

**Agreement No. \_\_\_\_\_**  
Entered and signed this \_\_\_\_\_ day of \_\_\_\_\_, 2010  
in Tel Aviv, Israel (the “**Effective Date**”)

*between*

**Israel Railways Ltd.**  
Company No. 52-004361-3  
of  
P.O.B. 18085  
Tel Aviv 61180, ISRAEL

(the “**ISR**”)

**Of the First Part**

*and*

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

(the “**Supplier**”)

**Of the Second Part**

ISR and Supplier collectively will hereinafter be referred to as the “**Parties**”

**WHEREAS**, ISR is interested in acquiring rail fastening systems for concrete sleepers and components thereof, as defined below, all in accordance with and subject to the terms and provisions of this Agreement and its Annexes (the “**Goods**”); and

**WHEREAS**, ISR has published Tender No. HN/RC/01/10, requesting proposals for the manufacture and supply of the Goods (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 and certifies that it has the know-how, ability, expertise, facilities, resources, financial resources, licenses, permits, sufficient experience in the manufacturing of SKL W clips in accordance with EN 13481-2 standard and in addition, sufficient experience in the supply of SKL rail fastening systems in accordance with EN 13481-2 standard and/or all that is required and necessary to undertake the obligations set forth in the Tender and as described in this Agreement herein; and

**WHEREAS**, the Parties desire to set forth a contractual non exclusive framework to determine the Parties' relationship and obligations with regards to the manufacture, supply and maintenance of the Goods as aforesaid.

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

**1. PREAMBLE, APPENDICES AND HEADINGS**

- 1.1 The preamble to this agreement and the accurate representations of the Parties hereto constitute an inseparable part of and are conditions for the validity of this Agreement.
- 1.2 The headings in this Agreement are for reference purposes only and are not a material part of and shall not be used in interpreting this Agreement.
- 1.3 The Agreement shall consist of the following documents each of which is attached hereto and is an integral and inseparable part hereof:

- 1.3.1. The general terms and conditions of the Agreement.
- 1.3.2. The following Annexes:

- Annex A1 – Technical Specifications
- Annex A2 – Technical Drawings
- Annex B – Consideration
- Annex C – Form of Supplier's Bank Details
- Annex D – Form of Performance Warranty Guarantee
- Annex E – Foreign Supplier's Industrial Cooperation Undertaking

**2. PRIORITY OF DOCUMENTS**

- 2.1 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 to form one Agreement. Nevertheless, in the event of any conflict or inconsistency between the instructions or any data contained in the Agreement documents, priority of interpretation shall be given in the following order:

- 1. This Agreement; excluding its annexes;
- 2. Annexes A1, B, C and D;
- 3. Annex A2.

2.2 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 3. 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

The following terms used in this Agreement shall have the meaning set forth below:

- 3.1 **“Acceptance” / “Accepted”** - shall mean the delivery of the Goods to the Site in accordance with the Delivery Time and the terms set forth in Sections 9 and 10 below.
- 3.2 **“Business Days”** - any day of the week other than Saturday and Sunday, and excluding official holidays and bank holidays.
- 3.3 **“DDU”** – the terms of delivery for the RFS shall be Delivery Duty Unpaid at ISR's Site (DDU) according to "INCOTERMS 2000" - International Rules for the Interpretation of Trade Terms (ICC Pub. No. 560, 2000), all as further set forth in Section 9 below.
- 3.4 **“IPM”**– ISR's project manager for this Agreement which shall be the Head of Track and Right of Way Department or anyone appointed by it.
- 3.5 **"Goods"** - state of the art rail fastening systems for concrete sleepers and components thereof, which includes, inter alia, angled guide plates, height adjustment plates, elastic rail seat pads, sleeper screws, W-shaped tension clamps, and/or rail fastening systems which includes, inter alia, the foregoing components for assorted universal monoblock concrete sleepers which are specified and comply fully with the Technical Specifications attached herein as Annex A.
- 3.6 **“Purchase Order”** - an order made pursuant to the provisions of this Agreement. It is hereby clarified that the terms and conditions of the Agreement shall prevail over any standard term and condition that are included in any Purchase Order.
- 3.7 **“Site”**- ISR's facilities located at Kishon in Haifa, Israel.

### 4. TERM OF AGREEMENT

- 4.1 The Agreement shall commence on the Effective Date and shall continue in full force and effect for a period of Two (2) years, without derogating from any other term and condition stated in the Agreement (the **“Agreement Period”**).

- 4.2 ISR shall have the option, to be executed at its sole discretion, to extend the Agreement Period by additional periods of up to Eight (8) years, and subject to section 4.3., the terms and the conditions of the Agreement shall remain unchanged (~~-, without derogating from any other term and condition stated in this Agreement~~) (the "Option Period").
- 4.3 Extension of the Agreement Period as of the fifth (5) anniversary following the Effective Date shall be subject to the fulfillment of the conditions specified in section 12.4 of Annex B.

**5. PURCHASE AND SALE**

- 5.1 During the Term of the Agreement, ISR shall purchase from time to time, at its sole discretion, the Goods, as defined above, all in accordance with the order procedure set forth in Section 6 below and the Supplier hereby agrees to sell and deliver the Goods to ISR, subject to the terms and conditions set forth in this Agreement.
- 5.2 During the Term of the Agreement, ISR, in its sole discretion, shall have the option to purchase from the Supplier an unlimited number of goods, similar and/or comparable, and/or derived, in whole or in part, from the Goods ("**Optional Goods**").
  - 5.2.1. The terms and the conditions of this Agreement, including its Annexes, shall apply, mutatis mutandis, to the Optional Goods.
  - 5.2.2. The purchase price of such Optional Goods shall be negotiated between the Supplier and ISR, based on the Price, as defined in Section 7 below.
- 5.3 Notwithstanding the above and for the avoidance of any doubt, the Parties confirm and acknowledge that the relationship established by ISR and the Supplier is non-exclusive, and in addition, that ISR is under no obligation whatsoever to order any of the Goods whatsoever from the Supplier and/or to issue any Purchase Order whatsoever.

**6. ORDER PROCEDURE**

- 6.1 ISR shall issue to the Supplier, Purchase Order(s) for the Goods.
- 6.2 The Purchase Order shall specify the quantity of Goods ordered and the applicable Delivery Date as defined in Section 10 herein below.
- 6.3 The Parties' contact persons are as follows, or any replacement contact persons as notified in writing by one Party to the other:

For ISR:                    Mr. \_\_\_\_\_

For the Supplier: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

---

---

---

---

Each Party shall, in writing without undue delay, notify the other Party of changes in contact persons, addresses or facsimile numbers, if any.

- 6.4 ISR shall forward a Purchase Order to the Supplier via facsimile, email, or airmail, to the contact person of the Supplier, a copy of which shall be sent via air mail. Upon receipt of a Purchase Order, the Supplier shall confirm via facsimile receipt of the Purchase Order to ISR's contact person. A copy of such confirmation shall be sent to ISR via air mail. The 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, etc.

## 7. PRICE

- 7.1 The price for the manufacture and supply of the Goods including all accompanying services and equipment as required in the terms and conditions of this Agreement, to be paid by ISR to Supplier shall be as set forth in **Annex B [Consideration]**(hereinafter: "**The Price**").
- 7.2 The Price shall be fixed for a period of one (1) year from \_\_\_\_\_ [being the final date for submission of the proposals in Tender No. \_\_\_\_\_ (the "**Final Submission Date**")]. Following one year from the Final Submission Date, the Price shall be linked in accordance with the terms and the conditions as set out in **Annex B**.
- 7.3 The Price shall be the final, complete and inclusive price that will be paid to the Supplier for the manufacture, supply, delivery, unstuffing, warranty as well as the fulfillment of all of the obligations set forth in this Agreement including its Annexes, including but not limited to costs related to quality control, drawings, specifications, manuals, instructions, sketches, insurances, guarantee, taxes, etc.
- 7.4 To preclude 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 manufacture, exportation, supply, delivery and the unstuffing of the Goods, including but not limited to, transportation costs and wharfage fees (**Dmei Ratzif**), portorage and local forwarding agent fees and Israeli customs duties, if applicable, shall be considered as part of the Price and shall be borne solely by Supplier. Notwithstanding same, Israeli Value Added Tax, if applicable, shall be borne by ISR. It is hereby clarified, that in the event that ISR shall be required to pay any of the payments related to import and release from customs, ISR shall charge the Supplier accordingly (excluding Israeli Value Added Tax).
- 7.5 The Price includes 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 **deducted** from the Price and paid directly to the Israeli Tax Authorities.

## 8. TERMS OF PAYMENT

- 8.1 Payment by ISR to Supplier shall be made on a *per-order* basis and shall be paid within sixty (60) days of the Acceptance of the Goods at the Site, provided that all the documents set forth in Section 9.3 below have been provided to ISR by the Supplier as specified in Section 9.3 below.
- 8.2 The aforesaid payment shall be made by means of a bank transfer to the Supplier's bank account as specified in the **Annex D**.

## 9. DELIVERY AND RELATED DOCUMENTS

- 9.1 Delivery of the Goods shall be DDU at Site. It is hereby clarified that the Goods shall be considered delivered and Accepted, only once Supplier has unstuffed and placed them at the Site, and they are ready for full operational use by ISR.

9.2 It is hereby clarified that although containers may not arrive at the Site and the Supplier may not perform any unstuffing and/or unpacking of containers at the Site, the Supplier however, shall be solely responsible for the transfer of the Goods to the Site after unstuffing of containers.

9.3 **Delivery Documents**

The following original documents will be supplied by the Supplier to ISR in accordance with the instructions set forth herein below:

9.3.1. Commercial invoice in the amount of the payment for the applicable Purchase Order.

The invoice 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 Purchase Order number for the Goods and/or the Optional Goods.

9.3.2. Original Certificate of Origin and Non-Manipulation Certificate, if necessary;

9.3.3. Bill of Lading - issued in ISR's name;

9.3.4. Packing Lists;

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

9.4 ISR's contact person, set forth in Section 6.3 above, must receive from the Supplier original copies of the above documents at least **Five (5) calendar days before** the arrival of the ship delivering the Goods to Israel. In addition, copies of the above import documents shall be sent to ISR by facsimile simultaneously with the delivery of the originals. The above import documents **must** be forwarded solely in ISR's name and shall state ISR's exact name.

## 10. TIME OF DELIVERY

10.1 Subject only to the exceptions specified in sections 10.1.1-10.1.2 and 10.2 below, after ISR has issued a Purchase Order for the Goods, the Supplier undertakes to supply the Goods to ISR within 90 days (the "Time of Delivery").~~After ISR has issued a Purchase Order for the Goods, the Supplier undertakes to supply the Goods to ISR within 90 days (the "Time of Delivery").~~ The delivery date shall be specified in the Purchase Order (the "**Delivery Date**").

10.1.1. For the FIRST Purchase Order of each of the Goods specified in Sections 8.2 and 8.3 of the Consideration Annex, including the relevant components thereof under Section 9, the Time of Delivery, if and to the applicable extent, shall be extended up to Eleven (11) months following the Effective Date. For the removal of doubt, the aforementioned shall not apply to any successive Purchase Orders of such applicable Goods.

10.1.2. For the FIRST Purchase Order of any similar Guide Plate as specified in Section 9.3 of the Consideration Annex, the Time of Delivery shall be agreed by the Parties. For the removal of doubt, this Section 10.1.2 does not apply to any of the Guide Plates which are specified under Section 8 of the Consideration Annex.

- 10.2 ISR may require the Supplier to supply urgent orders, in a reasonable quantity and a target delivery date for the goods as mutually agree by the Parties, provided however that the Goods shall be ready for shipment or for air flight, within 20 working days from the receipt of an urgent order ("**Urgent Order**"). The Supplier shall be responsible for all shipping or air flight arrangements, according to ISR's requests and instructions. In case of air flight, ISR shall bare the extra cost of the air flight.
- 10.3 It is hereby clarified that the Goods shall be considered Accepted only after being removed from any container and unstuffed in the Site

## 11. LIQUIDATED DAMAGES

In the event that Acceptance of the Goods is delayed beyond the specified Delivery Date, ISR will charge Supplier with liquidated damages in the sum equal to half percent (0.5%) of the value of the delayed Purchase Order for each calendar week of delay, or any part thereof. The liquidated damages shall not exceed a total of seven and half percent (7.5%) of the value of the delayed Purchase Order (the “**Liquidated Damages**”). The penalties specified in this sub-section shall not be conditional on ISR having to present evidence of any losses. The aforesaid in this Section shall be without prejudice to any other relief or remedy available to ISR under the Agreement or under law.

## 12. CONFORMITY OF THE GOODS

- 12.1 The Goods must be delivered in strict conformity with the technical specifications detailed in *Annex A* (the “**Technical Specifications**”). Any deviation from the Technical Specifications must be approved in advance and in writing by ISR.
- 12.2 Prior to the shipment of each order of the Goods, Supplier shall be solely responsible for issuing a quality control certificate for each order to be supplied.
- 12.3 ISR shall have a right to conduct inspections, examinations and tests in order to examine and assure the delivery of the Goods and the rendering of the services by the Supplier in accordance with the terms and the conditions of this Agreement. The aforesaid right may be exercised by ISR at any time during the Term of the Agreement, prior or after the Acceptance of the Goods, in accordance with ISR sole discretion.
- 12.4 Without derogating from the aforesaid in section 12.3, ISR shall, at any time, have the right to appoint its own inspector(s) or any entity on its behalf, who shall be entitled to inspect the facilities of the Supplier or any of its sub-contractors in order to assure the cooperation between the parties and the provision of the Goods in strict conformity with the technical specification.
- 12.5 Without derogating from the generality of the aforementioned in section 12.3, ISR right to inspect includes the right 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 Goods 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.
- 12.6 If any examination, inspection or test determines that the relevant materials, components or the Goods are defective, deficient, of inferior quality, or otherwise do not fully comply with the Technical Specifications ~~or are deficient in any other way~~, ISR shall be entitled to reject such materials, components or Goods. Following such rejection of any materials, components or Goods, the Supplier shall immediately replace or repair same to ISR's satisfaction, at the Supplier's expense.

### 13. WARRANTY

- 13.1 The Goods shall be fully warranted by the Supplier for a period of Three (3) years starting on the day the ISR has indicated the Acceptance of the Goods in writing (the “**Warranty Period**”).
- 13.2 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 to the Goods due to faults such as, but not limited to, faulty design, faulty workmanship, faulty dismantling for sea and land conveyance, faulty materials or components, and other faults in the accepted Goods whether made by the Supplier or any of the Supplier’s sub-contractors, and whether arising or negligent production.
- 13.3 For any fault or defect attributed to the Goods within the Warranty Period, the Supplier shall, at his own expense and without delay, immediately replace the damaged Goods to the satisfaction of ISR, and all costs related to such replacement, including, but not limited to, costs related to transportation, dismounting and mounting, etc. shall be borne by Supplier.
- 13.4 Without derogating from the aforesaid, the Supplier is obliged to remedy the fault and/or defect and/or damage to the Goods within thirty (30) Business Days from the day the damage report was communicated to it.
- 13.5 The Supplier shall do its best efforts whatsoever, in order to shorten the delivery time of the replaced Goods.

### 14. PERFORMANCE AND WARRANTY GUARANTEE

- 14.1 Supplier shall furnish ISR, within ten (10) days from the Effective Date, an original bank guarantee from a first class bank, approved in advance by ISR, in the amount of three hundred thousand Euro (€300,000), issued in the form attached hereto as **Annex D** (the “**Performance and Warranty Guarantee**”).
- 14.2 The Performance and Warranty Guarantee issued shall secure all of the Supplier's obligations undertaken in this Agreement, including without limitation to the Supplier's warranty obligations and Supplier's obligations to pay ISR any Liquidated Damages if applicable.
- 14.3 The Performance and Warranty Guarantee shall remain valid throughout the Agreement Period, the Option Period, and shall thereafter be consecutively extended for periods of not less than two (2) years each, until the end of the applicable Warranty Period. 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.
- 14.4 Without derogating from the above, any payment due to the Supplier under this Agreement shall be subject to the submission of the Performance and Warranty Guarantee. ~~shall be subject to any payment due to the Supplier under this Agreement.~~

## 15. INSURANCE

- 15.1 Without prejudicing or limiting its obligations, liabilities and responsibilities under any of the provisions of this Agreement, the Supplier shall, at its own expense take out and at all times during the period of execution of this Agreement maintain in full force and effect:
- 15.2 A worldwide professional and third party liability insurance with respect to personal injury or damage to property, including, but not limited to, damage to ISR's property, injury to ISR's employees and third parties, and pecuniary damage (including damage to property of ISR and injury to employees of ISR) in connection with the repair, delivery, use or operation of the Goods and shall give ISR at least thirty (30) days prior written notice of termination, cancellation, or non-renewal.
- 15.3 Products Liability Insurance covering the Supplier's liability for any damage to any third party including ISR caused by or due to the use of the Goods subject to a limit of liability of not less than \$10,000,000 (USD) any one occurrence and in the aggregate for any annual insurance period.
- 15.4 Insurance for the Goods at their full replacement value, including an "all risk" marine insurance policy at one hundred and ten percent (110%) of its DDU value during transport thereof, including an extended period of 3 months after delivery, in the joint names of ISR and the Supplier, against any loss or damage to the Goods arising out of, in course of, or caused by any risk or liability in respect of the Goods.
- 15.5 The insurance policies pursuant to Sections 15.1 – 15.3 shall remain in full force and effect as from the Effective Date and shall be consecutively renewed until the end of the Warranty Period of the Goods delivered under the Agreement.

## 16. INSTRUCTIONS AND DRAWINGS

- 16.1 The Supplier shall submit Two (2) sets of installation, operation, maintenance and storage instructions as well as technical drawings of the Goods. All materials shall be in English and/or Hebrew.
- 16.2 The above documents shall include, without limitation, detailed drawings in printed and magnetic media. Without derogating from the above, the Supplier shall make any efforts in order to provide ISR with full and complete technical information. All costs and fees related to such services shall be included as part of the Consideration, as defined above.

- 16.3 Supplier hereby grants to ISR a royalty-free, perpetual, non exclusive, non transferable and irrevocable license to use, copy, combine, translate, duplicate, digitize and alter all designs, drawings, documentation and other technical documents that may be submitted by Supplier to ISR or created by or on behalf of Supplier in connection with or as a result of the delivery of the Goods, including but not limited to all derivative works based thereon, all for the purpose of, or in connection with the operation or use by ISR, or a third party on ISR's behalf, of the Goods (including maintenance and enhancement thereof). All rights and title in and to the design, drawings and other technical documents and information provided by ISR or on its behalf to Supplier as well as all of the documents comprising this Agreement and their contents thereof, shall be deemed to be the sole and exclusive property of ISR.
- 16.4 The Supplier shall be liable for, and shall hold ISR harmless and indemnify it from and against, any claim of infringement of any intellectual property right of third parties contained in documents or other work prepared by it.

## **17. ANNUAL TRAINING**

- 17.1 The Supplier shall provide annually (i.e. each year during the Agreement Period) inspection, training and general guidance designated to ensure the proper use and maintenance of the Goods as well as to assure the cooperation between the Parties (hereafter: "Annual Training").
- 17.2 The Annual Training shall include, at least, a three (3) Business Days visit of a qualified technician or project manager at ISR premises.
- 17.3 The identity of the technician as well as schedule of the Annual Training shall be coordinated by the parties.
- 17.4 All costs and fees related to the Annual Training, including flights, lodging as well as out of pocket expenses shall be considered as part of the Price, and the Supplier shall not be entitled to any reimbursement whatsoever for the provision of the Annual Training.

## **18. QUALITY MANAGEMENT SYSTEM**

- 18.1 The Supplier hereby undertakes warrants and confirms to remain certified in accordance with ISO 9001:2000 or ISO 9001:2008 standards or equivalent, and the Supplier shall at any time during the term of Agreement be willing to prove such claim to be true. In any event, the Supplier must notify ISR, in writing, if the said qualification is suspended and/or canceled and/or not continued.
- 18.2 Without anything to the contrary, and for the avoidance of doubt, the aforementioned in this section 18 shall apply to the Supplier and/or any of its sub-contractors.

## 19. TERMINATION

- 19.1 During the Agreement Period ISR has the right to terminate this Agreement, in its sole discretion, by providing the Supplier with a Three (3) months written notice of such termination and without the need for ISR to give any reason therefore. Such termination shall be effective Three (3) months after the date such notice has been provided to the Supplier (“**Termination Date**”). All terms and conditions of this Agreement will remain in full force until the Termination Date.
- 19.2 ISR has the right to immediately terminate this Agreement, in its sole discretion, by providing a written notice to the Supplier upon the occurrence of one of the following events to or in connection with the Supplier:
- 19.2.1. voluntary or involuntary bankruptcy (liquidation or reorganization), or receivership or commencement of a similar insolvency proceeding;
  - 19.2.2. cessation of business operations;
  - 19.2.3. election to dissolve or wind-up business;
- 19.3 This Agreement may be immediately terminated by ISR, 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 ISR has advised the Supplier in writing as to the existence of such breach (“**Material Breach**”). Material Breach shall include, inter alia:
- 19.3.1. The Supplier's failure to supply the Goods within One hundred and eighty days (180) days from the Delivery Date of a Purchase Order.
  - 19.3.2. 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 ISR advised the Supplier in writing as to the existence of such breach.
  - 19.3.3. A Breach of the Supplier's obligations under Sections 9, and 11-18.
- 19.4 If ISR so directs, all Purchase Orders issued before the Termination Date will be honored by the Supplier in full. In the event ISR elects not to pursue with the already issued Purchase Orders, the Supplier shall not be entitled to any remuneration.
- 19.5 Termination of this Agreement for whatever reason shall be without prejudice to the rights of the Parties accrued under this Agreement up to the time of termination.
- 19.6 The provisions of this Agreement which expressly or by their nature are required to survive termination of this Agreement, such as Sections 13, 14, 16.3, 16.4, 19, 20 shall survive the expiration or termination of this Agreement.

## 20. RISKS AND LIABILITIES

- 20.1 Supplier shall be solely responsible for and agrees to indemnify and hold ISR harmless from and against all claims, risks and liabilities and any damage or loss to ISR, other property owned by ISR, or injuries to or death of persons, including employees of ISR and third parties, of whatever nature, caused, related to or arising out of the supply of the Goods to be provided by Supplier under this Agreement, including court costs and attorney's fees.
- 20.2 The Supplier shall be liable for any incidental, direct, indirect or consequential damages or losses to ISR, and such liability shall not be limited to loss of use or loss of revenues, arising from an infringement of any of its obligation under the Agreement.
- 20.3 Supplier shall be liable for, and shall hold ISR harmless and indemnify it from and against, any claim of infringement of any intellectual property right of third parties contained in documents and/or other work prepared by it.
- 20.4 In any event of liability whatsoever arising, Supplier's liability shall be capped and limited to the aggregate amount of €5,000,000 (Euro), provided however that such limitation of liability shall not apply to intentionally or grossly negligent caused damages or injuries or death to or death of persons or in case of mandatory provisions of the applicable law.

## 21. ISR SET-OFF RIGHT

Without derogating from any right of set-off conferred upon ISR elsewhere in this Agreement, ISR shall have the right to set-off against any amounts that may be owed to the Supplier pursuant to this Agreement, any amount, debt or payment owed by the Supplier to ISR pursuant to this Agreement (including but without limitation, in the form of indemnification or compensation for damages, liquidated or not).

## 22. FORCE MAJEURE

- 22.1 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 control and without fault or negligence of the party affected, including the following occurrences fires, floods, accidents, civil unrest, acts of God, war, governmental interference or embargoes (“**Force Majeure**”). The above does not extend for any contingencies happening to the Supplier's sub-contractors or sub-suppliers.
- 22.2 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. Any supply delayed due to an event of Force Majeure shall be extended for such time as the event shall continue.

**23. ASSIGNMENT**

This Agreement, including the rights and obligations herein, may not be transferred, directly or indirectly, by the Supplier to any third party without receiving ISR's prior written consent.

**24. 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.

**25. SEVERABILITY**

If any provision of this Agreement or the application thereof to any party or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other parties or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

**26. LANGUAGE**

All correspondence, orders, documentation, drawings, specifications, instructions, manuals etc. made by the Parties in performance of this Agreement will be in English and/or Hebrew, including and without limitation, oral and written communication between ISR and the Supplier, the issuing of Purchase Orders and the reply thereto.

**27. MANDATORY INDUSTRIAL COOPERATION**

Supplier represents that it will comply with and fulfills the requirements of the Israeli Ministry of Industry and Trade, represented by the Industrial Cooperation Authority (ICA) with regards to offset procurement which is to be carried out in connection with the scope of this Agreement, in accordance with Annex E attached hereto to this Agreement.

**28. APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

28.1 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.

28.2 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.

28.3 Any dispute in connection with the Agreement including its validity or interpretation shall be settled between the Parties. This also applies to other legal matters arising out of or in connection with this Agreement. 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.

28.4 All matters in dispute, following failure of negotiations as outlined above, shall be referred to the competent court located in Tel Aviv in Israel and the competent Israeli courts shall have exclusive jurisdiction in all matters arising there from unless otherwise mutually and expressly agreed, in writing, by the parties.

**29. 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, e-mail, facsimile transmission 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 or e-mail, twenty four (24) hours after dispatch by fax or e-mail, 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:* \_\_\_\_\_

*Title:* \_\_\_\_\_

*Printed Name:* \_\_\_\_\_

*Printed Name:* \_\_\_\_\_

*Signature:* \_\_\_\_\_

*Signature:* \_\_\_\_\_

*Title:* \_\_\_\_\_

*Title:* \_\_\_\_\_

*Printed Name:* \_\_\_\_\_

*Printed Name:* \_\_\_\_\_

*Annex A1*

**Technical Specifications**

*Annex A2*

**Technical Drawings**

*Annex B*

**Consideration**

# *Annex C*

## **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*  
**Form of Performance and Warranty Guaranty**

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 SKL W14 rail fastening systems for concrete sleepers and components thereof (the “**Goods**”):

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 \_\_\_\_\_ two (2) years from the Agreement's Effective Date, and shall thereafter be consecutively extended for periods of not less than two (2) years each, until the end of the applicable Warranty Period, all in accordance with Section 14 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.

For collecting any amount under this Guaranty, ISR shall not have to refer first to Supplier, nor shall it 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 Supplier or on the part of any person acting for Supplier or on its behalf or in its name, and a written demand or facsimile notice to Guarantor from an authorized representative of ISR in the following form shall suffice:

**Pursuant to Guaranty No. \_\_\_\_\_ issued by you on \_\_\_\_\_ [date] on behalf of \_\_\_\_\_, you are hereby instructed to immediately pay Israel Railways Ltd. the sum of \_\_\_\_\_ into account no. \_\_\_\_\_ in Bank \_\_\_\_\_ (branch \_\_\_\_\_ in \_\_\_\_\_, Israel).**

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

*Annex E*

**Foreign Supplier's**  
**Industrial Cooperation Undertaking**