

Tender No.23/2020 – Supply of eight 4-ton SWL forklift trucks (FLT) and Seven 2.5-ton SWL forklift trucks (FLT) for Haifa Port Company Ltd.

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Haifa, May 4, 2020

Appendix G
Agreement No. 23/2020

Supply of port & terminal FLT's for Haifa Port Company Ltd.

Drawn up and signed in Haifa, Israel on the ____ day of the month of ____ year ____

(The "Effective Date")

Between

Haifa Port Company Ltd.

Of Haifa, Israel

Private Company No. 513569749

Haifa Port, P.O.B 33539, Haifa, Zip 31334

Fax no.: +972-4-8518744

(Hereinafter called: "**HPC**")

And

A company duly incorporated and registered under the _____ law,

With main offices at _____

Address _____

Fax No.: _____

(Hereinafter called: "**The Supplier**" or "**The Contractor**")

(The Supplier and HPC are each referred to as a "**Party**" and collectively as the "**Parties**")

For the supply of port & terminal FLT's for Haifa Port Company Ltd

Tender No.23/2020 – Supply of eight 4-ton SWL forklift trucks (FLT) and Seven 2.5-ton SWL forklift trucks (FLT) for Haifa Port Company Ltd.

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Whereas: HPC has issued **Tender No. 23/2020** (the "Tender"), for the supply of eight 4-ton SWL forklift trucks and Seven 2.5-ton SWL forklift trucks (each, "a "FLT", and collectively, the "FLT"), all according to the Tender's documents, including the tender's Technical specifications of the FLT attached hereto as Appendix A and;

Whereas: The supplier submitted a proposal, which includes a technical and commercial proposal attached hereto as **Appendix BA**, a proposal which was selected by HPC as the winning proposal and;

Whereas: The supplier declares and certifies that he has the knowledge, ability, expertise, facility resources, financial resources, licenses, permits and all that is required and necessary to undertake the obligations set forth in this agreement and;

Whereas: The parties desire to set forth a contractual framework to govern the parties' relationship and obligations with regards to the supply of the **FLT**, warranty service, special tools and spare parts, all as set out in this agreement.

Therefore, the parties declare, agree and stipulate as follows:

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1. Preamble

- 1.1. The preamble to this agreement and its attachments constitute an integral part hereof. The sections headlines contained in this agreement are for convenience only and do not constitute matters to be considered interpreting this agreement.
- 1.2. Unless otherwise provided in this Agreement, all documents forming this Agreement are to be taken as mutually explanatory of one another and shall be deemed form one agreement. Nevertheless, in the event of any ambiguity or conflict or inconsistency between the agreement's attachments and this agreement, the order of precedence shall be as described hereunder:
 - 1.2.1. The Attachments shall govern all the technical aspects. Thus in the event of any ambiguity or conflict between legal instructions and technical instructions regarding a technical issue, such ambiguity or conflict shall be solved according to the attachments.
 - 1.2.2. The agreement shall govern all the legal aspects. Thus in the event of any ambiguity or conflict between legal instructions and technical instructions regarding a legal issue, such ambiguity or conflict shall be solved according to the agreement.
- 1.3. In order to avoid any doubt, HPC will solely decide what a technical issue is and what a legal issue is.
- 1.4. In the event of any inconsistencies or conflicts between one of the attachments to another, HPC will decide which document will prevail.
- 1.5. In any case of inconsistencies or conflicts, the supplier must draw the HPC attention and follow its orders.
- 1.6. Definitions

The following words and expressions shall have the meanings hereby assigned to them:

- 1.7. **The agreement or the contract or the agreement's documents** - (i) this agreement; (ii) the appendices/attachments and forms thereto; (iii) Technical Specifications (HPC); (iv) any laws and/or regulations, even if not explicitly mentioned hereinafter.

Day – Calendar day by the Gregorian calendar.

Effective Date - The date on which the agreement has been duly executed for and on behalf of HPC and the Supplier as mentioned above.

Laws and/or Regulations - All laws, ordinances, regulations, orders, including municipal by-laws, procedures and permits, and all rules, applicable standards and administrative orders of the State of Israel, as amended and/or modified and/or updated from time to time.

Month – Calendar month by the Gregorian calendar.

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Company or HPC - the Haifa Port Company and includes the legal successors or permitted assigns of the Company.

Contractor/supplier - means the person(s) whose bid to perform the Contract has been accepted by the Company and is named as such in the Contract Agreement, and includes the legal successors or permitted assigns of the Contractor.

Subcontractor - Any person to whom execution of any part of the Goods under this agreement is sub-contracted directly or indirectly by the supplier, including vendors and suppliers, and including their legal successors or permitted assignees.

Project Manager or "Israel Project Manager" or "IPM" - the person appointed by HPC to perform the authority delegated by the Company.

FLT or FLTs or goods- means the goods to be performed / supplied and installed, as well as all the supporting Services to be carried out by the Contractor under the Contract.

Place of Origin - The place where the materials, equipment and other supplies for the Facilities are produced or manufactured, or activities are carried out, and from which the services are provided and must be located in countries, territories and locations with whom the State of Israel maintains full diplomatic relations and/or those countries, etc. in which access by personnel of HPC (and those acting on behalf of HPC) are assured of free, unhampered and unrestricted access to Goods or parts of the Goods and/or if, as a matter of law or official regulation, that location does not prohibit, restrict and/or limit its commercial relations with the State of Israel and/or that location does not prohibit, restrict or limit - in fact - the access of Israelis and/or that the State of Israel does not prohibit any import of goods from that place or does not prohibit any payments to persons or entities in that place.

2. procurement

- 2.1. HPC shall issue during **2020** a purchase order to the supplier for **eight (8) 4-ton SWL forklift trucks and Seven (7) 2.5-ton SWL forklift trucks** , including consumable spare parts for the warranty period (24 months) according to the prices that are detailed in **Appendix BA**. all as fully detailed below:
- 2.2. The delivery time of the FLTs (Hereinafter: the "Delivery Time"), which shall be purchased by HPC shall not exceed **six (6) months** starting from the date HPC will issue a purchase order for that **FLT** till acceptance of all of the ordered FLTs by HPC and the issue of corresponding acceptance certificates. It is hereby stated by The Supplier and mutually understood by the parties, that notwithstanding the Delivery Time, The Supplier shall make its best efforts, in order to shorten the Delivery Time, as much as possible.
- 2.3. It is hereby clarified that the execution of this agreement, is subject that HPC will receive a special budgetary approval from the authorized entity.

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- 2.4. The purchase order of **FLT** will be in the form attached hereto as **Appendix GA**. HPC shall forward the purchase order to The Supplier via facsimile/email. Upon receipt of a purchase order by facsimile/email, The Supplier shall confirm HPC via facsimile/email receipt of the purchase order. A copy of such confirmation shall be sent to HPC also via air mail.
- 2.5. In order to prevent any doubt, it is hereby clarified that any order of the FLT and/or spare parts according to this agreement shall be on a non-exclusive basis, and that HPC, in its sole discretion, may at any time, including but not limited during the period of this agreement, purchase other FLT., similar, or any other type of FLT from any third party.

3. Contractors Responsibility, Insurance Requirements

- 3.1. The Supplier shall bear all risks in connection with the supply of the FLTs to HPC, including the shipment of the FLTs. to Destination (as defined in Section 8 below), including, without limitation, to all damages due to the carriage by sea/air/land transport, and will continue to bear all such risks in connection with the FLTs until delivery to the Destination.
- 3.2. In accordance with the Supplier's responsibility as detailed above, the supplier shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the period of this agreement, all insurances as detailed below. The identity of the insurers shall be subject to the approval of HPC, which should not unreasonably withhold such approval.
- 3.3. The Contractor agrees that he shall make no claim for additional payment from the Company on the ground of any misunderstanding or misapprehension by the Contractor in respect of any matter or on the ground of any allegation or fact that incorrect information was mistakenly given to him by any person, (Subcontractors included), firm or any legal entity whether in the employ of the Company or not, provided that a reasonable and similarly experienced Contractor should have been able to identify the incorrectness of the information, or of the failure on his part to obtain correct information.

Cargo Insurance

Covering any loss or damage occurring to the **FLTs**, while in transit from The Supplier's work location until arrival to the Destination (as defined in Section 8 below), with a limit liability and deductible limits as detailed below.

Amount	Deductible limits	Parties insured	From	To
At least the CIF value of the Cargo +10%	Not more than the equivalent of 5,000\$ per claim	HPC and The Supplier	Anywhere	Destination as detailed in Section 8 below

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Employer's Liability Insurance/Workers Compensation

Covering the supplier's legal liability towards any one engaged by him in providing the services to HPC, including, without limitation, the warranty services, in accordance with the requirements of this agreement, the statutory requirements in any country where the **FLTs** or any part thereof is executed, and the law in Israel, with a limit liability and deductible limits as detailed below.

Amount	Deductible limits	Parties insured
At least 5,000,000\$ per any event and for one insurance year	Not more than the equivalent of 5,000\$ per claim	HPC and The Supplier

- 3.3 HPC will be entitled, at any time during the period of this agreement, to apply to the supplier in order to assure all policies of insurance, as detailed above, made according to the requirements of this agreement, and The Supplier undertakes to provide HPC, not later than seven (7) days from the date of this apply, satisfactory insurance certificate duly signed by the supplier's insurers, which conforms all policies of insurance made with respect to The Supplier's undertakings pursuant to this agreement.

4. Warranty

- 4.1. The warranty period of each FLT that will be supplied to HPC shall be **twenty four (24) months from the issuance date of the Certificate of Acceptance** of each FLT, or **4000** engine-working hours of the applicable FLT whichever comes first.
- 4.2. During the warranty period, the supplier shall bear full responsibility and undertakes to remedy and fully compensate HPC, at its own expense, for any and all damage or loss to the FLTs due to faults such as, but not limited to, faulty design, faulty workmanship, faulty dismantling for sea and land conveyance, faulty materials or components, faulty assembly and other faults in the FLTs and any part thereof whether made by The Supplier or any of The Supplier's sub-contractors.
- 4.3. Without derogating from the generality of the aforesaid, the warranty shall include repair and/or replacement by The Supplier of defective parts and/or systems in the FLTs, all at The Supplier's sole cost and expense. To rule out any doubt, the warranty shall also include the cost of parts (including shipment thereof and all associated risks and costs), labor, transporting of the defective parts of the FLTs to and from The Supplier's workshop or service facility, technicians and all related material and services. The warranty shall

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also extend to all parts or systems, such as engines, transmissions, and batteries etc, which are not manufactured by The Supplier **(without regard to any back-to-back warranties of The Supplier's vendors, if and to the extent existing)**.

- 4.4. The Supplier hereby undertakes to supply warranty services to HPC during the warranty period and the extended limited warranty period of each ordered **FLT**, pursuant to all of the terms and conditions of this agreement, including the tender's technical specifications of the **FLT - Appendix AA**.

5. Prices

- 5.1. HPC will pay the supplier for each **FLT** which will be ordered the prices as detailed in **Appendix BA**, in **EURO** currency only **Total CIF (COST INSURANCE & FREIGHT")**, **Haifa port, Haifa, Israel (Incoterms 2010) Prices**.
- 5.2. The prices are fixed, final, complete and inclusive, and shall include all of the ancillary services with regard to the supply of the **FLTs** to HPC, all as specified herein this agreement, inter alia, providing of training as specified in the tender's technical Specifications of the **FLTs**, warranty services, **supply of spare parts and special tools** for the warranty period of 24 months as detailed in Technical Specification of the **FLTs**. The supplier shall not be entitled to any other payment, fee or compensation whatsoever from HPC with regard to the supply of the **FLTs** and all of the ancillary services as specified above. Without derogating from the aforementioned, the prices will not be subject to any change, inter alia, due to fluctuation of any sort.
- 5.3. 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 goods, including but not limited to transportation costs to Haifa Port, Israel, providing of certificates as required in this agreement, such as indicated in this agreement, shall be all considered as part of the **FLTs** prices and shall be born solely by the Contractor/supplier. Notwithstanding same, 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.
- 5.4. The **FLTs** 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 **FLTs** prices.
- 5.5. HPC shall carry out the clearance from customs, in Israel, of each deliverable under this agreement, either by itself or through agents of HPC's choice. The following original documents will be supplied by The Supplier to HPC:
- 5.5.1. Commercial invoices. The original invoice must state the word **ORIGINAL**. The invoice/s shall include a clear reference to this Agreement, the amount, part number (inclusive of serial number), if any, quantity, place of origin, delivery note number, shipping date, Supplier's company registration number and HPC's order number for the **FLT**;
- 5.5.2. Original Certificate of Origin and Non-Manipulation Certificate, if necessary;
- 5.5.3. Bill of Lading - issued in HPC's name;

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5.5.4. Packing Lists;

5.5.5. Any and all other documentation necessary to release the FLT from customs in an expeditious manner and to facilitate payment, i.e. the documents that will enable HPC to clear the FLT through customs and which will enable HPC to make payment in foreign currency in accordance with the Regulations of the Bank of Israel.

5.5.6. Original copies of all of the above mentioned documents must arrive at HPC's purchasing and logistics division at least seven (7) calendar days before the arrival of the ship delivering the FLT to Israel. In addition, copies of all of the above mentioned documents shall be sent to HPC by facsimile/email simultaneously with the delivery of the originals. The above mentioned documents must be forwarded solely in HPC's name and shall state HPC's exact name.

5.5.7. Issue of any FLT's license in Israel (if required) shall be on the contractor's responsibility and on his expense ; contractor shall submit to HPC all the relevant documents.

5.5.8. The Supplier shall make all it's necessary to get the approvals, licenses and permits in order to import the FLT to the destination, included, but not limited to, from the Industrial Cooperation Authority (ICA), if needed, by law.

6. Payment

Payment by HPC to The Supplier shall be made on a per-order of **FLT** basis,

6.1. Down Payment

Twenty five percent (25%) of the **FLTs** price per order will be paid by means of a bank transfer, for deposit in the supplier's account no. _____ in _____ Bank (hereinafter: "**the Supplier's Bank account**"), within sixty (60) days following the presentation in advance, of all the following documents:

6.1.1. **A Signed original invoice** of the supplier for the amount set out above.

6.1.2. **A performance Bank Guarantee** in the amount of ten percent (10%) of the **FLTs** price per order, as set out in **Appendix CA** to the agreement.

6.1.3. **A Payment Bank Guarantee** in the amount of Twenty percent (25%) of the **FLTs** price per order, as set out in **Appendix DA** to the agreement.

6.2. Second Payment

Seventy five percent (75%) of the **FLTs** price per order will be paid by means of a bank transfer for deposit in the supplier bank account, within sixty (60) days following the presentation in advance, of all the following documents

6.2.1. **A Signed original invoice** of The Supplier for the amount set out above.

6.2.2. **A warranty Bank Guarantee** in the amount of ten percent (10%) of the **FLTs** price per order, as set out in **Appendix DA** to the agreement.

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6.2.3. **A signed certificate of acceptance** of the ordered FLTs as set in **attachment F** to the agreement

6.2.4. A warranty certificate for the FLTs

7. Guarantees

- 7.1. Each Bank Guarantee as detailed in section 6 above shall be independent, unconditional and irrevocable, from at least an **"A-" rating bank** (S&P ranking).
- 7.2. These guarantees shall be canceled/or returned to the supplier, following the conditions as detailed below:
 - 7.2.1. **Performance guarantee**- this guarantee shall remain in force for a period of **fourteen** (14) months from receipt of the purchase order for the **FLTs** by The Supplier or until Acceptance in writing by HPC of the ordered **FLTs** to the agreement (whichever date is later), and subject to the substitution of this Guarantee by a warranty guarantee.
 - 7.2.2. **Payment Guarantees** – this guarantee shall remain in force until Acceptance in writing by HPC of the ordered **FLTs**. to the agreement (whichever date is later).
 - 7.2.3. **Warranty Guarantee** – this guarantee shall remain in force for a period of twenty four (24) months from the issuance date of the Acceptance Certificate of each **FLTs** or 5000 engine working hours of the applicable FLT whichever comes first -
- 7.3. HPC shall issue such notifications or instructions as will be necessary to extend the validity and/or cancel and/or return the above guarantees to the supplier.
- 7.4. All of the guarantees shall indicate the **FLTs** to which the said guarantees are applicable.
- 7.5. Whether HPC realize the above guarantees, the supplier should in seven (7) days from the date of realization, to complete the sum of the above guarantees to the original sum (before realization).
- 7.6. The supplier approves that the forms of guarantees attached to this Agreement are binding and committing. No addition, omission, deviation, alteration or change shall be made in these forms without the prior written consent of HPC.

8. Destination for Supply

Each FLT which will be ordered by HPC according to this agreement will be supplied to Haifa Port, Israel (Hereinafter: "the Destination"). The supplier shall inform HPC at least one (1) month in advance of the expected date of the Supply to the destination. The Spreaders shall be considered as delivered only after the acceptance of the Spreaders at the destination, as evidenced by a signed acceptance certificate from HPC – Appendix FA to the agreement.

9. Acceptance of the FLT

- 9.1. Each **FLT** which will be supplied to HPC will be tested by HPC in order to assure it comply with the requirements of the agreement and its Attachments.

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- 9.2. Acceptance Tests shall be performed by HPC, including at Haifa Port, Israel, under actual operating conditions, according to the tender's technical specifications of the **FLTs - Appendix AA**. The test will commence within fourteen (14) days from the formal bidders declaration date stating that the **FLT** is in full operation state. The test period will be 14 consecutive days .HPC shall inform the supplier the results of such tests. Without derogating from the above, the supplier shall provide HPC all necessary installation services in order to perform such tests. For the avoidance of any doubt, the costs of the aforementioned installation services shall be included in the **FLT** Price.
- 9.3. In the event that the FLT comply with the requirements, HPC will deliver the supplier a signed certificate of acceptance of the ordered FLT, as set out in Appendix FA to the agreement.
- 9.4. In the event that the FLT does not comply with the requirements, HPC will inform The Supplier its rejections, and the supplier shall need to attain acceptance of the FLT within fourteen (14) days, and so forth. However, the supplier will be entitled to attain acceptance not more than three (3) times.
- 9.5. If the supplier fails to attain acceptance of the FLT within the time for or any extensions as defined above, this breach shall be considered as a material breach, and HPC shall be entitled also to liquidated damages as specified in Section 10.1 below, for each complete/part of a week of delay.

10. Transfer of ownership

- 10.1. Ownership of the FLTs or FLTs parts (but not raw materials) to be imported into Israel shall become the property of the Company upon the loading on to the ship or airplane to be used to convey the FLTs or FLTs' parts from the country of origin to Israel and the issuance of the relevant Bill of Lading or similar document in the name of the Company.
- 10.2. Ownership of the FLTs and FLTs parts produced and/or assembled in Israel on a location other than the Site shall be transferred to the Company when the FLTs and FLTs' parts are brought on to the Site.
- 10.3. Notwithstanding the transfer of ownership of the FLTs and FLTs' Parts, the responsibility for care and custody thereof together with the risk of loss or damage thereto shall remain with the Contractor until Acceptance of each FLT by the Company.
- 10.4. In consideration of the payments to be made by the Company to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Company to provide the Goods free and clear of all liens and mortgages.

11. Liquidated damages

- 11.1. In the event that the supply of any of the ordered **FLTs** is delayed beyond the delivery time, the supplier shall be subject to a set of liquidated damages. The value of the liquidated damages will be equal to one percent (1%) of the total price of the **FLTs** that were ordered, for each complete/part of a week of delay, up to maximum of ten percent (10%) of the total price of the **FLTs** that were ordered. It is agreed that HPC will not be entitled to liquidate damages for delays less than seven (7) days, but for any delay of

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more than seven (7) days, the liquidated damages will accrue from the delivery time until the actual delivery time of the relevant **FLTs** to the destination. The payment of the Liquidated Damages shall not be conditional on HPC having to present evidence of any losses.

- 11.2. Without derogating from HPC's rights and remedies under the applicable law, in the event that the delivery time will be delayed by more than ten (10) weeks, such delay will be deemed as a material breach of this agreement by the supplier. In the event of such delay, HPC shall be entitled to each of the following cumulative remedies to be enforced or waived at HPC's discretion (i) collect the liquidated damages, including but not limited to, from the Payment and/or the Performance guarantee or by a deduction of the liquidated damages from the second payment. (ii) terminate this agreement forthwith and in such event the supplier shall not be entitled to any payment from HPC and the supplier shall immediately return the down payment, or (iii) allow the supplier additional time for delivery (in such case liquidated damages will continue to accrue as set forth above).

12. Training

The supplier shall provide training at Haifa Port, Israel in accordance with the terms and conditions as specified in the tender's technical specifications of the **FLTs** - **Appendix AA**. For the avoidance of any doubt, it is hereby clarified that the costs of the aforementioned training are included in the **FLTs** Prices.

13. Spare parts

- 13.1. The supplier shall supply HPC, during a period of ten (10) years commencing on the Effective Date of this agreement, all spare parts and tools necessary for the maintenance and for the repair of the **FLTs**, including the separate elements of the **FLTs**. Each packing of the same parts must indicate and be marked on the label, before the supply, according to the Israeli law, inter alia, the place of production according to the supply manifest, full details of the supplier: name, address, manufacture MPN number, origin country of the part ("made in...").
- 13.2. It is hereby clarified that any of the spare parts and tools purchased by HPC according to this Section, shall be on a non-exclusive basis, and HPC, in its sole discretion, may at any time, obtain those spare parts also from other suppliers. The Supplier hereby declares and agrees that it shall raise no objection to any said direct purchases nor shall The Supplier instruct or take any other action, which will cause any sub-contractors or other sub-contractors to refuse to do business or sell directly to HPC with regards to the spare parts and tools.

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14. Conformity And Inspection of the FLTs

- 14.1. The **FLTs** must be delivered in strict conformity with the tender's technical specifications– **Appendix AA** and the supplier's technical proposal– **Appendix BA**. Any deviation from the tender's technical specifications and the supplier's technical proposal must be approved in advance in writing by HPC. In the event of contradiction between the tender's technical specifications- **Appendix AA** and the supplier's technical proposal- **Appendix BA**, the tender's technical Specifications shall prevail. In the event that an item is not listed in the supplier's technical Proposal but is listed in the tender's technical specifications, such item shall be deemed to be included by reference also in the supplier's technical proposal. In the event that with respect to specific item there is information missing in the supplier's technical proposal and such information is listed in the tender's technical specifications, such information shall also be deemed to be included by reference in the supplier's technical Proposal.
- 14.2. Upon the signature of the agreement, The Supplier will furnish HPC all of the applicable information as required according to this agreement and its Attachments, including, but not limited to, drawings, parameters, diagrams, description and catalogue numbers of the **FLTs** and the spare parts, and any other items to be supplied, according to the requirements of this agreement. The supplier shall be responsible for the update of this information, from time to time, if and when applicable.
- 14.3. Without derogating from the aforesaid, HPC shall, at any time, have the right to appoint its own inspector or any entity on its behalf, who shall be entitled to be present at all stages of the **FLTs** production, including inter alia all tests described in the standards set out in the Tender's Technical Specifications of the **FLTs** and to review the results of any quality assurance or conformance tests carried out by The Supplier in order to ensure that the **FLTs** are manufactured and supplied in accordance with the technical Specifications prior to the delivery of each order to HPC. In such event, the supplier shall provide such inspector any assistance or cooperation needed, including all the necessary documentation, notice of any change in the testing or manufacture schedules and testing equipment.
- 14.4. In addition, HPC shall be entitled to perform at HPC's expense, any additional tests it deems necessary to ensure conformity of the **FLTs** with the tender's technical specifications.
- 14.5. If any inspection or tests determines that the relevant materials, components or the **FLTs** are defective or of inferior quality or do not fully comply with the tender's technical specifications or the supplier's technical proposal, or are deficient in any other way, HPC shall be entitled to reject such materials, components or the **FLTs**. Following such rejection of any materials, components or the **FLTs**, the supplier shall immediately replace or repair same to HPC's satisfaction, at the supplier's expense. Any corrective measures undertaken by the supplier shall not entitle it to any extension of the delivery time of the **FLTs** according to this agreement.
- 14.6. The presence of HPC or its representative during any stage of the **FLTs**. production or testing as well as their approval of any materials, test results, components or the **FLTs**,

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shall not relieve or derogate from the supplier's obligations under this agreement and specifically its obligations regarding quality and conformance with the tender's technical specifications of the FLT's.

15. Termination

- 15.1. Notwithstanding the aforesaid, this agreement may be terminated, by HPC, subject to a fourteen (14) days advance written notice to the supplier, upon occurrence of any of the following events:
 - 15.1.1. Bankruptcy and/or insolvency and/or receivership proceedings have started against the supplier, an assignment for the benefit of the supplier's creditors was being negotiated or discussed and/or a petition has been filed for the appointment of a trustee, liquidator or receiver, temporary or not, and was not removed within twenty-one (21) days of such filing.
 - 15.1.2. An order for FLT's according to this agreement has been rejected by The Supplier and/or any other execution process has been taken with respect to all or a material part of one of the Parties' assets, or a part thereof, which is material for the performance of any of its obligations hereunder.
 - 15.1.3. The Supplier has actually stopped managing its business or performing the work to be performed under this agreement for a consecutive period of thirty (30) days.
- 15.2. This agreement or any part thereof may be immediately terminated by HPC, by a written notice, if The Supplier is in breach of its obligations under this agreement and has not cured such breach, within thirty (30) days, after HPC has advised The Supplier in writing as to the existence of such breach (Hereafter: "**Material Breach**"). Material Breach shall include, inter alia:
 - 15.2.1. Breach of any of the representations and/or warranties set out in preface to this agreement, which was not cured by the supplier within fourteen (14) days after HPC advised the supplier in writing as to the existence of such breach.
 - 15.2.2. A Breach of the supplier's obligations mentioned in this agreement and under the Appendix A – the technical specifications.
 - 15.2.3. Breach of any provision of this agreement that is specified as material breach.
 - 15.2.4. In the event of a cause under the terms & conditions of the "Law of struggle against Iran's nuclear plan-2012".
- 15.3. The purchase order of the **FLT's** issued by HPC before the termination date will be honored by The Supplier in full, unless otherwise directed by HPC. In the event HPC elects not to pursue the already issued purchase orders of the **FLT's**, The Supplier shall not be entitled to any remuneration compensation or indemnification.

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16. Waivers

In any case where a party shall fail to exercise, or delays the exercise of any of its rights resulting from or arising out of this agreement, such delay shall not be deemed a waiver, consent or admission of any kind on its part with regard to such rights in the future.

17. Force Majeure

- 17.1. Neither Party shall be liable for any delay in the performance of the agreement, if such delay is, directly or indirectly, caused by, or arises from, an impediment beyond the reasonable control and without fault or negligence of the party effected, including the following occurrences: fires, floods, accidents, civil unrest, acts of God, war, governmental interference or embargoes, strikes (hereinafter: “**Force Majeure**”). It is hereby clarified that the above does not extend for any contingencies stated above happening to the supplier’s sub-contractors.
- 17.2. A party affected by an event of Force majeure shall- (a) promptly notify the other party in writing of any such event, the expected duration thereof, and its anticipated effect on the party affected in terms of the performance required hereunder; and - (b) make reasonable efforts to promptly remedy any such event of Force Majeure. Time of the delivery delayed due to an event of Force Majeure shall be extended for such time as the event shall continue.

18. Language

All correspondence, purchase orders of the **FLTs**, documentation, drawings, specifications, instructions, manuals etc. made by the parties in performance of this agreement will be in English, including and without limitation, written communication between HPC and The Supplier, the issuing of purchase orders of the **FLTs** and the reply thereto. Nevertheless, if the supplier is an Israeli one, than HPC shall be entitled to request that all or some of the correspondences and document mentioned above shall be in Hebrew.

19. Assignment

This agreement, including the rights and obligations herein, may not be transferred by the supplier to any third party. Any assignment as mentioned above will not be valid and will not oblige or bind HPC in anyway and by no means.

20. Dispute Resolution; Governing law and Venue

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All disputes in connection herewith will be resolved solely under Israeli law, with no regard to its conflict of law provisions, and shall be referred solely and exclusively to the courts of Haifa, Israel.

21. Agreement Period

The agreement shall commence on the effective date and shall continue in full force and effect until the lapse of the period during which the supplier is committed to make available for purchase by HPC the spare parts and tools under this agreement (i.e. ,a period of ten (10) years from the effective date).

22. Intellectual Property

- 22.1. The supplier warrants that any and all design elements, drawings ,ideas, and all other aspects of the Goods furnished by it, 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, shall 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 supplier shall be responsible for the use and shall pay all royalties, fees and other payments in respect 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 Goods or in the use of the Goods by the supplier and/or HPC and generally in performance of this agreement and in the supply of the goods pursuant to this agreement
- 22.3. The supplier shall indemnify or compensate HPC from and against all claims, suits or proceedings arising out of the violation of the above mentioned. In the event of any claim being made against HPC arising out of the matters referred to as above, the supplier shall, at its own expense, conduct all negotiations for the settlement of same and defend any litigation that may arise there from, on its own and sole expense.
- 22.4. The supplier shall keep confidential and shall not, without the written consent of the Company hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Subcontractor(s) such documents, data and other information it receives from the Company to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Contractor shall obtain from such

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Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor.

- 22.5. The Contractor shall not use such documents, data and other information received from the Company for any purpose other than for the purpose they were given for, such as the design, procurement, construction or such other goods and services as are required for the performance of the Contract. Similarly, the Company shall not use such documents, data and other information received from the Company for any purpose other than the operation and maintenance of the Goods (including fabrication and ordering of parts).
- 22.6. The above provisions, shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Goods or any part thereof.
- 22.7. The provisions shall survive termination, for whatever reason, of the Contract.

23. Completion and Acceptance

- 23.1. The Contractor, upon completion of his work on the FLTs on the Sites, shall issue a "Declaration of Completion" for purposes of testing on the Sites", **Appendix FA (Form J)**. Said "Declaration of Completion" shall indicate that the Contractor has completed all Goods required by the Contract and/or the specifications prior to final testing on the respective sites.
- 23.2. The IPM shall, within 14 days of the receipt of Forms J, participate in such examinations as are necessary to examine the FLT in preparation for commencement of testing on the respective Site. Any test shall be valid only by participation of the IPM or its representative in it.
- 23.3. In the event that the FLT is ready for testing on the respective Site, the IPM shall issue the "Readiness for Testing Certificate" (on the respective Site), **Appendix FA (Form K)**
- 23.4. The tests of the FLT on the respective Site shall be carried out in accordance with the Specifications with the participation of the IPM (and/or the PMR). The Contractor shall be responsible for the carrying out of the tests.
- 23.5. Upon successful completion of the functional tests and trials at the Operation Site of each of the FLTs in accordance with the provisions of this Contract, The IPM shall issue the certificate of "Readiness for Normal Operation Test" **Appendix FA (Form L)**.
- 23.6. Upon successful completion of the Acceptance tests and trials at the Operation Site of each of the FLTs in accordance with the provisions of this Contract, the Contractor shall deliver the relevant FLT to the Company at the Operation Site in a perfect working condition and ready for immediate efficient operation and in the times

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agreed upon by the parties and the Company shall accept the same upon the Contractor's notification and confirm forthwith Acceptance thereof in writing if the relevant FLT has been found in accordance with stipulations of the Contract. The Warranty period, in respect of such accepted FLT, shall start to run as further defined herein from the issuance of the Acceptance certificate.

- 23.7. Without derogating from the generality of the above said, the Contractor shall bear the full responsibility and all expenses for the complete erection, transport, installation running-in, testing and take-over trials and putting into operation the Goods, including all Goods incidental to, or implied in, or by the foregoing.
- 23.8. The Company shall not be precluded nor estopped by any certificate made or given by the IPM, or other officer, agent or appointee of the Company under any provisions of the Contract any time, either before or after the completion and Acceptance of the Goods and payment therefore pursuant to any such certificate, showing the true and correct amount and character of the work done and materials furnished by the Contractor or any other person under this Contract, or from showing at any time that any such certificate is untrue and incorrect, or improperly made in any particular, or that the work and materials, or any part thereof, do not in fact conform to the specifications; and the Company shall not be precluded or estopped, notwithstanding any such certificate and payment in accordance therewith, from demanding and recovering from the Contractor such expenses as it may sustain by reason of the Contractor's failure to comply with the specifications.
- 23.9. The above said in clause 24.8 shall not apply to the Certificate of Acceptance or to any written waiver of the Specifications or to any Change Order.

The delivery by the Contractor of the FLTs to the Company for Acceptance in accordance with the provisions of this Contract shall be performed in strict accordance with the Time Schedule stated in the Contract.

24. Notices

All notices, unless otherwise expressly provided in this agreement, shall be in writing and shall be sent by either of the Parties to the other Party by registered mail, facsimile transmission, electronic mail to the e-mail address as set forth at the head of this agreement or personal delivery to the addresses set forth at the head of this agreement, and shall be deemed to have been given seven (7) business days after the date on which the notice was posted, or in the case of notice by fax, twenty four (24) hours after dispatch by fax, or in the case of e-mail or personal delivery, at the time of delivery.

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

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HPC

By:-----

Title :-----

By:-----

Title :-----

Date_____

The Supplier

By:-----

Title :-----

Date:_____

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

Full Name and Signature

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Enclosed:

- Appendix "AA"**- Tender's Technical Specifications of the **FLTs**
- Appendix "BA"**- The Supplier's Technical & Commercial Proposals
- Appendix "CA"** - Form of Performance Guarantee
- Appendix "DA"** - Form of Payment Guarantee
- Appendix "EA"**- Form of Warranty Guarantee
- Appendix "FA"** - Form of Acceptance
- Appendix "GA"**- Purchase Order of **FLTs**
- Appendix "HA"**- Preferential declaration of origin (and or EUR 1 to be sent by supplier with shipment)



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Appendix "AA"
Tender's Technical Specifications



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Appendix "BA"

The Supplier's Technical & Commercial Proposals

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Appendix "CA"
Form of Performance Guarantee

To: Haifa Port Company Ltd.

P.O.B 33539

Haifa 31334

Israel

"Performance Guarantee No. _____"

Whereas, by Contract **No.23/2020**, Datedmade between the Haifa Port Company Ltd. (hereinafter referred to as "HPC") and _____ (hereinafter referred to as "the ConFLT"), 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 FLT's contract price**).

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.

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order This guarantee shall remain in force until(date, fourteen one (14) months from receipt of the for the relevant **FLTs** by the Contractor) or until acceptance in writing by HPC of the ordered **FLTs** (whichever date is first), 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 **FLTs** Unit Price(s) of the relevant accepted **FLTs**.

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 CFO - Economics and Finance of HPC or by a person nominated in writing by him (HPC employee), 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:

"Pursuant to the guarantee issued by you on _____, you are hereby instructed to pay immediately to the HPC the sum of _____ two Account Number _____ at _____ (Name of Bank) _____

CFO - Economics and Finance of HPC"

Shall be sufficient for all purposes of this guarantee, and specifically shall be sufficient to collect any sum(s) under this guarantee from the guarantor immediately upon the demand of HPC.

Except for the demand hereinabove specified, no other documents or other action shall be required, notwithstanding any applicable law or regulation.

The said guarantor hereby waives any notice of any default on the part of the said contractor and hereby waives any demand by HPC for payment by the contractor to HPC.

HPC shall not transfer nor endorse this guarantee or any part thereof to any other entity.

No action, event or condition other than a court order, which by any applicable law should operate to discharge us from liability hereunder, shall have any effect and we hereby waive any right we may have to apply such law, so that in all respects our liability hereunder shall be irrevocable and, except as stated herein, unconditional in all respects.

Date

Guarantor

Address of the Bank: _____

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Appendix "DA"

Form of Payment Guarantee

To: Haifa Port Company Ltd.

P.O.B 33539

Haifa 31334

Israel

"Payment Guarantee Number _____"

Whereas, by Contract **No 23/2020** 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 to be responsible and indemnify HPC for repayment by to HPC of the sum ofEuro (**twenty five percent (25%) of the contract price**), which represents monies that are due to HPC from the Contractor, and/or that have been paid, advanced, disbursed or forwarded, directly or indirectly to the Contractor by HPC, and or pursuant to the above-noted Contract.

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 or otherwise.

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 in writing by HPC of the ordered **FLTs**, in strict accordance with the provisions of the above contract, whereupon, HPC shall return this guarantee to the guarantor or to the contractor PROVIDED that the amount of this guarantee may be reduced upon the written notification by HPC to the guarantor that the amount guaranteed as specified herein should be reduced in the amount specified in said notification with regard to the **FLTs** so accepted. The return of this guarantee to the guarantor or the contractor as aforesaid constitutes the cancellation of this guarantee.

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Address of the Bank:

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Appendix "EA"
Form of Warranty Guarantee

To: Haifa Port Company Ltd.

P.O.B 33539

Haifa 3133401

Israel

"Warranty Guarantee for the Warranty Period"

(FLTs Number _____)

Whereas, by Contract **No.23/2020**, Datedmade 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, including all and each of the contractor's obligations under the said contract during the warranty period in respect of or due to faulty design, faulty workmanship, faulty dismantling for sea and land conveyance, faulty materials or components, faulty erection or operation, faulty paint and painting of **FLTs. Number....**, 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 FLT price.(FLT number....)**.

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.

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This guarantee shall remain in force until..... (Date, twenty four (24) months from the date HPC will sign on a certificate of acceptance of **FLT** number..... – or 5000 working hours whichever comes first.

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 CFO- Economics and Finance of HPC or by a person nominated in writing by him (HPC employee) 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:

"Pursuant to the Guarantee issued by you on _____, you are hereby instructed to pay immediately to the HPC the sum of _____ to Account Number _____ at _____ (Name of Bank) _____

CFO- Economics and Finance of HPC"

Shall be sufficient for all purposes of this guarantee, and specifically shall be sufficient to collect any sum(s) under this guarantee from the guarantor immediately upon the demand of HPC.

Except for the demand hereinabove specified, no other documents or other action shall be required, notwithstanding any applicable law or regulation.

This guarantee shall be valid and come into force only against the return to the Contractor or the cancellation of the Performance Guarantee in respect of FLT. Number.....

The said guarantor hereby waives any notice of any default on the part of the said contractor and hereby waives any demand by HPC for payment by the contractor to HPC.

This guarantee or any part thereof shall not be transferred nor endorsed to any other entity.

No action, event or condition, other than a court order, which by any applicable law should operate to discharge us from liability hereunder shall have any effect and we hereby waive any right we may have to apply such law, so that in all respects our liability hereunder shall be irrevocable and, except as stated herein, unconditional in all respects.

Date

Guarantor

Address of the Bank: _____

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Appendix "FA"
Form of Acceptance

Acceptance Certificate of port & terminal FLTs

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

1.1.1

Re: Agreement No 23/2020

We, the undersigned, on behalf of the HPC, hereby certify that **FLT** No. _____ was inspected by us today in accordance with the requirements of the agreement above, 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. Mrs. Zipora Elul, project manager, Haifa Port Company Ltd.* - _____

***(Signature& Stamp)**

Date_____

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Appendix "GA"

Purchase Order of port & terminal FLT's

Date:

Ref:

Messrs.

(Details of the Supplier).....

Via fax/email:

Dear Sirs,

Sub: Purchase Order of port & terminal FLT (Agreement 23/2020)

1. We hereby place with you our firm order for **FLT's**. as follows:
 - a. Quantity: eight (8) 4 ton FLT's **and/or** seven (7) 2.5 ton FLT's.
 - b. Price per unit of the 4 ton **FLT**:
 - c. Price per unit of the 2.5 ton **FLT**:
 - d. Total Price:
 - e. Delivery: CIF ,Haifa Port, Haifa, Israel.
2. All the conditions and terms regarding the manufacturing and supply of the **FLT's**, including, but not limited, Technical specifications, payment terms, delivery time, training, warranty of the **FLT's** etc. will be as detailed in the above agreement.
3. **Additional information:**

Yours Sincerely,

David Yidgar,

Head of Technical Purchasing

Haifa Port Company Ltd.

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Appendix HA

Preferential Declaration of Origin (and or EUR 1 to be submitted by Supplier with Shipment)

We hereby declare that EUR1 Preferential Declaration of Origin will be supplied according to the Israeli Custom regulations.

Date: _____

Bidder's Name: _____

Name of contact person: _____

Tel: _____

Fax: _____

E-Mail: _____

Declaration of Origin (US Certificate of Origin for Israel)

We hereby declare that a US Certificate of Origin for Israel will be supplied with shipment. Goods must meet the conditions for obtaining such certificate.

Date: _____

Bidder's Name: _____

Name of contact person: _____

Tel: _____

Fax: _____

E-Mail: _____

If not of European Union or US origin, please state origin of goods:

Origin of goods: _____

Bidder's Signature & Stamp

Date