

October 6, 2022  
Ref.: 290058**Public Tender No. PD22000636**  
**Invitation to Submit Bids****To: All Tender Participants**

Dear Sir / Madam,

Re: **Public Tender No. PD22000636****Submission of Digital Bids for Energy Infrastructures Ltd.'s Tenders**

1. Energy Infrastructures Ltd. ("The Company") intends to enable submission of bids for the Company's tenders using a digital method that requires the submission of an electronically signed bid.
2. An electronic signature is a signature that is unique to the signatory, and through which the signatory can be identified. The electronic signature can be made using a TOKEN device/smart card.
3. **To the best of the Company's knowledge, as of this date, two companies have been approved by the Registrar as authorized bodies under section 9 (b) of the Electronic Signature Law, 5761-2001, and through them a TOKEN device can be obtained.**  
These are the names of the authorized companies:  
A. PersonalID Ltd. Company website address: <https://www.personalid.co.il/>  
B. ComSign Ltd. Company website address: <https://www.comsign.co.il/>
4. **During the period up to 31.12.2022, the Company allows the bids to be submitted by physical submission - to the tender box or by digital submission depending on the choice of supplier/contractor.**
5. For your convenience, technical instructions for making an electronic signature in digital proposals are attached.
6. We will be happy to help with further questions on the subject. You can contact the following contacts:

Tenders for contractors and service providers:

Ms. Liat Sharon  
Tel: 09-9528611  
Mobile: 054-2828611  
Email: [Contractsbid@pei.co.il](mailto:Contractsbid@pei.co.il)  
Or -  
Adv. Maya Ben-Dor  
Tel: 09-9528553  
Mobile: 054-2828553  
Mail: [Proposals@pei.co.il](mailto:Proposals@pei.co.il)

Procurement Tenders:

Ms. Talmor Sela  
Tel: 09-9528614  
Mobile: 054-2828614  
Email: [purchasebid@pei.co.il](mailto:purchasebid@pei.co.il)



Energy Infrastructures Ltd. and/or Oil Products Pipeline Ltd. (the “**Company**”) hereby invites the submission of bids for the supply of **Steel pipe for petroleum** as specified in the Technical Specifications and Bill of Quantities attached hereto (the “**Goods**”), according to the following terms and conditions, and the general Terms of Tender attached as Annex A hereto.

In this Tender, “**NIS**” or the “₪” symbol means New Israeli Shekels, “**USD**” or the “\$” symbol means United States Dollars, and “**Euro**” or the “€” symbol means Euros. Price quotes may be provided in NIS, USD or Euro, and are inclusive of all costs, expenses and tax.

## 1. The Tender Documents

This invitation to bid (this “**Invitation to Bid**”) together with the documents listed below and attached hereto (the “**Tender Documents**”), together form one integral unit, comprising a single invitation to bid under the terms described herein and therein (which invitation to bid as expressed in the Tender Documents may hereinafter be referred to as the “**Tender**”):

- 1.1. General terms and conditions of this Tender – Annex A (the “**Terms of Tender**”);
- 1.2. Form of the Bidder’s Declaration – Annex B;
- 1.3. Form of Manufacturer’s Declaration – Annex C;
- 1.4. A bill of quantities of the Goods – Annex D (the “**Bill of Quantities**”)
- 1.5. Technical specifications regarding the Goods – Annex E (the “**Technical Specifications**”);
- 1.6. Form of the engagement contract, including the Appendices attached thereto (the “**Contract**”) – Annex F; and
- 1.7. List of Approved Bidders, Manufacturers, and Production Facilities – Annex G.
- 1.8. Annex H – Digital submission protocol

Any capitalized term in the other Tender Documents shall have the meaning ascribed to that term in this Invitation to Bid, unless specifically indicated otherwise therein; and any capitalized term in this Invitation to Bid which is defined only in another Tender Document shall have the meaning ascribed to that term in that Tender Document.



Interpretation of any provision of the Tender Documents, including in case of any conflict between the Tender Documents, shall follow the rules provided in the Terms of Tender.

## 2. The Supply of Goods

2.1 The Goods shall meet the requirements of the Technical Specifications and the Bill of Quantities, and shall be Manufactured by a Manufacturer meeting the criteria listed in Sections 3.7 and 3.8 below.

2.2 *[Reserved]*

2.3 The Goods are divided into two groups, as indicated in the Bill of Quantities. Bids for each of the two groups will be considered separately for purposes of bid comparison and award of contract.

2.4 The supply of Goods will be CIF port of Ashdod (Incoterms 2010) (“CIF”), to be received at port of Ashdod by no later than 90 days following the winning bidder’s notification of award (the “Delivery Date”). It is emphasized that any delay in supply of Goods which deviates from this deadline will be considered a fundamental breach of contract, and will cause the supplier to be liable for liquidated damages as described in the Contract.

2.5 Bidders may opt to submit their bids on a DDP basis, by which bidders undertake to deliver the Goods by the Delivery Date to the Company’s warehouse located at Company’s warehouse at the Final Destination (Ashkelon site) “**Final Destination**”), provided that “delivery” under such terms includes unloading the Goods into the company’s warehouse at the Final Destination, with any associated cost, risks and logistical burden borne by the bidder, as such terms are further described in the Contract (the “**DDP Terms**”).

2.6 The Company estimates its anticipated savings if delivery is performed under the DDP Terms (as opposed to CIF) to be: (a) for prices quoted in NIS, ₪ 22 per meter of pipe; (b) for prices quoted in USD, \$ 6.5 per meter of pipe; and (c) for prices quoted in Euro, € 5.6 per meter of pipe (the “Savings Estimate”). The Company estimates the additional time it would require to bring the Goods from port of Ashdod to the Final Destination to be 10 days for each of the two groups of Goods (the “Time Estimate”). The Company reserves the right to amend the Savings Estimate or the Time Estimate by notice given reasonably in advance to bidders, subject to the Terms of Tender regarding amendments to the Tender Documents (Section 3(B) of Annex A). The Savings Estimate and the Time Estimate will be used to adjust the Bid Scores of bids submitted under the DDP Terms for comparison of bids in accordance with Section 8.3 below, and for that purpose only.



- 2.7 For bids submitted under the DDP Terms, the supply Period will be 85 days; Regarding any delay in supply of Goods which deviates from this deadline, Section 2.5 above will apply (mutatis mutandis).
- 2.8 A bidder wishing to submit its bid under the DDP Terms must write the words “DDP Terms” on its quote submitted with the Bill of Quantities. If a bid is clearly and legibly marked “DDP Terms” on its quote, the entirety of the bid (including the Bidder’s Declaration and acceptance of the Contract) will be seen as if the DDP Terms were incorporated therein, superseding the CIF terms. If a bid is not clearly and legibly marked “DDP Terms” on its quote, the Company reserves the right to see the bid as submitted under the default (i.e. CIF) terms of the Tender.
- 2.9 Time is of the essence, and delays in delivery (other than resulting from a Force Majeure Event) will result in liquidated damages as described in the Contract.
- 2.10 Without derogating from the foregoing, bidders are advised that should there be a delay in delivery of the Goods and/or should any material defect or non-conformity be discovered in the Goods upon delivery, the Company reserves the right to take such negative experience into consideration regarding future or proposed relationship(s) with the winning bidder and/or its affiliates, including the possibility of excluding or limiting such bidder from future tenders or other commercial relationships, to the fullest degree allowed under applicable law.
- 2.11 It is clarified that the terms of supply provided in this Section 2 are for the sake of convenience only. The full and actual terms and conditions of supply shall be in accordance with the provisions of the Contract (including the general terms of contract attached thereto).

### 3. Preconditions

A bid or bidder which does not meet each of the conditions specified below on the date of that bid’s submission (the “**Submission Date**”) will be disqualified:

- 3.1. A true and authentic copy of the bid, including all documents required to be submitted pursuant to Section 4 of this Invitation to Bid, has been received by the Company, by no later than **November 6, 2022** at 23:59 Israel time (the “**Submission Deadline**”), **and all conditions of the Submission Protocol described in Section 13 below have been fulfilled. Bids submitted other than as per the Submission Protocol may be disqualified.**
- 3.2. The bidder is eligible to participate in the Company’s tenders, and has not, as of the Submission Date, been notified by the Company in writing of any suspension of its participation in accordance with the Company’s procedures.



- 3.3. (a) For non-Israeli bidders: The bidder is not subject to sanctions, investigations, or other restrictions by a governmental authority of its home jurisdiction which would render it ineligible to participate in tenders of governmental corporations or other public bodies in its home jurisdiction.
- (b) For Israeli bidders: The bidder is eligible to participate in the Tender and enter into the Contract in accordance with the relevant provisions of Israeli law concerning transactions with public bodies; and the bidder has a valid approval pursuant to the provisions of the Public Bodies Transactions Law, 5736-1976.
- 3.4. The bid indicates that it shall be for supply of Goods: (a) by Manufacturer(s) meeting the requirements of Section 3.7 and 3.8 below; **and** (b) which meet the requirements of the Technical Specifications and the Bill of Quantities, as evidenced by the bidder's and Manufacturers' respective signatures in conformance with Section 4.3 below. In this Tender, "**Manufacturer**" means a single person or entity responsible for all stages and processes relating to the Manufacture of Goods as described in the Technical Specifications; and "**Manufacture**" refers to all stages in the formation, production and coating of pipe; *but* excluding the coating process, *provided that*: (x) the coating process is actually performed by the bidder or for the bidder by bidder's authorized contractor, in an EU or OECD member country, *and* (y) the bid includes the indication described in Section 4.4 below.
- 3.5. For Israeli bidders: The bidder is registered in any registry as may be required by law and holds all licenses as may be required by law with respect to the subject matter of the engagement, and if there is an official Israeli standard (within the meaning thereof in the Standards Law, 5713-1953) on the subject matter of the engagement, the bidder meets the requirements of such standard.
- 3.6. Either: (a) the bidder is or is an Affiliate of a Manufacturer meeting the criteria of Section 3.8 below, and the bid is for the supply of Goods by that Manufacturer; or (b) in the five (5) years preceding the Submission Deadline (i.e., from July 27, 2017 to present), the bidder has successfully supplied pipes conforming to the API-5L standard, with an aggregate minimum value of NIS 17,800,000, USD 5,125,000 , or € 5,050,000.
- 3.7. The proposed Manufacturer has successfully manufactured and supplied, in the course of the five years preceding the Submission Deadline (i.e., from November 6, 2017 to present), pipe manufactured according to the API-5L standard in an aggregate value of not less than € 7,600,000, and has undertaken that all Goods will be Manufactured either (a) in a country which is a member of either the EU or the OECD; or (b) at a specific production facility located in another country, which has been visited and approved by the Company in the 24 months preceding the Submission Deadline (an "**Approved Production Facility**").





- 3.8. For sake of convenience, a list of Approved Production Facilities is provided in Annex G. Bidders interested in requesting the approval of a particular production facility manufacturing pipe according to the API-5L standard outside the EU or OECD (for this Tender or for future tenders of the Company) may contact the Company at the email address provided in Section 11.4 below. For avoidance of doubt, the Company is under no obligation to agree to visit or approve any particular production facility, any visits will be entirely at the requesting bidder's expense, the Company's approval or refusal to approve a particular production facility will be at Company's uncontrolled discretion in keeping with Company's internal standards and criteria, and the requesting bidder must waive any claim or argument to the contrary in order for its request to be considered.
- 3.9. The bid must be for supply of Goods produced by a single Manufacturer (meeting the requirements aforementioned) for each group of Goods indicated in the Bill of Quantities; however there is no requirement that the Manufacturer for one group of Goods be related to the Manufacturer for the other group. Bidders may participate in the bidding for a single group of Goods, by leaving the section for the other group blank. For purposes of the requirement of a single Manufacturer for each group of Goods, Manufacturers who are Affiliates of each other will be considered as if they were a single Manufacturer, provided that each such Affiliate meets the requirements aforementioned.
- 3.10. The bidder's net shareholder's equity for fiscal year 2019 was positive and, to the best of bidder's commercial knowledge on the Submission Date, there is no indication that the bidder's net shareholder's equity for fiscal year 2019 would be negative.
- 3.11. No other bid has been submitted in this Tender by that bidder or an entity which is part of that bidder's control group.

For sake of clarity, it is emphasized that multiple bids from the same bidder, bids from multiple entities within a single control group or syndicate, bids from multiple agents acting on behalf of the same principal, group or syndicate, or any substantially similar arrangement (any of the above, whether by direct or indirect means, "**Multiple Bids**") are categorically disallowed from this Tender. If any Multiple Bids are received, all such Multiple Bids will be automatically disqualified. This requirement does not prevent several bidders (who are not affiliated with each other in the manner described above) from submitting bids to provide Goods produced by the same Manufacturer. However, parallel bidding, in which a Manufacturer or its Affiliate submits a bid in addition to another bidder (other than an Affiliate of that Manufacturer) to provide Goods produced by that same Manufacturer (or an Affiliate thereof) is forbidden ("**Parallel Bids**"). If Parallel Bids are received, then the Parallel Bid(s) of any bidder other than the proposed Manufacturer (or Affiliate thereof) will be automatically disqualified, and the Company shall be entitled (in its discretion) to see that proposed Manufacturer (or Affiliate thereof) as bound directly by its bid, as per the lowest price quote of the other parallel bidders.



4. **Documents Required to be Attached to the Bid**

The following documents shall be included in the bid:

- 4.1. For Israeli bidders, a copy (certified by a lawyer as true to original) of a valid approval pursuant to the provisions of the Public Bodies Transactions Law, 5736-1976.
- 4.2. A copy of the Bill of Quantities (Annex D), showing the bidder's price quote in the appropriate space(s) provided, and signed by the bidder.
- 4.3. A copy of the Technical Specifications (Annex E), signed by the bidder (for each item) as well as by each Manufacturer indicated in the bidder's submission of the Bill of Quantities for the manufacture of each item, indicating thereby: (a) the Manufacturers' acknowledgement of the Technical Specifications and knowledge of the bid's submission regarding all relevant items; (b) the bidder's undertaking to supply the Goods in conformance with such Technical Specifications, unused and as manufactured by each Manufacturer indicated; and (c) the bidder's representation that a complete report of all relevant Manufacturers has been provided therein.
- 4.4. If the Manufacturer will not be responsible for the coating process, the bidder must indicate this on its submission of the Technical Specifications, with bidder's authorized signature indicating that the bidder itself or bidder's named authorized contractor will perform the coating process in an EU or OECD member country. If bidder fails to clearly make such indication with its authorized signature, Company reserves the right to view the bid as an undertaking to ensure that the Manufacturer will perform the coating process.
- 4.5. For Israeli bidders: Confirmation regarding (1) registration of the bidder in any registry as may be required by law, (2) any licenses as may be required by law and (3) compliance with any official Israeli standard that may exist, all of the above with respect to the subject matter of the engagement. Israeli bidders who are Approved Bidders (as defined in Section 4.8 below) are exempt from submitting the confirmations described in this Section 4.5, provided that any such or similar confirmations submitted in a previous tender of the Company shall be deemed referred to and repeated in the bid, including as provided in paragraph 12 of Annex B.
- 4.6. One of the following:
  - (a) the bidder's audited financial statement(s) for the fiscal year ending 31 December 2019, showing that as of that date the bidder's net shareholders' equity was positive; or



- (b) if the bidder is not required by applicable law to release its audited financial statements to the public, a letter addressed to the Company and signed by a certified public accountant licensed in the bidder's jurisdiction and responsible for the bidder's accounting, stating that the bidder's net shareholders' equity as of 31 December 2019 was positive.
- 4.7. A declaration in the form of Annex B, together with Appendix A and Appendix B thereto, completed and duly executed by the bidder's authorized signatory (the "**Bidder's Declaration**").
  - 4.8. Bidders whose bids have been duly approved for consideration in previous Company tenders in the course of calendar years 2021 or 2022 ("**Approved Bidders**") are exempt from including Appendix A in their Bidder's Declaration; however, this does not derogate from bidder's representation that conditions set forth in Section 3.6 are met. In such case, any document or representation based on which a bid of Approved Bidder was approved for consideration in a previous tender shall be deemed referred to and repeated in the bid, including as provided in paragraph 12 of Annex B. For sake of convenience, a list of Approved Bidders is provided in Annex G.
  - 4.9. For each proposed Manufacturer, Annex C, completed and duly executed by the Manufacturer, and confirmed by a certified public accountant licensed in that Manufacturer's jurisdiction and engaged as that Manufacturer's accountant.
  - 4.10. Manufacturers who were indicated in bids which were duly approved for consideration in previous Company tenders in the course of calendar years 2020-2022 ("**Approved Manufacturers**") are exempt from providing Annex C with the bid; however, this does not derogate from bidder's representation that conditions set forth in Section 3.8 are met. In such case, the documents or representations based such Manufacture was approved in the previous tender shall be deemed referred to and repeated by the bidder in the bid, including as provided in paragraph 12 of Annex B. For sake of convenience, a list of Approved Manufacturers is provided in Annex G.
  - 4.11. Annex F, including Appendix C thereto, signed by the bidder's authorized signatory in acceptance of the contractual terms and conditions therein. It is clarified that acceptance of such contractual terms and conditions forms an essential and integral part of the bid.
  - 4.12. A bid which does not include each of the relevant documents specified above may be automatically disqualified, with or without regard to its content; *however*, the Company may, at its sole discretion, request a particular bidder to supply one or more of the abovementioned documents, within a period of time following the Submission Deadline to be determined at the Company's reasonable discretion. If such bidder fails to supply the requested documents to the satisfaction of the Company within such period of time, the Company may





elect to disqualify its bid. If a bidder submits documentation in excess of the requirements of this Section 4, the Company reserves the right to treat such excess documentation as a Modification, in the manner described in Section 2 of the Terms of Tender.

## 5. Clarifications and Amendments

- 5.1. Bidders in the tender are required to thoroughly check the various Tender Documents. Any bidder who finds ambiguities, discrepancies or inconsistencies in or between the various Tender Documents or various provisions thereof, or any other inconsistency, or any bidder who wishes to suggest an amendment to the Tender Documents, may address the Company with a written request for clarification and/or suggestion for amendment. Such written request must be written entirely in the English language, and delivered to the company by email to [purchasebid@pei.co.il](mailto:purchasebid@pei.co.il) no later than **October 27, 2022**. It is clarified that the Company is not under any obligation to respond to such written request and/or accept any suggestions for amendment.
- 5.2. Any bidder who fails to submit a written request as described in Section 5.1 above will be barred from raising any claim in the future regarding any ambiguities, discrepancies or inconsistencies in or between the various provisions of the Tender Documents.
- 5.3. The bidder is aware and agrees that any request for clarification and/or suggestion for amendment may, at the Company's discretion, be sent to all of the bidders, including in a Notice to Bidders as described in Section 5.4 below.
- 5.4. The Company may, in its discretion, publish notices, updates, announcements and/or clarifications regarding this Tender, and/or modify or make any amendment to the Tender Documents (including any response to a written request received as per Section 5.1 above), by any means which the Company deems effective for such purpose, including by means of a notice sent to those bidders who have registered at the Company's website ([www.pei.co.il](http://www.pei.co.il)). Such registration is each bidder's sole responsibility (a "**Notice to Bidders**"). Registration for receipt of notices is the bidder's sole responsibility. A Notice to Bidders shall be deemed received by all bidders, effective immediately, upon such publication or dispatch of such notice, and references to this Tender or any Tender Document shall be deemed to incorporate all such notices, clarifications or amendments by reference.
- 5.5. The Company may amend or modify the Tender Documents (including but not limited to by means of a Notice to Bidders), in accordance with Section 3 of the Terms of Tender, *provided that* reasonable advance written notice has been given to all of the bidders in the Tender, and *provided further* that bids already submitted may be amended in response to such amendment or modification, by



an amending Submission Email in accordance with the Submission Protocol of Section 10 below.

6. **Split Bids**

- 6.1. Subject to the terms of this Section 6, the Company is entitled, in its sole discretion, to split the award of contract for supply of different items within each group of Goods between several bidders.
- 6.2. Any bidder who wishes to modify its price quote in the event that its bid is split must specify an adjustment surcharge in case of a split, clearly and legibly in the space provided in the Bidder's Declaration (paragraph 15 of Annex B). If a bidder fails to act as stated in this Section 6.2, the Company may split its bid without any additional surcharge, and that bidder's price quote for the various components will be binding notwithstanding any split the Company may elect to make.
- 6.3. It is clarified that while a bidder may specify different Lead Time Periods for each of the two groups of Goods, each group of Goods must have a single Lead Time Period for all items.

7. **Modification of or Reservations to the Tender Documents**

It is clarified that the bidder may not modify, add to, omit from, or make any reservations or conditions to the Tender Documents in any way. If the bidder believes that any clarification is required with respect to the terms and conditions of the Tender, or if the bidder wishes to suggest an amendment to the Tender Documents, it must address the Company in the manner and within the timeframe set forth in Section 5.1 above. By submitting its bid, each bidder indicates its acceptance of the terms of the Contract and this Tender, represents that its price quotes have taken into account all terms and conditions of the Contract and this Tender, and irrevocably waives any claim or argument to the contrary. If the bidder modifies, adds to, omits from, or makes any reservations or conditions to the Tender Documents in any way, then Section 2 of the Terms of Tender shall apply.

8. **Negotiations or Additional Competitive Process**

- 8.1. The Company reserves the right to negotiate with bidders whose bids are found to be adequate, subject to applicable law.
- 8.2. An estimate of the value of the engagement will be made for this Tender. In the event that all of the bids that are submitted in the tender are less favorable to the Company than such estimate, the Company may, in its sole discretion, hold an additional competitive process between the bidders who submitted the most appropriate bids.



- 8.3. In the event that the Company elects, in its sole discretion, to hold an additional competitive process (“Best & Final”), the Company may approach such bidders as it may select in its discretion, and notify them that they are entitled to submit, within such timeframe as may be determined, a final bid. If such bidder does not submit another bid pursuant thereto, its first bid shall be deemed as its final bid.
- 8.4. The Company reserves the right to to refuse any bid and/or to cancel the Tender at any stage, in its discretion; to refrain from awarding contract to the bid with the highest Bid Score; to refuse award of contract to a bidder whose bid would otherwise have been granted such award, or to retract such notice, under special circumstances and upon delivery of a reasoned notice of such decision to the relevant bidder.
- 8.5. Without prejudice to the foregoing, in the event that (in Company’s reasonable opinion) all qualified bids are less favorable to the Company than the Estimate, then the Company may, in its sole discretion, hold an additional competitive process between all, some, or several bidders, in a manner to be reasonably determined by Company to be most conducive to achieving the Tender’s purpose, in conformance with applicable law. If there is a single or single remaining qualified bid which is significantly less favorable to the Company than the Estimate then the Company may, in its discretion, and in addition to any other course of action otherwise available to Company: (a) allow that bidder to submit a more favorable bid by no later than a date which the Company may determine, (b) award contract as per that bid in accordance with the terms and conditions of this Tender, or (c) cancel this Tender and/or issue a subsequent Tender (whether or not under similar terms) in its stead.

9. **Award of Contract**

- 9.1. Subject to the other terms and conditions of this Tender, the bidder whose bid meets the threshold requirements and bears the lowest price quote shall receive award of the contract, subject to the terms and conditions of this Tender and applicable law.
- 9.2. Notwithstanding anything to the contrary, the Company may award the contract to a bid other than as described in Section 9.1 above:
- 9.2.1 In accordance with another provision of this Tender which mandates or grants the Company discretion to consider and/or award contract to a different bid or bids;
- 9.2.2 If the winning bidder has failed to execute the Contract within 7 days of being notified of its award, or has failed to supply the performance guarantee described in Section 11.1 below within 14 days of being notified of its award, or if the provisions of Section 10.3 otherwise apply; or



- 9.2.3 Under special circumstances, and for special reasons which the Company shall commit to writing, after having given the bidder who would otherwise have been awarded the contract reasonable opportunity to present its case.
- 9.3. If a single qualifying bid is submitted, or a single bid remains for the tender committee's consideration, at a price which is significantly less favorable to the Company than the estimated value described in Section 9.4 above, then the Company may inform such bidder accordingly, and may, in its sole and unlimited discretion: (a) allow that bidder to submit a more favorable bid by no later than a date which the Company may determine, (b) award contract as per that bid in accordance with the terms and conditions of this Tender, or (c) cancel this Tender.
- 9.4. It is further clarified that the Company is free to refuse any bid and/or to cancel the Tender at any stage, in its discretion.

## 10. Execution of Agreement with the Winning Bidder(s)

- 10.1. The Company will determine the bidder or bidders to be awarded contract, if any, and notify all bidders as soon as reasonably possible of the results. The notice of the winning bidder will not bind the Company until the Contract has been signed by the persons authorized to bind the Company thereby, and a complying Bank Guarantee has been delivered to the Company.
- 10.2. The engagement with the winning bidder will be based on a written agreement, the form of which is attached hereto as Annex I, and which constitutes an integral part hereof (the "**Contract**").
- 10.3. If a winning bidder fails to fully and accurately fulfill the terms, conditions, undertakings and requirements of the Tender, including if its bid includes any material misrepresentation(s), and/or if it fails to execute the Contract within 7 days of notification of award, or fails to provide the Bank Guarantee within 14 days of notification of award, then the Company may, in its sole discretion and without prejudice to any right or remedy otherwise available: (a) require such winning bidder to adhere to its bid, as represented therein, as per the terms of the Contract, after adjustment of set-off for the amount described in Section **שגיאה! מקור ההפניה לא נמצא.** (a) below; or (b) whether or not the Company has previously required the winning bidder to adhere to its bid as described in sub-section (a) above, at any time that a failure or misrepresentation described in this Section 10.3 remains unremedied, disqualify such bid retroactively, decide on a replacement bidder, and demand payment of the Liquidated Damages. The Company will notify such bidder of its decision without unreasonable delay.
- 10.4. Without derogating from the foregoing, the Company shall be entitled, even after determination of the winning bidder(s) and/or notice thereof, to retract



such notice and not engage with any of the bidders, including the bidder whose bid was determined to be the winning bid. A reasoned notice of such decision as will be delivered to the winning bidder(s) as early as possible, under the circumstances. For the avoidance of doubt, it is hereby clarified that should the Company retract such notice as aforesaid, it will not be liable for any expense or damage that the winner or any other bidder may have suffered in connection with such determination or notice or otherwise in connection with participation in the tender, as the case may be.

- 10.5. The Company reserves the right to make adjustments to the Contract that will be signed with the winning bidder, in its sole discretion.

## **11. Performance Guarantee**

11.1. The bidder agrees and undertakes, if its bid is chosen as a winning bid, to provide an autonomous bank guarantee conforming to all of the requirements of this Section 11.1 (the “**Bank Guarantee**”), as soon as reasonably, and in no case not more than 14 days subsequent to its notification of award, as a performance guarantee for the Contract.

11.1.1 The guarantee must be an original document, validly issued by a banking corporation regulated and licensed under Israeli law or by the banking authority of the bidder’s home jurisdiction.

11.1.2 The guarantee must be written in either the English language or the Hebrew language.

11.1.3 The guarantee must be addressed to the Company and be for the Company’s benefit; however, if the issuing bank’s general practice does not allow for issuance of an autonomous guarantee to more than one entity, the guarantee may be addressed to and for the benefit of Energy Infrastructures Ltd. alone.

11.1.4 The guarantee must be payable upon the beneficiary’s first written demand, under the substantial conditions described in this Section 11.1; however, the guarantee may allow for the issuing bank corporation to provide that actual payment of the guarantee can be made at any time within fifteen (15) days of receiving such written demand for payment.

11.1.5 The amount guaranteed shall be 5% of the contract value (the “**Guarantee Amount**”). If the award is split between two or more bidders (as contemplated in Section 7 above), the amount of each bidder’s guarantee will be a pro rata portion of the Guarantee Amount, as per the ratio of the





bid price of each bidder's winning award and the aggregate of all winning awards.

- 11.1.6 The guarantee shall be valid until a date no earlier than 30 weeks following notification of award (the "Guarantee Expiry Date"), or the actual delivery of all Goods to Company's satisfaction, as evidenced by an original document issued by the Company for the purpose of demonstrating the occurrence of such event; however for so long as the Goods have not been actually delivered to Company's satisfaction, the Company shall have the right to extend the Guarantee Expiry Date by written notice for successive 60 day periods.
- 11.1.7 The guarantee's applicant must be identical to the bidder.
- 11.1.8 The guarantee must be identified by a reference number or code and states that it is made in reference to the Company's "Public Tender No. PD22000636" and "Contract No. PD22000636" as the underlying relationship.
- 11.1.9 The guarantee must be governed by URDG 758, and must specifically state that the supporting statement under URDG article 15(a) is excluded.
- 11.1.10 The guarantee must provide that a complying presentation requires no additional documentation other than the Company's statement that the amount claimed is due by reason of the bidder's obligation arising from or in connection with this Tender or the Contract.

An autonomous bank guarantee issued by a banking corporation regulated and licensed under Israeli law or by the banking authority of the bidder's home jurisdiction, which conforms in all material respects to the suggested form provided as Appendix C to Annex I (including if modified as per any parameters stated in this Section 11.1), shall be considered a complying Bank Guarantee for purposes of this Tender.

- 11.2. The Company shall be entitled to demand payment of the Bank Guarantee for the amount stated therein or part thereof, if in its reasonable opinion such amount is payable to the Company for any breach of the Tender or Contract or on any other grounds. If such demand is made, the Company will provide the bidder with written correspondence stating the grounds by which such amount is payable.
- 11.3. It is clarified that the Company's rights as specified in this Section 11 do not derogate from any other remedy which would otherwise be available to the Company, including as per the Tender Documents and/or applicable law.



## 12. Miscellaneous Provisions

- 12.1. Any and all expenses involved in preparing the bid are at the bidder's expense only.
- 12.2. Bidders wishing to purchase the Tender Documents in hard copy may do so in consideration for a fee of NIS 500, to be paid to the Company upon the purchase of the documents at the Company's offices, 3 Hasadnaot St., Herzliya Pituach, on Sundays-Thursdays between 10:00-15:00, and after prior coordination with Ms. Talmor Sela, whose details are in Section 13.5 below. The purchase of the Tender Documents in hard copy is not required for participation in the tender.
- 12.3. The bid will be valid for 45 days following the Submission Deadline. Throughout this period, the bid shall be irrevocable. If need be, the Company may require bidders to extend the validity of their respective bids. Bids which are not extended as aforesaid shall be disqualified, even if such bid would otherwise have been preferred, and the Company may continue the Tender process in accordance with its needs, from amongst the bids which have been so extended.
- 12.4. Bidders may not withdraw their bids in the Tender so long as the bid is valid. A bidder withdrawing its bid in the tender shall be liable for Liquidated Damages to the Company, as described in the Terms of Tender, which amount the Company may collect by its first demand.

## 13. All bids must be submitted in accordance with the instructions provided in this Section 13 (collectively, the "**Submission Protocol**"). ***Submission of a bid in any manner other than as per the Submission Protocol may result in disqualification of the bid.***

- 13.1. The bid must be submitted and received, by no later than the Submission Deadline set forth in Section 3.1 above, **either**
- (a) in a sealed envelope, deposited by hand in the special-purpose tender-mailbox, on the first floor of the Company's offices at: Energy Infrastructures Ltd / Oil Products Pipeline Ltd., 3 HaSadna'ot, Herzliya, Israel (bidders submitting their bid by courier are advised to instruct their courier service of the importance of placing their bid in a sealed envelope in the tender box as per the above instructions), **or**
- (b) by an email with attachments conforming with Annex H and addressed to [tender636@pei.co.il](mailto:tender636@pei.co.il) (the "Designated Account"), In the manner set forth



below. The bidders are required to follow the submission instructions precisely.

Bidders must choose to submit their Bids by one of these two methods. Any Bid submitted by a Bidder by both methods (physical deposit and Submission Email) may be disqualified and/or considered as if not submitted and/or the Company will have a right to choose one of the two Bids at its discretion, and the bidder will have no claim in the matter.

- 13.2. In case of physical submission, all Bid Forms shall also be submitted on a Key Disk, (containing Adobe Acrobat PDF (PDF) searchable format files). In the event of any discrepancy between the copies, the paper copy shall prevail. The paper copy and Key Disk, shall be placed in one envelope.
- 13.3. **Without derogating from any other provision hereof, Submission Emails are subject to and must also comply with the terms in Annex H (the "Digital submission protocol").**
- 13.4. The Company may, at any time, at its discretion, amend or modify the Tender Documents, provided that it gives written notice thereof to all of the bidders in the Tender, and the bidders in the Tender must prepare, adjust and/or amend their bids based on such amendments or modifications.
- 13.5. Potential Applicants/Bidders are instructed to register at the Company's website in order to receive updates, announcements, clarifications etc. regarding the Tender. Said registration shall be the responsibility solely of the Applicants'/Bidders', and all notices, updates, announcements and/or clarifications made available to registered Applicants/Bidders thereby shall be deemed received by all Applicants/Bidders upon such publication.
- 13.6. Any question regarding the Tender may be referred to the undersigned via e-mail to [purchasebid@pei.co.il](mailto:purchasebid@pei.co.il).

Sincerely,

**Talmor Sela**

**Procurement & Engagements Department**



**Annex A: Terms of Tender**

- 1. Interpretation and Definitions.** These terms of tender (these “**Terms**”) are attached to and form an integral part of Public Tender No. PD22000636 for the supply of steel pipe for petroleum (the “**Tender**”), as described in the Invitation to Bid. The submission of a bid in the Tender comprises the bidder’s agreement to these Terms and waiver of any claim or argument to the contrary. In the case of any conflict between the Tender Documents, the terms which prevail shall be in the following order of precedence: (a) the Technical Specifications or Bill of Quantities (including a bidder’s price quotes as described in the completed Bill of Quantities); followed by (b) other terms of the Contract, including the general terms of contract attached thereto; followed by; (c) these Terms, unless and to the extent specifically provided otherwise in another Tender Document; followed by (d) the Invitation to Bid; followed by (e) any other Tender Document or other document submitted in the bid; followed by (f) other written correspondence (if any) exchanged between the Company and the bidder. In all events, the reasonable construction or interpretation which is most conducive to ensuring that, in consideration of the price quoted by the selected bidder, the Company shall receive, in a lawful and efficient manner, the entire amount of Goods ordered to its satisfaction and in a timely fashion, shall prevail. The general terms attached to the Contract shall also apply to the Tender to the extent applicable, unless otherwise specified herein or in the Invitation to Bid. Notwithstanding anything else to the contrary, it is specifically clarified that the entire Tender is subject to the provisions of Israeli tender law, including the Mandatory Tenders Regulations, 5753-1993 (the “**Regulations**”), and that nothing in the provisions of any Tender Documents shall be interpreted to derogate from any mandatory provisions therein or any other mandatory provisions of applicable law. In any Tender Document or Notice to Bidders, “including” means without derogating from the general application of the preceding word(s) or phrase, “knowledge” includes deemed knowledge after ordinary commercial diligence, and “written” includes by means of electronic correspondence. Unless otherwise specified or implied otherwise by context, in any Tender Document: (a)

“Affiliate” means a person controlling, controlled by, or under common control with another person, where “control” is defined as per subsection (g) below; (b) “bid” refers to the entirety of the documents described in Section 4 of the Invitation to Bid, as submitted to the Company by no later than the Submission Deadline and/or any part thereof, and is further deemed to include (i) any documents relied upon by inference, (ii) any documents or correspondence submitted in response to Company’s request, and (iii) any excess documentation which the Company, in its discretion, decides to include in accordance with Section 2 of these Terms; (c) regarding a bid which is split or which the Company may be entitled to split, the term “bid” may refer to that portion of the bid as may be applicable; (d) “bidder” means the party submitting a bid or interested in submitting a bid, as the case may be; (e) a “winning bid” means a bid selected by the Company or otherwise fitting for the award of contract, including that portion of a bid selected or fitting for award of contract, as per the terms of the Tender regarding split bids; (f) a “qualified bid” is a bid meeting all threshold conditions of the Tender (including the preconditions described in Section 3 of the Invitation to Bid), but excluding bids disqualified by the Company, and including bids accepted by the Company notwithstanding a flaw in the threshold conditions, when such disqualification or acceptance is done in accordance with the relevant provisions of the Tender and applicable law; and (g) a bidder’s “control group” means either of (A) one or more persons, entities, or ventures (“persons”), where one person controls, is controlled by or is under common control with the other person(s), “control” means the *de facto* ability, whether directly or indirectly, to direct a person’s activities (other than by mere exercise of a fiduciary duty), and possession of >50% of share capital or voting rights is presumed to comprise control, or (B) a syndicate of persons acting in any coordinated manner with regards to the Tender and/or the submission of bids.
- 2. No Modification.** If the bidder modifies, adds to, omits from, or makes any reservations or conditions to the Tender Documents in any way (any of the above, a “**Modification**”), the





Company may, at its sole discretion, act in accordance with any one or combination of the following options: (a) ignore the Modification(s), and require the bidder to meet its bid as if it had been submitted without such Modification(s); (b) accept any Modification comprising or implying an additional undertaking, representation or guarantee by the bidder as part of the bid, provided that such Modification shall not be considered in the comparison of bids or the award of contract; (c) disqualify the bid, in whole or in part; or (d) make any other decision that the Company may deem appropriate under the circumstances. The bidder represents that it is aware that the Company may take any of the actions described above, whether with respect to its bid or other bids, and irrevocably waives any claim or argument against the Company in such regard.

3. Amendments. (A) Amendment of bids. The Company may, in its uncontrolled discretion, allow a bidder whose bid is incomplete or flawed to amend, supplement or clarify its bid (including for the purpose of demonstrating the bidder's compliance with the threshold conditions), in such manner and under such conditions as may be determined by the Company in its discretion and in keeping with applicable law. The Company reserves the right to refrain from considering or to disqualify the bid of any bidder who refrains from providing the Company with required information in a timely fashion or who provides inaccurate information. Each bidder is required, without delay, to update the Company in writing regarding any change that may occur, if and when such change occurs, in the information delivered to the Company at any time from the Submission Date until the date of publication of the Company's decision regarding the award of contract, and if it is awarded contract, until the execution of the Contract. Failure to provide such update in writing shall be deemed a representation by bidder that no such change has occurred. (B) Amendment of Tender. The Company may, at any time, at its discretion, amend or modify the Tender Documents, whether or not such amendment or modification has been suggested by a bidder (including but not limited to by means of a Notice to Bidders as defined in Section 5.4 of the Invitation to Bid), provided that reasonable advance written notice has been given to all of the bidders in the Tender, and provided further

that bids already submitted may be amended in response to such amendment or modification, by an amending Submission Email in accordance with the Submission Protocol of Section 10 below.

4. Disqualifications. The Company reserves the right, in its discretion, to disqualify any bid if and to the extent such disqualification is mandated or allowed under the Tender Documents (including the Invitation to Bid and these Terms) and/or applicable law. Without derogating from the generality of the foregoing, it is clarified that the Company may, in its discretion, disqualify without additional cause: (a) any bid making a Modification to the Tender Documents; (b) retroactively, the bid of a bidder receiving award of contract, if such bidder fails to sign the Contract within 7 (seven) days of notification of award; (c) the bid of a bidder with whom the Company has had negative experience in a previous engagement, including an engagement in progress or a completed project. For the purposes of this section – "negative experience" shall include, inter alia: any dissatisfaction with the supply of goods or non-compliance with the required standards, non-compliance by the bidder with its obligations, including regarding meeting schedules, quality of goods, unreasonable claims, delays in the supply of goods not approved by the Company, any breach of undertakings or any legal provisions throughout the supply of goods, any suspicion of fraud, and/or other significant matters; (d) any bid whose price quote deviates significantly from the estimated or average estimated price quote for the Tender made prior to the inspection of bids (whether by Company or any of its advisors or agents) for the purpose of evaluating the competitiveness of bids (the "Estimate"), notwithstanding the Bid Score which such bid would otherwise have achieved; (e) any bid which may create a conflict of interest with other engagements of the bidder; (f) two or more bids which, in the Company's opinion, may be reasonably considered as Multiple Bids or are the substantial or commercial equivalent of Multiple Bids; (g) any bid, submitted by a bidder who is not an Affiliate of the bid's proposed Manufacturer, if that same proposed Manufacturer (or an Affiliate thereof) has submitted its own bid directly, in which case the Company shall be entitled (in its discretion) to see such submitting Manufacture or Affiliate as





bound by its bid as per the price quote of the bidder so disqualified; (h) a bid which does not clearly indicate that it is for the supply of Goods manufactured by a single Manufacturer meeting the requirements of Sections 3.7 and 3.8 (or two or more Manufacturers who are Affiliates of each other, and each of which meets such requirements); (i) a bid submitted in a manner which does not conform to the Submission Protocol described in Section 10 of the Invitation to bid, or whose receipt was not verified by phone conversation as described therein; (j) the bid of any bidder who refrains from providing the Company with required information in a timely fashion or who provides inaccurate information; (k) a bid in which a false, fraudulent, or misleading representation is made with knowledge of a bidder and/or its authorized representatives; (l) a bid regarding which the Company has, in its reasonable opinion, reason to suspect a fact contrary to the representations expressed in paragraphs 21 or 22 of the Bidder's Declaration (Annex B); (m) any bid which is incomplete, mistaken, or based on any incorrect assumption or misunderstanding regarding the Tender; or (n) any bid which would otherwise have been granted award of contract, under special circumstances only and for reasons which the Company shall commit to writing, after having given the relevant bidder reasonable opportunity to present its case. The aforesaid does not derogate from the Company's right to waive or correct technical flaws or any error or oversight which may occur in good faith, pursuant to the provisions of applicable law.

5. Right to Examine Tender Results. Bidders may examine the Tender results, in accordance with the Mandatory Tenders Regulations, 5753-1993 (the "**Regulations**"), for a non-refundable fee of either NIS 1,000, USD 285, or € 260, to be paid to the Company together with the examination request, which request must be received at the Company's office by no later than 30 days from publication of award of contract, or notice to a non-winning bidder of non-award of contract or disqualification, as the case may be.
6. Currency. The bidder's price quote may be provided in NIS, USD or Euro; however, if prices are quoted by an Israeli bidder in a currency other than NIS, the Company will reserve the right to make payment to such Israeli bidder in NIS in

accordance with the exchange rate current on date of invoice, as provided in the invoicing and payment terms of the Contract. A price quote expressed in a currency other than NIS, USD or Euro will be considered a Modification, and the terms of Section 2 above will apply. If price quotes are expressed in multiple currencies, the Company may, at its sole discretion, deem the quote to have been provided in any of the currencies so expressed. A price quote expressed as a number without any legible expression of currency will be deemed as if expressed in NIS.

7. Tax. It is clarified that each price quote is inclusive of all costs, expenses and tax (including VAT) associated with the provision or delivery of the Goods or fulfilment of any other condition of the Contract. If and to the extent that Israeli VAT applies to the provision of the Goods, the bidder may indicate such Israeli VAT as a separate item in each relevant price quote. In such case, that bid's "quote price" (for purpose of comparison of bids and determination of the Bid Score) shall be considered to be the amount of the bid before Israeli VAT and, if such bidder wins award of contract, Israeli VAT must be included as a separate item in each Invoice issued under the Contract. If, at any time and for whatever reason, the Company determines in its reasonable opinion that Israeli VAT applies to any bid which did not indicate Israeli VAT as a separate item, the Company may unilaterally amend the amount of that bid's quote price such that the amended quote price, after the addition of Israeli VAT, is equal to the putative price quoted in such bid; however for purpose of comparison of bids and determination of the Bid Score, the Company may – in its discretion – consider either of such values to be the bid's "quote price". In this Section 8, "**Israeli VAT**" means value added tax under the Value Added Tax Law, 5736-1975, at the rate which, as per the law in force on the Submission Deadline, will be the current rate on a contemplated Delivery Date; and "**VAT**" means any tax imposed by a governmental authority of any other jurisdiction in a manner similar to Israeli VAT.
8. Liquidated Damages. Without prejudice to other rights or remedies, the Company may demand liquidated damages as described herein (the "**Liquidated Damages**") if: (a) a bid is withdrawn during its period of validity; (b) a winning bidder repudiates its undertaking to be



bound by the provisions of the Contract in accordance with its bid; (c) a bid is disqualified on grounds of a false, fraudulent or misleading representation; the Company has determined, in a reasoned opinion, that a reasonable suspicion contrary to the representations expressed in paragraphs 21 or 22 of the Bidder's Declaration (Annex B) exists or has arisen. The amount of Liquidated Damages shall be the greater of: (x) € 30,000; or (y) if the cause for Liquidated Damages gives rise to the disqualification of a bid which would have been the winning bid at a lower price than the replacement bid, the difference between the breaching bidder's bid and the replacement bid. The Company will be entitled to recover the Liquidated Damages in any manner allowed by applicable law, including by right of set off against any obligation to such bidder, whether by virtue of this Tender or any other past or future tender, agreement or understanding.

9. Confidentiality. By submitting its bid, each bidder undertakes to be irrevocably bound by the confidentiality provisions of the Contract, effective as of the Submission Date, which shall apply to all stages of the Tender, *mutatis mutandis*, whether or not such bidder receives award of contract, and whether or not its bid is considered to be a qualified bid.
10. Information and Disclosure. Together with submission of its bid, a bidder may provide a reasoned statement clearly specifying which parts (if any) of its bid constitute, in its opinion, a trade or professional secret which is not to be made available for examination by other bidders. If no such statement is provided, or if such portions of the bid are not clearly and specifically marked, the Company shall be entitled to make the entire bid available for the examination of other bidders. It is clarified that a bidder who marks certain parts of its bid as a trade secret, by so doing waives its rights to examine the corresponding parts of other bids. Nothing in the aforesaid shall be interpreted as any obligation or undertaking by the Company to treat any information as confidential and/or to prevent exposure of such information, if and to the extent such obligation or undertaking would conflict with any applicable law requiring disclosure of information, including without limitation the Freedom of Information Law, 5758-1998 (the "**Applicable Information Laws**"). Each bidder

recognizes that Applicable Information Laws may require disclosure of information contained in the bid and/or otherwise related to the Tender, and waives in advance any claim or argument pertaining to a disclosure deemed necessary or advisable by Company for compliance with Applicable Information Laws, including if its entire bid or any part thereof is made available thereby for the examination of other bidders and/or competitors. Each bidder further agrees that if the Company is of the opinion that there is concern as to whether it may disclose any information as per a bidder's requests to be disclosed, the Company may, to the maximum extent permitted by law, refrain from disclosing any such information, so long as no court order has been issued requiring such disclosure.



**Annex B – Bidder’s Declaration**

To: Energy Infrastructures Ltd / Oil Products Pipeline Ltd (the “**Company**”)  
3 Hasadnaot,  
Herzliya  
ISRAEL

*By an Electrically Signed Attachment by email to:* [tender778-22@pei.co.il](mailto:tender778-22@pei.co.il)

**OR**

***By physical deposit by hand, in a sealed envelope, in the special-purpose tender-mailbox, on the first floor of the Company's offices at: Energy Infrastructures Ltd / Oil Products Pipeline Ltd, 3 Hasadnaot, Herzliya, Israel***

Re: Bidder’s Declaration for Public Tender No. PD22000636 (this “**Declaration**”)

The undersigned, [full company name]\_\_\_\_\_, domiciled and organized under the laws of [jurisdiction]\_\_\_\_\_, with offices at [street address]\_\_\_\_\_, [city, state/province, postal code] \_\_\_\_\_, [country]\_\_\_\_\_ (“**we**”) does hereby confirm, represent and undertake as follows:

1. We have read and thoroughly understood the provisions of all of the documents of “Public Tender No. PD22000636: Invitation to Submit Bids”, including the annexes thereto and this Declaration (the “**Tender**”, and such documents, the “**Tender Documents**”). Terms in this declaration, unless otherwise defined, have the meaning ascribed to those terms in the Tender Documents.
2. We agree to and accept all provisions of the Tender, as expressed in the Tender Documents, and we hereby waive any claim with respect to the Tender other than as specifically allowed for therein.
3. We agree and consent that our bid (including this Declaration) will be submitted electronically as one or more Electronically Signed Attachment(s), as per the Submission Protocol, and that any binding correspondence with the Company regarding the Tender may be conducted by electronic transmission.
4. We acknowledge that the Company may disclose any or all information contained in our bid and/or otherwise provided by us, if the Company deems such disclosure to be allowed or required under the terms of the Tender, or necessary or advisable for compliance with Applicable Information Laws or other applicable law, including if our bid is made available thereby for the examination of other bidders and/or competitors.
5. We engage on an ongoing basis in the manufacture and/or import, export or supply of the Goods described in the Tender, and we meet all threshold conditions of the Tender. If our bid is selected as per the procedures and conditions described in the Tender, we undertake to supply the Goods as defined in the Technical Specifications and Bill of Quantities, new and manufactured by the Manufacturer(s) indicated thereby, in consideration of our price as



quoted therein, in the quantities provided therein and/or as may be amended, in accordance with the terms of the Tender and the Contract.

6. We understand and agree that upon receiving notification that our bid has been selected as a winning bid, we will be automatically bound by the terms, conditions, and undertakings of the Contract (with Effective Date of date of such notification, regardless of when or whether the Contract is signed). Upon such notification, we agree to execute and deliver the Contract to the Company as per the terms of the Tender and the particulars of our bid, and we acknowledge that should we fail to do so, our bid may be disqualified retroactively.
7. We understand that the default commercial terms of the Contract are CIF (Incoterms 2010) port of Ashdod, and that, unless we have clearly written the words “DDP Terms” on the Bill of Quantities: (a) our bid will be considered an undertaking to arrange CIF delivery such that Goods are actually received at Ashdod port by no later than 90 days following our notification of award; and (b) our bid will not receive the advantage of a bid submitted under DDP Terms in calculating our bid’s Bid Score.
8. If we have written the words “DDP Terms” on the Bill of Quantities, this indicates that: (a) we understand that the DDP Terms, although based upon DDP (Incoterms 2010), are not entirely equivalent thereto, but rather additionally include unloading the Goods into the Company’s warehouse at the Final Destination (Ashkelon site), with any associated cost, risks and logistical burden borne by us exclusively, all as described in the Contract; (b) we undertake, should our bid be selected by the Company as a winning bid, to supply the Goods as per the DDP Terms to Company’s warehouse at the Final Destination, by no later than 85 days Period following our notification of award; and (c) we understand that in considering our bid, the Company will be placing special reliance on our agreement to the DDP terms.
9. Our quoted price is as indicated in our bid, and we understand that all conditions regarding payment (including but not limited to invoicing, currency, and the events and/or dates upon which payment is due) shall be in accordance with the Contract as per our bid, and we do not and shall not request any other manner or form of payment or consideration.
10. We understand that this bid may not be cancelled or revoked and is valid for 45 days from the Submission Deadline, and that withdrawal of our bid may result in Liquidated Damages. We further understand that the Company may require us to either extend the validity of our bid in order for our bid to remain under consideration.
11. We understand that our bid comprises a representation that we meet the criteria set forth in Section 3.7 of the Invitation to Bid, that each Manufacturer referenced in our bid meets the criteria set forth in Section 3.8 of the Invitation to Bid, and that all documents submitted with our bid in this Tender (including documents submitted previously and referred to in this bid), including the undertakings, confirmations and acknowledgments made or described therein or herein, are true, valid, and of continued effect in all material ways, unless otherwise indicated in our bid, and are deemed repeated until notification of the award of contract, unless and to the extent updated by written notice as per the Terms of Tender.





12. To the best of our knowledge, neither (a) submission of our bid according to the terms of the Tender nor (b) entry into or performance of the Contract, if and to the degree our bid is selected, would create a personal or business conflict of interest for any of us, our officers, our agents or our employees who are, have been or would be involved in the bid or performance of the Contract.
13. We undertake to keep confidential any information that may be disclosed, delivered or become known to us in the course of our dealings and undertakings with the Company regarding the Tender, other than information which (a) is or becomes public domain without fault of us, our directors, agents or employees, (b) reflects general knowledge or experience in our field of business or expertise, or (c) we are permitted to disclose by virtue of an explicit provision of the Tender or the Company's prior written approval. We shall not use, disclose, publish or otherwise allow for exposure of such information as described above to any person by any means whatsoever, without the Company's prior written consent on a case-by-case basis. In the event that our bid is selected, we will also ensure that our employees and any person who provides services on our behalf in any matter regarding the Tender or the Contract shall fulfill the provisions of this undertaking, and shall be bound by confidentiality covenants no less strict than the same.
14. These representations, understandings and undertakings are not exhaustive, and shall not be interpreted to derogate and or impair the full force of all provisions of the Tender and the Contract, including the Terms of Tender and the general Terms of Contract.
15. We are aware that in accordance with Section 6 of the Invitation to Bid, the Company may elect to split the award of contract for Goods *within a single group* between one or more bidders, in which case an adjustment surcharge of \_\_\_\_% apply to each item ordered. We recognize that if and to the extent the Company awards contract for *different groups* of Goods to different bidders, or if the surcharge blank in this paragraph is left blank or is illegible, our bid will be split with no additional surcharge.
16. If we are a person resident or domiciled in Israel, organized under the laws of Israel, or registered in the Companies Registrar or other registry of the Corporations Authority of Israel, then the following representations are included in this our Declaration:
  - 16.1. We are eligible to participate in the Tender and enter into the Contract in accordance with the relevant provisions of Israeli law concerning transactions with public bodies; we have a valid approval pursuant to the provisions of the Public Bodies Transactions Law, 5736-1976; we are registered in any registry as may be required by law and hold all licenses as may be required by law with respect to the subject matter of Tender, and if there is an official Israeli standard (within the meaning thereof in the Standards Law, 5713-1953) on the subject matter of the Tender, the we meet the requirements of such standard.
  - 16.2. Neither we nor any of its directors or officeholders have been convicted of a crime involving moral turpitude ("עבירה שיש עמה קלוני"), or if any of the above has ever been so convicted, at least 7 years have passed since the complete serving of that person's sentence; and no indictment for a crime involving moral turpitude has been served or is pending against any such individual.





- 16.3. There is no possible conflict of interest, whether direct or indirect, between the affairs of the bidder and or any interested party ("בעל עניין") of the bidder, and the execution of the works and/or fulfilment of the covenants described therein by the bidder or a person acting on bidder's behalf.
17. We affirm and represent that, either:
- (a) we are an Affiliate of a Manufacturer who meets the criteria of Section 3.7 of the Invitation to Bid, and regarding whom paragraph 18 of this Declaration applies; or
  - (b) from November 6, 2017 to present, we have successfully supplied pipe conforming to the API-5L standard, with an aggregate minimum value of NIS 17,800,000, USD 5,125,000 , or € 5,050,000.
18. To our best commercial knowledge, the Manufacturer proposed in our bid has successfully supplied, from November 6, 2017 to present, pipe manufactured according to API-5L in an aggregate value of not less than € 7,600,000.
19. The manufacture of all pipe which the Manufacturer shall supply pursuant to the Tender shall take place at the production facility operated by Manufacturer at the location detailed in Appendix B hereto, which specific production facility either: (a) is located in an EU or OECD member country; or (b) is an Approved Production Facility.
20. Unless indicated otherwise as per Section 4.4 of the Invitation to Bid, the coating of all pipe aforementioned will be performed either at the facility aforementioned, or by the Manufacturer's authorized subcontractor named in Appendix B hereto, at the facility and location described therein, which facility is located in either an EU or OECD member country. If such indication as per Section 4.4 has been made, we represent that either we or our authorized contractor named in Appendix B hereto will perform the coating process in an EU or OECD member country in accordance with the Technical Specifications.
21. Neither we nor any of our officers, agents or employees were involved in any attempt to dissuade any competitor from submitting bids in this Tender, or to submit a bid with a higher or lower Bid Score than our bid, or to cause an uncompetitive bid to be submitted. No part of this bid is the result of or arose from any arrangement or negotiations with any competitor, or any bidder or potential bidder in this Tender, nor was any such competitor, bidder or potential bidder consulted with or involved in the preparation of our bid, and we have not and shall not share our bid with any such person.
22. Neither we nor any of our officers, agents or employees have: (a) offered, given or received (whether directly or indirectly) any money, benefit, asset or item of value with the direct or indirect aim to affect any decision, act or omission of the Company and/or any person acting on the Company's behalf; (b) attempted to solicit, cooperate or communicate with any officer, agent or employee of the Company (whether directly indirectly) with the aim of directly or indirectly obtaining any information



relating to the Tender that has not been made available to all bidders; or (c) attempted to solicit, cooperate or otherwise communicate with any person (whether directly or indirectly), with the aim of fixing or quoting prices in any artificial and/or uncompetitive manner.

23. We acknowledge and agree that if, in Company's reasonable opinion, a reasonable suspicion arises contrary to the representations expressed in paragraphs 21 or 22 above, then the Company shall have the right, acting in its sole discretion and without derogating from any right or remedy otherwise available, to: (a) disqualify our bid; (b) cancel the Contract if awarded; (c) claim Liquidated Damages as per Section 9 of the Terms of Tender; (d) exclude us from any tender or procurement process regarding which such suspicion may arise, or in connection with any individuals involved in such suspicion; and/or (e) take any combination of the actions aforementioned, and/or any other act which the Company deems necessary or advisable under the circumstances.
24. The individual signed below is authorized to make this Declaration and submit this bid on our behalf. This Declaration when so signed, and our bid submitted therewith, are and shall be legally enforceable under the laws of our jurisdiction in accordance with their terms, without need for any further approval or authorization, and do not and shall not create or constitute any conflict with any agreement to which we are a party, or any of our governing documents, nor will the execution of this Declaration or the submission of our bid result in any such conflict.

IN WITNESS WHEREOF, our duly authorized representative has made this declaration on our behalf, and affixed his or her signature and our stamp below:

Name of Bidder: \_\_\_\_\_

By: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_

I, the duly authorized representative of the bidder whose signature appears above, am familiar with the English language and fully understand the content of this Declaration, and have received legal advice regarding its content on the bidder's behalf, to the extent deemed appropriate by the bidder. The signature appearing above is my signature and the contents of this declaration are true.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date



### Authentication

**Note:** Israeli bidders **must** authenticate this declaration by certification of a currently licensed Israeli lawyer according to the form provided below.

**Non-Israeli bidders may, alternatively, authenticate this declaration in a form and manner customary for authentication of documents or affidavits in their home jurisdiction, such that the non-Israeli bidder is satisfied that a person making such declaration falsely would be subject to punishment for perjury or other similar criminal offense in their home jurisdiction, and submission of this Declaration (however submitted by such non-Israeli bidder) constitutes that bidder's representation to the Company that this is the case.**

**Apostille is not required.**

I the undersigned, \_\_\_\_\_, Adv., License No. \_\_\_\_\_, do hereby confirm that \_\_\_\_\_ {who identified him/herself by I.D. No. \_\_\_\_\_ / with whom I am personally acquainted} appeared before me at \_{location} \_\_\_\_\_, Israel on \_{date} \_\_\_\_\_ and, after I warned him/her to tell the truth, failing which s/he would be subject to the penalties prescribed by law, did confirm the veracity of and signed his/her declaration above in my presence.

\_\_\_\_\_  
Signature and Stamp



**Annex B: Bidder's Declaration**

**Appendix A: Bidder's experience in the sale of pipe conforming to API-5L standard  
(condition number 3.6)**

To document the fulfillment of the condition set forth in Section 3.6 of the Invitation to Bid, and in accordance with paragraph 18(b)(ii) of the Bidder's Declaration, the following chart should be completed, followed by the accompanying declaration:

Name of Customer	Project Details	Year/ Period of Engagement	Value of Engagement (amount and currency)	Contact person + telephone

The undersigned, being the bidder's duly authorized representative for purposes of this declaration, does hereby declare and represent in the bidder's name that the information supplied in the chart above is true and accurate in all material respects.

\_\_\_\_\_  
Signature and stamp of bidder

\_\_\_\_\_  
Name of signatory

\_\_\_\_\_  
Position



**Annex B: Bidder's Declaration**

**Appendix B: Details of Manufacturers and coating contractors**

The following chart documents the proposed Manufacture and coating facilities and locations, in accordance with paragraphs 19 and 20 of the Bidder's Declaration:

Group 1 – seamless pipes

Name of Manufacturer	
Location of facility (city/region)	
Location of facility (country)	
Circle one option:	(a) Facility is located in an EU or OECD country; or (b) Facility is an Approved Production Facility
Name of contractor performing coating (if different than Manufacturer)	
Location of coating facility (EU or OECD country)	
Coating contractor's relationship to Manufacturer and/or bidder	

Group 2 – welded pipes

Name of Manufacturer	
Location of facility (city/region)	
Location of facility (country)	
Circle one option:	(a) Facility is located in an EU or OECD country; or (b) Facility is an Approved Production Facility
Name of contractor performing coating (if different than Manufacturer)	
Location of coating facility (country)	
Coating contractor's relationship to Manufacturer and/or bidder	

The undersigned, being the bidder's duly authorized representative for purposes of this declaration, does hereby declare and represent in the bidder's name that the information supplied in the chart above is true and accurate in all material respects.

\_\_\_\_\_  
Signature and stamp of bidder

\_\_\_\_\_  
Name of signatory

\_\_\_\_\_  
Position





**Annex C: Form of Manufacturer's Declaration**Public Tender No. PD22000636 (the "**Tender**")

The undersigned, \_\_\_\_\_, a *\_[type of entity]* \_\_\_\_\_ registered and domiciled in *\_[jurisdiction]* \_\_\_\_\_ (the "**Manufacturer**"), does hereby represent and declare to Energy Infrastructures, Ltd. (the "**Company**"), with respect to that certain Tender by which the Company has invited bids for procurement as described therein, that the Manufacturer has successfully supplied, from November 6, 2017 to present, pipe manufactured according to API-5L in an aggregate value of not less than € 7,600,000. The individual undersigned is authorized to make this declaration on the Manufacturer's behalf, and this declaration shall become a valid obligation of the Manufacturer, enforceable in accordance with its terms, upon execution by such individual, with no need for any further action or approval.

Name of Manufacturer: \_\_\_\_\_

Signature:   x  \_\_\_\_\_

By (name of authorized signatory): \_\_\_\_\_

Position: \_\_\_\_\_

**Confirmation**

I, \_\_\_\_\_, am a certified public accountant licensed in *\_[jurisdiction]* \_\_\_\_\_, engaged by the Manufacturer making the declaration above, do hereby confirm that the declaration aforementioned is true and accurate in all material respects, as per the financial information of said Manufacturer under my review.

\_\_\_\_\_  
Signature of accountant\_\_\_\_\_  
Printed Name\_\_\_\_\_  
License no.

Annex F: the ContractAgreement for the Supply of Goods

Contract No. PD22000636

This agreement for supply of goods (this “**Agreement**”) is entered effective as of the \_\_\_<sup>th</sup> day of \_\_\_\_\_, 2022 (the “**Effective Date**”), by and

between: **Energy Infrastructures Ltd. / Oil Products Pipeline Ltd.**

of 3 Hasadnaot St., Herzliya,  
ISRAEL  
(the “**Company**”)

of the first part;

and:

\_\_\_\_\_ St.  
\_\_\_\_\_ (country)  
(the “**Supplier**”)

of the second part;

each a “**Party**” to this Agreement, and together, the “**Parties**”.

**Whereas:** pursuant to that certain tender for the procurement of goods known as Tender No. PD22000636 (the “**Tender**”), the Company wishes to purchase from the Supplier certain goods as described herein and further specified in the bill of quantities attached hereto as Appendix A (the “**Bill of Quantities**”) and the technical specifications attached hereto as Appendix B (the “**Technical Specifications**”), which shall be Manufactured by the Manufacturer(s) indicated therein, all as further described below (the “**Goods**”); and

**Whereas:** the Supplier wishes to supply the Goods to the Company, as specified and in accordance with the terms and conditions of this Agreement;

Therefore, the Parties hereby declare, represent, agree and covenant as follows, with intent to be legally bound by the same:

### 1. General

This Agreement may be referred to as Contract No. PD22000636. This Agreement is subject to the terms of contract attached as Appendix C hereto (the “**General Terms**”), and such terms, as well as the recitals hereto, comprise an integral part hereof, and are definitive regarding the terms and conditions of this Agreement. Terms used herein and in the General Terms, if not defined otherwise have the same meaning ascribed to those terms in the Tender and/or the Tender Documents to the extent defined therein.



## 2. Supply of Goods

- 2.1. The Supplier undertakes to supply Goods conforming to the Technical Specifications, as described in the Bill of Quantities and as per the Lead Time Period(s) described therein, { *CIF (Incoterms 2010) to port of Ashdod / as per the DDP Terms* (the “**Destination Port**”)}, by no later than one Lead Time Period following the winning bidder’s notification of award (the “**Delivery Date**”).\*
- 2.2. To the greatest extent practicable, the Goods will be delivered in a single shipment. If and to the extent that a variety of Lead Time Period(s) and/or Manufacturer(s) renders a single shipment impracticable, the Goods may be supplied in multiple shipments, to be coordinated by advance agreement between the Parties (such single shipment or agreed multiple shipments, the “**Shipment(s)**”).
- 2.3. The Company reserves the right if necessary, at any time and under the appropriate circumstances, to amend the quantity of any item in the Bill of Quantities (including items listed in the Option), by written notice given reasonably in advance to Supplier as it may see fit, without further adjustment to the quoted price per unit.
- 2.4. The Supplier will not be entitled to make a partial supply of any Shipment, unless under special circumstances and subject to prior written approval by the Company with respect to such partial supply. In case of a partial supply without the Company’s prior written approval, the Company is entitled, without prejudice to any other right or remedy to take possession of the Goods delivered as if partial supply were allowed.
- 2.5. { *This paragraph 2.5 will appear in the Contract only if the bid was submitted under DDP Terms, as per Section 2.9 of the Invitation to Bid.* } In this Agreement, “**DDP Terms**” means commercial terms based upon DDP (Incoterms 2010) for delivery to the Destination; *provided that* (notwithstanding any Incoterms provision to the contrary) “**delivery**” shall include the unloading of all relevant Goods at the Destination, after prior coordination with the Company, with all associated cost, risk and logistics borne by the Supplier.

“**Destination**” in this Section 2.5 and throughout this Agreement means the Company’s warehouse located at the Company’s site indicated for each item in the Bill of Quantities, or any other warehouse, location, site or installation which the Company may specify in its discretion by reasonable advance notice, provided that if delivery to such Destination involves significantly greater cost to Supplier

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\* Note for Public Tender PD22000717: In Section 2.1 as well as in and Sections 5.4 and 6.1 below, the Contract will include the relevant italicized words contained in the parentheses { *CIF/DDP Terms* }, depending on whether DDP Terms have been indicated as per Section 2.9 of the Invitation to Bid. It is further noted that Section 2.5 will appear only if the bid was submitted under DDP Terms as described above; and Section 3.7 will appear only if the bid indicates, as per Section 4.4 of the Invitation to Bid, that the coating process will be performed by the bidder and not the Manufacturer; otherwise, these Sections will be omitted and replaced with “[*Reserved*]”.



than delivery to the warehouse indicated in the Bill of Quantities, Company will compensate Supplier as per an independent estimate of such additional cost.

The definition of “delivery” above shall apply anywhere that “delivery” is referenced or implied by the DDP Terms and/or as referred to throughout this Agreement. For avoidance of doubt, “delivery” is deemed to occur only upon the final disposition and/or integration of the Goods, as per Company’s reasonable instruction, at the site of the Destination.

- 2.6. The Company shall have the option, in its uncontrolled discretion, to extend the scope of this Agreement to include the Goods indicated in the Bill of Quantities as “option”, by delivering written notice to the Supplier by 60 days following the Submission Deadline (i.e., on or before the November 6, 2022) (the “Option”). The Option may be exercised in full or in part. Subject to Section 2.2 above, delivery of the Option Goods will be in a single Shipment, to the greatest extent practicable. Upon exercise of the Option, items regarding which the Option is exercised shall be deemed Goods under these Agreement, and all terms, conditions and warranties described in this Agreement (including but not limited to terms of supply, Price, invoicing and payment, warranty of Goods, and the General Terms and Conditions), shall apply thereto.
- 2.7. Prior to transporting the Goods to the Destination Port, the supplier will be required to issue a work permit, and arrive at the Destination Port for the purpose of examining the area and coordinating the unloading. The coordination meeting will be held in the presence of the supplier's representative and the representative of the moving company.
- 2.8. The unloading of the Goods will be carried out by a crane operator and at least 4 employees. Before commencing the unloading process, the supplier’s employees will undergo a safety briefing by an inspector on behalf of the company.
- 2.9. The unloading process will be carried out at the location specified by the company’s representative.
- 2.10. After unloading, a representative of the company will sign the delivery note, confirming that the Goods have arrived at the Destination Port, and were delivered in good condition.

### **3. The Supplier’s Representations and Warranties**

The Supplier represents, warrants and undertakes as follows:

- 3.1. Supplier has read and examined this Agreement, including all documents attached hereto, such that all provisions, conditions, and specifications included hereby and thereby are known and clear to the Supplier.
- 3.2. Supplier has the knowledge, capability and experience to fulfil the terms of this Agreement and supply the Goods in the manner described herein and therein.
- 3.3. All conditions of the Tender described in Section 3 of the Invitation to Bid are and have been fulfilled, and all documents and/or written correspondence presented to the Company in the course of the Tender process have been duly



executed by their respective authorized signatories or agents, and are and continue to be valid, true and accurate in all material respects.

- 3.4. To the best of Supplier's knowledge after ordinary commercial diligence, the Supplier's representations in its bid regarding each Manufacturer and the manufacturing process of Goods delivered are accurate in all material respects.
- 3.5. All Goods delivered comply with the Technical Standards, and Supplier will forward, upon the Company's demand, documents attesting to compliance with such standard.
- 3.6. All Goods will be Manufactured by the Manufacturer(s) indicated in the Supplier's bid (and if a particular production site was indicated or relied upon in the Supplier's bid, at that production site), and will be of the type, quality, dimensions, material and processing specified in the Technical Specifications and/or any samples, models or instructions provided by the Company related thereto.
- 3.7. *{This paragraph will appear in the Contract only if the bid indicates, as per Section 4.4 of the Invitation to Bid, that the coating process will be performed by the bidder and not the Manufacturer.}* The coating process will be performed by the bidder in accordance with the Technical Specifications, in an EU or OECD member country, by the Supplier or Supplier's authorized contractor named in Supplier's bid. Supplier represents that it and/or such contractor (as the case may be) possesses the professional and technical experience, qualifications, equipment and knowhow required to perform the coating as per the Technical Specifications and in accordance with relevant good manufacturing practices, and the coating process shall be so performed

It is clarified that no deviation from the above will be regarded as *de minimis*, that each such deviation shall be regarded as a material lack of conformity in the Goods, and that, without derogating from any other right or remedy, the Company will be entitled to refuse delivery of and/or invalidate the receipt of any Goods delivered or supplied with such lack of conformity, or return such Goods to Supplier at Supplier's sole expense, even if no other non-conformity exists.

#### 4. **Warranty of Goods**

- 4.1. The Supplier is responsible for the quality of the Goods in accordance with the Technical Specifications, including all of the parts, components and accessories thereof, for a period of 24 months from the date of supply thereof (the "**Warranty Period**").
- 4.2. **It is clarified** that the Supplier will be responsible that all Goods supplied will undergo quality inspection tests, performed by a registered third party inspection agency,. The TPI program shall be part of the manufacturer procedure and will be submitted to approval by the Company.. For the removal of doubt, the Supplier will bear the entire costs of the aforementioned inspection tests.





- 4.3. Without derogating from any warranty by virtue of applicable law, in the event that any flaws, defects, faults or deficiencies are discovered in the Goods during the Warranty Period, which are not the result of Company's failure to follow manufacturer's instructions, or the willful or grossly negligent act or omission of the Company or a third party subsequent to the Goods' delivery (hereinafter: a "**Flaw**"), the following provisions shall apply:
- (a) The Supplier will be liable for any damage caused to the Company as a reasonably foreseeable result of any Flaw, *excluding* loss of profits, revenue or production, or other indirect or consequential damages.
- (b) The Supplier will be required as soon as practically feasible and at its expense, to repair any Flaw, or, upon the Company's reasonable demand, to replace any Flawed item with another new item with identical or superior quality and of the same function and technical specifications. Any such repair and/or replacement shall be carried out as soon as practically feasible, at the Supplier's expense and to the Company's full satisfaction.
- (c) If the Supplier fails to fulfill its undertakings as aforesaid, the Company will be entitled, without prejudice to any of its other rights, to repair or replace the Goods itself and to charge the Supplier with the expenses of the repair and/or replacement as aforesaid, and the Supplier will indemnify the Company for any such expense immediately upon demand, up to the maximum extent of the Liability Cap.
- 4.4. The Supplier will indemnify and hold harmless the Company, its officers, employees, agents and sub-contractors, for any damage or expense incurred, including with respect to demands or claims of third parties, resulting from a Flaw or other breach of this Agreement by the Supplier, including due to a delinquency in the date of supply and/or the supply of Goods which do not conform with the terms and conditions of this Agreement. The Supplier shall indemnify the Company immediately upon receipt of a demand in respect of the aforesaid, without derogating from any other remedy or right available to the Company in such case, up to the maximum extent of the Liability Cap.
- 4.5. Unless otherwise provided herein, neither Supplier nor its affiliates are liable for loss of profits, revenue or production, or other indirect or consequential damages. Total liability of Supplier and its affiliates (excluding fraud and willful misconduct) shall not exceed the total Price of the Goods (the "**Liability Cap**").
- 4.6. Except for the warranties contained in the General Terms and/or this Agreement, neither Supplier nor its affiliates makes any other warranties, expressed or implied, including the warranty of fitness for a particular purpose, merchantability or result.

## **5. Supervision and Inspection**

- 5.1. Without prejudice to any other terms and conditions of this Agreement, the Company's representative will be entitled to inspect the quality of the Goods and



their conformance to the terms described herein, prior to, upon or after receipt thereof, all at the Company's option and discretion.

- 5.2. The Company will not be charged for Goods found to be defective or inconsistent with the terms of this Agreement.
- 5.3. The inspections carried out by the Company's representative as aforesaid do not release the Supplier from its full responsibility as per the Supplier's representations and warranties.
- 5.4. Company is responsible to inspect all Goods upon their receipt at *{Ashdod port / the Destination}*, and will notify Supplier immediately of any defect or Flaw detected in the Goods upon such inspection. Any defect or Flaw which was not detected upon delivery must be reported to Supplier within a reasonable time after its discovery, including all relevant particulars and any relevant supporting documentation. Company is not entitled to rely upon any hidden defect or Flaw in the Goods, if Company did not give notice to Supplier specifying the nature of such defect or Flaw within a reasonable time after Company discovered or ought to have discovered such defect or Flaw.

## 6. Price

- 6.1. The price of the Goods (including delivery *{CIF to Ashdod port / as per the DDP Terms}*) will be as quoted in the Bill of Quantities (the "**Price**").
- 6.2. It is clarified that the Price is inclusive of all tax and expenses (including VAT, whether or not VAT is listed as a separate entry on the Invoice), and no adjustments to the Price will be made for any reason whatsoever, other than as provided in this Agreement.

## 7. Payment

- 7.1. The Supplier will submit an original written invoice to the Company, at any time subsequent to receiving the Company's written confirmation that all Goods pertaining to a particular Shipment have been delivered in full, as per the terms of this Agreement to the Company's satisfaction (an "**Invoice**").
- 7.2. The amount and currency indicated on the Invoice must be equal to the Price relevant to that Shipment, after deduction of any advance payment received and subject to any duly exercised right of set-off (such amount, when duly invoiced as described herein, the "**Invoiced Amount**").
- 7.3. The Company shall pay the Invoiced Amount of each Invoice conforming to the terms of this Agreement, by either (a) a bank transfer which shall be executed by no later than 30 days following the end of the month in which an Invoice is actually received (Net 30 EOM) (the "**Payment Date**") or (b) by way of an irrevocable letter of credit acceptable to the Company and its bank, executed by the Supplier and delivered simultaneously herewith.



- 7.4. The Supplier may demand advance payment for up to 20% (twenty per cent) of the Price of this Agreement or the Price of any Shipment, against receipt by the Company of an original Bank Guarantee for such amount, payable no later than 30 days following the receipt of such Bank Guarantee. The balance will be paid as described in Section 7.3 above.

## **8. Safety Instructions**

- 8.1. For each violation of a safety provision, the supplier will compensate the Company in the agreed sum of NIS 1,500, and cumulatively up to the sum of the bank guarantee. In addition, in the case of a substantial safety violation, the Company may fine the supplier by an increased sum regarding a single violation, up to the sum of the bank guarantee, at its sole discretion and the supplier will have no claim in the matter.
- 8.2. Without derogating from the generality of the aforesaid, it should be noted that the company views safety violations as a substantial violation of the agreement: smoking in the Company's facilities, using a mobile phone in an operating area, non-compliance with the work permit or operating permit, using fire without a permit, work at height without a permit or, allowing an employee without prior safety training, Crane / Manitou / JCB work without tools insurance or without a suitable operating license or without surveys required by law, change of the operational status of systems without a permit, excavation without a permit given by all relevant factors, regarding the lack of infrastructure in the route.
- 8.3. It is clarified that the Company reserves the discretion to determine that additional safety violations constitute a substantial breach of the Agreement, in accordance with the provisions of this section.
- 8.4. Without derogating from any other method of collection, the company may deduct the amount of compensation from any sum that is in its possession and that is due or that will be due to the supplier and/or collect it by executing the bank guarantee. The payment of compensation or deduction of the amount of compensation will not relieve the supplier from any obligation or liability applied to him according to this agreement or according to law.
- 8.5. In addition, without derogating from the aforesaid or any other provision in this agreement and the rest of the company's benefits under any law and under the agreement, it is clarified that violation of safety provisions by the supplier will entitle the company to an agreed compensation of NIS 1,500. The parties view that this amount reflects the immediate minimum damage that will be caused to the company as a result of a breach of these provisions, and does not depend on any proof of damage.
- 8.6. It is clarified that this section does not derogate from the company's rights according to this agreement and under any law in the event that a breach of safety provisions caused damage or delay in the supply of the Goods, and such case will be dealt with in accordance with the agreement and law in this matter.



8.7. The Company may execute the bank guarantee for the purpose of collecting the agreed compensation under this section and/or deduct the agreed compensation from payments due to the supplier according to this agreement, at its sole discretion.

*[signature page follows]*



In witness whereof, the Parties have hereto set their hands and executed this Agreement, effective as of the Effective Date:

**THE SUPPLIER**

**THE COMPANY**

\_\_\_\_\_

\_\_\_\_\_

By (name): \_\_\_\_\_

By (name): \_\_\_\_\_

Position: \_\_\_\_\_

Position: \_\_\_\_\_

The following Appendices are considered attached hereto and form an integral part hereof:

Appendix A: Bill of Quantities [reference to Annex D of the Tender Documents]

Appendix B: Technical Specifications [reference to Annex E of the Tender Documents]

Appendix C: General Terms and Conditions of Contract





## Annex K: the Contract

### Appendix C: General Terms and Conditions of Contract

1. The terms and conditions provided herein (these “**Terms**”) govern the contract or agreement to which they are attached (such contract or agreement, including any annexes or appendices thereto, the “**Contract**”), between Energy Infrastructures Ltd. and/or Oil Products Pipeline Ltd. (the “**Company**”) and the supplier of goods named therein (the “**Supplier**” and the “**Goods**”, respectively). The Supplier and the Company are the parties to the Contract (the “**Parties**”), to the exclusion of benefit to any third party unless explicitly provided otherwise in the Contract. These Terms are incorporated into and comprise an integral part of the Contract. In the event of any conflict between these Terms and the Contract, these Terms shall prevail, unless and to the extent provided specifically otherwise in the Contract.

1A. In the Contract, an “affiliate” of a person means any person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person. For the purposes of this definition, “control” when used with respect to a person means the *de facto* ability, whether directly or indirectly, to direct the management or activities of such person directly or indirectly (other than by mere exercise of a fiduciary duty), and possession of >50% of share capital or board or shareholder voting rights is presumed to comprise control; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

2. Delivery will be in accordance with the relevant commercial terms and/or acronym(s) provided in the Contract. Notwithstanding, it is understood that any date of delivery described in the Contract (a “**Delivery Date**”) means the date of actual delivery to the port, terminal or other location described or implied therein (the “**Destination**”), such that “delivery” as per the relevant commercial term or acronym must take place by a time at which the Goods would be expected to arrive at the Destination by no later than the Delivery Date, accounting for reasonably foreseeable contingencies; and the extent of any “lateness” or “delay” in delivery shall be presumed to be equal to the actual delay from the prescribed Delivery Date until actual receipt of Goods at Destination, unless and to the extent proven otherwise by competent evidence. Goods supplied to a location other than the Destination without prior coordination with the Company shall be considered undelivered. For purposes of invoicing,

“delivery” is deemed to occur only upon the actual receipt of Goods at the Destination together with all relevant documentation, including documents mentioned in the Technical Specifications; or (in case of loss in transit under CIF, CFR or similar terms), 30 days following a loss, provided that Supplier has cooperated with Company’s reasonable requests for information and assistance in filing the relevant insurance claim(s). This paragraph 2 applies only to the extent that the definitions and/or interpretations of the terms quoted herein do not conflict with terms provided in the main body of the Contract.

3. Goods will be delivered new as manufactured, in accordance with the Contract and any technical specifications provided thereby, together with any certificates of quality, manufacture and/or inspection which are either: (a) mentioned in the Contract and/or the technical specifications thereto; or (b) reasonably requested by the company. Goods will be delivered free of any right, claim or encumbrance of any third party and, without prejudice to any right or remedy which the Company would otherwise enjoy, the mere existence of any such right, claim or encumbrance shall be sufficient to deem the Goods as not having been delivered.

4. In case of late delivery, liquidated damages will be assessed in the amount of 0.5% of the price stipulated for a particular Shipment or order for each week of delay, up to a maximum amount of 5% of such stipulated price, *provided that* such delay exceeds seven (7) calendar days. At any point where a delay either exceeds 30 days, or would give rise to a right of termination under applicable law, the Company may unilaterally terminate the entire Contract (or, in Company’s discretion, the delayed order or Shipment alone) by written notice to Supplier, provided that Supplier is given reasonable opportunity (up to 30 days) to remedy the delay. In case of any termination resulting from delay, Supplier will pay liquidated damages for the period of delay up until the effective date of termination. ***It is clarified that regarding any proposed or future relationship between the Company and Supplier and/or its affiliates, the Company may take into consideration any delay in delivery of the Goods and/or any material defect or non-conformity discovered in the Goods upon delivery, including the possibility of excluding or limiting Supplier from future tenders or other commercial***



*relationships on the basis of negative past experience, to the fullest degree allowed under applicable law.*

5. If and to the extent a “**Bank Guarantee**” is referenced in the Contract, such term is defined to mean an autonomous bank guarantee which meets the following requirements: (i) it is an original document, written entirely in either the English the Hebrew language, validly issued by a banking corporation regulated and licensed under Israeli law or by the banking authority of the Supplier’s home jurisdiction (the “**Issuing Bank**”); (ii) it is addressed to the Company, it references the Contract by Contract’s reference number as the underlying relationship, the applicant is the Supplier, and the beneficiary is the Company (or, if the Issuing Bank’s general practice does not allow for issuance of an autonomous guarantee to more than one entity, it may be addressed to and for the benefit of Energy Infrastructures Ltd. alone); (iii) its validity is until the actual delivery of all relevant Goods to Company’s satisfaction, as evidenced by an original document issued by the Company for the purpose of demonstrating the occurrence of such event; (iv) it is governed by URDG 758, and specifically states that the supporting statement under URDG article 15(a) is excluded; (v) it is payable immediately upon the beneficiary’s complying presentation (however it may provide that actual payment of the guarantee can be made at any time within fifteen days of receiving such complying presentation, if such is the Issuing Bank’s general practice); (vi) it states that a complying presentation requires no additional documentation other than the Company’s statement that the amount claimed is due by reason of the bidder’s obligation arising from or in connection with this the Contract; and (vii) it has been duly executed by the Issuing Bank, and clearly indicates the Issuing Bank’s name, branch, registered address and jurisdiction of regulation, in addition to the address and/or instructions for receipt of a complying presentation (if different).

6. A conforming Invoice must be written entirely in the English language, must be issued following the Company’s written confirmation that “delivery” (for purposes of invoicing) has occurred, must be for the Invoiced Amount and that amount only, and, if and to the extent that Israeli VAT applies, must show Israeli VAT as a separate item. If a putative Invoice does not include Israeli VAT and the Company determines in its reasonable opinion that Israeli VAT applies, the Company may demand an Invoice in which Israeli VAT appears as a separate item, adjusting the price of goods invoiced such the total payment

due, after the addition of Israeli VAT, is equal to the Invoiced Amount. “**Israeli VAT**” means value added tax under the Value Added Tax Law, 5736-1975, at the rate current on date of payment; and “**VAT**” means any tax imposed by a governmental authority of any other jurisdiction in a manner similar to Israeli VAT.

7. Force Majeure. Neither Party shall be in breach of the Contract, nor liable for delay or failure in performing its obligations thereunder, if and to the extent that such delay or failure results directly from events, circumstances or causes which were not reasonably foreseen, are beyond that Party’s reasonable control, and are not practicably amenable to mitigation by that Party’s reasonable efforts (such event, a “**Force Majeure Event**”, and such Party, the “**Affected Party**”). The above shall apply provided and to the extent that the Affected Party has provided the other Party with written notice of the Force Majeure Event within three days of its occurrence (or if notice within three days is not possible or practicable, at the first practicable opportunity), which notice shall include sufficient detail of the circumstances surrounding the Force Majeure Event, the date on which it started and its likely or potential duration, the likely effect of the Force Majeure Event on the Affected Party’s ability to fulfil its obligations, and the steps taken by the Affected Party to mitigate such effect. If the Force Majeure Event persists for more than 60 days, the other Party will be entitled to terminate the Contract without penalty. A delay which is the direct result of compliance with a governmental order which prevents or prohibits the taking of the required action, which order was given in direct response to the COVID-19 pandemic, shall be considered a "Force Majeure Event" hereunder, so long as the other conditions for the treatment of such delay as a Force Majeure Event, as defined herein, are met; and the terms and conditions of this Section 7 shall apply thereto.

8. Confidentiality. Any and all information or correspondence exchanged between Supplier and Company (including without limitation the Contract, the bidding process pursuant to which the Contract was awarded, and all ancillary communication and/or attachments) is the sole and exclusive property of the Company (the “**Confidential Information**”). Supplier will ensure that Confidential Information is not used by Supplier or its affiliates for a purpose other than the Contract, or disclosed to any person other than such officers, agents or employees of Supplier who are bound by provisions no less restrictive than this covenant, on a strictly need-to-know basis, without Company’s prior written consent. “Confidential



Information” does not include information which reflects general knowledge or experience; which is or becomes public domain without fault of Supplier; which was previously and lawfully available to Supplier on a non-confidential basis prior to disclosure; or whose disclosure is required by a court or tribunal having jurisdiction to issue such mandate, provided that Supplier has given notice to Company reasonably prior thereto and has cooperated with Company’s reasonable request (if any) to take action as Company may deem advisable (at Company’s expense) to limit the extent of such disclosure. Supplier recognizes that damages may be inadequate remedy for a breach of confidentiality, and therefore in case of such breach Company shall be entitled to injunctive relief.

9. The term “written” or “in writing” (as pertains to correspondence between the Parties) includes a notice sent by fax or email to a fax number or email established as the receiving Party’s contact details for purposes of this Contract. The Parties’ addresses for notices shall be: (a) the respective physical addresses provided in the recitals of the Contract; (b) email addresses or fax numbers exchanged between the Parties for correspondence purposes regarding the Contract; or (c) as may be provided or amended by written notice of one Party to the other from time to time. Email or fax notices are deemed received on the Business Day on which they are received or, for notices received other than on a Business Day or after 3:00 pm of the addressee’s local time, on the following Business Day. Notices sent by reputable international courier or registered mail with proof of receipt are deemed received on the Business Day recorded as delivered to addressee (and if not a Business Day, on the following Business Day). “**Business Day**” means: for an Israeli addressee, a day excluding Friday, Saturday and public holidays on which government offices are generally open for business; and for a non-Israeli addressee, a day excluding Saturday, Sunday and public holidays of such addressee’s jurisdiction on which banks of such jurisdiction are generally open for business.

10. The Contract (including these Terms), in context of the Tender and the documents submitted by the Supplier in its bid thereof, comprises the entire agreement between the Parties and supersedes any other correspondence or understanding, whether oral or written, and may be amended only by the written agreement of the Parties. No failure, forbearance, or delay of either Party to exercise any right or remedy provided in the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or

restrict further exercise of that or any other right or remedy. Each Party shall have the right (unless waived by prior written consent) to terminate the Contract without penalty if any change of control or insolvency event in the other Party occurs or is reasonably foreseen. Neither Party shall be entitled to assign or transfer any right or obligation under the Contract without the other Party’s prior written consent. Any provision of the Contract which is or becomes invalid, illegal or unenforceable shall be deemed modified and/or deleted to the minimum extent necessary to make it valid, legal and enforceable as per its commercial intent, in such manner that the other provisions remain valid and enforceable to the maximum extent. Headings in the Contract and/or these Terms are provided for sake of convenience only and are not to be referred to in the interpretation thereof. The UN Convention on Contracts for the International Sale of Goods applies to the Contract, unless and to the extent derogated from herein or therein.



**Annex G: List of Approved Bidders, Manufacturers, and Production Facilities**

For the convenience of bidders, the following list indicates certain bidders, manufacturers, and production facilities which the Company currently considers to have met the requirements of Approved Bidders, Approved Manufacturers, and Approved Production Facilities, respectively. This list is based on the Company's actual knowledge as of the date of publication of the Tender, and does not affect the definitions of "Approved Bidder", "Approved Manufacturer", or "Approved Production Facilities" as set forth in Sections 4.8, 4.10, and 3.7 of the Invitation to Bid (respectively). This list does not preclude the approval of additional production facilities as "Approved Production Facilities", if visited and approved by Company as described in Section 3.8 of the Invitation to Bid.

## Approved Bidders:

1. Mendelson Infrastructure and Industries Ltd
2. Middle East Tube-Industries 2001 LTD

## Approved Manufacturers and Production Facilities:

1. ArcelorMittal Tubular Products Roman SA, a Romanian company (for SMLS pipe);
2. Moravia Steel a.s., a Czech company (for SMLS pipe);
3. The Ukrainian companies Interpipe Niko Tube (for SMLS pipe), Interpipe NTRP (for SMLS pipe), or Interpipe NMPP (for welded pipe);
4. Vallourec Tubes Germany GmbH (for SMLS pipe);
5. Dalmine S.p.A. (Tenaris), an Italian company (for SMLS pipe);
6. TMK GLOBAL SA – TAGMET in Russia (for SMLS pipe);
7. TMK GLOBAL SA – TMK Volzhsky Pipe Plant OJSC (VTZ) in Russia (for SMLS and welded pipe);
8. Ümran Steel Pipe Industry, a Turkish company (for welded pipe);
9. Mannesmann Precision Tubes GmbH, a German company (for welded pipe);
10. Ilva S.p.A., an Italian company (for welded pipe); and
11. Liberty steel Romania (for welded pipe)





### Annex H - Digital Submission Protocol

The Bid and all of its attachments must be submitted and received, by no later than the Deadline for Submission of Bids set forth in the tender documents.

Digital submission will be performed as follows:

1. The Bid must be submitted by an email, addressed to the e-mail address stated in the tender documents (the "Designated Account"), in the manner set forth below. The bidders are required to follow the submission instructions precisely.
2. Without derogating from any provision in the tender documents, it is hereby clarified, that a bid that is sent not to the Designated Account and a bid that is submitted without being electronically signed - will be disqualified.
3. The Bid must be divided into 4 files that will be sent together in one email, with a subject line which states the name of the Bidder and the number of this Public Tender (for example: "XYZ Bidder Ltd. -- Submission of bid for Public Tender No. XX/XXX"):
  - 3.1. File No. 1: Documents proving the bidder's compliance with the preliminary tender conditions in a signed PDF file. **The file should be saved as: "Preliminary Conditions"**.
  - 3.2. File No. 2: Bid Price in a signed PDF file as well as in an Excel file. If both a PDF file and an Excel file are submitted, then in case of a conflict, what is said in the PDF file will prevail over what is said in the Excel file. **The file should be saved as: "Bid Price"**.
  - 3.3. File No. 3: Technical specifications and Mandatory Contractors' Tour summary, signed in a PDF file. **The file should be saved as: "Technical specifications and signed Mandatory Contractors' Tour summary"**.
  - 3.4. File No. 4: The rest of the tender documents in a signed PDF file, in accordance with the terms of the tender. **The file should be saved as: "General"**.
4. An automatic confirmation email, containing the files received in the Designated Account, will be sent from the Designated Account following the Submission Email. The bidder is required to ensure that all 4 files have been received. In the case in which no confirmation message was received, or in the case in which not all files were included in the confirmation message, the bidder is required, according to the timetables stated in sections 8-9 to address the Company, as specified in section 9 below.
5. The total size of the Submission Email must not exceed 9MB. It should be clarified that while file compression software may be used, the bidder is required to make certain that all files are legible and clear.
6. It is hereby clarified, that the bidder is not allowed to send to the Designated Account any links to external sites, which will interfere with the acceptance of the bid, and that the Submission Email must include all the required details. Among other things, the bidder is not allowed to attach a reference to JumboMail website or etc.
7. **All attachments to a Submission Email must be electronically signed by an individual authorized to submit the Bid on Bidder's behalf (an "Authorized Individual"), by means of a secure electronic signature which: (a) is uniquely connected to the Authorized Individual; (b) identifies the Authorized Individual as the signatory; and (c) is under the exclusive access and control of the Authorized Individual.**





8. The Company may open the Designated Account 24 hours prior to the Deadline for Submission of Bids ("Pre-Check Period"), solely to check receipt of emails in the Designated Account, as a result of an inquiry as set forth in Section 9 below. For the avoidance of doubt, the Company will not be opening any Submission Email and will not check if files were attached to it. It will be clarified that in cases where, for whatever reason, a Submission Email was received without any file, the bidder bears full responsibility, and will have no claim towards the Company in this regard.
9. A bidder who sent his bid before the Pre-Check Period, as described above, to the Designated Account, and did not receive an automatic confirmation email from the Designated Account as stated in section 4 above, will contact the company **immediately**, via [Contractsbid@pei.co.il](mailto:Contractsbid@pei.co.il) and all no later than the deadline for submission of bids, in order to clarify the matter. At the same time, the bidder will submit another copy of the bid to the company via physical or digital submission, according to the bidder's choice, and will notify the Company accordingly thereafter.
10. The company may open the Designated Account after the Pre-Check Period, following being notified by a bidder that its bid was not received in the Designated Account, and that the bidder sent its bid once again via email, and once again did not receive an automatic confirmation email from the Designated Account. The opening of the Designated Account as stated above, will be performed solely to check whether the bid has been submitted.
11. In case that more than one bid is submitted by the same bidder in the Designated Account, the latter bid will bind the bidder.
12. For the avoidance of any doubt, it is hereby clarified that bids may be submitted after the Pre-Check Period, as long as they are received in the Designated Account before the deadline for submission of bids. In this regard, the bidder will take into account that sometimes emails are received in an external email box sometime after being sent, and will send its bid accordingly and long enough before the bid submission date, so that it is received on time. It will be clarified, that the bidder bears full responsibility regarding the date of receipt of the emails to the Designated Account, and the bidder will have no claim to the company in this matter. **Except in cases as stated in section 9 above, after the Pre-Check Period to the Designated Account, it will no longer be possible to perform inquiries regarding the submission of bids to the Designated Account, and the bidders will bear full responsibility in cases where due to technical faults their bid will not be accepted in the Designated Account.**
13. By submitting its Bid, each bidder: (a) confirms and consents that its correspondence with the Company regarding the Tender (and/or the Contract, if awarded), may take place via the email address from which the bidder has submitted its bid, unless the bidder includes another email address for the purpose of correspondence and sending future notices from the Company, or until further notice on behalf of the bidder; (b) represents that any documents comprising or included in an Electronically Signed Attachment and bearing the signature, stamp or written acknowledgment of a Manufacturer or any other third party, are true and authentic copies of the original document duly executed by an individual who is, to the Bidder's best knowledge, the authorized representative of that third party; (c) represents that the electronic correspondence and signature by which the Submission Email and Electronically Signed Attachments were submitted meet, at a minimum, the legal requirements of a "standard electronic signature" under the laws of the Bidder's jurisdiction, and comprise a legally binding signature under those laws.
14. Any Bid submitted by a Bidder by both physical deposit and digital submission Email, may be disqualified and/or considered as if not submitted and/or the Company will have



a right to choose one of the two Bids at its complete discretion, and the bidder will have no claim in the matter.

