**Performance Bond**

**(“*Vertragserfüllungsbürgschaft*”)**

**BACKGROUND**

A. The Employer

|  |
| --- |
| name and registered place of business of the Employer  |
|  |

and

the Contractor

|  |
| --- |
| name and registered place of business of the Contractor  |
|  |

entered into the following contract (the “**Contract**”):

|  |  |
| --- | --- |
| contract no. / title of the contract | date |
| description of works or services |  |

B. Pursuant to the provisions of the Contract, the Contractor shall provide the Employer with a surety bond (“*Bürgschaft*”) pursuant to section 765 German Civil Code in the amount of ## % *(in words: ## percent)* of the Contract Price (as defined in the Contract) as a security for the full and due performance of all the obligations, duties, undertakings, and liabilities of the Contractor under or in connection with the Contract which also cover the obligations to repay any overpayments, recourse claims due the non-payment of the social security contributions (“*Sozialversicherungsbeiträge*”) or statutory accident insurance contributions (“*Unfallversicherungsbeiträge*”), claims against the Employer due to Contractor´s breach of the law concerning the posting of employees abroad (“*Arbeitnehmerentsendegesetz*”), non-payment of the minimum wage (“*Mindestlohn*”) or contributions to the federal leave act (“*Urlaubskassenbeiträge*”) each also with respect to the personnel of Contractor´s Sub-Contractors as well as any accessory claims (“*Nebenforderungen*”) like interest owed.

C. At the request of the Contractor, the Bank (as defined herein) has agreed to enter into this surety bond in favour of the Employer.

**OPERATIVE PROVISIONS**

1. We (the “**Bank**”)

|  |
| --- |
| Name and registered place of business of surety/bank |
|  |

hereby issue to the Employer the irrevocable and directly enforceable surety bond (“*unwiderrufliche, selbstschuldnerische Bürgschaft*”) under German law covering the full and due performance of all the obligations, duties, undertakings and liabilities of the Contractor under or in connection with the Contract as described in recital B above, and therefore undertake to pay to the Employer any amount up to a total amount (the “**Maximum Amount**”) of

|  |  |
| --- | --- |
| Currency | Amount |
|  |  |
| Currency | Amount in words |
|  |  |

To the extent this surety bond also covers claims for defects (“*Mangelgewährleistungsansprüche*”) including all claims for payment and damages in connection with defects, the coverage shall apply only with the restriction that we shall only be liable for claims for defects if the Employer has notified the Contractor of the defect or the defect symptom at the latest, in case of a services contract (“*Werkvertrag*”), upon acceptance of the services or, in the case of a purchase contract (“*Kaufvertrag*”), upon delivery of the goods; we shall therefore not be liable for defects if the Employer notifies the Contractor of the defect or the defect symptom for the first time after acceptance or (as the case may be) delivery.

1. We waive the defence of failure to pursue remedies (“*Einrede der Vorausklage”*) pursuant to section 771 of the German Civil Code as well as the right of deposit (“*Recht auf Hinterlegung*”).
2. We further waive the defences of voidability (“*Einrede der Anfechtbarkeit”*) pursuant to section 770 of the German Civil Code, if and to the extent the defence is not based on fraudulent misrepresentation (“*arglistige Täuschung*”) or unlawful threat (*“widerrechtliche Drohung”*). We waive the defences of set-off (“*Einrede der Aufrechenbarkeit”*) except to the extent the counterclaims of the Contractor are undisputed or have been finally adjudicated.
3. This surety bond shall also remain valid in the event of a change of ownership on Contractor´s side or in the event of a change in the Contractor´s company legal form.
4. Claims under this surety bond shall be time-barred after five years commencing at the end of the year in which the claims to be secured become due.
5. This surety bond shall expire on the earlier of:

(a) the date the Bank has paid demands totalling in aggregate the Maximum Amount or

1. the date the original surety bond is returned to the Bank for cancellation or
2. the date the Bank receive Employer’s written declaration that the Employer releases the Bank from all liabilities towards the Employer under this surety bond or
3. [*Date, 24:00 CET*].

(the "**Expiry Date**").

Any demand must be received by the Bank on or before the Expiry Date.

1. This surety bond and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation (the “**Dispute**”) shall be governed by and construed in accordance with German laws. The courts in Essen, Germany shall have exclusive jurisdiction over any Disputes arising out of or in connection with this surety bond.

|  |  |  |
| --- | --- | --- |
| date | place | signature  |