



Israel Railways Ltd.
Procurement & Contracting Division

Agreement No. _____

Entered and signed this _____ day of _____ 2020 (the "**Effective Date**")

between

Israel Railways Ltd.

Company No. 52-004361-3

1 Yoseftal St.

Lod 7136801

Israel

("ISR")

Of the First Part

and

("Supplier")

Of the Second Part

Each of ISR and the Supplier shall be referred to herein as a "**Party**" and collectively they shall be referred to as the "**Parties**".

WHEREAS, ISR is interested in acquiring the Wooden Sleepers (as defined in Section 3 below) and receiving the Works which form the subject of this Agreement together with all the services, tasks functions and responsibilities detailed in the Agreement and the Technical Specifications including any ancillary services and/or functions and/or tasks of any kind whatsoever required for the complete and successful completion of the Works and delivery of the Wooded Sleepers, as more fully defined and detailed in Section 3.28 below and in the Technical Specifications, all in accordance with and subject to the terms and provisions of this Agreement; and

WHEREAS, ISR has published Tender No. 42004 requesting proposals for the manufacture and supply of the Wooden Sleepers (the “**Tender**”); and

WHEREAS, Supplier submitted a proposal in the Tender which was selected by ISR to be the winning proposal; and

WHEREAS, Supplier declares, represents and certifies that it has read, understood and agrees to the terms set forth in this Agreement, and that it has the know-how, and that it is fully capable, both professionally and financially and in all other respects, including with regard to its ability, expertise, professional skills, facilities, resources, financial resources, licenses, permits and all that is required and necessary to undertake the obligations and the timely performance of the Works set forth and described in this Agreement and its Annexes attached hereto, to the highest standards; and

WHEREAS, based on the Supplier's aforementioned representations and undertakings, the Parties wish to set forth the terms and conditions which shall govern the Parties' rights and obligations with regards to the Agreement, including in connection with the manufacture and supply of the Wooden Sleepers, all as provided herein;

NOW, THEREFORE, IT IS DECLARED, COVENANTED AND AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. PREAMBLE, HEADINGS AND APPENDICES

- 1.1 The preamble to this Agreement, the attached Annexes (including any additional annex to be attached hereto following the signing of this Agreement) and the Tender Documents form an integral and inseparable part hereof and shall be binding on the Parties.
- 1.2 The headings in this Agreement are for reference purposes only and shall not be used in interpreting this Agreement.

1.3 The following documents, including all appendices and attachments thereto, shall constitute the Annexes to the Agreement which form an integral and inseparable part hereof:

- 1.3.1. Annex A – Technical Specifications
- 1.3.2. Annex B – Consideration Annex
- 1.3.3. Annex C – Supplier's Bank Account Form
- 1.3.4. Annex D – Final Acceptance Certificate Form
- 1.3.5. Annex E – Performance and Warranty Guarantee Form

2. **PRIORITY OF DOCUMENTS AND INTERPRETATION**

2.1 Unless as otherwise provided herein, this Agreement and the Annexes attached thereto are to be taken as mutually explanatory of one another and shall be deemed to form one agreement. Nevertheless, in the event of any contradiction, discrepancy, conflict, inconsistency, ambiguity and/or uncertainty between the provisions of or any data contained in this Agreement, the Annexes attached hereto and/or the Tender Documents, the following order of precedence shall apply:

- 2.1.1. This Agreement, excluding the Annexes.
- 2.1.2. The Consideration Annex.
- 2.1.3. The Technical Specifications.
- 2.1.4. The other Annexes to this Agreement but excluding the Supplier's Proposal to the Tender.
- 2.1.5. The other Tender Documents (excluding Attachment B to the Tender);
- 2.1.6. The Supplier's Proposal to the Tender.

2.2 In case of any discrepancy, conflict, inconsistency, ambiguity and/or uncertainty as to the interpretation of any provision contained in this Agreement and/or the order of precedence between the various provisions contained in this Agreement, which discrepancy, ambiguity, conflict, inconsistency or uncertainty is not resolved by applying the above order of precedence, those provisions that provide ISR with the maximum rights and which best serve the interest of ISR under the circumstances, as ISR shall determine at its sole discretion, shall apply.

2.3 Except as otherwise specifically indicated, all references to Sections refer to Sections of this Agreement, and all references to Annexes refer to Annexes to this Agreement. Annexes to be attached hereto after the Effective Date shall be deemed an integral part of this Agreement. The words "herein," "hereof," "hereinafter," and similar words and phrases, shall refer to this Agreement as a whole and not to any particular Section. The word "days" shall mean a calendar day and the term "Business Days" shall have the meaning ascribed to it in Section 33 below. Whenever required by the context of this Agreement, the singular shall include the plural, the masculine shall include the feminine and vice versa.

3. DEFINITIONS

Capitalized terms used in this Agreement shall have the meaning assigned to them below:

- 3.1 "**Acceptance**" / "**Accepted**" - shall mean, with respect to any Batch, ISR's issuance of a signed Final Acceptance Certificate with respect to that Batch in the form attached hereto as Annex D, following delivery of the Wooden Sleepers contained in that Batch to the Site in accordance with the Delivery Terms, the performance of all tasks required for the successful performance of the Acceptance Checks with respect to that Batch in accordance with the Technical Specifications as well as the fulfillment of all Supplier's undertakings and obligations pursuant to this Agreement with respect to that Batch;
- 3.2 "**Acceptance Checks**" – shall have the meaning assigned to it in section 14 of the Technical Specifications.
- 3.3 "**Agreement**" – Shall mean this Agreement No. _____ between the Parties, as amended and/or modified from time to time, including any attachment, appendix, variation thereto.
- 3.4 "**Batch**" – shall mean the First Batch or the Second Batch.
- 3.5 "**Business Days**" – shall mean any day other than a Saturday excluding official holidays and bank holidays in Israel.
- 3.6 "**Bearers/Crossing Timbers**" – shall mean Bearers/Crossing Timbers of 3400[mm]; 3600[mm]; 3800[mm]; 4100[mm] and 4400 [mm] as more fully defined and detailed in the Technical Specifications.
- 3.7 "**Damages**" – shall the meaning assigned to it in Section 20.1 below.

- 3.8 **"Defect"** – shall mean any defect, error, snag, deficiency, malfunction, unfitness for intended use, outstanding work or non-compliance with the Technical Specifications, the Agreement or, where each of the foregoing is silent – good engineering practices.
- 3.9 **"Delivered At Place"/"DAP"** – shall mean the terms of delivery for the Wooden Sleepers at ISR's Site, according to "INCOTERMS 2010" - International Rules for the Interpretation of Trade Terms (ICC Pub. No. 715), subject to the Delivery Terms;
- 3.10 **"Delivery Terms"** – shall have the meaning assigned to it in Section 11 below.
- 3.11 **"Delivery Times"** – shall have the meaning assigned to it in Section 0 below.
- 3.12 **"Final Acceptance Certificate"** – shall have the meaning assigned to it in Section **Error! Reference source not found.**
- 3.13 **"Force Majeure"** - shall have the meaning assigned to it in Section 22.1 below.
- 3.14 **"Intellectual Property Rights"** - shall have the meaning assigned to it in Section 18.2 below.
- 3.15 **"IPM"**– shall mean ISR's Project Manager for this Agreement which shall be the Head of ISR's Infrastructure Division or anyone appointed by him to act in his stead as further detailed in Section 8.5 below.
- 3.16 **"Liquidated Damages"** – shall have the meaning assigned to it in Section 14 below.
- 3.17 **"Performance and Warranty Guarantee"** – shall have the meaning assigned to it in Section 16.1 below.
- 3.18 **"Purchase Order"** – shall mean an order made pursuant to the provisions of this Agreement for the purchase of the quantity of Wooden Sleepers detailed in Section 8.1 below to be delivered on two separate dates according to the applicable Delivery Time as defined in Section 11 below. It is hereby clarified that the terms and conditions of the Agreement shall prevail over any standard term and/or condition included in the Purchase Order.

- 3.19 "**Retention Rights**" – shall have the meaning assigned to it in Section 25.1 below.
- 3.20 "**Site**"- shall mean ISR's facilities located Warehouse at Vitkin Station, Israel.
- 3.21 "**SPM**" – shall mean the Supplier's Project Manager for this Agreement as detailed in Section in Section 8.5 below.
- 3.22 "**Technical Specifications**" – shall mean the Technical Specifications attached hereto as *Annex A*;
- 3.23 "**Tender**" – shall mean Tender No. 42004 for the performance of the Works, including the design, manufacture, supply, delivery and Warranty of the Wooden Sleepers.
- 3.24 "**Tender Documents**" – shall mean the Invitation to Tender and all documents listed therein, the Technical Specifications, the Agreement and their respective appendices and any other document issued by the Tender committee during the Tender process.
- 3.25 "**Track Wood Sleepers**" – shall mean the Track Wood Sleepers 2600 [mm] as more fully defined and detailed in the Technical Specifications.
- 3.26 "**Warranty**" – shall have the meaning assigned thereto in Section 15 below.
- 3.27 "**Warranty Period**" – shall have the meaning assigned to it in Section 15 below;
- 3.28 "**Wooden Sleepers**" – shall mean collectively the Track Wood Sleepers 2600 [mm], the Bearers/Crossing Timbers 3400 [mm]; 3600 [mm]; 3800 [mm]; 4100 [mm] and 4400 [mm] all as more fully defined and detailed in the Technical Specifications.

3.29 "**Works**" – shall mean all works, components, materials and equipment to be executed or supplied by Supplier, directly or indirectly, in connection with the design, manufacture, supply, delivery, unstuffing and/or unpackaging and Warranty including but not be limited to, all necessary preservation treatments of the Wooden Sleepers, any implied and/or incidental and/or temporary works and/or any ancillary services and/or functions and/or tasks of any kind whatsoever required for the completion of the Works and the supply and delivery of the Wooded Sleepers no later than the respective Delivery Times, provision of all labor, materials, equipment, machinery, tools, accessories, components and other elements of any kind and description, all in accordance with the Technical Specifications and this Agreement.

4. **TERM OF THE AGREEMENT**

This Agreement shall enter into force on the Effective Date and, unless terminated earlier in accordance with the provisions of Section 19 below, shall expire upon satisfaction of all obligations of the Supplier hereunder, including its obligations during the Warranty Period.

5. **SUPPLIER'S REPRESENTATIONS AND WARRANTIES**

Supplier hereby represents and warrants to ISR as follows:

5.1 **Corporate Power and Authority**. Supplier has all necessary corporate power and authority to execute and deliver this Agreement, to perform its undertakings and obligations detailed hereunder and to consummate the transactions contemplated hereby. The Supplier has taken all necessary corporate actions to execute and deliver this Agreement including with respect to the performance of the Works and the consummation of the transactions contemplated hereby which require no further authorization or other corporate proceedings on the part of Supplier. This Agreement has been duly and validly executed and delivered by Supplier and constitutes a valid, legal and binding obligation of the Supplier, enforceable against the Supplier in accordance with its terms.

5.2 **No Conflict**. No actual or potential conflict of interest or unfair competitive advantage exists with respect to Supplier's acting hereunder, and Supplier shall not engage in any contractual relationship that may cause such conflict of interest or unfair competitive advantage to exist.

5.3 **No Litigation or Impediment**. There is no (i) litigation that is currently in effect or threatened, against Supplier, which would challenge the authority of Supplier to enter into this Agreement or to carry out its undertakings and obligations detailed hereunder, or (ii) impediment, whether legal or stemming from a prior or simultaneous commitment made by Supplier, or any other impediment of whatever nature, which might prevent Supplier from entering into this Agreement or hinder the performance of any or all of its undertakings and obligations detailed hereunder.

5.4 **No Undue Influence.** The Supplier and/or anyone acting on its behalf has not, directly or indirectly, made any proposal and/or actually given any benefit, funds or anything of value with the purpose of influencing the ISR's decision and/or the decision of any of its employees and/or anyone acting on its behalf, to engage with Supplier in this Agreement.

5.5 **Examination and Evaluation**

Supplier hereby represents and warrants to ISR that:

- 5.5.1. Supplier has examined all Tender Documents pertaining to the Tender, including the Agreement, and in particular the Technical Specifications, as well as all other documents comprising this Agreement, and is satisfied with regard to the data, specifications, terms and conditions under which the Wooden Sleepers shall be designed, manufactured, treated for preservation, checked supplied and delivered to ISR, the execution of the Works required for the provision of the Wooden Sleepers as well for the fulfillment of any and all obligations under this Agreement;
- 5.5.2. Supplier has evaluated (independent of, and without relying on, any information or data provided by ISR) any and all other factors that may be deemed to affect the carrying out of its obligations under this Agreement, including but without limitation, the technical risks and environmental influences, and any other risk involved therewith, and such other conditions that may be expected to affect the progress or completion of the Works in accordance with this Agreement, and has reasonable grounds to believe and certifies that such performance is feasible and practicable under the terms and conditions stated herein;
- 5.5.3. Supplier has examined and is fully acquainted and satisfied with all of the information provided to it by ISR;
- 5.5.4. Supplier shall not be entitled to any payment or compensation of any kind whatsoever other than as explicitly set forth herein, and shall not make and be prevented from making any claim for additional payment and/or extension of time from ISR, including claims of misunderstanding or misapprehension in respect of any matter which a reasonable experienced professional supplier of Wooden Sleepers knew or should have known or allegation or fact that incorrect information was furnished to the Supplier by any person (subcontractors included), firm or any legal entity which it knew or should have known to be incorrect and/or failure on its part to obtain correct information with regard to the Works.

5.6 **Compliance with Applicable Law.** Supplier is aware and has knowledge of all legal requirements prevailing in the State of Israel that must be followed for the execution of the Works. Supplier shall abide by any applicable law, as shall be in effect from time to time, and shall perform and execute the Works in strict compliance therewith (including but without limitation, the obligations relating to health and safety in the workplace and social security payments and labor laws, including Minimum Wage Law 5747-1987 and the regulations deriving therefrom).

5.7 **Discrepancies and Omissions**

5.7.1. Supplier represents that wherever it becomes aware and/or should have become aware of any suspected or actual contradiction or discrepancies between the provisions of, or any omission in, any of the various documents forming this Agreement, it shall notify the ISR in writing, immediately and in any event within no more than five (5) days of becoming aware.

5.7.2. No inaccuracies, errors, misstatements, omissions, discrepancies, defective or incomplete descriptions, contradictions or ambiguities in or between any of the provisions of this Agreement, or any information or instructions communicated or given by ISR to Supplier from time to time, shall constitute grounds for stoppage of the Works, for relieving or releasing Supplier of any of its responsibilities, duties, obligations or liabilities pursuant to this Agreement, for cancellation or termination of this Agreement by Supplier or for withdrawal from the Works.

5.7.3. Should any works, matters or things required for the proper execution and completion of the Works be omitted from this Agreement by ISR, the IPM shall – upon notice from Supplier to that effect or on its own initiative – give necessary explanations and instructions and decide what works, matters or actions are to be performed by Supplier and in what manner and order of sequence. Supplier shall thereupon be bound to comply and implement such instruction. In case any such instruction with regard to an omission involves matters of price or terms of payment or timetable, such matters shall be settled by mutual agreement (prices shall be based upon the rates specified in the Consideration Annex or pursuant thereto) – without derogating from Supplier's obligation to execute such instructions given by the IPM.

5.8 **Review and Approval.** The Supplier confirms and agrees that it shall apply to receive ISR's written consent, wherever ISR's consent, explicitly or implied, is required according to this Agreement. This requirement and the granting of ISR's consent, shall not derogate in any way from Supplier's responsibilities and liabilities under this Agreement, and ISR shall bear no responsibility or liability whatsoever in connection with the aforesaid.

5.9 **Independent Contractor**. Supplier is an independent contractor acting on its own risk and account and solely responsible for its own financial obligations, and nothing contained in this Agreement shall be construed as creating a joint venture, partnership, or principal and agent relationship between the Parties, nor will it be construed as creating any relationship whatsoever between ISR and any employees, subcontractors, representatives or agents of Supplier. Supplier will not have the authority, nor will it represent that it has the authority to assume or create any obligation, expressly or implied, on behalf of ISR.

6. GENERAL OBLIGATIONS

6.1 **Purchase and Sale**. Supplier hereby undertakes to execute and timely perform the Works required for the provision of the Wooden Sleepers, including, *inter alia*, the design, manufacture, supply, delivery, unstuffing and/or unpacking and Warranty in accordance with the terms and the conditions of this Agreement and the Technical Specifications .

6.2 **"Turn Key Basis"**. The Wooden Sleepers shall be supplied on a "turn key" basis such that Supplier shall perform at its own expense and risk all Works. Without limiting the generality of the foregoing, Supplier shall be solely responsible, at its own expense and risk, to timely carry out all Works, import and supply of any and all components, equipment and materials, perform any and all activities and pay and bear all costs and expenses pertaining to the performance of the Works and supply and delivery of the Wooden Sleepers.

6.3 **Standards**. The provision of the Wooden Sleepers and the execution of the Works shall be made in strict conformity with the terms and conditions of this Agreement and as specified in the Technical Specifications. Without derogating from the generality of the above, the Wooden Sleepers shall meet the standards set forth by ISR in this Agreement, and in the absence of such standard, Supplier shall comply with the standards which ensure the highest quality of workmanship, material and equipment required by applicable law and/or as instructed by ISR at ISR's sole discretion. All calculations, designs, manufacturing, treatment preservation and drawings related to the Wooden Sleepers or any part thereof shall assure the reliability, efficiency, competency as well as the functionality of the Wooden Sleepers to ISR's full satisfaction.

6.4 **Permits**. Supplier shall, at its sole expense, obtain, maintain, comply with and keep in effect all approvals, permits and licenses required for the execution of this Agreement, the supply of the Wooden Sleepers and the provision of all ancillary services, pursuant to this Agreement. Without derogating from the generality of the foregoing, the Supplier shall obtain all necessary export licenses required for the export of the Wooden Sleepers to Israel.

- 6.5 **Safety.** All Works shall be performed in strict compliance with ISR's safety regulations and any other applicable law pertaining to safety at work, as may be in force from time to time. Supplier shall immediately report to the IPM the occurrence of any accident in connection with the execution of the Works. Supplier shall also report any such accident to the relevant competent authority whenever such report is required.
- 6.6 **Cooperation.** Supplier undertakes to fully cooperate with ISR any other supplier and/or contractor and/or consultant engaged by and/or acting on behalf of ISR and to furnish ISR with all relevant information required for the interface between the Wooden Sleepers and any other equipment and/or infrastructure of ISR.
- 6.7 **Environmental Standards.** The Wooden Sleepers shall meet the applicable environmental standards in accordance with Israeli law and regulations and in the absence of such, the relevant EU standard shall apply. However, in any event of discrepancy between the provisions of Israeli law and any E.U. standard, the provisions of the Israeli law shall prevail.
- 6.8 **Quality Management System.** Supplier hereby undertakes, warrants and confirms, and will ensue same for its subcontractors, to remain certified in accordance with ISO 9001 standard or equivalent. At any time during the term of this Agreement, the Supplier shall, if so instructed by ISR, provide evidence of such certifications. In any event, Supplier must notify ISR, in writing, in the event said certification is suspended and/or canceled and/or not continued.
- 6.9 **Documentation.** Supplier undertakes to provide ISR with all documentation specified in the Technical Specifications.

7. SUPERVISION; ACCESS TO PLACES OF PRODUCTION; INSPECTIONS

- 7.1 **Supervision by ISR.** ISR shall be entitled (but not obligated) to monitor and supervise the performance of the Works with regards to the provision of the Wooden Sleepers and Warranty, by itself or through any third party in Israel and/or abroad, and Supplier undertakes to cooperate with respect thereto including submitting all information required by ISR and/or any third party on its behalf. Such supervision, if applicable, shall not derogate from any provision of this Agreement and/or from Supplier's liability and responsibility to perform the Works in accordance with the provisions of this Agreement and to supply the Wooden Sleepers and fulfill all its undertakings and obligations set out herein, nor shall it impose any responsibility on ISR which is not otherwise expressly set forth in this Agreement.
- 7.2 **Places of Production.** The place of production of the Wooden Sleepers shall be at the Supplier's plant in [_____].

- 7.3 **Assistance by Supplier.** Without derogating from the above, Supplier shall supply any assistance and access reasonably requested by ISR's inspectors and duly authorized representatives (including all equipment necessary) in order to enable them to carry out inspection, checking, test and measurements in connection with this Agreement and provide them with any information requested. The costs of inspection by ISR of the works in Israel and abroad will be borne by ISR.
- 7.4 **Rejection of the Works, Materials and Components.** If any of the Works, materials or components, whether completed or in process, is reasonably rejected on inspection, the same shall be marked in a manner satisfactory to the IPM, so as to ensure its subsequent identification as a rejected article. Supplier shall within seven (7) days or within such other reasonable time, pull down, take out, separate and sort out any such marked Works, materials or components so rejected. Materials or components of the Works or the entire Works rejected under this Section shall not be considered as having been delivered under this Agreement and Supplier shall, without delay, replace and deliver satisfactory materials, components or Works at Supplier's sole cost and expense. No such rejection shall give grounds to any delay or extension in the timetables set forth in the Agreement.
- 7.5 **Inspection not to Relieve Supplier's Obligations.** Inspection, examination, rejection or approval with no objections by ISR of finished or unfinished Works or of materials or components shall neither relieve nor derogate from Supplier's obligation to execute and complete the Works in strict accordance with the requirements of this Agreement.

8. **ORDER PROCEDURE**

- 8.1 Within four (4) months from the Effective Date, and subject to the terms and conditions set forth in the Agreement, ISR shall issue to the SPM, via email, one (1) Purchase Order for two thousand six hundred (2,600) Wooden Sleepers divided according to type and quantity as detailed in Section 8.2 below.
- 8.2 The Wooden Sleepers divided according to type to be included in the Purchase Order shall be as follows:
- 8.2.1. Two thousand (2,000) Track Wood Sleepers 2600 [mm] divided as follows: one thousand two hundred (1,100) to be delivered in the First Batch and nine hundred (900) to be delivered in the Second Batch as detailed in Sections 11.2.1 and 11.2.2 respectively.
 - 8.2.2. Two hundred (200) Crossing Timbers 3400 [mm]: to be delivered in the First Batch as detailed in Section 11.2.1 below.

- 8.2.3. One hundred (100) Crossing Timbers 3600 [mm]: to be delivered in the First Batch as detailed in Sections 11.2.1 below.
- 8.2.4. One hundred (100) Crossing Timbers 3800 [mm]: to be delivered in the First Batch as detailed in Section 11.2.1 below.
- 8.2.5. One hundred (100) Crossing Timbers 4100 mm: to be delivered in the First Batch as detailed in Sections 11.2.1 below.
- 8.2.6. One hundred (100) Crossing Timbers 4400 mm: to be delivered in the First Batch as detailed in Sections 11.2.1 below.

8.3 The Purchase Order shall specify the entire quantity of the Wooden Sleepers being ordered and the applicable Delivery Time as defined in Section 11 herein below.

8.4 Upon receipt of a Purchase Order by e-mail, Supplier shall confirm via email receipt of the said Purchase Order to ISR's IPM within no later than three (3) Business Days. An original document of such confirmation shall be sent to ISR via air mail.

8.5 The Parties' contact persons are as follows, or any replacement contact persons as notified in writing by one Party to the other:

For ISR (“IPM”): [____]
 Israel Railways Ltd.
 Address: Yoseftal 1, Lod
 Telephone: [____]
 E-mail: [____]

For Supplier [____]
 (“SPM”): [_____
 Address: [____]
 Telephone: [____]
 E-mail: [____]

8.6 Each Party shall, in writing without undue delay, notify the other Party of changes in contact persons, addresses, telephone numbers, or e-mail addresses, if any. Supplier will endeavor to furnish a secured electronic mail service or other equivalent means, in accordance with ISR safety requirements, which will be used by both Parties for the purpose of ordering procedure, requests, queries, reports etc.

8.7 The following original documents shall be supplied to ISR by the Supplier:

- 8.7.1. Commercial invoices. The invoice/s shall include a clear reference to this Agreement, the amount, part number (inclusive of serial number), if any, quantity, delivery note number, shipping date, Supplier's company registration number and ISR's order number for the goods;
- 8.7.2. Original Certificate of Origin and Non-Manipulation Certificate (if required);
- 8.7.3. Bill of Lading - issued in ISR's name;
- 8.7.4. Packing Lists;
- 8.7.5. Any other documentation necessary to release the Wooden Sleepers and/or any part thereof from customs in an expeditious manner and to facilitate payment, e.g. the documents that will enable ISR to clear the Wooden Sleepers and/or any part thereof through customs and which will enable ISR to make payment in foreign currency in accordance with the applicable Israeli law.

8.8 Original copies of all of the above documents **must arrive** at ISR's Site at least **five (5) calendar days before** the arrival of the ship delivering the Wooden Sleepers or any part thereof to Israel. In addition, copies of all of the above documents shall be sent to ISR by e-mail simultaneously with the delivery of the originals. The above documents **must** be forwarded solely in ISR's name and shall state ISR's exact name.

9. **The Consideration**

9.1 In consideration for the successful completion of the Works, the timely supply of the Wooden Sleepers and the fulfillment of all of Supplier's obligations pursuant to this Agreement including, without limitation, the Warranty and all accompanying services and equipment to ISR's full satisfaction as required in accordance with the terms and conditions of this Agreement, Supplier shall be entitled to receive payment in accordance with the Consideration Annex attached hereto as Annex B (the "**Consideration**").

9.2 Consideration shall be the final, complete and inclusive price that shall be paid to Supplier for the design, manufacture, preservation treatment, supply, delivery and unstuffing and/or unpacking and Warranty of the Wooden Sleepers and the execution of all the Works and all ancillary services pursuant to this Agreement, exclusive only of VAT. Other than as set forth herein, the Supplier shall not be entitled to receive any additional payments in connection with the performance of its obligations hereunder. The Consideration is inclusive of all taxes (other than VAT), license fees, royalties, or any other costs or expenses of any kind related to the provision of the Wooden Sleepers and/or to the Works. ISR shall not be charged with any further payments in connection with the Supplier's execution of any of its obligations and undertakings under this Agreement.

9.3 It is hereby clarified that unstuffing shall not be performed at ISR's Site or premises.

9.4 Value added tax, to the extent applicable, shall be added to any payment made by ISR to Supplier hereunder, subject to the issuance of a tax invoice on ISR's name, in accordance with the law.

All amounts payable to the Supplier under this Agreement shall be paid in Euros (€).

9.5 For the removal of any doubt, it is hereby clarified that all taxes, fees, duties, licenses, costs or other payments that are to be paid in connection with the exportation, supply and delivery of the Wooden Sleepers, including but not limited to all types of importation and custom duties and services, such as transportation costs, customs agents' fees, purchase tax (in Hebrew "Mas Kniya" or "מס קנייה"), wharf fees (in Hebrew "Dmei Ratzif" or "דמי רציף"), cleaning of the containers, unstuffing and unloading at the Site, Israeli customs duties, port handling fees (in Hebrew "Dmei Nitul" or "דמי ניטול"), port infrastructure fees (in Hebrew "Dmei Tashtit" or "דמי תשתית"), cam locks for discharging the Wooden Sleepers at port, supervision while discharging at port, discharging terms at port, etc. shall be considered as part of the Consideration and shall be borne solely by Supplier.

9.6 ISR shall be entitled to deduct from any and all sums payable pursuant to this Agreement the amounts ISR is legally required to withhold at source.

10. **TERMS OF PAYMENT**

Payment by ISR to Supplier shall be made as follows:

- 10.1 One Hundred percent (100%) of the Consideration in respect of any Batch ("**Payment**") shall be paid to Supplier within sixty (60) calendar days following issuance of the Final Acceptance Certificate with respect to that Batch, provided that Supplier has provided ISR at least forty-five (45) calendar days prior to the said Payment with all the following:
 - 10.1.1. An invoice in the amount of the Payment; and
 - 10.1.2. The Performance and Warranty Guarantee as defined in Section 16 below.
- 10.2 Payments under this Agreement shall be made to Supplier by means of bank transfer to Supplier's bank account as specified in the form attached hereto as *Annex C*.

11. **DELIVERY TERMS AND DELIVERY TIME**

11.1 Delivery Terms

- 11.1.1. The Supplier shall deliver the Wooden Sleepers to the ISR's Site (DAP Incoterms) subject to the express terms and conditions set forth herein. Any and all costs and expenses related to the delivery of the Wooden Sleepers as aforesaid, including transportation and off-loading shall be borne by the Supplier (the "**Delivery Terms**").
- 11.1.2. All unstuffing and/or unpacking of containers shall be done at an Israeli port and not at Site. The Supplier shall be solely responsible for the transfer of the Wooden Sleepers to the Site after unstuffing and/or unpacking of containers.
- 11.1.3. The Wooden Sleepers shall be packed and marked as detailed in section 11 of the Technical Specifications.
- 11.1.4. As an integral part of the delivery of the Wooden Sleepers, Supplier shall furnish ISR with all documents detailed under Section 13 of the Technical Specifications.

11.2 Delivery Time

After ISR has issued the Purchase Order for the Wooden Sleepers, the Supplier undertakes to supply the Wooden Sleepers to ISR on two separate dates of delivery, in accordance with the following:

- 11.2.1. The First Batch - within no later than one hundred and twenty (120) days from the issuance of the Purchase Order ("**The First Batch** ").
- 11.2.2. The Second Batch - within no later than one hundred and twenty (120) days from receipt of the First Batch and issuance of the Final Acceptance Certificate by ISR with respect thereto ("**The Second Batch** ").

11.3 The Supplier shall manufacture the Wooden Sleepers and deliver them to the ISR's Site (DAP Incoterms) so as to arrive no later than the respective Delivery Time.

11.4 Within [10] Business Days following the successful completion of the Acceptance Checks of the Wooden Sleepers contained in any Batch, ISR shall issue Supplier with the Final Completion Certificate with respect to that Batch, indicating the Acceptance of same, all in accordance with and subject to the provisions of the Agreement.

12. **Transfer of Title**

12.1 The ownership and title to the Wooden Sleepers and any part thereof shall fully pass to ISR free and clear of all security interests, liens, attachment, encumbrances and any other rights or claims of any kind of any third party, upon the date of issuance by ISR of the applicable Final Acceptance Certificate. The passing of title to ISR and vesting of ownership rights shall be without prejudice to any right that may accrue to ISR under this Agreement.

12.2 ISR shall bear no responsibility for any Works performed or materials, components or equipment used by Supplier, including such materials, equipment or Works being stored or that have been placed at any location besides the Site and which are lost, stolen, damaged, destroyed or otherwise fail prior to Acceptance. Supplier shall be solely responsible to protect completely and preserve entirely the Wooden Sleepers and any related Works, components, material and equipment until the Acceptance thereof.

13. **TESTING AND ACCEPTANCE CHECKS**

13.1 Inspection Prior to shipment – Prior to the shipment of the Wooden Sleepers, Supplier shall be solely responsible to issue the required documentation according to Section 13 of the Technical Specifications.

13.2 Without derogating from the aforesaid, ISR 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 production including, *inter alia*, all tests described in the standards set out in the Technical Specifications and to review the results of any quality assurance or conformance tests carried out by the Supplier in order to ensure that the Wooden Sleepers are manufactured and supplied in accordance with the Technical Specifications prior to the delivery of each order to ISR. 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.

- 13.3 If any inspection or tests determine that the relevant Wooden Sleepers are defective, of inferior quality, do not fully comply with the Technical Specifications or are deficient in any other way, ISR shall be entitled to reject the Wooden Sleepers in their entirety. Following such rejection of Wooden Sleepers, the Supplier shall immediately replace or repair to ISR's satisfaction, at the Supplier's expense.
- 13.4 Upon delivery DAP of the Wooden Sleepers or any part thereof, to the Site, and upon completion of the Works to ISR's full satisfaction, ISR shall conduct Acceptance Checks and in the event that the results of such Acceptance Checks for the entire quantity of Wooden Sleepers ordered shall be successful to ISR's full satisfaction, ISR shall sign the Final Acceptance Certificate with respect to the relevant Batch, in the form Attached hereto as **Annex D ("Final Acceptance Certificate")**.
- 13.5 Without derogating from ISR's rights under this Agreement and/or any Applicable Law, in the event that, for any reason, ISR shall not grant a Final Acceptance Certificate then, ISR may take the following measures: (1) request that Supplier repossess all of the Wooden Sleepers that did not pass the Acceptance Checks by ISR ("**Defective Wooden Sleepers**") it supplied without any additional cost to ISR and supply alternative Wooden Sleepers, within two (2) month from ISR's written demand, to be tested by ISR without any additional cost to ISR; (2) request that Supplier repossess all Defective Wooden Sleepers it supplied without any additional cost to ISR and without supplying alternative Wooden Sleepers (in such event ISR shall only pay for the Wooden Sleepers which it accepted) (3) terminate the Agreement for breach and request that Supplier repossess all of the Wooden Sleepers it supplied (Defective Wooden Sleepers and non- Defective Wooden Sleepers) without any additional cost to ISR and without supplying alternative Wooden Sleepers (in such an event ISR shall not pay for any of the Wooden Sleepers that were supplied).
- 13.6 ISR's requests as detailed above shall be final and binding upon the Supplier. Supplier shall fully and unconditionally comply with any and all request by ISR as detailed above and hereby waives any and all demands against ISR. In the event, that any of the above circumstances shall occur, Supplier shall immediately and no later than ninety-six (96) hours from ISR's demand, repay ISR for all outstanding amounts received from ISR, without derogating from any of ISR's rights under any law and/or this Agreement, to collect the Performance and Warranty Guarantee or any other right available to ISR under any law and/or this Agreement.

14. **LIQUIDATED DAMAGES**

- 14.1 Without prejudice to any other relief or remedy available to ISR under this Agreement or under law, in the event that Acceptance of the Wooden Sleepers is delayed beyond the specified Delivery Time, the Supplier shall pay ISR

liquidated damages in the sum equal to half of a percent (0.5%) of the value of the delayed delivery for each calendar week of delay, or any part thereof. The liquidated damages shall not exceed a total of seven and a half percent (7.5%) of the Consideration (the “**Liquidated Damages**”) without prejudice to any other relief or remedy available to ISR under this Agreement.

14.2 The liquidated damages have been determined after due consideration of the damages the Parties anticipate that ISR will suffer under the specific circumstances to which each specific type of liquidated damage apply, and therefore they shall not be regarded as a penalty. Payment of the liquidated damages shall not be conditioned on ISR having to present evidence of any loss.

15. **WARRANTY**

15.1 The Wooden Sleepers shall be fully warranted by the Supplier for a period of Twenty-four (24) months from the Acceptance of the relevant Batch of Wooden Sleepers by ISR (the “**Warranty Period**”).

15.2 Supplier confirms and warrants to ISR that during the respective Warranty Period, the Wooden Sleepers and any part thereof shall be fully functional in all respects in strict accordance with the terms and the conditions of this Agreement, including the Technical Specifications, and be free of any Defect (the “**Warranty**”).

15.3 During the Warranty Period, the Supplier shall bear full responsibility and undertakes to remedy and fully compensate ISR, at its own expense for any and all damage or loss caused to ISR due to Defects in the Wooden Sleepers including, without limitation, Defects in design, materials, workmanship, assembly, components, faulty dismantling for sea and land conveyance and other faults whether caused by the Supplier or any of the Supplier’s sub-contractors, and whether attributed to negligent production.

15.4 Without derogating from the above, in case any Defect is discovered in the Works within the respective Warranty Period, the Supplier shall, at his own expense and without delay, immediately rectify the ascertained Defect by repair and/or replacement, to the satisfaction of ISR, including, but not limited to, any and all Works, special tools, equipment, costs related to transportation, dismounting and mounting, etc.

15.5 Without derogating from the aforesaid, the Supplier is obliged to replace at Site any defected and/or damaged Wooden Sleeper within no later than sixty (60) Calendar Days from the day of ISR's receipt of the damage report. All costs and expenses associated with the replacement of the defected and/or damaged Wooden Sleeper shall be borne solely by Supplier.

15.6 The Supplier shall do its best efforts to shorten the delivery time of the replaced Wooden Sleepers as detailed in Section 15.5 above.

16. PERFORMANCE AND WARRANTY GUARANTEE

16.1 To secure the punctual, complete and entire performance of all of Supplier's obligations under this Agreement, including without limitation to the Supplier's warranty obligations and Supplier's obligations to pay ISR any Liquidated Damages if applicable, Supplier shall furnish ISR within ten (10) days of the Effective Date, with an irrevocable autonomous bank guarantee to be paid upon first written demand without the need to prove or substantiate the demand from a first class bank, approved in advance by ISR, in the full amount of twenty-five thousand Euros (25,000 €), issued in the form attached hereto as **Annex E** (the "**Performance and Warranty Guarantee**").

16.2 The Performance and Warranty Guarantee shall remain in full force and effect until sixty (60) days following the end of the Warranty Period of the Second Batch.

16.3 The extension of the Performance and Warranty Guarantee shall be at the Supplier's sole responsibility. In the event the required extension is not submitted to ISR at least thirty (30) days prior to the expiry date of the existing guarantee, ISR shall be entitled to exercise such guarantee.

16.4 Without derogating from the above, the submission of the Performance and Warranty Guarantee shall be a pre-condition to effecting any payments due to the Supplier under this Agreement.

17. INSURANCE

17.1 Without derogating from any of the Supplier's responsibilities and liabilities under this Agreement and/or under the Applicable Law, the Supplier shall maintain, at its own expense through a reputable and legally licensed insurer at all times for as long as any liability under this Agreement may exist, insurance policies as following (hereinafter: "**Supplier's Insurance Policies**"):

17.1.1. **Marine "All Risk" Insurance** against any loss or damage to the Wooden Sleepers and the Spare Parts, arising out of, in course of, or caused by any risk in respect of the transport of the Wooden Sleepers and the Spare Parts. The policy shall apply from the time of moving the Wooden Sleepers and the Spare Parts from the Supplier' warehouses / premises until arrival within the Site and vice versa, including loading and unloading, temporary and extended storage and all domestic inland and/or intermediate

transits everywhere in the world (including within Israel) irrespective of the terms of sale. Settlement of claims will be made at 110% of the Wooden Sleepers and the Spare Parts DAP value. The policy shall include a waiver of subrogation towards ISR and/or the Israeli Government and/or the IPM and/or anyone acting on their behalf, provided that the waiver of subrogation shall not apply in favor of a person who has maliciously caused the damage.

17.1.2. **A worldwide Third Party Liability Insurance**, in the joint names of ISR and the Supplier subject to a "Cross Liability" clause, with a limit of liability not less than €1,000,000 per occurrence and in the aggregate for an annual period of insurance, covering any liability (including Product Liability) of the Supplier for any loss or damage derived from the execution of this Agreement and/or from any act or omission of Supplier and/or whoever act on its behalf.

17.2 The Supplier's Insurance Policies shall be primary and precedent to any of ISR and/or the Israeli Government's insurances and/or the IPM, and the Supplier's insurers shall waive their rights of contribution from any of ISR and/or the Israeli Government and/or the IPM's insurers with respect to any damage covered under the Supplier's Insurance Policies.

17.3 The Supplier shall refrain from cancelling the Supplier's Insurance Policies and/or from reducing their scope. The Supplier further undertakes to notify ISR of any situation of cancellation and/or reducing the scope of any of the Supplier's Insurance Policies, sixty (60) days before the date of occurrence of such situation.

17.4 The Supplier represents and warrants that it shall not have any claims, demands and/or actions against ISR and/or the Israeli Government and/or the IPM and/or anyone acting on their behalf, concerning damage to its property or other property used by the Supplier and/or those acting on its behalf in connection with this Agreement. The foregoing shall not apply for the benefit of anyone who caused damage with malicious intent.

17.5 The Supplier waives and shall have no claims or demands of any kind against ISR and/or anyone on its behalf, with respect to the content and/or extent and/or coverage of the Supplier's Insurance Policies, and the Supplier hereby confirms that it shall be prevented from raising any such claim or demand in this regard. For the avoidance of doubt, it is agreed that the Supplier's Insurance Policies, including the limits specified herein, are stated as a minimal demand imposed on the Supplier which does not exempt the Supplier from any liability in accordance with this agreement and/or the Applicable Law. The Supplier is encouraged to further scrutinize its exposure to liability and to add and/or increase the types and scope of insurance coverage.

- 17.6 The Supplier undertakes to indemnify ISR and/or the Israeli Government for any amount incurred by ISR and/or the Israeli Government as a result of a violation by the Supplier and/or any person or entity acting on its behalf of any of the conditions of the Supplier's Insurance Policies.
- 17.7 The Supplier alone is responsible for payment of premiums and deductibles stated in the Supplier's Insurance Policies. These amounts can be offset by ISR from any amount due to the Supplier in accordance with this Agreement.
- 17.8 The Supplier is required to notify ISR immediately of any event which is likely to give rise to a claim under the Supplier's Insurance Policies, as well as to cooperate with ISR as required in order to obtain settlement of any insurance claim under the Supplier's Insurance Policies.
- 17.9 It is clarified and agreed that insurance payments shall not derogate from the Supplier's liability under the Agreement and/or under the Applicable Law, and should the insurance payments not be sufficient in order to cover the extent of the loss and/or the damage actually caused, the Supplier shall be responsible for completing such.
- 17.10 If, during the Supplier's Insurance Policies period, any changes occur to the value of the Wooden Sleepers, for any reason, the Contractor is required to immediately update the sum insured under the Marine "All Risk" Insurance as stated in clause 17.1.1.
- 17.11 As a precedent condition precedent to the first payment under this Agreement, Supplier shall furnish a signed certificate from its insurers stating:
- "The insurance policies required by Agreement No. _____ between ISR and the Supplier are in full force and effect. We hereby confirm that the right to receive indemnity payments under the Marine "All Risk" insurances stated in clause 17.1.1 of the Agreement is reserved solely to ISR and this by irrevocable designation. Additionally, the policy contains a "Loss Payee" clause on behalf of ISR".*
- 17.12 Without derogating from the duty to provide the insurance certificate as detailed in section 17.11 above, The Supplier undertakes to provide ISR with a copy of all of its insurance policies within fourteen (14) days of ISR's first request.

18. INTELLECTUAL PROPERTY RIGHTS

18.1 **Intellectual Property Rights Warranty.** Supplier represents and warrants that it is the owner of all rights and title (including but without limitation Intellectual Property Rights, as defined below) in and to the Wooden Sleepers, as well as in any Works and any component thereof (including, without limitation, systems, parts, software incorporated in the Wooden Sleepers or integrated with them), and documentation provided to ISR under this Agreement and the Technical Specification and/or that it has obtained sufficient rights and that it is authorized to offer and sub-license to ISR any such Wooden Sleepers, Works or documentation and/or any part thereof and/or Software, by the relevant third parties who developed and/or own and/or hold the Intellectual Property Rights thereof, and that ISR may use same in accordance with the terms and conditions of this Agreement, including the operation and maintenance of the Wooden Sleepers and for the purpose of interface with other ISR's equipment (whether existing now or in the future).

18.2 **Non Infringement Warranty.** Supplier represents and warrants that the Wooden Sleepers, Works and/or Software and documentation, and their use by ISR in accordance with this Agreement (i) do not and will not infringe any patents, copyrights, whether or not registered, trade names, registered and unregistered trademarks, service marks, trade dress, domain name registrations and other source indicators; computer software, including databases; trade secrets, commercial secrets, inventions (whether or not patentable and whether or not reduced to practice), know-how, methodologies, or other intellectual property right of any person ("**Intellectual Property Rights**"), and (ii) no claim, action or suit for the misappropriation or infringement of any Intellectual Property Right has been brought or is pending or, to the best of its knowledge, threatened against Supplier and/or any third party from which Supplier has obtained such Intellectual Property Rights in connection with the Wooden Sleepers, Works or documentation provided under this Agreement.

18.3 **Responsibility of Supplier.** Supplier shall be solely and fully liable and responsible for the use of, and shall fully and timely pay all royalties, fees and other payments with respect to, all Intellectual Property Rights, licenses and rights of whatever type, manufactured, used, implemented or employed in the design, production, completion, use or operation of the Wooden Sleepers and Works and/or Software and documentation by Supplier or ISR.

19. TERMINATION

19.1 This Agreement may be terminated by ISR at its sole and absolute discretion at any time, whether before or after commencement of the Works, by giving Supplier prior written notice of at least fourteen (14) days, if any of the following occurs:

19.1.1. The Supplier assigns or transfers any of its rights or obligations

pursuant to this Agreement without the prior written approval of ISR.

- 19.1.2. The Supplier becomes bankrupt, insolvent, or does not pay its debts as they become due, or admits in writing its inability to pay its debts or makes assignment for the benefit of creditors, or liquidation, receiverships, or reorganization proceedings (whether temporary or not) have been commenced against Supplier and have not been removed within twenty one (21) days.
 - 19.1.3. An attachment order has been imposed and/or any other execution process has been taken with respect to all or a material part of Supplier's assets, or a part thereof which is material for the performance of any of its obligations hereunder and has not been removed within thirty (30) days.
 - 19.1.4. Supplier has stopped managing its business (or substantial portion thereof) or execution of the Works, for a consecutive period of thirty (30) days.
 - 19.1.5. Any representation or warranty made by Supplier in this Agreement and/or any certificate, schedule or other document delivered by Supplier pursuant to this Agreement has been false or materially misleading when made.
 - 19.1.6. Supplier breaches any material provision of this Agreement and fails to cure such breach within twenty (20) days from the date of ISR's notice.
 - 19.1.7. Supplier breaches any provision of this Agreement and fails to cure such breach within thirty (30) days from the date of ISR's notice.
- 19.2 **Restitution of Payments.** Without prejudice to any other remedies available to ISR under any agreement and/or under any applicable law, in the event that ISR exercises its right to terminate this Agreement for any of the reasons set forth in Section 19.1, then within thirty (30) days from notification by ISR that it has rescinded or terminated this Agreement, prior to the issuance of Final Acceptance Certificate, Supplier shall return to ISR all payments it has received from ISR in respect of all terminated Works.
- 19.3 **Termination for Convenience.** In addition to, and without derogating from any other right that ISR may have to terminate this Agreement, including but without limitation pursuant to any other provision of this Section and/or to any applicable law, ISR shall have the right to terminate this Agreement at will, without cause and at ISR's sole and absolute discretion, by sixty (60) days prior written notice to Supplier.
- 19.4 Supplier hereby waives the right to termination under this Agreement and/or under law, for any reason. The sole and only remedy available to Supplier under this Agreement is compensation for breach subject to the terms of this Agreement.

19.5 **Effect of Termination**

- 19.5.1. Subject to Sections 19.5.4 and 19.5.5 below, termination of this Agreement will not limit either Party from pursuing any other remedies available to it under any agreement and/or applicable law, and termination or expiration of this Agreement, from whatever cause arising, shall be without prejudice to the rights of the Parties accrued under this Agreement up to the time of termination.
- 19.5.2. The provisions of this Agreement which expressly or by their nature are required to survive termination of this Agreement (including but without limitation provisions regarding Warranty, Intellectual Property and Liability) shall survive the expiration or termination of this Agreement.
- 19.5.3. Upon receipt of any termination notice, Supplier shall, take all required steps and actions to:
 - (i) Cease all Works according to the IPM's instructions; and
 - (ii) Transfer to ISR all its rights under all warranties extended by its suppliers.
- 19.5.4. Payment to Supplier (if and to the extent that Supplier shall be entitled thereto) shall constitute the sole and exclusive remedy (monetary or otherwise) to Supplier in connection with the Agreement and/or the cancellation and/or the termination thereof, and Supplier shall not be entitled to any other payment or recourse for loss of profits or to any other remedy that might be available to it under applicable law and/or agreement (including but without limitation specific performance and/or injunctive relief) in the event of termination of this Agreement pursuant to this Section.
- 19.5.5. No damages or other recourses whatsoever (including but without limitation enforcement of this Agreement) shall be due to Supplier, by reason of any termination of this Agreement in accordance with its terms. In particular, but without limitation, Supplier shall not be entitled to any compensation, reimbursement or damage of any kind for any unjust enrichment or tort claim, if any, resulting from the termination of this Agreement as aforesaid and/or on account of loss of prospective profits or investments and/or loss of goodwill or any other causes.

20. **RISKS AND LIABILITIES**

- 20.1 **General.** Supplier shall be solely responsible for, and shall defend, indemnify, and hold ISR, including its shareholders, officers, directors, employees and anyone acting on its behalf, harmless from and against any and all claims, liabilities, demands, suits, proceedings (whether civil or criminal, other than criminal acts of ISR), orders, judgments, penalties, settlements, fines and all associated costs, losses and expenses (including reasonable attorneys' and other professionals' fees) or any other direct damages (collectively, "**Damages**"), which ISR and/or any of the above persons and entities may incur arising out of, incidental to, or connected with any of the following (all without derogating from any other remedy that ISR and/or any of the above persons and entities may be entitled to under the circumstances, pursuant to this Agreement or under any applicable law):
- 20.1.1. The Works, including but without limitation, their design, assembly, integration, adjustment, tests and trials of the Wooden Sleepers (and/or any part thereof), as well as the Warranty;
 - 20.1.2. The use of the Wooden Sleepers and/or any part thereof, when the Damages arise from faulty design (including errors and omissions in design) or workmanship;
 - 20.1.3. Any damage to property, death or injury to persons, arising out of, or in connection with, the Wooden Sleepers or the Works;
 - 20.1.4. Supplier's breach of any term or provision of this Agreement or any applicable law;
 - 20.1.5. Any claims against ISR made by any subcontractor arising from, or in connection with, the Works to be performed by the subcontractor, including but without limitation any payments related to the Works or any part thereof to any subcontractor;
 - 20.1.6. Any negligent or willful act, error or omission by Supplier, its employees, agents, representatives and Subcontractors, in the performance of this Agreement (including, for the removal of doubt, the execution of the Works);
 - 20.1.7. Any actual or alleged infringement of Intellectual Property Rights of whatever type arising out of, in connection with, or otherwise resulting from the use of the Wooded Sleepers by Supplier, its subcontractors or ISR.
- 20.2 **Payment of Indemnification Amounts.** Any amount for which ISR claims for indemnification hereunder shall be paid to it within the time specified in the notice requiring indemnification.
- 20.3 **Defense against Proceedings.** If any legal action or any other proceeding (collectively "**Proceedings**") are commenced against ISR, in respect of which Supplier may be liable to indemnify ISR under this Section, then the following provisions shall apply:

- 20.3.1. Notice of such Proceedings shall be promptly given to Supplier.
- 20.3.2. Supplier shall, at its sole cost and expense, defend any litigation that may arise from such Proceedings and conduct all negotiations for the settlement of same, provided that any settlement of such Proceedings will be subject to ISR's prior written consent and provided further that Supplier shall not, in connection with such defense and/or settlement (i) injure ISR's reputation; (ii) purport to take any action expressly or implicitly on behalf of ISR; or (iii) purport to make any representation and/or admission regarding and/or concerning ISR or ISR's activities. ISR's written consent shall not be unreasonably withheld.
- 20.3.3. At the request and expense of Supplier, ISR shall afford reasonable assistance to Supplier in the defense of such Proceedings.
- 20.3.4. So long that Supplier timely takes over and properly conducts the negotiations or litigation, Supplier shall not be required to reimburse ISR the fees for services of attorneys retained by ISR (if and to the extent so retained). If ISR finds, however, that Supplier is not coordinating its defense with ISR in a proper manner or fails to defend ISR diligently or if ISR determines, at its sole and absolute discretion, that representation should be by ISR, then ISR may retain the services of attorneys on its behalf and at Supplier's expense, which attorneys will represent ISR in the said Proceedings and may settle such Proceedings, provided that Supplier gives its consent to such settlement in advance and in writing (which consent shall not be unreasonably withheld). For the removal of doubt, the settling of such Proceedings by ISR shall not relieve Supplier of the obligation to indemnify ISR as provided in this Agreement (including without limitation, for reasonable legal fees and expenses incurred by ISR in connection with the enforcement of Supplier's indemnification obligations hereunder).
- 20.3.5. In addition to the above, if ISR is a defendant in any Proceedings, ISR may at its sole discretion participate and retain the services of attorneys on its behalf at its own expense.
- 20.4 **Exclusions.** Subject to the provisions of Section 20.5 below, in no event shall either Party be liable towards the other for any and all indirect or consequential Damages, including but not limited to loss of profit, loss of revenue, loss of goodwill, etc. with respect to this Agreement (including the Works to be performed hereunder), whether in an action based on contract, tort (including negligence) or any other cause of action.

20.5 **Exceptions**. The provisions of Section 20.4 above shall not apply with respect to the following:

20.5.1. Any Damages to ISR incurred in connection with endemic failures, including but without limitation such damages to ISR as: replacement of components, publication of advertisements and/or manpower specifically assigned to rectification of such faults and damages;

20.5.2. Alleged or actual infringement of Intellectual Property Rights by the Works or any part thereof;

20.5.3. Death or injury;

20.5.4. Claim for payment by any Subcontractor.

20.6 **Withholding of Payments and Collection on Guarantees**. Without derogating from any other rights of ISR under any applicable law and/or agreement, in the event that any claim is made against ISR, or any lien or attachment is affixed against any of its properties, which claim, lien or attachment relates to or is based on circumstances and/or events which fall within the responsibilities and/or indemnification obligations of Supplier as per Section 20.1 above, then unless Supplier provides adequate security, to ISR's satisfaction, that the claim will be covered, ISR may (i) withhold all payments then due or thereafter becoming due to Supplier, until such claim is satisfied and such liens or attachments released, and (ii) settle the matter by paying any such claim or removing such lien or attachment, and recover any amounts required in order to do so by collecting upon any of the applicable Guarantees.

21. **SUBCONTRACTORS**

21.1 The Supplier may not engage subcontractor ("**Subcontractor**") for the performance of any of its obligations under this Agreement without the prior written consent of ISR.

21.2 Without derogating from the above, engaging a sub-contractor shall be subject to the following terms and conditions:

21.2.1. The Subcontractor must meet the terms and the conditions set out in the Technical Specifications.

21.2.2. Subcontractor shall abide by all applicable obligations under the Agreement which are required by it for the fulfillment of the Agreement, such as, but not limited to, obligations with regards to the Declarations and Representations, General Obligations, Intellectual Property, Warranty, Risks and Liabilities, Delivery Terms, Termination etc.

- 21.2.3. In the event that the Subcontractor shall fail to comply with this Agreement, ISR shall have the right to rescind its approval (with respect to Subcontractor) and/or to instruct Supplier to perform the relevant Works by itself or through another approved subcontractor, whereupon Supplier shall immediately stop employing the non-complying subcontractor.
- 21.2.4. The retention of the subcontractors, shall not relieve Supplier of its responsibility to ISR in connection with the execution of the Works, the supply of the Wooden Sleepers and the fulfillment of the obligations under the Agreement or from any liability under this Agreement and under applicable law, nor shall it impose any liability or responsibility upon ISR in connection with the aforesaid, including but without limitation for any acts and omissions done and/or works executed by Subcontractors, and Supplier shall be fully responsible towards ISR for the acts and omissions of its subcontractors.

22. **FORCE MAJEURE**

- 22.1 “**Force Majeure**” shall mean an event outside the control and without fault or negligence of the Party effected, which constitutes exceptional and unforeseeable circumstances which, despite the exercise of diligent efforts, such Party was unable to prevent, limit or minimize, and which makes it impossible or illegal for such Party to perform its obligations under this Agreement, including but not limited to fires, floods, accidents, earthquakes, volcanic activity, hurricanes, riots, wars embargoes, strikes (other than strikes by the employees of Supplier or employees of Supplier's subcontractors). The above does not extend for any contingencies stated above happening to Supplier’s subcontractors except for the Wooden Sleepers engine and bogie.

For the avoidance of doubt, it is hereby emphasized that any violent occurrences in Judea, Samaria, Gaza, Lebanon and/or Syria, or any particular act of terror shall not by itself be regarded as Force Majeure for the purposes of this Agreement.

- 22.2 Neither Party shall be liable for a delay in performance of its obligations pursuant to the Agreement, to the extent that such delay results from Force Majeure.
- 22.3 A Party affected by 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) endeavor to continue to perform its obligations as far as reasonably practicable and make reasonable efforts to mitigate the effects of the Force Majeure.

22.4 Any Works or supply delayed due to an event of Force Majeure shall be extended for such time as the event transpired without entitlement to receive further or additional payment on top of the Consideration, including with regard to linkage payments.

23. LANGUAGE

Any correspondence with regard to this Agreement shall be in English. All correspondence, orders, documentation, drawings, specifications, instructions, manuals etc. made by the Parties in performance of this Agreement will be in English or Hebrew.

24. APPLICABLE LAW AND SETTLEMENT OF DISPUTES

24.1 This Agreement shall, in all respects, be governed by and construed in accordance with the laws in force from time to time in the State of Israel.

24.2 The Uniform Law on International Sales (1964) and the United Nations (Vienna) Convention Contracts for the International Sale of Goods of April 11, 1980 shall not be applicable to this Agreement.

24.3 Any dispute in connection with the Agreement including its validity or interpretation shall be settled between the Parties. The negotiations shall be conducted by at least two persons chosen by each party for this purpose. The timeframe for the settlements of disputes between the Parties shall not exceed a period of three (3) months.

24.4 All matters in dispute, following failure of negotiations as outlined above, shall be referred to the competent court located in Tel Aviv-Jaffa in Israel which shall have exclusive jurisdiction in all matters arising therefrom unless otherwise mutually and expressly agreed, in writing, by the Parties.

24.5 **Dispute not Effecting Performance.** Under no circumstances will the Supplier be entitled to delay or suspend the performance of any of its obligations hereunder, including by way of applying for an injunctive order.

25. MISCELLANEOUS

- 25.1 **Waiver of Lien by Supplier.** Supplier hereby waives any right of lien and claim and preservation of ownership (in Hebrew: "שימור בעלות") (collectively, "**Retention Rights**") against ISR with regard to the Wooden Sleepers and the Works. Supplier represents and warrants that the consideration to be paid by ISR under this Agreement includes ample financial provisions concerning the waiver by Supplier of all Retention Rights with regard to the Works, and the payments to be made by Supplier to its Subcontractors contain ample financial provisions for the insertion of a clause requiring a similar waiver by said Subcontractor in connection with the Works.
- 25.2 **Set-Off** Without derogating from any right of set-off conferred upon ISR elsewhere in this Agreement or under applicable law, ISR shall have the right to set-off against any amounts owed to it pursuant to this Agreement against any amount payable by ISR to Supplier pursuant to this Agreement (. Supplier shall not be entitled to set-off amounts owed to it by ISR against any amount payable by Supplier to ISR and Supplier hereby waives any such right.
- 25.3 **Exercise or Non Exercise of Rights by the Parties.** Consent by a Party to deviate from any of the provisions of this Agreement in a particular case shall not constitute a precedent, and no inference by analogy shall be drawn from it in respect of any other case. If a Party does not exercise any of the rights conferred upon it by this Agreement or any guarantee arising hereunder in a particular instance, such fact shall not be regarded as a waiver of those rights in any other instance and shall not be considered as implying or indicating a waiver of any right under this Agreement.
- 25.4 **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof, superseding all prior and contemporaneous drafts (including drafts of the Agreement that formed part of the Tender), proposals, negotiations, communications, documents, understandings and agreements, written or oral, with respect to the subject matter of this Agreement, unless specifically incorporated herein by reference. Any such superseded documents shall not be used in any manner for the interpretation of this Agreement and shall not constitute admissible evidence in any proceedings between the parties. This Agreement may only be amended by a written document signed by both Parties.
- 25.5 **No Third-Party Beneficiaries.** All rights and obligations of the Parties hereunder are personal to them. This Agreement is not intended to benefit, nor shall it be deemed to give rise to, any rights to any third party (including, without limitation any Subcontractor).

25.6 **Assignment.** The Supplier may not assign or transfer any of its rights and obligations pursuant to this Agreement without the prior written consent of ISR. The Supplier may not charge or create any security interest with respect to its rights pursuant to this Agreement without the prior written consent of ISR. ISR may at any time, upon its absolute discretion, assign and/or transfer any and/or all of its rights and/or obligations under this Agreement to the State of Israel and/or any other entity controlled and/or affiliated to the State of Israel ("**State of Israel**") by providing written notice to Supplier ("**Notice of Assignment**"). Upon receipt of Notice of Assignment by Supplier, the assignment and/or the transfer shall be binding and Supplier may not object such assignment and/or transfer and shall fulfill any and all obligations resulting from such assignment and/or the transfer as directed by ISR and/or the State of Israel, which in turn may also assign and/or transfer their rights.

25.7 **Severability.** If any provision of this Agreement is held or made invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect the remainder of this Agreement, and the invalid or unenforceable provisions shall be replaced by a mutually acceptable provision, which, being valid, legal and enforceable, comes closest to the original intentions of the parties hereto and has like economic effect.

25.8 **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 or email 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 email, twenty four (24) hours after dispatch by email, or in the case of personal delivery, at the time of delivery.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT BY THEIR DULY AUTHORIZED REPRESENTATIVES AS OF THE EFFECTIVE DATE.

ISRAEL RAILWAYS LTD.

Signature: _____

Signature: _____

Title: CEO

Title: _____

Printed Name:

Printed Name: _____

Signature: _____

Signature: _____

Title: **Deputy General Manager**
Economics and Finance

Title: _____

Printed Name:

Printed Name: _____

Annex A

Technical Specifications

Annex B

Consideration Annex

Annex C

Supplier's Bank Account Form

PART A – Supplier's Bank Details

[to be completed by the Supplier's authorized signatories]:

We the undersigned, _____ [authorized signatories on behalf of the Supplier] request herein that all payments to be paid to us by Israel Railways Ltd. under this Agreement shall be made by means of bank transfer to our bank account according to the following details:

Bank Account No.: _____

Swift Code: _____

EBAN Code (applicable to European Accounts): _____

Branch Number: _____

Bank Name: _____

Bank Address: _____

Signature: _____

Name: _____

Title: _____

Date: _____

PART B - Certificate of Authorization

[to be completed by an ADVOCATE / C.P.A]:

I, _____ [Advocate/C.P.A] of _____, hereby certify that _____ and _____ are fully empowered by _____ [Supplier] to sign the Bank Account Form, and hereby certify that their signatures upon the Bank Account Form are fully binding in accordance with the _____ [Supplier] articles of association.

Signature and stamp: _____

Bank Account Form

PART B - Certificate of Authorization

[alternative authorization: to be completed by the SUPPLIER'S BANK]:

We, the undersigned _____ [Bank] hereby declare that as of _____ [date of Supplier's signature on Part A above] the _____ [Supplier] is the registered owner of the above mentioned account and certify that Part A above has been signed by the Supplier's authorized signatories. We undertake to promptly inform Israel Railways Ltd. regarding any change in the ownership of the account or the authorized signatories.

Signature: _____

Name: _____

Title: _____

Stamp: _____

Annex D

Final Acceptance Certificate Form

To:

[Name of Supplier]

[Street]

[City]

[Country of origin]

From:

Israel Railways Ltd.

1 Yoseftal St.

Lod 7136801

Israel

We hereby certify that the [First/Second] Batch of Wooden Sleepers as defined in the Agreement No. _____, which was ordered by Israel Railways Ltd. ("**ISR**") according to the Agreement has been accepted and taken over by ISR after the performance of Acceptance Checks.

**THIS CERTIFICATE IS ISSUED WITHOUT PREJUDICE TO THE RIGHTS
AND POWERS OF ISR UNDER THE AFORESAID CONTRACT.**

Signed: _____ Israel Railways Ltd.

Name

Date

Confirmed:

Signed: _____ for [*Name of The Supplier*]

Name

Date

Annex E

Performance and Warranty Guaranty Form

Israel Railways
Haifa East Station
1 Hativat Golani Street
P.O. Box 1481
Haifa, Israel

Re: Guaranty No. _____ (“Performance and Warranty Guaranty”)

Whereas _____ (the “**Supplier**”) and Israel Railways Ltd. (“**ISR**”) entered into an Agreement No. _____ on _____ (the “**Agreement**”) for the manufacture and supply of Wooden Sleepers, (the “**Wooden Sleepers**”):

Now, we _____ (“**Guarantor**”) hereby irrevocably guaranty the immediate payment, on first demand, to ISR of the sum of _____ Euro in the event that the Supplier has not fully complied with all of its obligations under the Agreement, including its warranty obligations.

This Guaranty shall be valid and remain in force until the end of 60 days following the end of Warranty Period for the last Wooden Sleepers delivered and accepted by ISR under the terms of this Agreement, all in accordance with Section 16 of the Agreement, and may be drawn down by ISR on one or more occasions up to the aggregate amount referred to above. This Guaranty shall not be revocable by Guarantor or Supplier by notice or otherwise.

In order to collect any amount under this Guarantee, ISR shall not have to refer to Supplier, shall not have to produce any judgment or other judicial document, and shall not have to prove any breach, failure or non-compliance on the part of Supplier or on the part of any person acting for it, or on its behalf, or in its name, and a written demand, **in** English or in Hebrew by the Deputy General Manager, Commerce, Economics & Finance of Israel Railways Ltd. or by a person designated in writing by him, substantially in the following form, shall be sufficient for all purposes of this Guarantee, and specifically shall be sufficient to collect any sums under this Guarantee from us, and we shall pay such sums immediately upon such first demand by ISR:

"Pursuant to the Guarantee issued by you on _____, you are hereby instructed to pay immediately to Israel Railways Ltd. the sum of

_____ to Account Number
_____ at _____ (Name of Bank).

Said written notice shall be sufficient for all purposes of this Guaranty, and specifically shall be sufficient to collect any sum(s) under this Guaranty from the Guarantor immediately upon the demand of ISR.

Guarantor