

**AGREEMENT**

for

**Repair of trolley rail cranes no. C1,C2,C3 and A4 (Konecranes**

**RMG Eastern Terminal)**

Between

**THE HAIFA PORT COMPANY**

and

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**Contract No. 50/2019**

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**THIS AGREEMENT** (together with all the Appendices and Annexes attached hereto and forming an integral part hereof, shall be referred to as the "**Agreement**") is made and entered in duplicate in \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ between

**THE HAIFA PORT COMPANY (HPC)**  
(hereinafter called the "**HPC**")  
and

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(Hereinafter called "the **Contractor**")

**WHEREAS** the HPC is desirous that specialized engineering services be furnished by the Contractor for the HPC with regard to the following:

All required works in regard of **Repair of trolley rail cranes no. C1,C2,C3 and A4 Konecranes RMG** located in the Eastern Terminal Port of Haifa, Israel, all as more specifically described in the Scope of Work & Timetable attached hereto.

**NOW THEREFORE** it is hereby agreed and declared by and between the parties hereto as follows:

The HPC hereby appoints the Contractor and the Contractor accepts the appointment on the terms and subject to the conditions as laid down in this Agreement, the General Conditions attached hereto and the Appendices annexed hereto and made a part hereof.

- Appendix A: Scope of Work
- Appendix B: Remuneration and Payment
- Appendix C: List of Personnel
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- Appendix E Acceptance Certificate
- Appendix F Certificate of insurances
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- Appendix I Technical Specifications

## GENERAL CONDITIONS

### 1. SCOPE OF SERVICES

The services to be performed by the Contractor, under this Agreement (hereinafter called the "**Services**" and/or "**Works**") that are described in details in the Scope of Work set forth in **Appendix A** and in the Technical Specifications set forth in **Appendix H**.

### 2. RELATIONSHIP BETWEEN THE PARTIES

Nothing contained herein shall be construed as establishing or creating a relationship of employer - employee, master and servant or principal and agent.

### 3. LANGUAGE AND LAW

The language in which the Agreement is drawn up is English;

The language according to which the Agreement is to be construed and interpreted, designated the "Ruling Language", is English;

The state, the law of which is to apply to the Agreement and according to which the Agreement is to be governed and construed, is the State of Israel.

### 4. DEFINITIONS

- 4.1. Words importing the singular only also include the plural and the masculine includes the feminine and vice-versa where the context requires. The word "days" denotes calendar days.

"**Chief Engineer**" or "**CEPA**" shall mean the HPC's Deputy Director General for Engineering or his nominated representative.

"**Project Manager**" or "**IPM**" shall mean whoever is appointed from time to time by the HPC and is nominated as the HPC's Project Manager for the purposes hereof.

- 4.2. All documents forming part of the Agreement (and all parts thereof) are intended to be correlative, complementary and mutually explanatory. The Agreement shall be read as a whole.

4.3. In the event of any inconsistencies or conflicts in language or obligations, etc., priority in interpretation and/or the binding effect of the documents comprising the Contractor shall be in the following order: First, the Agreement and these General Conditions; Second, the Statement of Work, then the Scope of Work and then any attachments or certificate referred to in the Agreement.

In the event that inconsistency or ambiguity between any of the provisions or the Agreement document is not settled as abovementioned, HPC and the Contractor shall mutually decide, which of the conflicting provisions prevails.

In any case of inconsistency ambiguity or conflict, the Contractor must draw the HPC attention and follow its orders.

## 5. HEADINGS

The headings in these Conditions shall not be deemed to be part thereof or be taken into consideration in the interpretation or construction thereof or of the Agreement.

## 6. NOTICES

All notices under this Agreement will be given in writing and will be deemed to have been given if delivered by one of the following means at the specific designation of the Parties as set forth below:

Personal delivery; by EMAIL, by registered post by FAX with subsequent notification within 48 hours by EMAIL or post;

HPC's Address:  
POB 33539  
Haifa 31334, Israel  
Tel: +972-4-8518651-  
FAX: +972-4- 8681848  
e-mail: [natang@haifaport.co.il](mailto:natang@haifaport.co.il)

Contractor's Address:

\_\_\_\_\_  
\_\_\_\_\_  
TEL \_\_\_\_\_  
FAX \_\_\_\_\_  
E-MAIL : \_\_\_\_\_

## 7. COMMENCEMENT AND COMPLETION

### 7.1. Agreement in Force

The Agreement shall come into force upon its signing by the parties.

7.2. **Commencement Date**

The Contractor shall commence to provide the Services upon the later of (i) as set out in the mutually agreed Timetable or (ii) at the mutually agreed date that the cranes will be actually delivered to the Contractor by HPC for the purpose of performing the Services, but also according the time frame described in the Technical Specification, par.6.

7.3. **Completion Date**

The Works shall be completed as set out in the mutually agreed Timetable or as alternatively agreed in writing between both Parties, but also according the time frame described in the Technical Specification, par.6.

**8. ALTERATION, ASSIGNMENT & SUB-CONTRACTING**

8.1. **Alterations**

Should circumstances arise which call for modifications of the Agreement and/or the Scope of Work, these may be made by mutual consent given in writing, with respect to each party's responsibility to such alteration. Proposals in this respect from one party shall be given due consideration by the other party.

Any orders for additional works shall be given in advance by the IPM and shall be in writing.

8.2. **Assignment**

The Contractor shall not, without the written consent of the HPC, assign or transfer the obligations of this Agreement or any part thereof.

8.3. **Sub-Contracts**

Contractor may appoint subcontractors to perform part of the Services under this Agreement. Any sub-contractor relating to the performance of the Services by the Contractor shall be prior approved by the HPC in writing.

**9. POSTPONEMENT AND TERMINATION**

9.1. **By Notice of the HPC**

The HPC may by written notice to the Contractor at any time give prior notice of its intention to abandon the Services, in whole or in part, or terminate this

Agreement. The effective date of termination of this Agreement shall not be less than forty five (45) days after receipt of such notice, or such other shorter or longer period as may be mutually agreed between the Parties. Upon receipt of such notice the Contractor shall take immediate steps to bring the Services to a close and shall reduce expenditures to a minimum and shall be entitled to compensation as set out in Section 9.4 herein.

9.2. **Force Majeure**

The Force Majeure (Exemption) clause of the International Chamber of Commerce (ICC Publication No. 421) is hereby incorporated in this Agreement, a copy of which is attached hereto.

The Contractor shall promptly notify the HPC, in writing, of any situation, event or impediment of Force Majeure which makes it impossible for the Contractor to carry out in whole or in part its obligations under this Agreement. Upon the occurrence of such a situation, event or impediment of Force Majeure, the Services shall be deemed to be postponed for a period of time equal to that caused by the Force Majeure and a reasonable period not exceeding 60 days to remobilize for the continuation of the Services. PROVIDED HOWEVER, that the Contractor, as a condition precedent, must additionally prove that it has made a good faith effort to minimize the effects of the situation, events or impediment of Force Majeure.

9.3. **Default by the HPC**

The Contractor may by written notice to the HPC terminate this Agreement:

- 9.3.1. if it has not received payment of that part of any invoice which is not contested within sixty (60) days of submission thereof;
- 9.3.2. if the Services have been postponed as provided for in Clause 9.2 and the period of postponement has exceeded 60 days.
- 9.3.3. In case of material breach of this Agreement by the HPC that was not remedied within 14 days from written notice.

and recover any damages suffered by the Contractor as a result of the HPC's non-performance in terms of 9.3.1 and 9.3.2.

9.4. **Entitlement of the Contractor upon Postponement or Termination**

Upon postponement of the Services or termination of this Agreement as above and subject to the obligation of the Contractor to reduce expenditure to a minimum, the Contractor shall be entitled to receive the remuneration due up to the effective date of postponement or termination and reimbursement in full for

such of the costs as shall have been incurred prior to the effective date of such postponement or termination.

## 10. PERSONNEL

- 10.1. The Services shall be carried out by personnel specified in **Appendix C** hereof for the respective periods of time indicated herein, provided that the Contractor may make such reasonable adjustments in such periods as may be appropriate to ensure the efficient performance of the Services after having received the prior written approval of the HPC.
- 10.2. Should it become necessary to replace any person specified by name in **Appendix C** hereof, the Contractor shall forthwith arrange for such replacement with a person of comparable experience who shall similarly be approved in advance by the HPC.
- 10.3. The HPC shall have the power to reasonably request the replacement or termination of personnel engaged by the Contractor for the performance of the Services described herein who, in its opinion, should be replaced or terminated. All such requests, for whatever reason, must be presented in writing and shall specify the reason for the request. The Contractor shall, thereafter, promptly replace or terminate the engagement of the person(s) so specified.
- 10.4. The Contractor shall at all times retain full and unseverable responsibility for the due performance of its obligations hereunder and for the satisfactory completion of the Services.

## 11. DEFAULT BY THE CONTRACTOR

- 11.1. The HPC shall notify the Contractor, in writing, if it considers that it is not discharging its obligations under this Agreement, stating the reasons therefore. Thereafter, in the event that the Contractor does not respond to such notice either by email or in writing within 14 days, the HPC shall have the power to terminate the Agreement.
- 11.2. In any event, the Contractor shall be entitled to receive the remuneration for the services it has executed until the time of notice of termination, in the deduction of every sum or expense or damage caused to the HPC due to the Contractor's responsibility and/or violation of this Agreement provided that no deduction is made without prior notice to the Contractor and that Such deductions will be made only from revenues from the specific project indicated in this Agreement.

## 12. Liquidated Damages

- 12.1. Should the Contractor, for reasons other than Force Majeure, fail to deliver and hand-over to HPC the SOW, all or any of it, within times fixed, agreed or extended (if an

extension is granted) as set forth in the SOW and/or in this Agreement then the Contractor shall pay to HPC agreed liquidated damages ("**Liquidated Damages**") amounting to 1 % (one percent) of the remuneration of the SOW per each delayed crane per each day of delay. The total amount of the agreed liquidated damages in respect of delay, as aforesaid, shall not exceed a total maximum amount of 10 % of the remuneration of the SOW per each delayed crane.

- 12.2. In the event of a delay as set forth above, with respect to each SOW, HPC shall be entitled to collect the Liquidated Damages from the payment out of the remuneration (such limitation however shall apply only if the Works were actually delivered to HPC in accordance with the terms hereof, but not in other events, in which cases the Liquidated Damages can be collected in any manner, including, without derogation, through the exercise of the Guarantees. HPC shall inform the Contractor on same, to the extent such notification shall not adversely affect the prospects of realization of the funds covered thereunder.
- 12.3. To avoid any doubt it is agreed by the parties that for delays in the supply of the SOW the Contractor has to pay to HPC only the Liquidated Damages as mentioned above and that this shall be the only monetary remedy available to HPC to compensate for such delay, provided however that consequential damages and indirect damages of any kind, such as but not limited to loss of use and profit, are expressly excluded.

### **13. CLAIMS FOR DEFAULT**

Any claim for damages arising out of default and termination shall be agreed between the HPC and the Contractor or, failing agreement, shall be settled as set out in Clause 18 of this Agreement.

### **14. TERMINATION NOT AFFECTING RIGHTS, ETC.**

Termination of this Agreement, for whatever reason, shall not prejudice or affect the accrued rights or claims and liabilities of either party to this Agreement.

### **15. THE RIGHTS AND DUTIES OF THE CONTRACTOR**

- 15.1. The Contractor shall exercise all reasonable skill, care and diligence in the performance of the Services under the Agreement and shall carry out all its responsibilities in accordance with recognized professional standards. The Contractor shall in all professional matters act as a faithful adviser to the HPC and, in so far as any of its duties are discretionary, act fairly as between the HPC and third parties. The Contractor shall immediately notify the HPC of any and all contacts between it and potential suppliers of equipment and/or services with regard to or in connection with the Services.

- 15.2. The Contractor warrants that it has, in the past, performed similar tasks to those set out in the Scope of Work, **Appendix A, Appendix I** and that it is fully capable of performing those tasks in accordance with recognized professional standards.
- 15.3. The Contractor warrants that it has the know-how, expertise, experience, adequate financial resources and all that is required in connection with the tasks set out in the Scope of Work.
- 15.4. The Contractor warrants that it does not know of any impediment, whether a legal one and/or one stemming from a previous and/or simultaneous commitment made by the Contractor, and/or any other impediment of whatever nature, which might and/or should prevent the Contractor from carrying out or hinder it in the performance of any and all of its obligations.
- 15.5. The remuneration of the Contractor charged to the HPC according to **Appendix B** shall constitute its only remuneration from HPC in connection with the Agreement.
- 15.6. The Contractor will provide all the expert technical advice and skills which are normally required for the class of services for which it is engaged. Where specialist technical advice or assistance is required, beyond that committed under the Scope of Work in **Appendix A**, The Contractor may, with the prior written agreement of the HPC, arrange for the provision of such services. The HPC shall pay for all such services. However, the Contractor shall retain full and unseverable responsibility for all the Services which it is committed to render under this Agreement.
- 15.7. Equipment and materials furnished to The Contractor by the HPC or purchased by the Contractor with funds wholly supplied or reimbursed by the HPC shall be the property of the HPC and shall be so marked. Upon completion or termination of the Services the Contractor shall furnish to the HPC inventories of the equipment and materials referred to above as it then remains and dispose of same as directed by the HPC.
- 15.8. The Contractor, its employees and sub-contractors, whilst in Israel, shall respect the laws and customs of the state of Israel, and follow them. The Contractor shall secure all necessary licenses, permits, and approvals necessary for the performance of the services by itself and by those employed by it both in Israel and abroad.
- 15.9. The Contractor specifically warrants that any and all design elements, software, hardware, ideas, and all other aspects of the Works furnished by it, shall not be such as will cause the infringement of any letters patent, registered design, trade mark, copyright, intellectual property rights, industrial property rights or any and all other rights with regard to the Works which are held by any other person.
- 15.10. The Contractor shall keep confidential and shall not, without the written consent of HPC hereto, divulge to any third party any documents, data or other information

furnished directly or indirectly by the any party in connection with the Agreement, whether such information has been furnished prior to, during or following termination of the Agreement. Notwithstanding the above, the Contractor may furnish to its Subcontractor(s) such documents, data and other information it receives from HPC to the extent required for the Subcontractor(s) to perform its work under the Agreement; Provided, however, that the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this Clause.

- 15.11. The obligations above, however, shall not apply to that information which: now or hereafter enters the public domain through no fault of that party; can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party hereto; otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality; is compelled to be disclosed according to any applicable law or legal process or authorized entity.

## **16. LIABILITY OF THE CONTRACTOR**

- 16.1. Notwithstanding anything herein contained to the contrary, the Contractor shall be responsible for and agrees to indemnify and hold the HPC harmless from and against all claims, risks and liabilities and every damage or loss to property of third parties (including property of the HPC) or injuries to or death of persons, including employees of the HPC and third parties, of whatever kind to the extent that said claims, etc. were caused by and arising out of the negligence of the Contractor 's personnel during their stay in Israel in the rendering of professional services under this Agreement except the Contractor shall bear proportional responsibility and proportional liability for claims resulting from joint involvement between the Contractor and another party. Such liability and responsibility shall include court cost and attorney's fees, if any.
- 16.2. This liability and agreement to indemnify does not relate to claims of any third party arising out of, incidental to, connected with or related to the use of the cranes.
- 16.3. The Contractor shall additionally be liable for any violation of legal provisions or rights of third parties in respect of patents and/or copyrights introduced into documents prepared by it.
- 16.4. The Contractor shall indemnify and hold harmless HPC and its employees, officers, directors, consultants and shareholders from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses (i) arising or resulting or in connection with all subject matters of this Contract; and/or (ii) arising or

resulting from the death or injury of any person or loss of or damage to any property (other than the Facilities whether accepted or not), arising in connection with this contract by reason of the negligence of the Contractor or its Subcontractors, or their employees, officers or agents, and/or (iii) arising or resulting from the violation of any Laws and Regulations by the Contractor or its personnel, including the Subcontractors and their personnel, and/or (iv) made against HPC directly by the Contractor's Subcontractor(s) for works, goods or services etc. supplied or performed by that Subcontractor on behalf of the Contractor pursuant to the Contract; and/or (v) caused by it to other contractors' works as result of negligence or a breach of its obligations hereunder; and/or (vi) arising or resulting from any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing by reason of: the design, manufacture, assembly, or installation of the Facilities by the Contractor or the use of the Facilities in the State of Israel; and/or (vii) all claims, risks and liabilities and every damage or loss to property or injuries to or death of persons, including employees of HPC and third parties, of whatever kind caused by or arising out of the services in this contract or the use of the cranes because of faulty design (including errors and omissions in design), faulty software, faulty workmanship, faulty erection, faulty materials or components, faulty transport, faulty installation and any part thereof whether done, made or manufactured by the Contractor or any of its suppliers or Subcontractors.

- 16.5. If any proceedings are brought or any claim is made against HPC that might subject the Contractor to liability, HPC shall within reasonable time give the Contractor a notice thereof and the Contractor may, at its own expense and in HPC's name, conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. The failure by HPC so to notify the Contractor shall not relieve the Contractor from any liability

## 17. INSURANCE

- 17.1. Without derogating from Contractor's liability under this Agreement or any applicable law, Contractor undertakes to procure – through a reputable insurance company - and to maintain, at its sole expense, during the term of this Agreement and until final completion, handing-over and acceptance of the Works, as well as for any additional period during which the Contractor is held liable (whether at law or under this Agreement), for any damage or loss suffered by any third party, including HPC and/or Israel Ports Company's (IPC) and/or anyone acting on its behalf, the insurances detailed hereunder (hereinafter: "**Contractor's Insurances**") for its own benefit and for the benefit of HPC and/or Israel Ports Company's:

- 17.1.1 Third Party Liability Combined with Product's liability on occurrence basis with a limit of liability of \$ 5,000,000 per occurrence and in the aggregate in respect of liability at law for death and/or bodily or personal injury and/or property damage caused during the performance

of the Works or during the Insurance Period. This policy shall be issued in the name of Contractor and naming HPC and/or Israel Ports Company's as an additional insured and subject to a cross-liability clause whilst HPC and its property shall expressly be deemed to be a third party for the purpose of this policy. This policy shall be extended to cover liability deriving from the use of mobile cranes and other mobile equipment other than compulsory motor vehicle liability insurance.

This policy shall also cover liability deriving from lifting devices, cranes or elevators, loading and unloading, works to a height, subrogation claims of the National Insurance Institute, contractors and subcontractors and their workers, damage to property on which the assured or any person in its service are or were working on at the time of the occurrence of the insurance event. The Contractor can to procure the above insurances separately Subject to the following: The Product's liability cover shall apply retroactively commencing from the date on which the Contractor provides the services and/or performance of the works, and will exist for a period of the Works and the Extended Maintenance period of 24 months

Any person employed by the Contractor and/or any subcontractor on its behalf in the execution of the Works not being a direct employee of the assured and in respect of whom the assured is not bound to pay National Insurance contributions according to statute and regulations will be deemed to be a third party under this policy. The policy will exist for the period of the Works and the Extended Maintenance Period of 24 months.

- 17.1.2 Employers' Liability Insurance, in respect of legal liability towards all persons employed in the execution of or in connection with the Works in respect of physical injury caused during the course of and consequent upon the execution of the Works or during the Insurance Period with a liability limit of not less than \$ 5,000,000 any one occurrence and in the aggregate for the period of the insurance.

This policy shall also cover contractors and subcontractors and their employees, works to a height, work and rest hours. The policy extends to cover the legal liability of HPC and IPC as employers towards the Contractor's and Sub contractors' employees

- 17.1.3 Professional liability insurance policy to covering the Contractor's

legal liability results from any act or omission of the Contractor and/or anyone acting on its behalf and/or in its name in the course and/or in consequence or and/or in connection with its activity and/or anyone on its behalf pursuant to this Agreement, with a limit of liability of not less than \$ 5,000,000 per event and for the period of insurance.

The insurance shall be extended to cover HPC and IPC, to the extent this is permissible under the Contractor's existing Professional Liability Insurance and those acting on its behalf as an additional insured in respect of their liability for acts and/or omissions of the Contractor and or the Contractors Sub-Contractors, subject to a cross-liability clause.

The cover shall apply retroactively commencing from the date on which the Contractor provides the services and/or performance of the works, and will exist for a period of the Works and the Extended Maintenance period of 24 months.

- 17.2. The Contractor hereby undertakes to continue and maintain a professional liability insurance policy for a period of no less than seven (7) years from the date of the provision of the services and/or products and/or equipments pursuant to this Agreement and as long as the Contractor is legally liable for the Works carried out pursuant to this Agreement.
- 17.3. Within 14 days of execution of this Agreement and/or as from the beginning of services (the earlier) Contractor shall submit to HPC the Contractor's Insurance certificates (substantially in the form attached hereto as **Appendix F**) duly signed by their Insurer or such Insurer's authorized representative (the "**Insurance Certificate**"). The submission of such certificates and/or its review or inspection by HPC, shall not relieve Contractor of any of its undertakings hereunder.
- 17.4. HPC may examine the Insurance Certificate, which the Contractor is committed to furnish as set out above, and the Contractor undertakes to make any change or amendment that will be required in order to make it conform to the Contractor's undertakings. The Contractor declares that HPC's right to examine the Insurance Certificate and its right to demand amendments to the Insurance Certificate, as set out above, does not impose on HPC or any party on its behalf any obligation or responsibility in relation to such Insurance Certificate, or as regards the nature, extent and validity of the Contractor's insurance coverage or with respect to the absence thereof, nor does it detract from any liability whatsoever imposed on the Contractor herein.

17.5. In addition to the insurances noted above, Contractor shall procure and maintain the following insurances:

17.5.1 In respect of any motor vehicle (including mobile cranes and any other mobile equipment) utilized in the performance of the Works hereunder:

- Compulsory insurance covering liability which is required to be insured under the requirements of the applicable law.
- Comprehensive motor insurance as well as third party liability insurance property damage which shall be extended to indemnify HPC in respect of any liability devolving upon HPC and/or Israel Ports Company's as a result of the utilization of such vehicles.

17.5.2 Property insurance covering property owned and/or in the possession of the Contractor and/or for which it is liable, brought to the premises on which the Works are carried out, against loss or damage in consequence of fire, explosion, earthquake, storm, tempest, flood, damages caused by liquids and cracked pipes, damages caused by impact, damage by aircraft, riots, strikes, malicious damage, break-in and robbery.

The policy shall include an express clause regarding waiver of the right of subrogation towards HPC and/or Israel Ports Company's, owner/lesser, their employees or anyone acting on their behalf.

- 17.6. The Contractor undertakes to fulfill the conditions of the insurance policies affected by it, fully and punctually pay the insurance premiums and arrange for and ensure that the Contractor's insurance coverage is in effect according to the Contractor's undertakings.
- 17.7. The Contractor shall pay all deductibles set forth in the above mentioned policies.
- 17.8. The Contractor represents and warrants that it shall not have any claims, demands and/or actions against HPC and/or Israel Ports Company's and/or anyone on its behalf, concerning damage with respect to which it is entitled to receive indemnification under its insurance policies (unless self-deductible) and Contractor hereby relieves HPC and/or Israel Ports Company's and/or anyone on its behalf of any liability for such damage. The foregoing shall not apply to damage caused maliciously.
- 17.9. The Contractor hereby undertakes to cause that the insurance terms to be brought to the attention of its managers, employees and subcontractors, and the Contractor

shall ensure that the changes necessary to effectuate the terms of this Agreement shall be executed both with respect to its insurance policies and with respect to the insurance policies of the subcontractors currently engaged and which may be engaged in the future by the Contractor for the performance of the Works.

- 17.10. If at any time HPC is notified by Contractor's insurer/s that any of Contractor's Insurances are about to be cancelled and/or narrowed, Contractor shall re-procure such insurance prior to the date of such cancellation/narrowing.
- 17.11. For avoidance of doubt, it is agreed that the limits of indemnity noted under the liability Insurances mentioned above represent a minimum requirement. The Contractor undertakes to assess its exposure to liability and determine the limits of liability accordingly.
- 17.12. Neither HPC and/or Israel Ports Company's and/or any owner or lessor of any site nor anyone on its or their behalf, shall be liable for any loss or damage, for any reason whatsoever, to any equipment, tools, materials and/or test gear of Contractor or any of its subcontractors or anyone acting or their behalf which is brought to any site, and all such liability is hereby expressly waived by Contractor, provided that the foregoing shall not apply in favour of any person who maliciously caused such damage.
- 17.13. Throughout the performance of this Agreement, The Contractor shall comply with any applicable National Insurance Law and all regulations and orders there under so as to ensure that all personnel employed or engaged by or on behalf of Contractor in the performance of such Work shall be entitled to the full benefits under such applicable law. Contractor shall effect and maintain National Insurance and/or Workmen's Compensation Insurance as required under the laws applying to the employment of such persons.

## **18. OBLIGATIONS OF THE HPC**

- 18.1. The HPC shall furnish all pertinent data and information available to it and shall give such assistance as shall reasonably be required by the Contractor for the carrying out of its duties under this Agreement. The HPC shall give its decision on all sketches, drawings, reports, recommendations and other matters properly referred to it for decision by the Contractor in such reasonable time as not to delay or disrupt the performance by the Contractor of the Services under this Agreement.
- 18.2. The HPC shall carry-out the tasks specified in Appendix A as shall be instructed and directed by the Contractor in reasonably required for the performance of Contractor's duties under this Agreement. The tasks shall be performed in such reasonable time as will not delay the performance of the Contractor's Services.

- 18.3. The HPC shall assist for the timely granting to the Contractor of:  
Necessary visas, licenses, permits and customs clearance for entry and exit;  
unobstructed access to all sites, cranes and locations involved in carrying out the Services;
- 18.4. Any delay in the delivery of any Work as a result of HPC's failure to assist the Contractor and/or to supply any material or to carry out any task shall not be considered as breach of this Agreement by the Contractor.
- 18.5. HPC warrants that this Agreement is a valid and binding obligation of the HPC in accordance with the applicable law and was properly approved by all of its corporate organs, and there exists no limitation that may in any way prevent the validity of this Agreement or any conflicting obligation that may prevent this Agreement or any PO or any SOW from being valid.
- 18.6. HPC shall keep confidential and shall not, without the written consent of the Contractor hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the any party in connection with the Agreement, whether such information has been furnished prior to, during or following termination of the Agreement.

## 19. SETTLEMENT OF DISPUTES

- 19.1. The Agreement shall, in all respects, be governed by and construed according to the laws, from time to time, in force in Israel.
- 19.2. Any and all disputes or differences between the parties arising out of or as consequences of this Agreement, if they cannot be settled amicably by negotiation, shall be finally settled exclusively in Courts located in the State of Israel.

## 20. REMUNERATION OF THE CONTRACTOR

- 20.1. The HPC shall remunerate the Contractor in respect of the Services in accordance with the conditions set forth in **Appendix B**.
- 20.2. In the event of any Services being required supplementary to those detailed in **Appendix A** and **Appendix H** due to circumstances arising beyond the control of the Contractor and which could not reasonably have been foreseen or for any additional services, alterations or modifications as agreed between the Parties and resulting from the HPC's specific request which cause amendments to the Services or termination of this Agreement, the Contractor shall receive additional remuneration which shall be computed on a time basis together with all reimbursable costs incurred based, to the extent possible, upon the elements and prices which were

taken into account in the formulation of the pricing for the Services under this Agreement.

- 20.3. In the case of delay on the part of the HPC and on its responsibility, the Contractor shall be entitled to additional remuneration to the extent that such delay results in proven extra cost. Such additional remuneration shall be computed on a time basis together with all reimbursable costs incurred based, to the extent possible, upon the elements and prices which were taken into account in formulation of the pricing for the Services under this Agreement.

## 21. PAYMENTS TO THE CONTRACTOR

- 21.1. The HPC shall effect payments to the Contractor in accordance with the payments set out in the price list (**Appendix D**) and in the manner set forth in **Appendix B**
- 21.2. Amounts due to the Contractor shall be paid promptly as set out in **Appendix B**.
- 21.3. To preclude any doubt, it is hereby clarified that all taxes, fees, licenses, costs or other payments that are to be paid in connection with the supply of the work, including but not limited providing of certificates as required in this agreement shall be all considered as part of the work prices and shall be born solely by The Supplier. Moreover, Israeli Value Added Tax (VAT) and duties and levies imposed in Israel by the Israeli Tax Authorities, if applicable, shall be born solely by HPC.
- 21.4. The work prices include any sum which the Israeli Tax authorities require to be withheld at source. The amounts required by the applicable law to be withheld at source by the Israeli Tax Authorities shall be paid by HPC directly to the Israeli Tax Authorities and shall be deducted from the work prices.
- 21.5. All applicable stamp duties and taxes outside of Israel shall be borne by the Contractor while all applicable stamp duties and taxes in Israel shall be borne by the HPC.

## 22. INTELLECTUAL PROPERTY

- 22.1. Any and all design elements, drawings ,ideas, knowledge, techniques, intellectual property rights, patents, copyright, designs, industrial property rights secret processes, and all other aspects related to the cranes and/or the Works furnished by the Contractor herein, whether as a consequence of its own activities or as a product of discussions, demands, requests, suggestions, functional or performance specifications, or statement of work, etc. of HPC, are and shall remain at all times the sole property of the Contractor and the Contractor warrants that will not cause the infringement of any letters patent, registered design, trade mark, copyright, intellectual property rights, industrial property rights or any and all other rights of third parties.

- 22.2. The Contractor shall be responsible for the use of patents, copyrights, rights in intellectual property of whatever type, secret processes, licenses, patent rights, patented or not patented inventions, articles, appliances or other equipment, manufactured, used, implemented or employed in the design, production and completion, or operation of the Works or in the use of the Works by the Contractor and/or HPC and generally in performance of this Agreement and in the supply of the Works pursuant to this Agreement.
- 22.3. The Contractor shall indemnify or compensate HPC from and against all claims, suits or proceedings arising out of the violation of the above mentioned matters referred to in this section 21 used for or in connection with the Works by the Contractor or HPC or with regard, generally, to the performance of this Agreement and the Works to be supplied hereunder. In the event of any claim being made against HPC arising out of the matters referred to in this section 21, and in respect of which the Contractor may be liable under this Section 21, the Contractor shall be notified thereof and shall, at its own expense, conduct all negotiations for the settlement of same and defend any litigation that may arise there from. HPC shall not, unless and until the Contractor shall have failed to take over the conduct of the negotiations or litigation, make any admission which might be prejudicial thereto, and shall provide reasonable cooperation in any such defense, at the expense of Contractor. To the extent the Contractor shall not diligently and promptly defend against any claim or demand, HPC shall be entitled to settle or defend the same and shall be immediately indemnified by the Contractor as set forth above.

### 23. WARRANTY

- 23.1. The warranty period for the works for each crane shall be twelve (12) months from the issuance date of the Acceptance Certificate of each crane in the form of **Appendix E**.
- 23.2. The Contractor hereby undertakes to supply warranty services to HPC during the warranty period for each crane, pursuant to all of the terms and conditions of this Agreement, SOW and the Technical specification.
- 23.3. During the warranty period, the Contractor shall bear full responsibility and undertakes to remedy/repair at its own expense any defects due to faults which are caused due to faulty workmanship faulty assembly ,faulty electrical works and /or adjustment whether made by the contractor or any of the Contractor's sub-contractors.
- 23.4. Excluded from the Warranty are items for which repair or replacement are necessary because of : (i) normal wear and tear; (ii) vandalism by parties not related to the Contractor; (iii) alterations, repairs or adjustments performed by HPC or any third party without the Contractor's previous consent - provided that in the event of an emergency, HPC shall have the right to carry out such repairs as are necessary to

operate the cranes and shall immediately notify the Contractor of said repairs (iv) gross negligence or willful misuse of the cranes by HPC; and (v) damages caused to the cranes by work done by HPC or third parties on the cranes which are not related to the Works performed by the Contractor under the SOW and the Technical specification. Materials, parts and/or hoist cables delivered by HPC are in no case under the responsibility of the Contractor, to the extent that damages to the cables didn't caused by negligence of fault installation by the Contractor.

## 24. BANK GUARANTEES (SECURITIES)

### 24.1. Issuance of Bank Guarantees

The Contractor shall provide the Bank guarantees specified below in favor of the Company at the times, and in the amount, manner and form specified below.

All Guarantees will be issued from Contractor's Bank which is a reputable European Bank and will be submitted through HPC's Approved Bank. "**Approved Bank**" means one of the five major Israeli Banks (Bank Hapoalim, Bank Leumi, Israel Discount Bank, First International Bank, Bank Mizrahi) or a Bank, which has been rated by Standard & Poor's with a level of at least "A-" or which has received a similar rating level from Moody's. The Bank will be approved by HPC that will not unreasonably disapprove the Bank.

In the event that the Bank of the required rating is located in a nation which does not maintain full diplomatic relations with the State of Israel at the time of the issuance of the Guarantee, the bank guarantee shall be accompanied by a counter-guarantee from an Approved Bank located in Israel or located in a nation which maintains full diplomatic relations with the State of Israel.

### 24.2. Bank Guarantees for Performance

**Performance guarantee**- this guarantee shall be submitted with the contract document. The contractor shall provide Performance guarantee for each crane (herein, "Performance Guarantee") in an amount consisting of Ten Percent (10%) of the total price of the works related to each crane, in accordance to **Appendix G " Indicated Form of Performance Guarantee"**. This Guarantee shall be replaced by warranty guarantee.

### 24.3. Bank Guarantees for Warranty

The Contractor shall provide Warranty Guarantee for each crane (herein, "**Warranty Guarantee**") in an amount consisting of Ten Percent (10%) of the total Price for each Crane, in accordance to **Appendix H " Indicated Form of Warranty Guarantee"**.

The Warranty Guaranty shall be denominated in the currency of the Agreement, and shall be in the form of Bank Guaranty provided herein or in another form acceptable to the parties.

Each Warranty Guarantee shall remain in force until one year after the acceptance of each crane by HPC in strict accordance with the provisions of the Agreement including the issue by the HPC of the relevant Acceptance Certificate.

**25. ACCEPTANCE; HANDING-OVER;**

25.1. Without derogating from the above, upon completion of the Works related to a specific crane, the Contractor shall submit to HPC a certificate stating that all Works on such crane have been performed in accordance with the SOW and the Technical specification and with all requirements and specifications set forth therein. The IPM will issue an Acceptance Certificate in the form attached as **Appendix E** (the "**Acceptance Certificate**") to the Contractor, and upon issuance of the Acceptance Certificate, the applicable SOW related to the specific crane shall be deemed completed and accepted by HPC.

25.2. Upon Acceptance of the Works, and subject to the full payment of the remuneration under this Agreement, the Contractor conveys to HPC full, complete and unhindered title to all materials, components, parts and all other matters used in connection with the Works and which comprise a part of such Works, free and clear of any third party right, including, without limitation, rights in equity or incidental or implied rights of any kind.

**IN WITNESS WHEREOF the Parties have caused this Contract to be duly executed by their duly authorized representatives the day and year first above written:**

**The Contractor**

**HPC**

By:-----

By:-----

Title :-----

Title :-----

By:-----

Title :-----

I, the undersigned, legal counsel of \_\_\_\_\_ ("**Contractor**"), hereby confirm that \_\_\_\_\_, who have signed this agreement, is duly authorized to sign this agreement on behalf of the Contractor, and that his/her signature shall bind the Contractor hereunder for all intents and purpose.

Full Name and Signature \_\_\_\_\_

**Appendix A**

**SCOPE OF WORK:**

(Technical specification – par. 6)

**Appendix B**

**Remuneration and Payment:**

The HPC shall pay the Contractor in the manner set out herein:

The sums set out above include all accompanying costs and all expenses such as transportation (both local and international), accommodations, meals, etc.

Payment shall be made by the HPC By means of a bank transfer to Contractor's account at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Account Number:

1. Full payment of 100% (one hundred percent) per each crane (according **Appendix D**) shall be paid by the HPC after completion of the said Works (**Appendix A and Appendix H**) .
2. The said payment shall be made within 60 days after the presentation of the corresponding invoice and **Acceptance Certificate (appendix E)** to the HPC.
3. The invoice shall be accompanied by a Warranty Guarantee in favor of the HPC to be in effect until end of Warranty Period. The Warranty Guarantee shall be returned to the Contractor upon its expiration.

**Price list:**

Crane NO. C1 –

Crane NO. C2 –

Crane NO. C3 –

Crane NO. A4 –

**Appendix C**

**List of Personnel**

**Appendix D**

**Deleted**

**Appendix E**  
**Acceptance Certificate:**

To: \_\_\_\_\_

From: HAIFA PORT COMPANY Ltd. ("HPC")

Re: Agreement No. \_\_\_\_\_

We, the undersigned, on behalf of the HPC, hereby certify that Repairing trolley rails cranes works on crane No. \_\_\_\_\_ were inspected by us today in accordance with the requirements of the agreement and technical specification, and have been accepted by the HPC.

**This certificate is issued without prejudice to the rights and powers of the HPC, under the above agreement and/or the law of Israel.**

**For HPC:**

1. Mr. Natan Goldgur (project manager)\* - \_\_\_\_\_
2. Mr Zed Tafesh - (Head of Engineering Division)\* - \_\_\_\_\_

**Appendix F**  
**Insurance Certificate**

**Insurance Certificate**  
Date: \_\_\_\_\_

To: Haifa port Company Ltd. ("HPC")

Dear Sir/Madam,

**Re: Certificate of the existence of insurances in connection with the execution of Works and services and/or Repair of trolley rail cranes no. C1,C2,C3 and A5 (Hilgers RMG Eastern Terminal) carried out pursuant to the Contract dated the \_\_\_/\_\_\_/\_\_\_ signed between you and \_\_\_\_\_ (the: "the Contractor")**

We hereby confirm that as from the day of \_\_\_\_\_ until the \_\_\_ day of \_\_\_\_\_ we have issued on the Contractor's behalf the following insurances in connection with the above referenced contract: in the name of the Contractor and the name of subcontractors as well as in the name of Haifa Port Company (HPC) and Israel Ports Company's (IPC) (hereinafter: "**the Individuals comprising the Assured**") the following insurances:

1. **Construction Works Insurance Sum Insured: \_\_\_\_\_ \$.**

***Extensions and Alterations:***

- a. Surrounding and existing Property up to 150,000 \$
- b. Removal of Debris up 150,000 \$
- c. Coverage for the Contractor's- Plant, machinery and equipment and equipment and parts used for the work

- d. Theft and Burglary up to \_\_\_\_\_ \$
- e. Extended Maintenance coverage for 24 months.
- f. Coverage for Expediting expenses up to 20% of the damage.
- g. Coverage for Inland Transit and Off-site Storage up to 75,000\$.
- h. Coverage for Professional fees and Plans. Documents and data (Design and Supervision) including Claim Handling costs up 75,000€.

2. **Third Party Liability Combined with Product's liability** on occurrence basis, with a limit of liability of \$ 5,000,000 any one occurrence and in the aggregate in respect of liability at law for death and/or bodily or personal injury and/or property damage caused during the performance of the Works or services hereunder or during the Insurance Period. This policy shall be subject to a cross-liability clause whilst HPC and its property shall expressly be deemed to be a third party for the purpose of this policy. This policy shall be extended to cover liability deriving from the use of mobile cranes and other mobile equipment other than compulsory motor vehicle liability insurance.

This policy shall also cover liability deriving from lifting devices, cranes or elevators, loading and unloading, works to a height, subrogation claims of the National Insurance Institute, contractors and subcontractors and their workers, damage to property on which the assured or any person in its service are or were working on at the time of the occurrence of the insurance event.

Any person employed by the Contractor and/or by any subcontractor on its behalf in the execution of the works not being a direct employee of the assured and in respect of whom the assured is not bound to pay National Insurance contributions according to statute and regulations will be deemed to be a third party under this policy.

Subject to a cross-liability clause, this policy shall be extended to cover the legal liability of the lessors/owners of the Sites as additional insured as their interest may appear, with respect only to operations of the Contractor, in the performance of the Works or Services.

The insurance will exist for the period of the Works and the Extended Maintenance Period of 24 months.

3. **Employers' Liability Insurance**, in respect of legal liability towards all persons employed in the execution of or in connection with the works in respect of physical injury caused during the course of and consequent upon the execution of the works with a liability limit of not less than \$ 5,000,000 any one occurrence and in the aggregate for the period of the insurance.

This policy shall also cover contractors and subcontractors and their employees,

works to a height, workers from the territories, strike or lock-out, work and rest hours.

The policy extends to cover the legal liability of HPC and IPC as employers towards the Contractor's and Sub contractors' employees.

4. **Professional liability insurance policy** to cover the contractor's legal liability results from any act or omission of the contractor' and/or anyone acting on its behalf and/or in its name in the course and/or in consequence or and/or in connection with its activity and/or anyone on its behalf pursuant to the contract, with a limit of liability of not less than \$ 5,000,000 per event and for the period of insurance.

The insurance has been extended to cover HPC and IPC and those acting on its behalf, to the extent this is permissible under the Contractor's existing Professional Liability Insurance as an additional insured in respect of their liability for acts and/or omissions of the contractor' and or the Contractors Sub-Contractors, subject to a cross-liability clause.

The cover shall apply retroactively commencing from the date on which the Contractor provides the services and/or performance of the works, and will exist for a period of the Works and the Extended Maintenance period of 24 months.

**The above policies will be subject to the following provisions:**

- a. The above policies have priority over any insurance maintained by HPC and or IPC and or by owner/lessors.
- b. We waive our rights to make any claim or demand for contribution towards you and towards your insurers, with respect to any occurrence covered by the above policies.
- c. We waive our right to subrogation against you and/or owner/lessors and/or anyone acting on your behalf and/or against any person or body which a reasonable assured would not have sued for compensation as well as any person or body to whom the assured or any customer has an affiliation or whom the assured or HPC has undertaken to indemnify or any other person connected with the assured by express or implied working agreement.
- d. The above mentioned policies may not be narrowed and/or restricted and or cancelled unless we give you a prior written notice thereof at least 60 days in advance.
- e. The policies shall be subject to worldwide territorial limits and jurisdiction.
- f. We agree to submit to the exclusive jurisdiction of the courts in the State of Israel in case of claims arising out of personal injury or death.
- g. We are aware that the Contractor alone is liable for payment of the insurance premiums and deductibles.
- h. Name of Insured extend to include HPC and or IPC, in connection with the execution of the Construction Work.

This Certificate is subject to the conditions of the original policies and the exceptions thereof to the extent they have not been expressly varied by the foregoing.

Yours faithfully,

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Insurance Company



**Appendix G**  
**Indicated Form of Performance Guarantee**

To: Haifa Port Company Ltd.  
P.O.B 33539  
Haifa 31334  
Israel

"Performance Guarantee of works in regard of **Repair of trolley rail cranes no C1,C2,C3 and A4 Konecranes RMG** "

Whereas, by Contract No.50/2019, Dated .....made between the Haifa Port Company Ltd.(hereinafter referred to as "**HPC**") and \_\_\_\_\_ (hereinafter referred to as "the "**Contractor**"), the parties entered into a Contract as therein stated;

Now, we .....(hereinafter referred to as "the Guarantor") hereby irrevocably guarantee to HPC due, punctual, true, faithful and satisfactory performance by the Contractor of the obligations on his part contained in said Contract and undertake to be responsible and indemnify HPC for payment by him of all sums of money, losses, damages, costs, charges and expenses that may become due or payable to HPC, by or from the Contractor by reason or in consequence of the default of the Contractor in performance, execution or perseverance of his said obligations, but so nevertheless that the total amount to be determined or regarded or collected by HPC of or from us immediately upon the demand of HPC, shall not exceed the sum of ..... Euro (**Comprising ten percent (10%) of the works of Repair of trolley rail cranes no. C1,C2,C3 and A4 Hilgers RMG** " **Contract Price of the relevant crane.**

This Guarantee shall not be revocable by notice or otherwise and our liability hereunder shall not be impaired or discharged by any extensions of time or variation or alterations made, given, conceded or agreed (with or without our knowledge or consent) under the said Contract.

We hereby agree that any part of the Contract may be amended, renewed, extended, modified, compromised, released or discharged by mutual agreement between you and the Contractor, and this Guarantee may be exchanged or surrendered, all without in any way impairing or affecting our liabilities hereunder without notice to us and without the necessity for any additional endorsement, consent or guarantee by us, provided, however, that the sum guaranteed shall not be increased or decreased.

This Guarantee shall remain in force until Acceptance Certificate by HPC -Attachment E to the Contract, and subject to the substitution of this Guarantee by a Warranty Guarantee for the Warranty Period under the same Contract to be delivered by the Contractor to HPC in an amount comprising ten percent (10%) of the works of **Repair of trolley rail cranes no. C1, C2, C3 and A4 Konecrane RMG** of the relevant accepted crane.



**Appendix H**

**Indicated Form of Warranty Guarantee**

To: Haifa Port Company Ltd.

Warranty Guarantee "

Whereas, by Contract No. \_\_\_\_\_ Dated ..... made between the Haifa Port Company Ltd. (hereinafter referred to as "HPC") and (hereinafter referred to as "**the Contractor**"), the parties entered into an Agreement as therein stated;

Now, we ..... (hereinafter referred to as "**the Guarantor**") hereby irrevocably guarantee to HPC due, punctual, true, faithful and satisfactory performance by the Contractor of the obligations on his part contained in said Agreement and undertake to be responsible and indemnify HPC for payment by him of all sums of money, losses, damages, costs, charges and expenses that may become due or payable to HPC, by or from the Contractor by reason or in consequence of the default of the Contractor in performance, execution or perseverance of his said obligations, but so nevertheless that the total amount to be determined or regarded or collected by HPC of or from us immediately upon the demand of HPC, shall not exceed the sum of ..... comprising 10 percent of the Agreement Price per crane.

This Guarantee shall not be revocable by notice or otherwise and our liability hereunder shall not be impaired or discharged by any extensions of time or variation or alterations made, given, conceded or agreed (with or without our knowledge or consent) under the said Agreement.

We hereby agree that any part of the Contract may be amended, renewed, extended, modified, compromised, released or discharged by mutual agreement between you and the Contractor, and this Guarantee may be exchanged or surrendered, all without in any way impairing or affecting our liabilities hereunder without notice to us and without the necessity for any additional endorsement, consent or guarantee by us, provided, however, that the sum guaranteed shall not be increased or decreased.

This Guarantee shall remain in force until one year after Acceptance in writing by HPC of each crane.

For collecting any amount under this Guarantee, HPC shall not have to produce any judgment or any other judicial document, nor shall it have to prove any breach, failure or non-compliance on the part of the Contractor or on the part of any person acting for him or on his behalf or in his name or any other person, and a written demand by the Deputy General Manager - Economics and Finance of HPC or by a person nominated in writing by him, by registered (airmail) post to the addressee at the address set out herein, or as otherwise advised by and between the parties hereto in the following form:



**Appendix I**  
**Technical Specifications**

(Attached separately)