation of contractual obligations; or
- any other act or omission which causes a public sector body or organisation damage or by which the representative or the agent of a public sector body or organisation, any Party or its representative, agent or intermediary are put, in a position to obtain an undue advantage,


shall be deemed null and void.

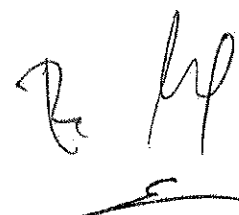
The Parties undertake to avoid any practices that would lead to this Annex or the Purchase Contract being null under the preceding paragraph of this article. This declaration constitutes a statement in accordance with the rules on integrity and prevention of corruption.

**SOCIAL CLAUSE**

**Article 13**

Subject always to the provisions of the PPA-3, the Purchase Contract shall be terminated in case one of the following circumstances is fulfilled:

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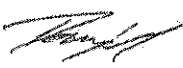
- the Purchaser is informed that the court determined with a final decision (*pravnomočna odločba*) failure to comply with labour, environmental or social legislation by the New Vendor or the Subcontractor, or
- if the Purchaser is informed that the competent government body established by a final decision (*pravnomočna odločba*) at least two violations by the New Vendor or the a Subcontractor during the execution of the Purchase Contract regarding:
  - o remuneration of work,
  - o working time,
  - o breaks,
  - o performing work based on civil law contracts despite the existence of the employment relationship or related to illegal employment for which a fine was imposed with a final decision or decision of a court,

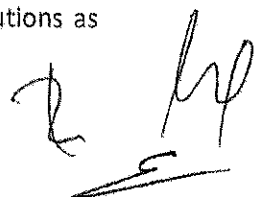
and under condition that there is at least six months' time between being made aware of the violation and until the expiry of the validity of the Purchase Contract or if the New Vendor acts with the Subcontractor and also if due to a determined violation the New Vendor does not replace or change such Subcontractor in a way, defined in accordance to article 94 of the PPA-3 and the Purchase Contract terms within 30 days from becoming aware of the violation.

If the circumstances and terms from the previous paragraph are fulfilled, it shall be deemed that the Purchase Contract is terminated on the day of entering into a new public procurement contract for the same subject matter. The contracting authority will inform the supplier of the date of entering into of the new contract.

If the Purchaser does not begin a new public procurement procedure within 30 days since being familiarized with the violation, it is considered that the Purchase Contract is terminated on the thirtieth day since familiarisation with the violation.

For the avoidance of any doubt, termination of the Purchase Contract (pursuant to this Article 10 or based on any other legal title) after the entry into force of this Annex (see Article 14, first paragraph) shall not result in the Vendor becoming liable to the Purchaser under and/or in connection with the subject matter of the Purchase Contract and/or this Annex again in any way or form whatsoever. The New Vendor and/or Koch Solutions as

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solidary debtors shall, however, remain liable for claims of the Purchaser in relation to the termination of the Purchase Contract, and liable for all obligations relating to the bank guarantees and any additional obligations arising during the warranty term.

**VALIDITY OF THE ANNEX, PURCHASE CONTRACT TRANSFER EFFECTIVENESS**

**Article 14**

Entry into force of this Annex: Upon the signature of all contracting Parties.

Effectiveness of the transfer of the Purchase Contract from the Vendor to the New Vendor: Upon the fulfilment of the suspensive conditions that the New Vendor (no matter when) (i) submits to the Purchaser new advance payment bank guarantees in accordance with article 4 of the Purchase Contract (see Article 8 of this Annex) and (ii) submits to the Purchaser a new Performance Bond in accordance with article 7b of the Purchase Contract (see Article 9 of this Annex). The following paragraph of this Article 14 shall remain unaffected hereby.

The obligations of the New Vendor to provide new advance payment bank guarantees in accordance with Article 8, second to last paragraph, of this Annex and a new Performance Bond in accordance with Article 9, last paragraph, of this Annex shall enter into force immediately upon signing of this Annex by all Parties.




**FINAL PROVISIONS**

**Article 15**

Provisions of the Purchase Contract, which are not amended by this Annex, remain unchanged.

Should any of the provisions of this Annex be or become invalid, this shall not affect its remaining provisions. The invalid provision shall be replaced by a valid one that shall, to the largest extent possible, serve the purpose pursued by the Parties.

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All documents and correspondence between the Parties shall be in English unless the contracting parties agree to the contrary concerning some specific documents.

The contracting parties shall endeavour to settle disputes in an amicable way. Should no agreement be reached, the parties agree that the dispute shall be settled under the rules of Arbitration of the United Nations UNCITRAL arbitration rules by three arbitrators appointed in accordance with the said rules. The arbitration shall take place in Ljubljana, Slovenia, applying the Slovenian Law. The language of arbitration proceeding shall be English.

As of date of this Annex, the provision of the preceding paragraph shall replace provision of Article 23, paragraph 4) of the Purchase Contract.

This Annex was made out in six equal copies in English language; where of each party to the Annex receives two copies.

APPENDICES

- 1) WRITTEN STATEMEN – DIRECT PAYMENT

*[Signature Page follows]*

*David R. Roth*


*[Handwritten signatures]*

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Contracting Authority/Purchaser


Luka Koper d.d.

In Koper, Date: 2.8.2019

Signatory: President of the Managing Board: Dimitrij Zadel 

Signatory: Member of Managing Board:

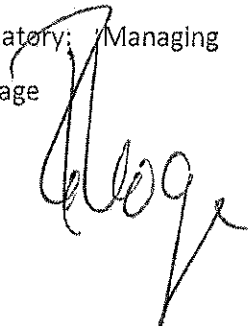
Metod Podkrižnik



Tenderer/Vendor/Supplier

FLSmidth Wadgassen GmbH

In Wadgassen, Date: \_\_\_\_\_

Signatory: Managing Director: Hendrik Rehage 

and

New Tenderer/Vendor/Supplier

Nantong Rainbow Heavy Machineries Co, Ltd.

In \_\_\_\_\_, Date: \_\_\_\_\_

Signatory: President: Mr. Wu Jian

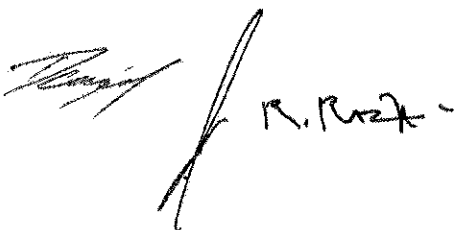
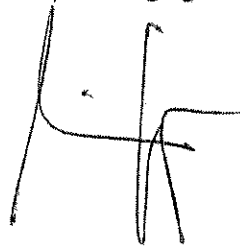


KOCH SOLUTIONS

Koch Solutions GmbH

In \_\_\_\_\_, Date: \_\_\_\_\_

Signatory: Managing Director: Jürgen Maier



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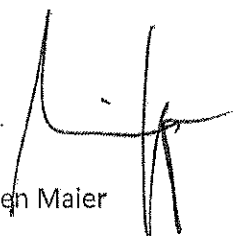
Appendix No. 1

**A WRITTEN STATEMENT**

Koch Solutions GmbH, VAT ID No.: DE 320 497 928, Registration No.: HRB 104899, represented by its managing director Jürgen Maier, with this written statement, as a subcontractor of the Nantong Rainbow Heavy Machineries Co., Ltd. in relation to the Purchase Contract No.: JN 242/2018/5217003/45 – 123886, confirms that it will not demand direct payment in accordance with Article 94 of the Slovenian Public Procurement Act (Official Gazette of the Republic of Slovenia, No.: 91/15 and 14/18, hereinafter referred to as PPA-3).

In relation with Purchase Contract No.: JN 242/2018/5217003/45 – 123886 Luka Koper d.d. as contracting authority shall pay all the payments directly to Nantong Rainbow Heavy Machineries Co., Ltd as main contractor.

**Koch Solutions GmbH**

  
Jürgen Maier

In \_\_\_\_\_, Date: \_\_\_\_\_



