**Settlement agreement**

**coNTAINING CHANGES TO PURCHASE AND SALE AGREEMENT NO. 202598**

**dATED [insert date]**

between

**LLC M.V. CARGO**

and

**NEUERO Industrietechnik fur Forderanlagen GmbH**

This agreement (hereinafter referred to as "**Settlement Agreement**") is dated **[•]** and entered into

# BETWEEN:

1. the private limited liability company LLC “**M.V. CARGO”**, a company duly incorporated and existing under the laws of Ukraine, with registered address at: 60 Alexey Stavnitser Str, Vyzyrka, Odeskyi district, Odesa region, 67543, Ukraine ("**MV Cargo**"); and
2. the private limited liability company **NEUERO** **Industrietechnik fur Forderanlagen GmbH**, a company duly incorporated and existing under the laws of Germany, with registered address at: Neuerostr. 1, 49324 Melle, Germany ("**NEUERO**");

hereinafter also jointly referred to as the “**Parties**” and each separately referred to as “**Party**”.

# WHEREAS:

1. On October 28, 2021, the Parties entered into a purchase and sale agreement no. 202598 (the “**Agreement**”) regarding the purchase of a Shiploader SL2000-Kiko (the “**Shiploader**”). The Agreement stipulates that it sets forth the entire understanding between the Parties and that it supersedes all prior agreements, written and oral (Article 20.4 of the Agreement), that it is governed by Dutch law (Article 15.1 of the Agreement), that the applicability of the UN Convention on the International Sales of Goods is explicitly excluded (Article 15.2 of the Agreement), and that no modification of the Agreement or any exhibits to the Agreement (“**Exhibits to the Agreement**”) will be effective unless in writing and signed by both Parties (Article 20.4 of the Agreement).
2. In the Agreement, the Parties agreed that the purchase price for the Shiploader is EUR 3,099,000 (the “**Purchase Price**”), that the Shiploader must be delivered at place (DAP Incoterms 2010) by NEUERO at Bert 25, Seaport of Pivdennyi (Article 4.4 and 4.7 and Exhibit 1 of the Agreement, paragraph 4), as a complete plant (Article 2.1 of the Agreement), and that it will be transported to the destination in parts, transported by trucks over the mainland (Article 4.9 of the Agreement). In the Agreement, the Parties furthermore agreed that MV Cargo will pay the Purchase Price according to a payment schedule specified in Exhibit 1 to the Agreement (the “**Payment Schedule**”). Parties also agreed on certain key milestones as specified in Exhibit 1 to the Agreement (“**Key Milestones**”).
3. Ukraine was invaded by Russia on a large scale on February 24, 2022. The invasion was launched out of Belarus to target Kyiv, and from the northeast against the city of Kharkiv. All further military activity by Russia in Ukraine will hereinafter be referred to as the “**Invasion**”.
4. In the course of 2022, a dispute arose between the Parties regarding the questions whether NEUERO is entitled to increase the Purchase Price of the Agreement, whether NEURO is entitled to change the Key Milestone regarding delivery of the Shiploader, and whether NEUERO is entitled to terminate the Agreement without being liable for damages suffered by MV Cargo. NEUERO inter alia takes the position that the Invasion qualifies as a force majeure event and/or an unforeseen circumstance (*onvoorziene omstandigheid*). MV Cargo, on the other hand, takes the position that the Invasion does not qualify as a force majeure event and/or unforeseen circumstance, that the production of the Shiploader is still possible and that the project can still be performed, that Companies around the world are being faced with price fluctuations due to a variety of reasons such as inflation, the Invasion, sanctions, personnel shortages or the post-effects of COVD-19 and that NEUERO cannot shift these risks to MV Cargo (the “**Dispute**”).
5. To end the Dispute and to continue the business relationship between the Parties, the Parties conducted good faith negotiations, which ultimately resulted in certain agreements as further set out in this Settlement Agreement. With this Settlement Agreement, the Parties intend to bring the Dispute to a final end. The Parties' intention therefore is that – after the entry into force of the Settlement Agreement and apart from any obligations arising from it – MV Cargo will no longer be confronted with any claims by NEUERO for an increase of the Purchase Price, any adjustments of the Key Milestones, and/or claims that NEUERO would be entitled to terminate the Agreement without being liable towards MV Cargo as a result of the Invasion, on whatever legal ground. Subject to the changes as agreed by the Parties, all rights and obligations of the Parties under the Agreement will remain in full force. All agreements between the Parties have been accurately and correctly reflected in this Settlement Agreement, and the text of the Settlement Agreement contains an exhaustive representation of the Parties' intentions. The Parties have ascertained this, have received professional assistance and have been advised by specialists.

# The following haS been agreed:

## The settlement

1. Change of the Purchase Price
   1. The Parties agreed to increase the Purchase Price with an amount of EUR 276,000. The new Purchase Price is therefore (EUR 3,099,000 plus EUR 276,000 =) EUR 3,375,000 (three million three hundred and seventy-five thousand euros).
   2. MV Cargo will no longer be required to provide a bank guarantee.
2. New Payment Schedule
   1. The Parties agreed to change the Payment Schedule into the below new Payment Schedule (with rounded percentage of new Purchase Price):

|  |  |  |
| --- | --- | --- |
| **%** | **EUR** | **Deliverable** |
| 13,77 | 464 850 | (Already paid by MV Cargo after signing of the Agreement) |
| 9,18 | 309 900 | (Already paid by MV Cargo after confirmation of basic engineering) |
| 15,77 | 532 125 | Within fifteen business days after NEURERO (i) placed the order at its supplier(s) for all the steel structure of the Shiploader; and (ii) sends written proof with supporting documents to MV Cargo.  As shown in the adjusted Time and Delivery Schedule (see Clause 3(2) of this Settlement Agreement, the order for steel beams will take place ultimately on 31.01.2023.  Parties will use the template order form (“**Template Order Form**”) for orders placed at supplier(s) (“**Orders Placed**”). ~~The Template Order Form is attached to this Settlement Agreement, and becomes Exhibit 6 to the Agreement.~~ |
| 15,77 | 532 125 | Within fifteen business days after (i) NEUERO provides proof to MV Cargo of Orders Placed for mechanical and electrical equipment and progress report, showing the status of manufacturing.  As shown in the adjusted Time and Delivery Schedule (see Clause 3(2) of this Settlement Agreement, the order for mechanical and electrical equipment will take place ultimately by 31.07.2023. |
| 35,51 | 1198500 | within fifteen business days upon pre-shipment inspection based on the inspection and test plan (“**ITP**”) ~~that is attached to this Settlement Agreement, and becomes Exhibit 7 to the Agreement.~~ |
| 10 | 337500 | Within fifteen business days after (i) assembling by NEUERO; and (ii) final acceptance by MV Cargo. |

1. FCA Delivery
   1. The Parties agreed that NEUERO is no longer required to deliver the Shiploader in accordance with DAP Berth 25, Seaport of Pivdennyi, Ukraine, Incoterms 2010. The Parties agreed that delivery will take place in accordance with FCA Incoterms 2020. The place for pickup is Melle/Germany and Teplice/ Czech Republic.
   2. The Parties agreed that the “Time and Delivery Schedule” with the Key Milestones as included in paragraph 6 of Exhibit 1 to the Agreement will be changed as follows:

|  |  |
| --- | --- |
| Key Milestone | Date |
| Commencement date | 6.09.2021 |
| Basic engineering | 6.12.2021 |
| Orders for steel beams placed by NEUERO and proof of order sent by NEUERO to MV Cargo | 31.01.2023 |
| Orders for mechanical and electrical components placed by NEUERO and proof of order sent by NEUERO to MV Cargo | 31.07.2023 |
| Ready for Pre-shipment survey | 31.10.2023 |
| delivery as per FCA Incoterms 2020 | 30.11.2023 |
| ~~Commissioning~~ | ~~[date]~~ |

1. Acceptance requirements
   1. As explained in the Article 2 above, acceptance will take place based on the ITP.
2. Changes to Detailed technical specification
   1. The Parties agreed to change the use of Sivacon Siemens into Rittal panels and perform the machinery house close to standard Neuero execution. In each Clause and Exhibit to the Agreement the words “Sivacon Siemens” is stated, it must from now on be read as “Rittal panels”.
3. Waiver
   1. Hereinafter NEUERO waives its right to claim that the Invasion qualifies as a force majeure event and/or unforeseen circumstance (*onvoorziene omstandigheid*).
   2. NEUERO waives its right to claim any (further) increase of the Purchase Price, on whatever legal ground.
   3. NEUERO is entitled to reimbursement of reasonable costs associated with the storage of goods until shipment, if the storage period exceeds 3 months. NEUERO will give MV Cargo one-month prior notice before any costs can be charged from MV Cargo. The request for payment will be substantiated with written evidence of the costs incurred by NEUERO for storage.
4. Agreement remains fully effective
   1. The Agreement, taking into account the above changes, remains fully effective and binding upon the Parties.

## Miscellaneous

1. Full and final release and relinquish of rights
   1. Subject to the terms and conditions of this Settlement Agreement and the Agreement being fulfilled, the Parties grant each other full and final settlement (*finale kwijting)* in connection with, relating to or resulting from the Dispute.
   2. Each Party hereby waives, releases and forever discharges, all and/or any actions, claims, rights, demands and set-offs, whether in this jurisdiction or any other, whether or not presently known to the Parties, that it, or any of its subsidiaries, affiliated and parent companies, ever had or may have against the other Party, its subsidiaries, affiliated and parent companies, or any of their respective officers, directors or employees, arising out or connected with the Dispute.
   3. Parties have agreed that they themselves will bear the costs of the (legal) assistance they have received and the costs they have incurred in connection with the Dispute and (the conclusion of) the Settlement Agreement and costs to prevent and/or limit (future) damages.
2. Entire agreement
   1. The Settlement Agreement and Agreement correctly and exhaustively sets out all the Parties' agreements and intentions regarding the subjects and (alleged) legal relationships referred to in the Settlement Agreement and the Agreement.
   2. The Parties are only permitted to provide evidence of the contents and scope of the agreements made between the Parties in this Settlement Agreement by submitting this Settlement Agreement. This agreement must be regarded as an evidence agreement.
   3. Parties are only permitted to provide evidence of facts and circumstances that serve to interpret the agreements made in this Settlement Agreement by submitting this Settlement Agreement. This agreement must be regarded as an evidence agreement.
3. Settlement agreement
   1. This Settlement Agreement constitutes a settlement agreement (*vaststellingsovereenkomst*) in accordance with and within the meaning of Article 7:900 of the Dutch Civil Code.
4. Termination, nullification and/or adjustment
   1. Each Party will bear its own risk for the possibility of error (*dwaling*) with regard to facts and circumstances that relate to entering into this Settlement Agreement.
   2. Each Party hereby waives the right to terminate (*ontbinden*) the Settlement Agreement, in whole or in part, to annul (*vernietigen*) or modify (*aanpassen*), in whole or in part, on the grounds of error, to have the effects of this Settlement Agreement amended to remove prejudice, and to suspend (*opschorten*) or set off obligations (*verrekenen*) under this Settlement Agreement. A claim for performance of this Settlement Agreement is the only remedy for nonperformance of any obligation for the Parties, arising from this Settlement Agreement. The other Party accept this waiver of right.
   3. The Parties may only amend or supplement this Settlement Agreement by means of a written agreement between, and signed by, both Parties to this Settlement Agreement.
   4. Proof of any change as referred to in the preceding paragraph of this article will be permitted only by submitting a written agreement as referred to in the preceding paragraph. This agreement must be regarded as an evidence agreement.
5. Validity
   1. If one or more provisions (or part(s)) of the Settlement Agreement is found to be void, nonbinding or for whatever reason cannot be enforced, the validity and power of the other provisions (or the other part(s)) of the Settlement Agreement will not be affected. In such a case, the nonbinding, void or voided provision(s) will be replaced by operation of law by one or more provisions that are binding and that deviate as little as possible from the provision(s) deemed nonbinding, void or voided, also having regard to the purpose and scope of the provision(s) and of the Settlement Agreement, as exhaustively follows from the Settlement Agreement.
6. Confidentiality
   1. The Parties undertake not to make any statements (in any form whatsoever) to third parties regarding the contents of this Settlement Agreement or what has been exchanged in the context of the negotiations prior to the conclusion of this Settlement Agreement, unless explicit prior written consent from the other Party is obtained, which consent will not be delayed or refused on unreasonable grounds.
   2. Contrary to the provisions of the first paragraph of this article, the communications referred to therein may be made and, if this is reasonably deemed reasonably necessary, a copy of the Settlement Agreement may be provided to:
      1. the judge and/or arbitrator who is being referred (i) on the basis of Article 14 of the Settlement Agreement, and (ii) to settle any other dispute in the context of which the existence and/or contents of this Settlement Agreement may reasonably be considered relevant, if and to the extent that the consent of the other Party is requested prior to the provision of this Settlement Agreement. Such consent may not be refused on unreasonable grounds;
      2. tax advisors, legal counsels and insurers of both the Parties and Parties' affiliates;**[[1]](#footnote-1)**
      3. to the extent necessary on the basis of a mandatory provision: (i), any judicial or supervisory authorities or other governmental bodies (including the Tax Authorities), or (ii) Parties affiliated with the Parties.
7. Third party clause and transferability of rights and obligations
   1. This Settlement Agreement does not contain any third party clauses.
   2. Rights or obligations under this Settlement Agreement are not transferable (in the property law sense) in whole or in part and they cannot be encumbered without the prior consent of the other Party.
8. Governing law, choice of forum and entry into force
   1. The Settlement Agreement is governed by and construed in accordance with the laws of the Netherlands.
   2. Any dispute arising out of or in connection with this Settlement Agreement will be settled in accordance with the dispute resolution protocol as described in Article 16 of the Agreement.
   3. The Settlement Agreement shall enter into force on the day it is signed by, or on behalf of, all Parties.
9. Copies
   1. Each Party can sign a separate copy of this Settlement Agreement. It is not necessary that all signatures of all Parties be placed on one copy of the Settlement Agreement. As soon as each Party has signed a copy, the separate copies of the Settlement Agreement will jointly constitute one and the same Settlement Agreement.
10. Digital signing
    1. The Parties can scan a signed copy of the Settlement Agreement and send the digital copy to the other Party by e-mail. The Parties will grant the same legal effects to this scan of the Settlement Agreement as to a physical copy of the Settlement Agreement with a handwritten ('wet') signature.
11. Exchange originals
    1. Considering the provisions of Article 85 of the Dutch Code of Civil Procedure, after sending a digital copy by e-mail, the Parties will send each other a physical copy of the Settlement Agreement with the handwritten ('wet') signature. A Party can only invoke Article 85 of the Dutch Code of Civil Procedure, if this Party can prove that it has sent the other Party a physical copy of the Settlement Agreement with a wet signature (with signed proof of receipt) to the address mentioned in Clause 14 of the Agreement.

***\* \* \****

*- remainder of page intentionally left blank, signatures to follow -*

# IN WITNESS WHEREOF

the Parties have executed this Agreement as of the date written below, initialed on each page.  
  
Signed for and on behalf of, by their authorised legal representative:

|  |  |  |
| --- | --- | --- |
| **LLC “M.V. CARGO”**  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  Mr. Anatoly Sikorsky  *Executive director under the articles of incorporation; authorised to act independently (statutair bestuurder; zelfstandig bevoegd)*  Date: \_\_\_ / \_\_\_ / \_\_\_\_\_\_\_\_ | |  |
| **NEUERO Industrietechnik fur Forderanlagen GmbH    \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  Mr. Tomas Kisslinger  *Executive director under the articles of incorporation; authorised to act independently (statutair bestuurder; zelfstandig bevoegd)*  Date: \_\_\_ / \_\_\_ / \_\_\_\_\_\_\_\_ | |  |
|  |  | |

1. "Affiliates" means shareholder(s) of the Parties or entities belonging to a group linked by shareholder relations to which the Parties also belong. [↑](#footnote-ref-1)