

**GENERAL TERMS AND CONDITIONS**  
**("GTC")**

**for**

**Supply of Equipment and Services**

**by**



**INTECO melting and casting technologies GmbH**

registered under FN 72888p

Wiener Straße 25a, 8600 Bruck an der Mur, AUSTRIA

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## **1. DEFINITIONS**

Unless the context requires otherwise, the following words shall have the following meanings assigned to them in this Article 1:

- 1.1 **“Buyer”** shall mean the Party that receives an offer from the Seller or places an order to acquire goods or services with the Seller or enters into a Contract with the Seller.
- 1.2 **“Confidential Information”** shall mean any confidential or proprietary information or data, written or oral or in any other form, concerning the Project, business operations, software, plans, drawings, Plant and know-how documentations, products, processes, technology, strategies, facilities, research, finances, customers, legal affairs, pricing, information systems, trade secrets, development plans, marketing information, commercial information, properties, environmental considerations, suppliers, technical information, raw material usage, business methods, personnel, sales or similar confidential or proprietary information or data of a Party or its respective parent company, subsidiary or affiliate. The term **“Confidential Information”** shall not include information that (a) is already in a Party’s legal possession, as evidenced by the written, dated documentation of such Party and provided that such information is not known by the said Party to be subject to another confidentiality agreement, (b) is or becomes generally available to the public other than as a result of disclosure by the recipient Party or its representatives in violation of the Contract or (c) is independently developed by a Party without reference to or reliance upon the Confidential information or (d) is required to be disclosed by any law or regulation or by the decree of any competent tribunal, provided that the receiving Party required to make such disclosure shall limit its disclosure to the information or data required to be disclosed and shall make reasonable efforts to give maximum possible notice to the disclosing Party prior to such disclosure and assist the disclosing Party in seeking protection of the information or data to be disclosed. The Party who refers to these exceptions bears the burden of proof.
- 1.3 **“Contract”** shall mean the contract to supply equipment and/or services, which is concluded between the Buyer and the Seller, with all its Annexes and these GTC as integral parts of the Contract. In case of any divergence of interpretation between these GTC and the Contract, the Contract shall prevail. In case of any divergence of interpretation between the Contract and its Annexes, the Contract shall prevail.
- 1.4 **“Contract Price”** shall mean the total amount to be paid by the Buyer to the Seller according to the Contract.
- 1.5 **“Days”, “Weeks” and “Months”** shall mean calendar days, weeks and months reckoned according to the Gregorian calendar.
- 1.6 **“Effective Date”** shall mean the date on which the Contract comes into effect.
- 1.7 **“Equipment”** shall mean the mechanical and electrical equipment, materials and auxiliary equipment supplied by the Seller as specified in the Contract.
- 1.8 **“EUR”** shall mean the currency Euro within the European Union.
- 1.9 **“FOB”, “FCA”, “CFR”, “CIF”, “CIP”, “DAP” and “DDP”** etc. are the commercial terms defined in accordance with the provisions of the International Rules for the Interpretation of International Commercial Terms (INCOTERMS) 2010, except as otherwise provided herein.
- 1.10 **“Last Main Shipment”** shall be deemed on the date of the last shipment of Main Equipment as stated in the Contract.
- 1.11 **“Main Equipment”** shall mean Equipment with exception of subsequent deliveries as personal computers, spare parts etc.

- 1.12 **“Offer”** shall mean the offer of the Seller together with these GTC as an integrated part of the offer.
- 1.13 **“Party”** shall mean the Seller or the Buyer, **“Parties”** shall mean both together.
- 1.14 **“Plant”** shall mean the plant or the facilities to be delivered by the Seller or the Buyer as specified in the Contract.
- 1.15 **“Seller”** shall mean **INTECO melting and casting technologies GmbH**, FN 72888p, Wiener Straße 25a, 8600 Bruck an der Mur, AUSTRIA.
- 1.16 **“Subcontractor”** shall mean any person other than the Seller to whom any part of the Seller’s obligations has been subcontracted by the Seller. To avoid any doubt any company within the Seller’s Group, these are companies where the Seller holds the majority of shares or controls them otherwise, shall not be deemed as a subcontractor according to the above definition. The same applies to the procurement of components and parts based on the detail engineering of the Seller as well as manufactured equipment of minor items.

## **2. GENERAL PROVISIONS**

- 2.1 These GTC shall apply to the present and all subsequent Contracts and Offers on the delivery of Equipment and/or Services between the Buyer and the Seller in business-to-business relationships exclusively.
- 2.2 Conflicting, differing or supplementing terms and conditions of the Buyer are not accepted and shall not bind the Seller, even if the Seller does not explicitly object to them or if the Seller unconditionally renders performance or accepts payments.
- 2.3 Any deviations from these GTC or any agreement shall only become valid and binding by the written confirmation of the Seller.
- 2.4 The Buyer shall be entitled to the non- exclusive use of any delivered standard software in unmodified form for use only with the agreed Equipment. Unless otherwise agreed or indicated, e.g. on the data media or in the software documentation, the Buyer shall be entitled to create two back-up copies.

## **3. PRICE**

- 3.1 The Contract Price as specified in the Contract shall be considered in all respects as firm, fixed and not subject to adjustments unless otherwise agreed expressly.
- 3.2 The Price does not include the Value Added Taxes ("VAT"), which shall be paid additionally by the Buyer at the rates valid at the time of invoicing, if VAT are required by law.
- 3.3 The Contract Price does not include any costs for transport, insurance, packaging, taxes, duties and other charges unless otherwise agreed in the Contract.
- 3.4 In the event of any delays related to the Buyer's contractual obligations and responsibilities, which are beyond the control of the Seller, causing the time schedule to fall behind by more than three (3) Months, then any part of the Contract Price that has yet to be paid after the three (3) Months delay period, whether due for payment at that time or not, will be increased each additional Day of delay by the amount of 0.03 % (zero point zero three percent) of the outstanding sum. Claims by the Seller for damages shall remain unaffected.
- 3.5 In the event of any essential changes being made to the scope, nature, design data, material, construction and time schedule specified in the Contract, the Seller reserves the right of Price revisions, which shall also take into account cost variations resulting from any changes of the Contract time schedule. Further, any costs arising from any circumstances for which the Seller cannot be held responsible, such as disturbances during the execution of work due to operational conditions prevailing at site or due to Force Majeure shall be charged separately.

## **4. PAYMENT TERMS**

- 4.1 For the payment to be made, the Buyer will establish an irrevocable, divisible, transferable and if requested reconfirmed Letter of Credit (L/C) for 100 % (hundred percent) of the Contract Price through an advising bank acceptable to the Seller; the beneficiary of the said Letter of Credit shall be the Seller. The Letter of Credit shall be opened in favor of the Seller and shall be payable to the Seller at the counters of an Austrian first class bank. The Letter of Credit shall be valid for the full period of time necessary to effect Contract Payment (plus 3 (three) Months as safety duration). The Letter of Credit will allow payments for partial shipments or partial deliveries of services. All costs, bank charges or other fees related to the Letter of Credit shall be paid by the Buyer.
- 4.2 The Buyer shall pay invoices in full within 14 (fourteen) Days from the date of receipt of the Seller's invoice and after all the conditions stipulated in the Contract, in particular those

regarding the provision of proper documentation, have been complied with. Payment shall be made to the bank account of the Seller.

- 4.3 Payments by the Buyer are considered as being fulfilled when they have been credited for free disposal on the bank account of the Seller.
- 4.4 If milestones such as PAC or FAC are delayed beyond the control of the Seller, payments are due at the latest 3 (three) Months after the related milestone in the time schedule of the Contract.
- 4.5 If the Buyer fails to make any payment required by the Contract by the due date for payment, then the Buyer shall pay interest on the overdue amount at the rate of 8% (eight percent) per annum above the relevant 3 (three) Months EURIBOR.

## **5. TECHNICAL DOCUMENTS/DRAWINGS**

- 5.1 The Seller shall provide the Buyer with designs, drawings, specifications, time schedules and bills of quantities as may be necessary to enable the Buyer to carry out manufacturing and erection. These documents will be specified in the Contract.
- 5.2 The Seller shall be entitled to subcontract parts of his obligations of the Contract to a Subcontractor.

## **6. DELIVERY AND PACKING**

- 6.1 The final Main Shipment of the Equipment will take place in accordance with the delivery schedule as agreed on in the Contract.
- 6.2 The delivery will be effected under condition that:
  - a. the Contract has become effective,
  - b. all local permits to execute the work are received and
  - c. execution of the Contract is granted on an uninterrupted basis.
- 6.3 Any modification in design desired by the Buyer or demanded by any authority during the execution of the Contract may require an appropriate extension of the delivery schedule and the completion time.
- 6.4 In the event the Buyer requests changes to the delivery schedule, as specified in the Contract, the Seller reserves the right to make price changes. Further, any costs arising from circumstances for which the Seller cannot be held responsible, such as disturbances during the execution of work due to operational conditions prevailing at site or due to Force Majeure, will be charged separately.
- 6.5 The Seller shall deliver the Equipment on the basis of the INCOTERMS 2010 agreed in the Contract to the place of delivery, in accordance with the delivery schedule. Partial deliveries are allowed.
- 6.6 Unless otherwise agreed, packing will be invoiced separately to the Buyer.

## **7. INSURANCE**

- 7.1 The Buyer shall carry all necessary erection all risks insurance and shall, in cooperation and with assistance of the Seller, do its best to minimize the uninsured risks throughout the erection period of the Plant after the arrival of the Equipment at the Site.

- 7.2 In the event a claim for indemnification of loss and/or damage against above mentioned insurance becomes necessary, both Parties shall assist and cooperate with each other to promptly take up the matter with the insurance company. They shall offer necessary assistance to have the damaged or lost Equipment replaced or repaired as promptly as possible.

## **8. WARRANTY**

- 8.1 The Seller warrants, that at time of delivery all the Equipment supplied by the Seller is new and free from defects, of first class workmanship and materials and shows no defects due to faulty design, materials or workmanship, under normal operating conditions.
- 8.2 The warranty period shall be 12 (twelve) months from the date of delivery of equipment/service to the Buyer. Warranty claims may only be asserted after timely and written notice of defects by the Buyer. Obvious defects shall be reported without delay, but no later than 14 (fourteen) days after delivery of equipment/service. Hidden defects shall be reported immediately after their discovery, but within the warranty period. The notice of defects does not release the Buyer from the contractually agreed payment obligation. Apart from those cases in which the Buyer is entitled to redhibitory action by law, the Seller reserves the right to fulfill the warranty at free choice of the Seller within a reasonable period through correction or price reduction. Claims for compensation for damage caused by delay cannot be asserted within that period.
- 8.3 No liability is assumed for the correctness of the plans, drawings and other documents and information ("Documents") submitted by the Buyer. Any claim for damages for defective services resulting from the Documents submitted by the Buyer is excluded.
- 8.4 The Seller shall not be responsible and these warranties shall not apply in any of the following cases:
- a. damages in transit, improper storage or handling, incorrect or negligent operations or improper maintenance without the fault of the Seller;
  - b. any alternations made otherwise than by or with the prior written consent of the Seller; and
  - c. normal wear and tear.

## **9. TITLE AND RISK**

- 9.1 The title to the Equipment shall pass from the Seller to the Buyer at the same time as the risk for any damage in the Equipment pursuant to the agreed INCOTERMS 2010 according to the Contract at 00.00 hours.

## **10. VARIATION**

- 10.1 Any variations in, additions or amendments to the Contract ("Variations") are subject to a written agreement between the Parties.
- 10.2 If the Buyer desires any Variations of the Contract, notice in writing shall be given by the Buyer immediately to enable the Seller to make necessary arrangements. In case the Equipment is already manufactured or in the course of manufacture, or any matters completed or drawings or patterns made require alteration, the costs thereof shall be paid by the Buyer to the Seller. In this case, a reasonable time for the extension of delivery shall be granted, all extra costs due to Variations shall be paid by the Buyer.

- 10.3 Minor and insubstantial Variations, which do not affect the agreed price or delivery in any case, shall be made by written consent between the Parties hereto, but shall not require the approval of the respective governments of the Buyer and the Seller.

#### **11. PROPRIETARY RIGHTS/PATENTS**

- 11.1 The Seller shall indemnify and hold the Buyer harmless against all direct costs, actions, claims and demands brought by a third party by reason of or in consequence of any infringement of any patent, design patent, trademark or copyright by the Equipment or parts thereof that have been supplied by the Seller as a result of engineering services.
- 11.2 In the event that any claim is made or action is brought against the Buyer relating to such infringement, the Buyer shall promptly notify the Seller thereof. The Seller, at his own option, may request the assistance of the Buyer and can conduct, on the behalf of the Buyer, all negotiations for settlement of such dispute or litigation as may arise therefrom.

#### **12. OWNERSHIP OF DRAWINGS, PLANS AND SPECIFICATIONS**

- 12.1 All drawings, plans, specifications, oral or written data, documentations and similar documents developed and/or provided and/or supplied by the Seller to the Buyer ("Documents") are the Seller's property.
- 12.2 The Seller grants the Buyer an irrevocable and limited right to use such Documents only as agreed according to the Contract. The Documents shall not be used by the Buyer for another purpose than agreed in the Contract. Accordingly the Buyer has no right to completely or partially copy, change, reproduce, discuss with or disclose such Documents to third parties (this includes affiliates of the Buyer) without written agreement of the Seller.
- 12.3 The Buyer ensures, that all persons having access to such Documents or any copies thereof, shall be bound by these provisions.
- 12.4 In the case of any violation of this Article, the Seller shall be entitled to comprehensive reimbursement of costs and damages, in particular on the ground of loss of future profits from expected sales. The Buyer shall pay to the Seller liquidated damages in the amount of EUR 1 million (one million Euro) per case, payable irrespective of fault, without prejudice to the Seller's right to claim compensation from the Buyer.

#### **13. TAXES AND DUTIES**

- 13.1 The Seller shall pay all the customs duties and tariffs for export of the Equipment assessed or imposed on the Seller by the government or other competent authority of the Seller's country in relation to the Contract.
- 13.2 The Buyer shall pay and bear all bank charges, taxes and duties, including customs duties and including VAT related to the import of the Equipment, assessed or imposed on the Buyer or the Seller by the government or other competent authority of the Buyer's country in relation to the Contract.
- 13.3 In case the Seller shall bear the withholding taxes which may be imposed by any competent authorities upon payments to be made to the Seller under the Contract, the Buyer shall withhold and deduct such withholding taxes from the payments and pay the said taxes to the appropriate tax office on behalf of the Seller and shall send to the Seller the original tax payment certificates.



#### **14.REMINDER FEES AND COLLECTION EXPENSES**

- 14.1 In case of delay of the payment the Buyer is obliged to pay all pre-procedural costs as for reminder fees, professional fees for lawyers and/or collection agencies without prejudice to the Seller's right to claim compensation from the Buyer.

#### **15.CLAIMS, LIABILITY, PERSONAL INJURY AND NON-SOLICITATION**

- 15.1 The Parties are not entitled to forward claims and demands other than as specified in these GTC or in the Contract.
- 15.2 The liability for damages caused by the Seller is limited to the order value, except for personal injury.
- 15.3 If the Seller causes damage to the Buyer, provided such damage was caused by the Seller in intentional or grossly negligent manner or in case performance by the Seller under the Contract causes death or injury to persons of the Buyer or a third party, provided the Seller shall be liable therefore, the Seller shall indemnify the Buyer or a third party to the extent of the coverage of the Seller's respective third party liability insurance.
- 15.4 The Seller shall under no circumstances be liable for slight negligence, indirect or consequential damage, as well as, but not limited to pure financial loss, loss of use, loss of profit, loss of production, loss of revenues, cost of capital or increased cost connected with the interruption of operation suffered by the Buyer for whatever reason.
- 15.5 Claims for damages shall become statute-barred within 12 (twelve) months after becoming aware of the damage and the injuring party.
- 15.6 The Buyer shall refrain from hiring or otherwise employing (direct or indirect) employees, representatives, consultants or other agents of the Seller during the effectiveness of the Contract and for a period of two (2) years after termination of the Contract.
- 15.7 Notwithstanding any claims for damages asserted by the Seller against the Buyer, the Buyer agrees to pay to the Seller immediately liquidated damages equal to the gross annual salary most recently paid to the solicited employee, representative, consultant or other agent, but not less than EUR 100.000,00 (one hundred thousand Euro) per breach of the non-solicitation obligation in Article. The foregoing shall be without prejudice to the Sellers's right to assert claims for damages in excess of the liquidated damages. The Buyer bears the burden of proof.

#### **16.PRODUCT LIABILITY**

- 16.1 Recourse claims are excluded unless the Buyer proves, that the mistake is in the sphere of the Seller and was caused at least gross negligent.

#### **17.CONFIDENTIALITY**

- 17.1 The Parties agree that Confidential Information is only allowed to be used in connection with an offer and the realization of the Contract and that Confidential Information is strictly confidential. Each Party will undertake all necessary steps to ensure non-disclosure of Confidential Information to third parties and shall also impose this confidential obligation evidently to all its employees as well as to its other agents.
- 17.2 Confidential Information remains the exclusive property of the disclosing Party. The receiving Party gains no rights or claims on such Confidential Information. The Parties may not sell,

exploit, assign, lease, barter, use, incorporate, disclose or trade other Party's Confidential Information for any other reason whatsoever.

- 17.3 The Parties shall impose the secrecy obligation on their staff as well as on their contractors or suppliers.
- 17.4 In case of any violation of this Article, the violating Party has to pay immediately liquidated damages of EUR 100.000,00 (one hundred thousand Euro) for every violation of this Article to the injured Party. The foregoing shall be without prejudice to the injured Party's right to assert claims for damages in excess of the liquidated damages. The violating Party bears the burden of proof.
- 17.5 The obligations of this Article shall survive the termination of the Contract for an unlimited period.

## **18. FORCE MAJEURE**

- 18.1 Neither Party of the Contract shall be responsible for failing to perform an obligation under the Contract to the extent that it is caused by a Force Majeure Event provided that such Party:
- a. gives prompt written notice to the other Party describing the Force Majeure Event including its known or anticipated impact and expected duration and
  - b. takes all reasonable steps to overcome and mitigate the effects of the Force Majeure Event as soon as possible.
- 18.2 The occurrence and duration of a Force Majeure Event shall be established by a document issued by the Chamber of Trade and Commerce of the country in which the incident took place. Documentation regarding the occurrence, character and duration of the Force Majeure Event shall be submitted within 30 (thirty) Days after the above mentioned initial notification of the other Party. Failing proper documentation of the Force Majeure Event without significant reason, the Party affected shall be forfeited from referring to it as an argument of exemption from liability.
- 18.3 Force majeure hereunder shall be defined as any of the following events: war, preparation for war, act of terrorism, blockade, revolution, insurrection, mobilization, civil commotions, riots, strike, sabotage, inevitable accident, lockout, act of governmental authorities, Act of God, plague, freight embargo, EU or governmental regulations, earthquake, tidal wave, typhoon, storm, fire, explosion, flood or any condition of a similar nature beyond the control of the Parties hereto.
- 18.4 If a Force Majeure Event continues more than 180 (one hundred eighty) Days, the Party not directly affected by the Force Majeure Event shall be entitled to terminate the remaining part of the Contract with immediate effect by giving written notice by registered letter to the other Party.
- 18.5 Neither Party shall be liable for payment of any compensations including penalties, liquidated damages or interest for any payment delayed in the event of occurrence of Force Majeure, nor shall they be subject to any liability whatsoever.
- 18.6 In case of termination of the Contract in accordance with this Article the Seller is entitled to all amounts of engineering, equipment and services already supplied and/or invoiced to the Buyer. The Buyer shall indemnify the Seller of all additional reasonable internal and external expenses and costs incurred by the Seller until the termination of the Contract (date of receipt of the written notice of termination at the Seller's office), including but not limited to

costs for engineering, manufacturing and storing and taking reasonable measures to protect and to preserve the delayed Equipment.

#### **19.EFFECTIVE DATE OF CONTRACT**

- 19.1 The Contract shall become fully effective and binding upon the Parties on the date on which all of the following conditions have been fulfilled:
- a. The Contract has been signed by both Parties;
  - b. Receipt of the down payment by the Seller in accordance with the Contract;
  - c. Opening and making operative of the Letter of Credit (L/C) of a first class bank acceptable to the Seller in accordance with the Contract;
  - d. Receipt of the Export License to be issued by the Austrian Government or of a Certificate issued by the Seller stating no Export License is required.
- 19.2 The Parties shall try their best to make the Contract become effective as soon as possible.

#### **20.TERMINATION**

- 20.1 In the event of a material breach of the Contract, the dissatisfied Party shall be entitled to terminate the Contract before the end of the Contract with immediate effect, if the breach fails to be cured within 3 (three) Months after a written notification of breach has been addressed to the other Party by registered letter. The termination of the Contract without reason is not allowed.
- 20.2 In case of delay of acceptance or other significant reasons such as bankruptcy of the Buyer, rejection of bankruptcy in default of asset as well as delay of payment by the Buyer, the Seller is entitled to withdraw from the Contract, as it has not yet been fully performed by the Parties. The Seller's delivering obligation is not effective if there are any delays of payment by the Buyer.
- 20.3 In case of the authorized withdraw of the Contract by the Seller, the Buyer has to pay within 14 (fourteen) Days compensation for liquidated damages of 30 % (thirty percent) of the gross quantity of orders (including taxes) as well as the difference of the actually incurred damage.
- 20.4 In case of the unauthorized withdraw of the Contract by the Buyer or if the Buyer is seeking for termination of the Contract, the Seller has the choice to insist on fulfillment of the Contract or to agree on the termination of the Contract. In the latter case the Buyer has to pay within 14 (fourteen) Days compensation for liquidated damages of 30 % (thirty percent) of the gross quantity orders (including taxes) as well as the difference of the actually incurred damage.

#### **21.GOVERNING LAW AND ARBITRATION**

- 21.1 The Contract and all of the rights and duties arising from or relating to it in any way shall exclusively be governed, construed and enforced under the laws of Austria, with the exclusion of the provisions of International Private Law. Should there be any modifications in the applicable law during the implementation of the Contract, such modifications shall apply.
- 21.2 Any differences or disputes arising out of or in connection with the Contract including any questions regarding the existence, validity or termination of the Contract during the term of the Contract or thereafter, shall be settled by an amicable effort of both Parties.

- 21.3 An attempt to arrive a settlement shall be deemed to have failed as soon as one of the Parties so notifies the other Party thereof in writing.
- 21.4 If an attempt at settlement pursuant to the above section has failed, the dispute shall be submitted to the International Court of Arbitration of the International Chamber of Commerce (ICC) and shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules.
- 21.5 The English language shall be used in the arbitration.
- 21.6 The place of arbitration shall be in Vienna, Austria.
- 21.7 Each Party hereby agrees to bear its own legal costs incurred in the arbitration proceedings.

## **22. MISCELLANEOUS**

- 22.1 All present and future contracts with the Buyer are based on these GTC unless a deviation therefrom is specifically provided for in the Contract. These GTC shall be deemed accepted by the Buyer at the latest from confirmation of the Order.
- 22.2 Any gaps in these GTC shall be governed solely by applicable statutory provisions. The Buyer's terms and conditions (e.g. quotations, terms and conditions of sale or confirmation of order) shall only be valid if they have been expressly approved in writing by the Seller.
- 22.3 Any additions or modifications to these GTC or the Contract shall be valid only if they are made in writing and signed by the duly authorized representatives of the Parties and being provided, that written and signed agreements may validly be exchanged by e-mail, fax, mail or courier.
- 22.4 English shall be the official language in the performance of the duties hereunder and any correspondence, documents, manuals, instructions, notices and other communications between the Parties.
- 22.5 If the Contract is drawn in English and a language other than English, the English text shall prevail for all parts of the Contract, in case of any divergence of interpretation.
- 22.6 Important notices, in which rights and/or obligations of either Party are involved, shall be given by fax or registered letter, and such notices shall be deemed to have been received at the time of delivery to the other Party (time of the courier's delivery receipt).
- 22.7 The Buyer is obliged to immediately inform the Seller if the Buyer's address is changing, otherwise explanations by the Seller count as legally valid if they are sent to the last known address of the Buyer.
- 22.8 No Party shall be deemed to have waived any right, power or privilege under the Contract or any provision thereof unless such waiver is duly executed in writing and acknowledged by the Party to be charged with such waiver.
- 22.9 If a particular provision of these GTC, the Offer or the Contract is legally ineffective or unfeasible for any legal reason then, unless the basic intention of the Parties is substantially jeopardized thereby, the validity of the remaining provisions shall not be effective thereby. In such case the Parties shall come to an agreement approximating as closely as possible the arrangement originally envisaged in the Contract.