

To:



To the Attention of:



**Scope:** Proposal for a contract for the overhaul of brake devices for the year 2024

Dear Recipients,









Following the competitive selection process referred to below, we are hereby submitting our contract proposal detailed as follows.

## TENDER CONTRACT

### BETWEEN

**Mercitalia Intermodal S.p.A.**, with registered and administrative offices on via Anton Cechov no. 50/2, 20151 – Milano, Tax Code and VAT Number IT 00857491005, share capital Euro 7.000.000,00 fully paid-up, Business Register of Milano enrolment no. 00823190152, R.E.A.[Economic and Administrative Index] under no. 0758334, represented herein by Ms. Maria Antonietta Zocco, by virtue of powers conferred on her by Power of Attorney filed at the office of Notary Paola Casali, of Milano, under no. 29.291/8.485, of 8 July, 2019 (hereafter also “**Mercitalia**” or the “**Customer**”)

### AND

, with registered office in , on ,   
Business Register enrolment and VAT no. , PEC (certified email) , represented herein by , in his/her capacity of ,  
having been conferred the necessary powers of signature and representation (hereinafter, the “Contractor”)

The Customer and the Contractor, also jointly the “Parties” and, each individually, the “Party”

### WHEREAS

Mercitalia Intermodal S.p.A.  
Gruppo Ferrovie dello Stato Italiane  
Società soggetta alla direzione e coordinamento  
di Mercitalia Logistics S.p.A.

Sede Legale: Via Anton Cechov, 50/2 - 20151 Milano  
Tel. 39 02 668951 - Fax 39 02 66800755  
www.mercitaliaintermodal.it - E-mail: info@mercitaliaintermodal.it  
Cap. Soc. € 7.000.000 i.v. - Codice Fiscale e Registro Imprese di Milano n. 00823190152  
P.IVA IT 00857491005 - Milano R.E.A 0758334 - MECC. n. MI 325924



- a) The Customer needs to award a contract for the overhaul of the brake devices, as better described below;
- b) a competitive selection process was called for on ■■■■ / ■■■■ / ■■■■, in order to award a contract;
- c) a Contractor was selected and awarded at the end of the selection process;
- d) the award was notified to the Contractor by email;
- e) The Customer performed due diligence to determine the Contractor's possession of reliability, technical suitability and financial capability requirements, pursuant to the competitive selection process;
- f) on ■■■■ / ■■■■ / ■■■■ the Contractor submitted its final deposit;
- g) Therefore, the Parties intend to enter into this Contract.

### **Now, therefore**

The Parties, represented as indicated above, agree as follows:

## **ARTICLE 1**

### **Recitals**

The Recitals, the instruments referred to therein – although not appended thereto – and the attachment constitute an integral and substantial part of this Contract. In the event of a discrepancy between the provisions of the Contract and those laid down in the attachments, the former will prevail.

## **ARTICLE 2**

### **Definitions**

The following definitions are applicable to the Contract:

- a) Brake device: distributors, complementary valves, weighing valves and kink valves as listed in Annex 3 (Price List).
- b) Overhaul services: maintenance activity that extends the functional period of the brake device for a period equal to the functional period envisaged for a new brake system.
- c) PO: Purchase Order drawn up by the Customer for the Contract activities.

d) DN: Delivery Note concerning the transport of the brake devices.

## ARTICLE 3

### Scope

The Customer entrusts to the Contractor, who accepts, under the conditions and in the manner provided for in this Contract and in the instruments referred to therein, the overhaul services to be performed on an estimated amount of 80 (eighty) brake devices (hereinafter referred to as the “Service(s)”).

It is understood that the Customer has no obligation to assign the aforementioned quantity of brake device overhaul services to the Contractor, and, therefore, can determine at its sole discretion whether to request a lower quantity of brake devices without the Contractor being entitled to claim anything whatsoever.

For the complete description of the technical and functional characteristics and the methods of implementation of the services, please refer to the Organisational and Technical Specifications, Annex 1 to this Contract (hereinafter, the “OTS”).

## ARTICLE 4

### Method of Implementation

The Service referred to in this Contract, as described in Annex 1 “OTS”, will be delivered by the Contractor with its own organization of personnel and vehicles, and full assumption of business risk, in a workmanlike manner, with delivery of the brake devices perfectly suitable and prepared for the operation of rail transport, and having the quality and characteristics provided for in the Contract and in the OTS (Annex 1).

The Services covered hereunder will be carried out in full compliance with the requirements laid down during the Operational procedure (Annex 2), attached hereto.

Before the start of the Service, and as warranted during the period of contract performance, the Customer and the Contractor, on the basis of the OTS (Annex 1) and the contractual documentation, defined the Operational procedure (Annex 2) in order to regulate the operating methods related to interactions concerning Operational Safety.

The Contractor, also in compliance with the provisions of the Operational procedure (Annex 2), undertakes to ensure:

- a) Compliance with the Plans and Provisions for maintenance/repair/overhaul provided by the Customer, ensuring the traceability of maintenance operations implemented;
- b) Verification of compliance of spare parts used for the maintenance operations (either recently purchased or repaired);
- c) Management of technical documentation (e.g., transposition of the technical documentation received, updates, distribution to its staff, etc.);
- d) The use of personnel with the necessary skills training in relation to the activities carried out;
- e) Possession of a Competency Management System (CMS) to ensure that the relevant qualifications remain valid over time.

In addition, the Contractor must provide the Customer with the following documentation:

- a) Updated list of personnel working on the Components, to be made available, upon request of the Customer, at least every 6 months, or in case of changes thereto;
- b) ECM Certification, pursuant to Reg. EU 445/2011 or EU 779/2019 for function “d” (maintenance delivery);
- c) UNI EN ISO 9001:2015;
- d) Periodic certification of the proper implementation of all the activities envisaged by the Competency Management System, to be generated every six months for the first year, and once a year thereafter.

The devices will be made available to the Contractor by the Customer, in accordance with Annex 2 (Operational procedure).

The Contractor must deliver the Quality Plan to the Customer within 90 (ninety) consecutive calendar days from the date of notification of the final award of the Contract.

It is understood that the Customer reserves the right to report any non-conformity of the Quality Plan with respect to the contractual provisions at any time, as warranted.

The Contractor will deliver the overhauled devices at its expense and as defined in procedures set out in Annex 2 (Operational procedure).

## ARTICLE 4-bis

### Authorisations

The Contractor declares, under its sole responsibility, that it has all of the authorisations, permits, clearances, etc., as well as registrations with the relevant Registers/Rolls, and that it has met the administrative requirements for the implementation of all of the contract Service, in accordance with applicable legislative and regulatory provisions and standards.

The Contractor shall promptly notify the Customer if the Public Administration or any relevant Body, also for reasons not attributable to the Contractor, revokes, terminates or suspends the Service, or if any actions may prevent the implementation of the Service, in whole or in part. In this case, the Customer shall be entitled to terminate this Contract in whole or in part, depending on the nature of the event in question, without prejudice to its entitlement to seek compensation for any loss incurred.

## ARTICLE 5

### Terms of Service

The Contractor undertakes to perform the Services within the terms set out in Annex 1 (OTS).

This Agreement will be valid and effective from 01/01/2024 to 31/12/2024.

For the sole purposes of the provisions of Art. 44.1 letter a) of the “Condizioni Generali di Contratto per gli appalti di forniture delle Società del Gruppo Ferrovie dello Stato Italiane”, as referred to in Art. 24 (the **CGC**), C.G.C., overheads are quantified in the measure of 3% (three percent) of the amount of this Contract, pursuant to Art. 8 below.

## ARTICLE 6

### Service Check - Testing

All services, activities and operations inherent in the Contract, must be performed by the Contractor in accordance with the requirements and obligations provided for in this Contract and in all instruments attached thereto, or otherwise referred to herein.

The checks and tests necessary to ensure compliance with the characteristics defined by the OTS (Annex 1) must be carried out on the entirety of services provided.

The Contractor undertakes to provide the Customer with a copy of the certifications relating to the Technical Specifications of Interoperability (TSI) issued by the notified body for each brake component.

The Contractor must issue the “3.1 Inspection Certificate” on the delivery date.

In the event of failure by the Contractor to provide the Customer with the “3.1 Inspection Certificate”, as well as any additional documentation required by the relevant applicable technical specification, the Customer will not accept the delivery of the brake system and be entitled to levy a penalty (in addition to any greater damage suffered) for the delayed delivery, accruing up to the day of receipt by the Customer of the aforementioned documentation, which the Contractor must submit by email or registered letter with return receipt.

The Contractor can provide test certificates issued by legally recognised bodies or institutes, which must issue adequate certification of the test results. However, the Customer has the right to request the Contractor to carry out testing in the manner set forth in this Contract and in the OTS (Annex 1).

The Customer reserves the right to appoint an external tester for technical-administrative testing.

The Customer expressly reserves the right, to which the Contractor gives its unconditional consent, to carry out or have carried out, during contract performance, periodic audits at the plants where rolling stock maintenance operations are carried out, in order to assess the correct application of the processes by the Contractor.

## ARTICLE 6-bis

### Minimum Cybersecurity Measures

The Contractor shall ensure the security of the computer system used to perform the services covered hereunder, including the related activities of transmission, reception, storage and electronic sharing of all documentation relating to the subject matter of this Contract.

To this end, the Contractor must:

**a) Comply with the following essential cybersecurity measures:**

1. Appoint a contact person who is responsible for coordinating the management and protection of information and IT systems;

2. Identify and comply with laws and/or regulations in the field of cybersecurity;
3. Ensure that all relevant devices are equipped with regularly updated protection software (antivirus, antimalware, etc.);
4. Ensure that passwords are different for each account, of the appropriate complexity and with automatic lockout procedures following repeated attempts. It is also necessary to evaluate the use of the most secure authentication systems offered by the service provider (e.g. two-factor authentication);
5. Ensure that personnel authorised to access IT services, whether remote or local, have personal users not shared with others; that access is properly protected and that old accounts that are no longer used are deactivated;
6. Ensure that staff are adequately sensitized and trained about cybersecurity risks and practices to be adopted for the safe use of business tools (e.g., recognising email attachments, use of authorised software only, locking a device in case of non-use, etc.);
7. Ensure that the initial configuration of all systems and devices is carried out by experienced personnel, responsible for safe configuration;
8. Ensure that encrypted network protocols (e.g., SSH, SSL) are used when using web applications with public network access, or remote management of servers and network devices;
9. Ensure that information and data are periodically backed up and that such backups are kept securely and verified periodically, with the understanding that, where required, the data will be made available in a timely manner;
10. Ensure that networks and systems are protected from unauthorised access through specific tools (e.g., Firewalls and other anti-intrusion devices/software);
11. Ensure that all software in use (including firmware) is upgraded to the latest version recommended by the manufacturer;

**b)** Report a possible cyberattack as soon as possible by contacting +393316360190, or by writing to [securityincident@fsitaliane.it](mailto:securityincident@fsitaliane.it);

**c)** Perform a back-up of the above computer documentation on an off-line system in order to avoid, at minimum, the loss of documents and, in case of requirements with a deadline imposed by contract or law, to produce the documentation according to a timeline that allows compliance with the terms of law or contract, even in the event of a cyberattack;



d) Allow access by personnel appointed by the Customer for the verification of the minimum measures adopted pursuant to letter a) above, in compliance with the legislation on the processing of personal data.

In the event of a partial or complete failure of even one of the obligations listed above, the Customer will have the right to terminate this Contract pursuant to Art. 1456 of the Italian Civil Code, and, regardless of the exercise of that option, the right to full compensation for damage suffered as a result of non-compliance.

## ARTICLE 7

### Increase/Decrease of the Service

The Customer reserves the right, to which the Contractor gives its consent, at any time during the validity of this Contract, to increase or decrease (temporarily or permanently) the Service, without the Contractor being able to avoid performing the required changes, or making exceptions, rights or claims of any kind.

The Parties mutually agree that the amounts are indicative, are not in any way “guaranteed minimums” and not binding for the Customer, who, therefore, may request more or less Service amounts during the period of Contract performance.

In the event of an increase in contractual services up to the maximum of one fifth of the amount of the Contract, the written order shall also contain any time extension of the expiry period of the Contract to the extent strictly necessary to enable the performance of the additional services, equal to a maximum of 3 months.

## ARTICLE 7-bis

### Qualitative Changes

No change in the services due may be made on the initiative of the Contractor.

The Customer has the right to introduce, during the execution of the Contract, by means of a special written order, including by fax or e-mail, the changes deemed necessary and concerning the conditions of execution and the technical specifications of the services due, provided that such changes do not entail substantial changes to the subject matter of the Contract and do not result in an increase in the contractual amount higher than provided for in Article 7 above.

The Contractor undertakes to perform the changes as ordered above and to apply the same agreements, prices and conditions as the Contract, without the right to any



compensation or additional compensation compared to the consideration for the services actually rendered.

Where it is necessary to contract new prices to compensate for the activities subject to the change order, an additional act will be appended to the Contract. In case of dispute concerning the new prices, the Contractor may not, under any circumstances, refuse to implement the changes ordered by the Customer.

## ARTICLE 8

### Consideration

The Service will be compensated in accordance with the Price List (Annex 3) appended to the Contract.

The fees compensate the Contractor for any charge, performance and activities provided for in this Contract, as well as from acts referred therein, or that – although not expressly indicated – are necessary for the achievement of the quality/quantity levels of the Service and, therefore, under no circumstances may the Contractor request or claim further compensation or compensation of any kind.

The estimate financial value of this Contract is €                     ,            (Euro                     /00) VAT excluded. In any case, the provisions of Article 7 above concerning the purely indicative nature of the quantity of Services to be entrusted to the Contractor, as referred to in Article 3, shall apply.

## ARTICLE 9

### Firm Prices

The fees referred to in the article above are understood to be offered by the Contractor on the basis of his own calculations, evaluations and estimates and, by way of derogation from Art. 1664 of the Italian Civil Code, it remains established that they will be invariable and not subject to modifications of any kind, whatever eventuality may occur at any time, for the duration of the Contract.

## ARTICLE 10

### Payment Methods

Compensation for the services rendered by the Contractor in execution of this Contract

Mercitalia Intermodal S.p.A.  
Gruppo Ferrovie dello Stato Italiane  
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di Mercitalia Logistics S.p.A.

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shall be settled as follows.

Once the overhauled devices have been returned to the Customer, the Contractor, by calculating deductions for any penalties applied to the Contractor, will issue an invoice for the amount corresponding to the relevant PO fulfilled. Invoices must be issued in compliance with current legislation.

Any data relating to the goods receipt document must be accurately quoted on the invoice, as this document constitutes the approval for the payment of the Services.

Invoices must be issued in compliance with current legislation and bear the following information:

- Name, Tax ID or VAT number;
- Invoice issue date;
- Contract number and date;
- Reference to the Customer's PO;
- Exact compensation amount;
- Details of services provided.

and sent:

a) If the Contractor has a tax office in Italy - in the manner of electronic invoicing in XML electronic format through the Exchange System (SdI), reporting the recipient code RYRNP0U (where the penultimate digit is a “zero”).

b) If the Contractor has its tax office in a country other than Italy - in Pdf format, a document by email and in a format other than the compressed format, to the email address: [fatture.gruppofs@ferservizi.it](mailto:fatture.gruppofs@ferservizi.it).

A courtesy copy of the invoice must also be sent to: [amministrazione-dtc@mercitaliaintermodal.it](mailto:amministrazione-dtc@mercitaliaintermodal.it).

Any delay due to non-compliance with the procedure established above cannot be chargeable in any way to the Customer.

By applying the combined provisions of paragraphs 2, letter a) and 5, letter a) of Art. 4 of Italian Legislative Decree No. 231/2002, as amended by Legislative Decree 192/2012, the fees payment terms are set at 60 (sixty) days from the invoice receipt date.

Payments will be subject to due diligence performed on the DURC (Single Contribution Payment Certificate), attesting to the Contractor's compliance with the requirements pertaining to the payment of workers' contribution.

For the purposes of each payment, the Contractor must send to the Customer, also electronically, the Single Contribution Payment Certificate (DURC), or an equivalent document in the case of a Contractor based in a foreign country; if contributions have not been paid for one or more subjects delivering Contract services, the Contractor will proceed in accordance with the provisions of Article 56, paragraph 3, of the "G.G.C." referred to in the following article. Moreover, pursuant to the provisions of Article 56, paragraph 3 of the "G.G.C.", in order to ensure the correct fulfilment of the contribution requirements, 0.50 percent of any amount due to the Contractor will be withheld from each payment. These withholdings will be released during final settlement, after acquiring the valid DURC certifying contribution payment compliance.

In the event of non-compliance by the Contractor with the Social Security contribution payments, the Customer reserves the right to proceed in accordance with the provisions of Art. 56 paragraph 3 of the "G.G.C.", without prejudice to the provisions of Article 13-*bis*. To this end, the Customer reserves the right to request, and the Contractor undertakes to provide, any documentation useful to verify the regular and timely fulfilment of the obligations towards the workers (e.g., Monthly F24 forms, virtual DM10, Uniemens flow, etc.).

Each and every invoice must be made out to:

*Mercitalia Intermodal S.p.A.*

*Via Anton Cechov 50/2, 20151 - Milano*

*VAT number 00857491005*

*On behalf of the Direzione Tecnica*

To this end, the Contractor has already provided its current bank account details to the Customer.

Payments pursuant to the above will be made by bank transfer to the aforementioned current account.

## ARTICLE 11

### Assignment of Receivables

Mercitalia Intermodal S.p.A.  
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Any receivables and debts arising from this Contract may be the subject of assignment or delegation or mandate to collect or any act of disposition (“Assignment”) in favour of Fercredit-Servizi Finanziari S.p.A. – companies of the FS Italiane S.p.A. Group or of banking and financial intermediaries authorized and supervised by the Bank of Italy.

Within 20 days of receipt of the Assignment notification, the Customer may provide its reasoned refusal.

In any case, the Customer may object to the transfer on the basis of the relevant terms and conditions accepted hereunder.

## ARTICLE 12

### Security Deposit

To ensure the accurate fulfilment of the contractual obligations, including those relating to the warranty period, referred to in Art. 14 below, the Contractor has provided a security deposit of € [REDACTED], [REDACTED] (Euro [REDACTED]/[REDACTED]), equal to 10% (ten percent) of the estimated total value of this Contract, pursuant to Art. 8 above, by means of a demand guarantee - drawn up in accordance with the text accepted by the Customer, no. [REDACTED] issued on [REDACTED]/[REDACTED]/[REDACTED] by [REDACTED] – and filed in the Customer’s records at the time of stipulation of this Contract.

The Customer has the right to avail itself of the aforementioned guarantee, in whole or in part, without the need for a notice or judicial order and without the Contractor, nor the Banking Institution being able to object, in order to indemnify any damages that it claims to have suffered, on the basis of its own investigations, by reason of the performance of the services covered hereunder, without prejudice to any greater damage exceeding any sum paid.

The Customer may also use the security deposit to collect any credit due to it – on the basis of its own investigations – by the Contractor, including the collection of penalties.

The Contractor is required to replenish the aforementioned security if the Customer has used it – in whole or in part – during the execution of this Contract.

Furthermore, if adverse changes to the economic and financial conditions emerge against the guarantor, the Contractor must replace the original guarantor within 60 days of the Customer’s request with another institution that meets the requirements defined at the time the security deposit was first paid.

The security deposit will be released, after deduction of any credits claimed by the Customer, on the basis of its findings, against the Contractor, 6 months after the date of validity of the Contract, or by 30/06/2025, pursuant to the provisions of Art. 10.3 of the C.G.C., provided that, at the time of release, there are no disputes or pending disputes.

## ARTICLE 13

### Indemnification

The Contractor, substantially and procedurally, upon request and without the possibility of making exceptions, undertakes to hold the Customer harmless from any consequence resulting from non-compliance with laws and regulations on remuneration, as well as social security and contribution obligations for its employees and the employees of its subcontractors. In particular, the Contractor undertakes to indemnify and hold the Customer harmless, in the event that the Customer is called to account, even as a joint and several entity, from any injury, loss, damage, liability, cost, expense, including legal expenses, arising from claims or actions made by the employees of the Contractor and any subcontractors, or from the incorrect or non-fulfilment of the obligations regarding remuneration and social security contributions.

The Contractor retains exclusive responsibility for the organisation and management of manpower deployed in the Service. The Contractor shall be the guarantor, in particular, of the conduct of its own personnel and any subcontractors, ensuring – also through appropriate training – that, in no case, shall staff perform work services on the instructions of or direct request by the Customer's personnel. Before the start of contract work, the Contractor will identify its own Contract Manager, pursuant to the instructions provided in Art. 26 below: the Contractor's staff, as well as any subcontractors will only execute the orders and provisions provided to them by the Manager, and/or other subjects delegated by him/her, and, in any case, identified by the Contractor.

Subject to the foregoing, in the event of disputes brought by workers who are assigned any work hereunder, even after Contract expiration, the Manager undertakes:

1. To wilfully take part in court proceedings, to the extent that was not already formally agreed, in order to support the Customer and to promote the favourable resolution of the dispute, including by means of a settlement, and assuming the related economic burdens and waiving any right to seek compensation thereof from the Customer. This requirement is applicable to cases where a worker's claim proves to be manifestly unfounded and/or the Contractor fails to demonstrate

that he has diligently managed his staff so as to avoid the occurrence of the dispute, in accordance with the relevant work standards and the contractual framework;

2. In the event of an amicable and/or otherwise settlement of a dispute, and without prejudice to any case in which the Contractor can demonstrate that he has diligently managed his personnel, so as to avoid the dispute, the Contractor undertakes to pay the Customer, as partial compensation for any damage suffered, in reference to each employee involved in the dispute, with effect from the date included in the scope of this Contract, the amount of € 20,000 (twenty thousand/00 Euro), which will be retained as compensation on the claims due by the Contractor, or by forfeiting the security deposit, or settled by bank transfer within 30 (thirty days) of the date of the ruling on the matter.

## **ARTICLE 13-bis**

### **Liability for Loss - Insurance Policy**

The Contractor assumes all liability for injury/loss to personnel and to property of the Customer and of the F.S.I. Group Companies, or to third parties (persons or property), due to its own acts and/or omissions, or the acts and/or omission of its employees and independent support personnel associated with the services performed by the Contractor, and no clauses or agreements contained in insurance contracts shall limit its liability in any way. The Contractor also undertakes to indemnify the Customer against any third-party claim brought against it in this context.

Where, in connection with the performance of the Service, any damage results from, is dependent upon or connected to railway operation or traffic, the Contractor assumes all responsibility if it appears that it has not taken any measures prescribed by this Contract, and any documents appended thereto or recalled therein, or required by diligence in relation to the Service provided, whose purpose was to prevent the event or to avoid harm, and does not prove that the damage could not have been avoided under any circumstance.

In this regard, the Contractor guarantees the complete and timely implementation of all the commitments and obligations assumed pursuant to the Contract, and undertakes to hold the Customer harmless from any liability, damage and expense in relation to any actions, claims and complaints, including those of third parties, connected or otherwise deriving from the execution of the Contract, due to actions of the Contractor or its



employees and/or business partners, or directly or indirectly attributable to them, without prejudice to the case in which an injury is attributable to the malicious misconduct or gross negligence of the Customer.

Before the start of the Service, the Contractor will provide – or provide a copy of – appropriate insurance coverage purchased from a prime Company, and must hold the Insured Party harmless against any amount he may be required to pay, as civilly liable, as compensation (capital, interest and expenses) for damage unintentionally caused to third parties for death, personal injury and material damage to tangible goods, resulting from an accidental event in connection with the performance of this Contract.

The Contractor shall deliver a copy of the insurance policy upon commencing the Service.

The policy shall be valid for the entire duration of this Contract, including the warranty period referred to in Art. 14 below, and have a ceiling of at least € 10.000.000,00 (ten million/00) per claim and per annum.

In addition, the Insurance Company must undertake, with specific reference to this Contract, to comply with the following conditions:

- Waive the right of redress against companies of the FS Group and their employees;
- Consider FSI Group companies and their employees, as well as other Group Contractors and their employees as third parties performing services in the same contract location;
- Do not decrease the sums insured, reverse or cancel the insurance contract without the consent of the Customer;
- Provide the Customer, by certified email (PEC) or registered letter with return receipt, with notification of any failure to pay premium instalments, without prejudice to the coverage validity for 90 days from the notification date. In this regard, the Customer will have the right to pay the premium directly, deducting the amount from any consideration due to the Contractor, or to terminate the Contract pursuant to and for the effects of the following Art. 16.

## ARTICLE 14

### Guarantee of Proper Operation

Mercitalia Intermodal S.p.A.  
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The Services are covered by a guarantee from the moment the Brake systems are returned and for a period of 12 (twelve) consecutive calendar months from the date of final testing thereof.

During the warranty period, the Contractor shall borne all costs that may be required to eliminate defects, malfunctions and failures that make the brake systems non-compliant with the conditions of the Contract and the OTS (Annex 1), due to incorrect performance of the expected services.

Any changes that may become necessary during the warranty period must also result in updates to the technical documentation to be delivered to the Customer.

Changes still in progress at the end of the warranty must be completed without any costs being incurred by the Customer.

The warranty includes the free replacement of all components, which due to defects, glitches or errors during assembly may have become defective or unsuitable for the intended purpose of use.

Requests for assistance will be forwarded by the Customer to the Contractor via fax. To this end, the Contractor shall provide the Customer with the fax number for any such communication.

Assistance interventions must take place within 22 (twenty-two) consecutive hours from the call, except during holidays.

## ARTICLE 15

### Penalties - Disapplication

If the Contractor fails to comply with the obligations and requirements of this Contract and its annexes, the Customer shall apply, for each of the following cases, the penalties below, notwithstanding the right to compensation for any greater damage suffered:

1. Penalties for delayed delivery of the brake systems, or failure to perform the service:  
1% (one percent) of the price of the material not delivered on time for every 10 days (or part thereof), up to 60 days of delay. After 60 days, 3% (three percent) every 10 days up to a maximum of 20%, which corresponds to a delay of more than 100 days.
2. Penalties for non-fulfilment relating to warranty obligations: If it fails to fulfil its contractual obligations relating to the warranty, the Contractor must pay a penalty equal to 1% (one percent) of the amount of the services relating to each defective

device, for each day or fraction of a day of delayed intervention, with respect to the terms referred to in the last paragraph of Art. 14 above.

3. In the event of a disqualification notice pursuant to Legislative Decree 159/2011, the Contractor must pay a penalty equal to 10% (ten percent) of the contractual amount referred to the aforementioned Art. 8, last paragraph;
4. For any non-fulfilment of the obligations referred to in Art. 17-bis, € 40.00 (forty/00).

The application of the penalties thus determined will be notified to the Contractor in writing by certified email (PEC) or registered letter with return receipt, and the corresponding amounts will be withheld from the first payments due to the Contractor following notification.

Any accrued penalties, as indicated in paragraph 1 above, may not exceed 20% (twenty per cent) of the presumed contractual amount, pursuant to the last paragraph of Art. 8 above, without prejudice to the right of termination, pursuant to and by the effects of Art. 1456 of the Italian Civil Code, as also laid down in Art. 16.

### **Non-Application of Criminal Penalties**

The Contractor may submit to the Customer a reasoned request concerning the total or partial non-application of the penalties.

The request must be sent by certified email (PEC) or registered letter with return receipt via Post Offices, within 30 (thirty) calendar days from the date on which the Customer has made known to the Contractor its determination to apply the penalties.

Requests submitted after the aforementioned deadline, or in a manner other than the requirements set forth above shall be considered late, inadmissible and dismissed.

The Customer will assess whether a request is grounded and notify the Contractor of its determinations in this regard.

## **ARTICLE 16**

### **Express Termination Clause**

Pursuant to and for the effects of Article 1456 of the Italian Civil Code, the Customer has the right to terminate this Contract for breach by the Contractor, as well as in the cases provided for in Art. 61 of the G.C.C., and specifically:

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www.mercitaliaintermodal.it - E-mail: info@mercitaliaintermodal.it  
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1. In the event of breach by the Contractor of the obligations referred to in Art. 4 (“Implementation Procedures”);
2. In the event that the Contractor does not have any required permits, and/or if such permits and/or authorisations, as referred to in Art. 4-*bis* above, have been revoked, voided or suspended;
3. Violation of the obligations referred to in Art. 6-bis (“Minimum Cybersecurity Measures”)
4. Breach of obligations, failure to activate or expiration of the policy ceilings referred to in Article 13-*bis* above, or for non-payment of the insurance premiums pursuant to the aforementioned Article;
5. Application of the penalties referred to in Art. 15, for a total amount exceeding 20% (twenty percent) of the presumed amount of this Contract, as referred to in Art. 8 above;
6. Failure to comply with the obligations referred to in Art. 4 above, concerning any failure by the Contractor to obtain, by the effective date of this Agreement, the required authorisations and/or permits referred to in Art. 4-bis above, or in the event that such permits and/or authorisations have been revoked, cancelled or suspended.
7. Failure to comply with the provisions of Arts. 10 (“Terms of Payment”) and 18 (“Non-Transferability of the Subcontracting Agreement”);
8. Failure to comply with the obligations provided for by Arts. 17-bis (“Safety in the Workplace - Financial and Legal Provisions for Employees”), 19 (“Confidentiality Obligations”), 20 (“Price Transparency”) and 21 (“Code of Ethics”); 23-bis (“Conflict of Interest”);
9. Failure to fulfil the requirement to replace the original guarantor within 60 days from the Customer’s request, pursuant to Art. 12 above.
10. Issuance of a disbarment notice issued pursuant to Legislative Decree 159/2011

Termination is declared by email or registered letter with return receipt, without the need for any forewarning or formal notice by the other Party, and shall result in the Customer’s collection of the security deposit referred to in Art. 12 above, without prejudice to its rights vis-à-vis the Contractor for compensation due for additional damages, if any.

## ARTICLE 17

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### Withdrawal

The Customer has the right to withdraw from this Contract by notifying the Contractor by certified email (PEC) or registered letter with return receipt to be sent to the Contractor's address, at least 90 (ninety) days before the date on which the withdrawal takes effect.

In the event of withdrawal, the Contractor will be awarded only the consideration due for services regularly delivered up to that date, without the latter being able to claim rights to compensation or indemnification whatsoever, including by way of derogation from Art. 1671 of the Italian Civil Code.

### ARTICLE 17-bis

#### **Safety in the Workplace Financial and Legal Provisions for Employees.**

The Contractor will perform the Services covered by the Contract by scrupulously complying with all the rules on safety and hygiene in the workplace in force at the time of performance, including any regulations not explicitly mentioned in the Contract and its annexes.

The amount relating to security costs is zero, as the Contract does not present any risk of interference pursuant to and for the purposes of Art. 26 of Legislative Decree 81/2008. For this reason, the Single Document for the Assessment of Interference Risks (DUVRI) was not prepared.

The Contractor acknowledges that it is responsible for all charges relating to the insurance of personnel employed in the Contract services, and assumes all civil liability in the event of accidents and injuries such personnel may suffer or cause.

Moreover, the Contractor undertakes to comply with all obligations towards its employees under applicable labour and social insurance laws (disability, old age, occupational diseases, unemployment, etc.).

In the event that the relevant control body reports non-compliance with the above obligations, the Customer reserves the right to suspend any payment(s) until it has been ascertained that the Contractor is in compliance.

## ARTICLE 18

### Non-Transferability of the Contract – Subcontracting

Under penalty of termination, pursuant to Article 16 above, the Contractor may not transfer this Contract.

The Contractor shall not, under any circumstances, avail itself of subcontracting, under penalty of termination pursuant to and by the effects of Art. 1456 of the Italian Civil Code, and Art. 16.

It is understood that the Contractor is fully and exclusively responsible towards the Customer for the execution of the above services and the expected quality levels.

In case of violation of these provisions, the Customer may terminate this contract pursuant to Art. 1456 of the Italian Civil Code.

Any subcontracts shall be governed by Article 15.5 of the C.G.C.

## ARTICLE 19

### Confidentiality Requirements

Without prejudice to the provisions of Art. 6 of the C.G.C., the Contractor undertakes not to disclose to third parties and not to use in any way, for reasons other than those relevant to the execution of this Contract, technical information relating to facts, acts, programmes, projects, processes, drawings, equipment, appliances, machines, etc., which are made available to him by the Customer, or of which he is aware at the time of such execution.

The confidentiality requirement shall be binding for the duration of this Contract and, thereafter, until the information learned has become public knowledge.

The confidentiality requirement referred to in this Article shall remain binding without time limit, even in the event of termination of or withdrawal from this Contract.

## ARTICLE 20

### Pricing Transparency

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The Contractor expressly and irrevocably:

- Declares that there has been no intermediation or other work by third parties for the stipulation of this contract;
- Declares that it has not paid, nor promised to pay sums or other intermediary fees or similar, directly or through associated or subsidiary companies aimed at facilitating the contract completion;
- Undertakes not to pay to anyone, for any reason, sums aimed at facilitating and/or making the execution and/or management of this contract less onerous than the obligations undertaken, nor to carry out actions in any case aimed at the same purposes.

In the event that even one of the declarations made pursuant to the preceding paragraph is found not to be true, or the Contractor does not comply the commitments and obligations undertaken hereunder for the entire duration of this Contract, the Contract shall be automatically terminated, pursuant to and for the purposes of Art. 1456 of the Italian Civil Code, for breach by the Contractor, who will consequently be required to compensate all damages resulting from termination, and be removed from the professional roster, if any.

## ARTICLE 21

### Integrity clause

The Customer manages relationships and business referring to the principles contained in the Codice Etico del Gruppo Ferrovie dello Stato Italiane, in its Modello di Organizzazione Gestione e Controllo pursuant to Legislative Decree no. 231/2001 and subsequent amendments (“Modello 231”) and in the Policy Anticorruzione of the Gruppo FS Italiane.

The Contractor declares and guarantees:

- (a) that has read the Codice Etico del Gruppo Ferrovie dello Stato Italiane (“Codice Etico”), published on the website <http://www.fsitaliane.it>, section “Il Gruppo FS”, subsection “Governance”, subsection “Codice Etico”, which can be downloaded and printed online or of which you can request a hard copy at any time, which is an integral part of Modello 231, and that has well understood its principles, contents and purposes;
- (b) to have read the Modello 231, available at the internet address <http://www.mercitaliaintermodal.it>, which can be downloaded and printed



online or of which he may request a hard copy at any time, and to have fully understood the principles, contents and purpose;

- (c) that has read the Policy Anticorruzione del Gruppo FS Italiane, available at the internet address <http://www.fsitaliane.it>, section “Il Gruppo FS”, subsection “Etica, compliance e integrità”, which can be downloaded and printed online or of which you may request a paper copy at any time, and that you have well understood its principles, contents and purposes.

The Contractor declares to acknowledge the commitments undertaken by the Company in the documents mentioned above and to undertake to comply with the principles and provisions contained therein as well as to ensure that its subcontractors, sub-suppliers, third parties and its entire supply chain are refer, in the performance of their business and in the management of relations with third parties, to principles equivalent to those adopted by the Company.

The Contractor's violation of any of the principles and provisions contained in the Codice Etico di FS and/or in the Customer's Modello 231 and/or in the Anti-Corruption Policy of the FS Italiane Group, as well as the failure to comply with the commitments referred to in this article constitute a hypothesis of legal termination of this Contract pursuant to and for the purposes of art. 1456 of the civil code, to be exercised in the manner referred to in article 16 (express termination clause).

The Contractor acknowledges that the relevant reports pursuant to and for the effects of the Modello 231, including the Codice Etico, and for anti-corruption purposes, can be made in the manner and through the channels indicated in the Parte Generale of the Customer's Modello 231.

## ARTICLE 22

### Processing of personal data

The Parties undertake to process the personal data, acquired in the context and for the purposes connected to the assignment and execution of the contract, in compliance with the principles of correctness, lawfulness and transparency established by current legislation on the protection of personal data (EU Regulation 2016/679 and Italian Legislative Decree no. 196/2003 and subsequent amendments).

In particular, the Parties undertake to process personal data in compliance with the principle of minimization, as well as to guarantee its integrity and confidentiality.

Each Part, as independent Data Controllers, is obliged to provide the information on the processing of personal data to the natural persons of their own organization and to those of the other Party whose data are processed for the purposes referred to in the first paragraph of this article and guarantee the exercise of the rights of the interested parties.

The above disclosure obligation is fulfilled by the Customer by publishing it in the institutional website [www.mercitaliaintermodal.it](http://www.mercitaliaintermodal.it) and by the Contractor by [REDACTED].

Each Party is responsible for disputes, actions or claims made by the interested parties and/or any other subject and/or Authority regarding the non-compliance with current



legislation on the protection of personal data (EU Regulation 2016/679 and Italian Legislative Decree 196/2003 and subsequent amendments), attributable to it.

## ARTICLE 23

### Tax Liabilities

The performances of this Contract are acknowledged to be subject to VAT. Any changes in the tax regime shall not in any circumstances lead to changes of the agreed consideration.

This Contract, entered into by an exchange of letters in accordance with commercial practice, is subject to VAT and is exempt from registration for tax purposes until use, pursuant to Article 5 of the registration tax Consolidation Law approved by Presidential Decree no. 131 of 26 April 1986 and, if registration is requested, the requesting party will be obliged to make a fixed tax payment in accordance with Article 40 of the aforementioned Consolidated Law.

## ARTICLE 23-bis

### Conflict of Interest

For purposes related to the performance of the Contract, the Contractor warrants the absence of subjective or objective situations that may result in a conflict of interest hindering in any way the performance of the Contract.

Likewise, the Contractor undertakes, should unforeseen conflict-of-interest situations arise in the run-up to the performance of the Contract, to immediately report it to the Customer which will make the necessary evaluations.

In the event that even one of the declarations made pursuant to this article is untrue, or that the Contractor does not comply with the commitments and obligations entered into for the duration of the Contract, the Contract shall be automatically terminated, pursuant to and by the effects of Art. 1456 of the Italian Civil Code, by fact and fault of the Contractor, who will consequently be required to compensate any and all damages resulting from termination.

## ARTICLE 24

### Referral clause

For any matter that is not governed or otherwise regulated by this Contract, please refer to the provisions of the Italian Civil Code, to any applicable legal or regulatory provisions

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and to the provisions contained in Chapter I, Chapter II, of Art. 43 and 44, as well as Chapter IV, Title II, Title III and Title IV and Chapter V 63 and 65), of the “*General Contract Conditions for Supply Contracts of the Companies of the Ferrovie dello Stato Italiane Group*”, approved by the Board of Directors of Ferrovie dello Stato Italiane S.p.A. at its meeting on 22 March 2017, and registered at the Revenue Agency, Provincial Directorate I of Rome, Rome 1 Trastevere District Office, no. 5987 Series 3, on 23 June 2017, and issued by Group Resolution No. 231/AD of 17 July 2017 (elsewhere named herein as the “C.G.C.”), which are available on [www.mercitalialogistics.it](http://www.mercitalialogistics.it), at the Notices and Tenders section, which, although not attached to this Contract, constitute an integral and substantial part thereof. The Contractor declares that he has a detailed and complete knowledge of these conditions. The Parties agree that the term “Supplier” used in the CGC must be understood as equivalent to that of “Contractor” used herein.

In the event of a discrepancy between what is provided for in other documents and the provisions of this Contract, the latter shall prevail.

## ARTICLE 25

### Customer’s Contract Manager

The Contract Manager appointed by the Customer is Alberto Cetti (Tel. +39 334 6409900 - email [a.cetti@mercitaliaintermodal.it](mailto:a.cetti@mercitaliaintermodal.it)), who will ensure the correct contract performance by the Contractor, also ensuring compliance with the contract provisions.

For this task, the Contract Manager may rely upon deputies or duly appointed personnel.

## ARTICLE 26

### Contractor’s Contract Manager

The Contractor appoints [redacted], tel. [redacted] email address [redacted], as Contract Manager, who will be responsible for the exercise of all the powers provided for in this Contract.

The Contract Manager acting on the Contractor’s behalf may use substitutes or delegated personnel for this task.

## ARTICLE 27

### Contractor’s Address for Service

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For administrative, legal and tax purposes, the Contractor declares that its address for service is located in \_\_\_\_\_, on \_\_\_\_\_, with the understanding that, lacking an address for service, the alternative address is the Municipality of \_\_\_\_\_.

## ARTICLE 28

### Disputes, Jurisdiction and Applicable Law

Arbitration is not permitted. Any disputes arising from this instrument will be referred to the exclusive jurisdiction of the Court of Milan. This Contract is governed by Italian law.

## ARTICLE 29

### Annexes

The following documents are annexed to this Contract, and form an integral and essential part thereof:

*Annex 1: Organisational and Technical Specifications (OTS)*

*Annex 2: Operational Procedures;*

*Annex 3: Price list.*

For the purposes of finalising this Agreement, please approve the above contractual text and its annexes, by way of full and unconditional acceptance, by means of your Legal Representative or by a proxy vested with the proper powers. It is also necessary to copy, on a separate digitally signed note, the underlying list of clauses, specially signed in digital format to express specific acceptance pursuant to Art. 1341 and 1342 of the Italian Civil Code.

The aforementioned note, together with the aforementioned Annexes, must be sent to:

[direzionetecnica@pec.mercitaliaintermodal.it](mailto:direzionetecnica@pec.mercitaliaintermodal.it).

Best regards.

The Customer

**Mercitalia Intermodal S.p.A.**

Direzione Tecnica

*il Direttore*

Maria Antonietta Zocco

**For acceptance of the Contract Proposal**

Place,..... date.....

The Contractor

Signature

**“List of clauses subject to specific approval Contract No. [redacted] of [redacted]/[redacted]/[redacted]”**

A) For acceptance of the clauses relating to the following Contract Articles:

- Article 4 Implementation Procedures
- Article 7 Increase/Decrease of Services Awarded
- Article 7-bis Qualitative changes
- Article 8 Consideration
- Article 10 Payment Methods
- Article 11 Assignment of Receivables
- Article 13 Obligations of the Contractor in the case of Rolling Stock containing Asbestos or Glass Wool
- Article 13-ter Liability for Loss - Insurance Policy
- Article 14 Guarantee of Proper Operation
- Article 16 Express Termination Clause
- Article 17 Withdrawal
- Article 17-bis Health and Safety at Work - Financial and Legal Provisions for Employees.
- Article 17-ter Complete List of Employees
- Article 18 Non-Transferability of Contract/Subcontracting
- Article 20 Price Transparency
- Article 21 Code of Ethics
- Article 23-bis Conflict of Interest
- Article 28 - Disputes, Jurisdiction and Applicable Law

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B) For the purposes of Art. 1341 of the Civil Code, for acceptance of the clauses *relating to the* "General Contract Conditions of Supply Contracts of the Companies of the Ferrovie dello Stato Italiane Group", approved by the Board of Directors of Ferrovie dello Stato Italiane S.p.A, at the meeting of 22 March, 2017 and registered at the Revenue Agency, Provincial Directorate I of Rome, Territorial Office of Rome 1, Trastevere, under no. 5987 Series 3, on 23 June 2017, and issued by Group Resolution No. 231/AD of 17 July 2017

- Art. 5 Industrial and Commercial Property. Patents;
- Art. 6 Confidentiality Requirements;
- Art. 8 Stipulation of Contract and Start of Contract Services;
- Art. 10 Guarantees;
- Art. Article 12 Contractual Prices;
- Art. 14 Amendments to Contract;
- Art. 15 Anti-Mafia Measures, Compliance with Social Security Contributions and Compensation Requirements, Transfer of Contract and Subcontracting;
- Art. 17 Contractor's Disputes;
- Art. 19 Damage due to Force Majeure and Contractor's Liability for Damages;
- Art. 43 Contract Terms, Suspension of Contract Performance and Extensions Thereof;
- Art. 44 Unlawful Duration of Suspension;
- Art. 54 Penalties for Non-Compliance and Methods for Financial Calculation of Delays;
- Art. 55 Penalties for Delay or Non-Execution and Early Completion Bonuses;
- Art. 56 Consideration for Supply and Payments;
- Art. 57 Terms and Methods of Payment;

- Art. 58 Invoice Submission;
- Art. 59 Debt Collection - Compensation;
- Art. 60 Suspension of Payments;
- Art. 61 Express Termination Clause - Performance of Contract Services by Third Parties;
- Art. 62 Damage Compensation;

**For specific acceptance of Unfair Terms**

Date, .....

**The Contractor**

Signature.....

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