

April 21, 2024

**Public Tender No. PD24000597**  
**Invitation to Submit Bids****To: All Tender Participants**

Dear Sir / Madam,

Re: **Public Tender No. PD24000597****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 31.12.22, 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:Mr. Eran Rheinisch

Tel: 09-9528612

Mobile: 054-2828612

Email: [purchasebid@pei.co.il](mailto:purchasebid@pei.co.il)

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

In this Tender, “**NIS**” 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; however, the currency provisions of Section 17.4 shall apply. Each price quote includes all costs, expenses and tax, as further described in Section 17.5 below.

## 1. **The Tender Documents**

This invitation to bid (this “**Invitation**”) 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. Form of the bidder’s declaration – Annex A;
- 1.2. Note: Annexes B, C, and D have been intentionally omitted from this Tender;
- 1.3. Form of Manufacturer’s declaration – Annex E;
- 1.4. A bill of quantities of the Goods – Annex F (the “**Bill of Quantities**”)
- 1.5. Technical specifications regarding the Goods – Annex G (the “**Technical Specifications**”); and
- 1.6. Annex H – Digital submission protocol
- 1.7. Form of the engagement contract, including the Exhibits attached thereto (the “**Contract**”) – Annex I.

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

In the case of any conflict between the Tender Documents, these rules of interpretation shall apply, in the following order of precedence:

- (a) The executed contract between the Company and the winning bidder(s) shall comprise the entire agreement between those parties and shall supersede and replace any previous documents, agreements or understandings between them;



(b) In the event of a conflict between any other Tender Document and the Technical Specifications or Bill of Quantities (including a bidder's price quotes as described in the completed Bill of Quantities), the terms of the Technical Specifications or Bill of Quantities shall prevail;

(c) In the event of a conflict between the Contract and any other Tender Document, the terms of the Contract shall prevail;

(d) In the event of a conflict between this Invitation and any other Tender Document, the terms of this Invitation shall prevail; and

(e) In the event of any other conflict, discrepancy, or question of interpretation, 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, shall prevail.

## 2. The Goods, Location and Date of Supply

2.1. The Goods shall meet the requirements of the Technical Specifications and the Bill of Quantities,

2.2. The Goods will be supplied DDP (Incoterms 2010) to Company's warehouse at Ashkelon. It is specifically stipulated that any cost associated with unloading the Goods into the Company's warehouse will be borne by the supplier, unless provided otherwise in the relevant Order.

2.3. The supply of all Goods will be performed to Company's warehouse no later than 2 weeks after receipt of an order from the Company. 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.

2.4. 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.

## 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, has been received by the Company, by no later than **May 22<sup>nd</sup>, 2024 at 23:59** Israel time (the "**Submission Deadline**"), **and all conditions of the Submission Protocol described in Section 18 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: 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 Sections 4.2 and 4.3 below (including as implied by Section 4.11 below, to the degree relevant).
- 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. The bidder's net shareholder's equity for fiscal year 2022 was positive.

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

The documents described in Sections 4.1 through 4.9 below, 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, showing the bidder's price quote in the appropriate space(s) provided, signed by the bidder.
- 4.3. A copy of the Technical Specifications, signed by the bidder (for each item) as well as by each Manufacturer of each item, indicating thereby:  
(a) the Manufacturers' acknowledgement of the Technical Specifications; (b) the bidder's undertaking to supply the Goods in



conformance with such Technical Specifications, unused and as manufactured by the relevant Manufacturers; and (c) the bidder's representation that a complete report of all relevant Manufacturers has been provided therein. (*Note:* In this Tender the term “**Manufacturer**” is defined in Section above.)

- 4.4. 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.
- 4.5. One of the following:
- (a) The bidder's audited financial statement(s) for the fiscal year ending 31 December 2022, showing that as of that date the bidder's net shareholders' equity was positive;
- (b) The bidder's audited financial statement(s) for a different period ending no earlier than 31 December 2022, showing that as of the end of such period the bidder's net shareholders' equity was positive, *provided that* such statement(s) is accompanied by the confirmation of a certified public accountant licensed in the bidder's jurisdiction identifying such financial statement(s) as the bidders' latest existing audited financial statement(s); or
- (c) 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 2022 was positive.
- 4.6. The following Tender Documents, completed and duly executed by the bidder's authorized signatories:
- 4.6.1. Annex A.
- 4.7. For any Manufacturer not included in the list of approved manufacturers provided in the Bill of Quantities and not previously approved by the Company as per Section **שגיאה! מקור ההפניה לא נמצא.** above: Annex E, completed and duly executed by each such Manufacturer and confirmed by a certified public accountant licensed in that Manufacturer's jurisdiction and engaged as that Manufacturer's accountant. (*Note:* In this Tender the term “**Manufacturer**” is defined in Section above.) For a Manufacturer previously approved by the Company as per Section above, the bidder must reference the tender and/or order in which such Manufacturer was approved.
- 4.8. Annex I, 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.

- 4.9. Bids for supply of Goods made in Israel must also be submitted together with the documents required in Section 11 in order to gain the benefit of the Preference Regulations.
- 4.10. [Reserved]
- 4.11. Bidders whose bids were previously received and approved for consideration in the course of at least one of the Company's public tenders in calendar year 2020 are *not* required to submit the documents described in Sections 4.1, 4.3, 4.4, 4.5, or 4.7 herein, to the extent that such submissions would be redundant or repetitive. Any such bidder failing to submit updated versions of such documents together with its bid in this Tender is representing that no event or passage of time has occurred which would affect the representations, undertakings, confirmations and/or acknowledgments contained or described therein or thereby (including the representations and/or undertakings of any Manufacturers relevant to such bidder's bid in this Tender).
- 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 of the documents above following submission within a given period of time. If such bidder fails to supply the requested documents to the satisfaction of the Company, within such period of time as is given thereto for such purpose, the Company may 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 in the manner described in Section 6.2 below, which shall apply to such excess documentation, *mutatis mutandis*. Without derogating from any other provision herein, it is clarified that failure of a winning bidder to deliver a complying Bank Guarantee within 14 days of notification of award is a fundamental breach of this Tender, and grounds for retraction of the award, at Company's discretion.

## 5. Clarifications

- 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, may address the Company with a written request for clarification. Such written request must be delivered to the Company by email to [purchasebid@pei.co.il](mailto:purchasebid@pei.co.il), by no later than **May 8<sup>th</sup> 2024**.



- 5.2. Any bidder who fails to submit a written request for clarification 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. It is emphasized that only written responses sent by the Company or its authorized agents are binding.
- 5.4. The bidder is aware and agrees that a written response to any question asked may, at the Company's discretion, be sent to all of the bidders, including as described in Section 5.5 below.
- 5.5. The Company may, in its discretion, publish any and all notices, updates, announcements and/or clarifications regarding this Tender to bidders who have registered at the Company's website ([www.pei.co.il](http://www.pei.co.il)), which registration is each bidder's sole responsibility. Any update, announcement, clarification or other notice so published to registered bidders (a "**Notice to Bidders**") shall be deemed received by all bidders, effective immediately upon such publication.

## 6. **Modification of or Reservations to the Tender Documents**

- 6.1. 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. The Company emphasizes that in any case in which the bidder believes that any clarification is required with respect to the terms and conditions of the Tender, it must address the Company in of the manner and within the timeframe set forth in Section 5.1 above.
- 6.2. If, the provisions of the above Section 6.1 notwithstanding, the bidder modifies, adds to, omits from, or makes any reservations or conditions to the Tender Documents in any way, the Company may, at its sole discretion, act in accordance with any one or combination of the following options:
  - 6.2.1. Ignore any reservation, modification or condition, and require the bidder to meet its bid as if it had been submitted without such reservation, modification or condition, and if the bidder refuses to do so, the Company shall be entitled to demand Liquidated Damages;
  - 6.2.2. Accept any modification comprising or implying an additional undertaking, representation or guarantee by the bidder as part of the bid, *provided that* such additional condition shall not be considered in the comparison of bids or the award of contract.
  - 6.2.3. Disqualify the bid, in whole or in part; or
  - 6.2.4. 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 it hereby irrevocably waives any claim or argument against the Company in this regard.

- 6.3. It is clarified that by submitting its bid, each bidder represents that its price quotes have taken into account all terms and conditions of the Contract and this Tender, including without limitation the terms regarding split bids and partial orders, and further including any terms and conditions regarding payment, currency, tax and expenses, and each bidder irrevocably waives any claim or argument to the contrary.

## 7. **Split Bids and Partial Orders**

- 7.1. Subject to the terms of this Section 7, the Company will be entitled, at its sole discretion, to split the award of contract for supply of different items in the Bill of Quantities between several bidders.
- 7.2. 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 submitted in the form of Annex A. If a bidder fails to act as stated in this Section 7.2, the Company may split its bid without any additional surcharge; that bidder's price quote for the various components will be binding despite any split the Company may elect to make regarding such bid; and such bidder hereby irrevocably waives any claim or argument against the Company in this regard.
- 7.3. The Company may, at its discretion, reduce the quantity of Goods in its order, in accordance with its needs, and all relevant provisions of the Tender shall apply in such reduced quantity (including the price quote).
- 7.4. At any time within the timeframe set forth in Section 5.1 above, the Company reserves the right to amend the quantity of any Goods specified to the Bill of Quantities, by written notice to all potential bidders, including by Notice to Bidders as described in Section 5.5 above. In such event, each bid shall be regarded as if the quantities specified in that bid's signed Bill of Quantities (as per Section 4.2 above) were so amended.

## 8. **Inspection of the Bids**

- 8.1. The Company may, in its unlimited 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.





- 8.2. The Company reserves the right to refrain from considering or to disqualify the bid of any bidder who fails to provide the Company with required information or who provides inaccurate information.
- 8.3. The bidder is required, without delay, to update the Company in writing and without delay 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.

## 9. **Disqualification of Bids**

- 9.1. The Company may disqualify any bid in accordance with the provisions of the Tender Documents and/or applicable law. Without derogating from the generality of the aforesaid, the Company may, in its discretion, disqualify any bid which is incomplete, mistaken, or based on any incorrect assumption or misunderstanding regarding the Tender, or any bid which may create a conflict of interest with other engagements of the bidder, including engagements of the bidder with the Company on other matters contemplated in the tender. The aforesaid does not derogate from the Company's right to waive or correct technical flaws which may occur in a bid in good faith, pursuant to the provisions of applicable law.
- 9.2. Without prejudice to any of its rights, the Company may disqualify, in its sole discretion, the bid of a bidder whose bid is designated to be the winning bid in accordance with the tender provisions, with whom the Company has had a 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.
- 9.3. If at least five bids are submitted which meet the threshold conditions, the Company may, in its discretion, disqualify bids whose quote prices are in an amount whose value is less than 90% of the Qualified Average Amount of all bids which have met the threshold conditions. For purposes of this calculation, the "**Qualified Average Amount**" is the average amount of those bids meeting the threshold conditions after excluding the lowest such bid and the highest such bid, provided that if there are two identical lowest or highest such bids, those bids shall not be excluded from the computation of such average.
- 9.4. An estimate of this Tender's value will have been made prior to the inspection of bids. The Company may, in its discretion, disqualify any bid which deviates significantly from that estimate.



**10. Award of Contract**

- 10.1. 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.
- 10.2. Notwithstanding anything to the contrary, the Company may award the contract to a bid other than as described in Section 10.1 above:
- 10.2.1. 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;
- 10.2.2. If the winning bidder has failed execute the Contract within 7 days of being notified of its award, or has failed to supply the performance guarantee described in Section 15.1 below within 14 days of being notified of its award, or if the provisions of Section 13.3 otherwise apply; or
- 10.2.3. 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.
- 10.3. 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.
- 10.4. 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.

**11. Priority for Goods made in Israel**

- 11.1. The Company will give preference to bids for goods made in Israel according to the provisions of the Mandatory Tenders Regulations (Preference for Israeli Products and Mandatory Business Cooperation), 5755-1995 (the "**Preference Regulations**"), with regards to bids to supply Israeli goods whose quote price does not exceed the quote price of bids to supply imported goods by more than 15%.
- 11.2. In order to benefit from the preference stated in Section 11.1 above, a bidder is required to attach to its bid the following documents:



- 11.2.1. A declaration signed by the bidder's authorized signatories confirming that the value of the Israeli Price Component of the goods in question constitutes at least 35% of the Bid Price of those goods. The meaning of “**Israeli Price Component**” is as defined in the Preference Regulations: meaning the price of the goods, *ex works* of the Israeli Manufacturer, net of the costs of any raw materials, parts, consulting services, planning, manpower and financing that were used in the manufacture of the goods and which originate from outside of Israel.
- 11.2.2. A certificate that the manufacturer of the goods is an Israeli citizen or a permanent resident of Israel or a corporation registered in Israel.
- 11.2.3. Confirmation from an accountant regarding the percentage reflecting the ratio of the Israeli Price Component to the Bid Price of the relevant goods, as specified in the bidder's declaration. The confirmation shall be prepared in accordance with the accepted audit standards in Israel, and the bidder's declaration in Section 11.2.1 above shall be attached thereto, imprinted with the accountant's stamp for identification purposes only.
- 11.3. The Company reserves the right to investigate each item and determine, solely on the basis of its own professional discretion, whether a particular item is an Israeli Product meeting the Preference Regulations requirements, including whether or not manufacturing activities in Israel constitute a “substantial transformation”. The Company further reserves the right to request from a bidder additional details or clarifications regarding that bidder’s declaration as described in Section 11.2.1 above.
- 11.4. It is clarified that, in keeping with the decision of the Company’s tender committee, the coating of goods in Israel will not be considered a “substantial transformation”, and therefore will not, in and of itself, create a preference in accordance with the Preference Regulations.
- 11.5. In this Section 11, “**Bid Price**”, “**Israel**”, “**Israeli Manufacturer**”, “**Israeli Product**” and “**substantial transformation**” have the meanings provided in or implied by the Preference Regulations

## **12. Negotiations or Additional Competitive Process**

- 12.1. The Company reserves the right to negotiate with bidders whose bids are found to be adequate, subject to applicable law.
- 12.2. 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 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.



12.3. 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.

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

13.1. 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.

13.2. 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**”).

13.3. 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 14.3(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 13.3 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.

13.4. 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.



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

14. **Liquidated Damages**

14.1. By submitting its bid, each bidder agrees that, in addition to and without prejudice to any right or remedy otherwise available to the Company, it shall pay Liquidated Damages to the Company in the case of any of the following breaches:

- (a) The retraction of a bid (or substantial equivalent of the same);
- (b) Any material misrepresentation in a bid, or any material breach of the Tender; or
- (c) Failure to fulfil any requirement upon an award of contract, including execution of the Contract within 7 days of notification of award, and delivery of a complying Bank Guarantee within 14 days of notification of award.

14.2. 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, and shall further be entitled (at its discretion) to instigate proceedings against the breaching bidder and otherwise pursue the recovery of Liquidated Damages in any competent court or tribunal of the breaching bidder's jurisdiction.

14.3. In this Tender, "**Liquidated Damages**" means the aggregate of the following amounts:

- (a) Regarding an Israeli bidder or a bidder whose quote is in NIS, the amount of NIS 25,000, regarding a non-Israeli bidder whose quote is in Euro, € 6,250, and regarding a non-Israeli bidder whose quote is in USD, \$ 6,800;
- (b) If the Company elects to disqualify a winning bid due to bidder's breach of Tender as per Section 13.3(a) above, the difference between the breaching bidder's bid and the replacement bid (as expressed in values reflecting the currency of the breaching bidder's bid, as per the Bank of Israel representative exchange rate on the date of Company's written notification to the breaching bidder), with an additional surcharge of 20% (twenty percent);
- (b) Penalty interest and/or CPI adjustments as customarily imposed by courts of the bidder's jurisdiction (and for a bidder whose quote is in NIS, as customarily imposed by courts in Israel); and





(c) All expenses reasonably incurred by Company in recovery of the amounts aforementioned, including legal expenses and attorneys' fees.

14.4. The Liquidated Damages expressed in this Section 14 are in addition to and independent of the liquidated damages expressed in the Contract for failure or foreseen failure to deliver Goods in a timely fashion, (*see* Section 6.2(c) of the Contract).

## 15. Performance Guarantee

15.1. 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 15.115.1 (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.

15.1.1. 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.

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

15.1.3. 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.

15.1.4. The guarantee must be payable upon the beneficiary's first written demand, under the substantial conditions described in this Section 15.1; 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.

15.1.5. The amount guaranteed shall be either (a) NIS 25,000; (b) € 6,250; or (c) US\$ 6,700 (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.

15.1.6. 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.

- 15.1.7. The guarantee's applicant must be identical to the bidder.
- 15.1.8. 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. PD24000597" and "Contract No. PD24000597" as the underlying relationship.
- 15.1.9. The guarantee must be governed by URDG 758, and must specifically state that the supporting statement under URDG article 15(a) is excluded.
- 15.1.10. 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 15.1), shall be considered a complying Bank Guarantee for purposes of this Tender.

- 15.2. 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.
- 15.3. It is clarified that the Company's rights as specified in this Section 14.4 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.

## 16. **Examination of bids**

- 16.1. 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 270, or € 250, 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 notice of non-award of contract or disqualification, as the case may be.



- 16.2. Together with submission of its bid, the bidder must 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.
- 16.3. 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.
- 16.4. 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, including without limitation the Freedom of Information Law, 5758-1998 (the “**Information Law**”).
- 16.5. If and to the extent the Company is required to determine, in consideration of the Information Law and/or other applicable law, which details of a bid must be made available for the examination of other bidders, the Company, shall take into account, amongst other considerations, the bidder’s statement as described in Section 16.2 above. It is clarified, however, that this decision will be made in the Company’s sole discretion in keeping with applicable law, and by submitting its bid, the bidder agrees that it shall have no claim or argument whatsoever if its entire bid or any part thereof is made available for the examination of other bidders.
- 16.6. The bidder further agrees that if the Company is of the opinion that there is concern as to whether information in a bid that it requests to examine be disclosed, the Company may refrain from disclosing any such information, so long as no court order has been issued requiring such disclosure.
17. **General Provisions**
- 17.1. Any and all expenses involved in preparing the bid are at the bidder's expense only.
- 17.2. The bid will be valid for 90 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, and/or provide bid guarantees and/or performance guarantees complying with the conditions expressed in Section 15.1 above (to be treated in the manner of a Bank Guarantee, *mutatis mutandis*). Bids which are not extended as aforesaid (or for which bid guarantees and/or performance guarantees as described above are not provided as required) shall be disqualified, even if such bid would otherwise have been



preferred, and the Company may continue the process of the Tender process in accordance with its needs, from amongst the bids which have been so extended and/or for which such guarantees have been provided.

- 17.3. 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 Section 14 above, which amount the Company may collect by its first demand.
- 17.4. 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 of the Tender Documents, and the terms of Section 6.2 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.
- 17.5. (a) 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.
- (b) If and to the extent that Israeli VAT applies to the provision of the Goods, the bidder must indicate such Israeli VAT as a separate item in each relevant price quote and invoice. If, at any time and for whatever reason, the Company determines in its reasonable opinion that Israeli VAT applies to any bid, order, or invoice, the Company may unilaterally amend the amount of such bid, order or invoice such that Israeli VAT appears as a separate item and the total quote or amount due, after the addition of Israeli VAT, is equal to the putative amount of such bid, order, or invoice.
- (c) **"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.
- 17.6. By submitting its bid, each bidder undertakes to be irrevocably bound by the terms of Contract expressed in Annex I. It is clarified that each price quote expressed in a bid will be considered as taking into account all relevant provisions of the Contract and Tender, including without limitation any provisions regarding currency, payment, invoices, taxes, expenses, VAT, and delivery, as well as any representation or guarantee expressed therein, effective as of the Submission Deadline and repeated upon execution of the Contract.



- 17.7. By submitting its bid, each bidder undertakes to be irrevocably bound by the confidentiality provisions of the Contract (as expressed in Section 12 of Annex I), effective as of the Submission Date.
- 17.8. Unless otherwise specified or implied otherwise by context, in this Tender: (a) “**bid**” refers to the entirety of the documents described in Section 4 and 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 as per Section 4.11, (ii) any documents or correspondence submitted in response to the Company’s request as per Section 4.9, and (iii) any excess documentation which the Company, in its discretion, decides to include in accordance with Sections 4.9 and/or 6.2.2; and (b) “**bidder**” means the party submitting a bid or interested in submitting a bid, as the case may be.
- 17.9. Non-fulfillment of one or more of the instructions in this tender may lead to the disqualification of the bid, at the Company’s sole discretion, and without derogating from any other right or remedy otherwise available to the Company.
- 17.10. It is clarified that the tender is subject to the provisions of Israeli tender law, including the regulations, and nothing in the provisions of the Tender Documents shall be interpreted to derogate from any mandatory provisions therein or any other mandatory provisions of applicable law.
- 18.** All bids must be submitted in accordance with the instructions provided in this Section 18 (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.***

- 18.1. 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 Section 18.2 below and addressed to [tender597-24@pei.co.il](mailto:tender597-24@pei.co.il), 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.





- 18.2. 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.
- 18.3. **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").**
- 18.4. 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.
- 18.5. 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.
- 18.6. Any question may be referred to the undersigned via e-mail to **[purchasebid@pei.co.il](mailto:purchasebid@pei.co.il)**.
- 18.7. All disputes relating to, arising from or in connection with this Tender and/or the Tender Documents shall be finally adjudicated by the competent courts of Israel, Tel Aviv District. This Tender and each of the Tender Documents is governed by the law of the State of Israel, without reference to its conflict of laws rules.

Sincerely,



**Eran Rheinisch**

**Procurement & Engagements Department**



**Annex A – The Bidder’s Declaration**

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

The undersigned,

(bidder's full name) \_\_\_\_\_ I.D. / Co.No. \_\_\_\_\_ Address  
\_\_\_\_\_ Zip Code \_\_\_\_\_ Country \_\_\_\_\_ Tel:  
\_\_\_\_\_ Mobile phone: \_\_\_\_\_ Fax: \_\_\_\_\_ e-mail:  
\_\_\_\_\_

(“**we**”) does hereby confirm, represent and undertake as follows:

**PART A – GENERAL DECLARATION**

1. I (the undersigned signatory) am authorized to make and sign this declaration on behalf of the Bidder under the terms of the Bidder’s organizational documents and any relevant decision or authorization of the Bidder’s managers and/or directors.
2. I (the undersigned signatory) am the officer responsible at the Bidder for the bid submitted in this Tender on the Bidder’s behalf.
3. We have read and thoroughly understood the provisions of all of the documents of “Public Tender No. PD24000597: Invitation to Submit Bids”, including the annexes thereto and this form (the “**Tender**”, and such documents, the “**Tender Documents**”). Capitalized terms in this declaration, unless otherwise defined, have the meanings ascribed to those terms in the Tender Documents.
4. 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.
5. If and to the degree 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 in consideration of our price as quoted therein, in the quantities provided therein and/or as may be amended, all in accordance with the terms of the Tender and the Contract, and pursuant thereto we agree to sign the Contract and be bound by its terms.
6. We understand that the supply will be DDP (Incoterms 2010), to Company’s warehouse at Ashkelon, on a date to be agreed upon between the Company and



the selected bidder, and in any event no later than 26 weeks from the date of receipt of the Order.

7. 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.
8. We understand that we will be required to deliver the Bank Guarantee to the Company immediately upon award of contract if and to the extent our bid is selected (and in no event later than 14 days of our notification thereof), which will serve as a performance guarantee, and that the Company will be entitled to demand payment from such Bank Guarantee by representing to the guarantor that the amount claimed is due by reason of our obligation arising from or in connection with the Tender or the Contract, without need for additional documentation; however such entitlement is independent of and shall not prejudice the underlying relationship between us and the Company.
9. We understand that this bid may not be cancelled or revoked and is valid in accordance with Section 17.3 of the Invitation to submit bids, i.e. for 90 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 and/or require additional bid and/or performance guarantees in order for our bid to remain under consideration.
10. We understand and agree that should our bid be selected as a winning bid, we will be automatically bound by the terms, conditions, and undertakings of the Contract, and that should we fail, following selection of our bid, to comply with the terms of the Tender and the Contract (including the timely execution of the Contract and delivery of the Bank Guarantee), our bid may be disqualified retroactively and we may be required to pay, inter alia, the difference between our bid and the replacement bid with an additional 20% surcharge.
11. We are aware that non-compliance with any of the pre-requirements described in Section 3 of the Invitation or any part thereof, and/or non-submission of any of the documents required in Section 4 of the Invitation, shall constitute grounds for disqualification of the bid and/or forfeiture of the Bank Guarantee, all at the Company's sole discretion. We understand that our bid comprises a representation that all documents submitted with our bid in this Tender (including documents submitted with our bid in previous tenders as if repeated hereby, if and to the extent relied upon by us in our submission of this bid), including the undertakings, confirmations and acknowledgments made or described therein or thereby, are true, valid, and of continued effect in all material ways, unless otherwise indicated in our bid.
12. For sake of clarity, nothing in this our declaration shall be interpreted in a manner that would derogate from our full and unconditional acceptance of all terms of the Tender and the Contract.



13. We engage on an ongoing basis in the manufacture and/or import, export or supply of the Goods described in the Tender, and we undertake, should our bid be selected, to supply all such Goods as we may be requested under the terms of the Contract.
14. 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.
15. 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 part of the public domain through no fault of our own (including of 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.
16. We are aware that in accordance with Section 7 of the Invitation to submit bids, the Company may elect to split its order between one or more bidders, in which case we wish to choose the alternative marked below:

**[Instruction: One of the two options below should be clearly marked:]**

- 16.1. [ ] Our bid may be split, with no additional surcharge.
- 16.2. [ ] If the Company splits our bid, an adjustment surcharge of \_\_\_\_% (in words: \_\_\_\_\_ per cent) will apply to each item ordered.

*[Note: if the adjustment surcharge is not filled in or is illegible, the Company reserves the right to split the bid with no additional surcharge.]*

17. 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:
  - 17.1. 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 the 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, then we meet the requirements of such standard.

- 17.2. Neither we nor any of our directors or officeholders have been convicted of a crime involving moral turpitude ("עבירה שיש עמה קלון"), 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.
- 17.3. 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 herein and/or in the Contract by the bidder or a person acting on bidder's behalf.

### **PART B: DECLARATION REGARDING NON-COLLUSIVE TENDERING**

1. The prices and/or quantities stated in this bid were determined by the Bidder independently, without any consultation, arrangement or contact with another bidder or with another potential bidder, and were not presented to any other bidder or potential bidder, with the exception of sub-suppliers whom the Bidder intends to use in the framework of this bid, whose details are: \_\_\_\_\_ (*Instruction: if any – please state the name of the sub-supplier, the field in which it provides services and contact details*).
2. Neither I (the undersigned signatory) nor the Bidder was involved in an attempt to dissuade any competitor from submitting bids in this tender.
3. Neither I (the undersigned signatory) nor the Bidder was involved in an attempt to cause any competitor to submit a bid higher or lower bid than the Bidder's bid.
4. Neither I (the undersigned signatory) nor the Bidder was involved in an attempt to cause a competitor to submit an uncompetitive bid of any type.
5. This bid is submitted in good faith, and neither this bid nor any part thereof is the result of or arose from any arrangement or negotiations with another competitor, bidder or potential bidder in this Tender.
6. I (the undersigned signatory) undertake to notify the Company should any change occur in any of the above details from the time of execution of this affidavit until the Submission Deadline.
7. I (the undersigned signatory) am aware that the penalty for collusive tendering may be up to five years of actual imprisonment.





**PART C - DECLARATION REGARDING BRIBERY AND "BROKERAGE FEES"**

1. This declaration, representation and undertaking is made without derogating from any duties or prohibitions that may otherwise apply by virtue of applicable law.
2. Neither I (the undersigned signatory) nor the Bidder has, and neither I (the undersigned signatory) nor the Bidder shall:
  - 2.1. offer, give or receive, whether directly or indirectly, any benefit, money, bribe or anything of value with the aim of directly or indirectly affecting any decision, act and/or omission of the Company and/or any person acting on the Company's behalf and/or any other person or entity, in connection with the Tender and/or any contract, order or other relationship related thereto or derived therefrom (any or all of the above, the "**Tender Materials**");
  - 2.2. solicit, cooperate or otherwise communicate with, whether directly or indirectly, any officer, agent or employee of the Company, or any other person or entity, with the aim of directly or indirectly obtaining any information relating to the Tender and/or the Tender Materials which is privileged, confidential, or (whether or not privileged or confidential) not available to all of the Tender's bidders; or
  - 2.3. solicit, cooperate or otherwise communicate with, whether directly or indirectly, any officer, agent or employee of the Company, or any other person or entity, with the aim of fixing prices in an artificial and/or uncompetitive manner.
3. If, in the Company's opinion, a reasonable suspicion should arise indicating that either I (the undersigned signatory) or the Bidder may have acted contrary to the provisions of Section 2 above, it is acknowledged and agreed that the Company shall have the right, acting in its sole and unlimited discretion, to exclude the Bidder from the Tender or any other procurement process in respect of which such suspicion may arise (a "**Procurement**") and may, in its sole discretion, disqualify the Bidder's bid(s) in any Procurement and/or cancel, at any time, the Bidder's winning bid(s) in any Procurement and/or terminate, at any time, any contract or order derived from or otherwise related to any Procurement.

**PART D – CONCLUDING DECLARATIONS**

1. I (the undersigned signatory) will bring the content of this declaration and undertaking to the attention of the Bidder's employees, sub-contractors, representatives, agents and any other person who is involved in any way in the Tender on the Bidder's behalf.



2. References to me (the undersigned signatory) in this declaration shall be deemed to include (with regards to the Bidder's declaration and undertaking without reservation, and with regards to my declaration to the extent of my actual knowledge) all employees, representatives, sub-contractors or agents of the Bidder as described in paragraph 6 above.

*In witness whereof, the undersigned hereby executes this Declaration:*

Bidder's Name: \_\_\_\_\_

Signatory's Name: \_\_\_\_\_

Signatory's Position: \_\_\_\_\_

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

Bidder's stamp: \_\_\_\_\_

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

**Authentication (Israeli bidders only)**

**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 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. \_\_\_\_\_, Lic. No. \_\_\_\_\_, of \_\_\_\_\_, do hereby confirm that on \_\_\_\_\_ appeared before me \_\_\_\_\_, (who identified himself by I.D. No. \_\_\_\_\_ / with whom I am personally acquainted), and did, after I warned him/her to tell the truth, failing which s/he would be liable for the penalties prescribed by law, confirm the veracity of and sign his/her declaration above.

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

**Note: Annexes B, C and D have been intentionally deleted from this Tender**



**Annex E: Form of Manufacturer's Declaration**

*Note: this completed form must be submitted by and with regard to **each** Manufacturer qualified by the parameters described in Section 3.6.3 of the Invitation to submit bids. This form does **not** need to be submitted by or with regard to a Manufacturer appearing on the list of approved manufacturers in the Bill of Quantities (Annex F).*

Public Tender No.PD24000597 (the “**Tender**”)

The undersigned, \_\_\_\_\_, a [type of entity] registered and domiciled in [Manufacturer's 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, in the three (3) year period prior to the Submission Deadline, the goods described below, to the Qualified Customer named below, in the manner described below, in an aggregate value of not less than US\$ 1,000,000 (one million United States Dollars).

1. Type of Goods, as described in the Bill of Quantities for this Tender, which it is proposed in bid that Manufacturer shall produce (or participate in production of):

\_\_\_\_\_

2. Stage or process of Manufacturer's responsibility for production of such Goods, as proposed in bid (if all stages of manufacture, write “all”):

\_\_\_\_\_

3. Production site (including location and country) at which it is proposed in bid that Manufacturer shall produce (or participate in the production of) such Goods:

\_\_\_\_\_

4. Name of Qualified Customer (must be an affiliate of one of the following: B.P., Chevron, Exxon Mobil, Kinder Morgan or Shell):

\_\_\_\_\_

5. Country of Qualified Customer to which the goods were actually supplied by Manufacturer since July 7, 2018.

\_\_\_\_\_

6. Type of goods which Manufacturer produced (or participate in production of) and which were supplied to Qualified Customer since July 7, 2018.

\_\_\_\_\_

7. Stage or process of Manufacturer's responsibility for production of such goods supplied to such Qualified Customer (if all stages of manufacture, write “all”):

\_\_\_\_\_

8. Production site (including location and country) at which Manufacturer produced (or participated in the production of) such goods to such Qualified Customer:



\_\_\_\_\_  
I, \_\_\_\_\_, a citizen of \_\_\_\_\_ bearing passport number \_\_\_\_\_ of that country [if Israeli: bearing ID no: \_\_\_\_\_], do sign below as the authorized signatory of the Manufacturer, and I do further declare and affirm, after being warned that I must make a truthful declaration and that if I fail to do so I may face punishment as prescribed by law, that the above declaration made by the Manufacturer and executed by my hand is truthful in all material respects.

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

Signature: \_\_\_\_\_x\_\_\_\_\_

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

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

I, \_\_\_\_\_, a certified public accountant licensed in \_\_\_\_\_ (license no. \_\_\_\_\_), and engaged as the Manufacturer's accountant, do hereby confirm that the above declaration made by the Manufacturer conforms to the Manufacturer's books and accounts.

Signature of accountant: \_\_\_\_\_

### Authentications of Signatures

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

(b) Non-Israeli bidders may 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. Submission of this declaration by a non-Israeli bidder constitutes that bidder's representation to the Company that this is the case. Apostille is not required.

I the undersigned, Adv. \_\_\_\_\_, Lic. No. \_\_\_\_\_, of \_\_\_\_\_ St., do hereby confirm that on \_\_\_\_\_ appeared before me \_\_[signatory making declaration on Manufacturer's behalf]\_\_, (who identified himself by I.D. No. \_\_\_\_\_ / with whom I am personally acquainted), and did, after I warned him/her to tell the truth, failing which s/he would be liable for the penalties prescribed by law, confirm the veracity of and sign his/her declaration above.

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



I the undersigned, Adv. \_\_\_\_\_, Lic. No. \_\_\_\_\_, of \_\_\_\_\_ St., do hereby confirm that on \_\_\_\_\_ appeared before me \_\_[accountant making statement above]\_\_, (who identified himself by I.D. No. \_\_\_\_\_ / with whom I am personally acquainted), and did, after I warned him/her to tell the truth, failing which s/he would be liable for the penalties prescribed by law, confirm the veracity of and sign his/her declaration above.

---

Signature and Stamp





### 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 some time 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.



**Annex I: the Contract**  
**Agreement for the Supply of Goods**

Contract No. PD24000597

This agreement for supply of goods (this “**Agreement**”) is entered effective as of the \_\_\_<sup>th</sup> day of \_\_\_\_\_, 2021 (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: \_\_\_\_\_  
of \_\_\_\_\_ St.  
\_\_\_\_\_ (country)  
(the “**Supplier**”)

**of the second part;**

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

**Whereas:** the Company wishes to purchase from the Supplier certain goods as described herein and further specified in the bill of quantities attached hereto as Exhibit A (the “**Bill of Quantities**”) and the technical specifications attached hereto as Exhibit B (the “**Technical Specifications**”), in accordance with an Order or Orders issued by the Company as described herein (the “**Goods**”); and

**Whereas:** the Supplier has the necessary knowledge, experience and capability to supply the Goods and wishes to supply the Goods to the Company, all as specified in and in accordance with the terms and conditions of this Agreement; and

**Whereas:** the Parties wish to put the agreement between them to writing;

Therefore, the Parties hereby declare, represented and agreed as follows, with intent to be legally bound by the same:

**1. Definitions and Interpretation**

1.1. This Agreement is entered by the party pursuant to that certain tender for the procurement of goods known as Tender No. PD24000597 (the “**Tender**”). This Agreement may be referred to as Contract No. PD24000597. Capitalized terms



used herein and not defined otherwise have the same meaning ascribed to those terms in the Tender and/or the Tender Documents (and if defined differently in several Tender Documents, as defined in the Invitation).

- 1.2. An “**Order**” means any order by the Company for the supply of Goods, signed by the Company’s authorized signatory(ies), that is sent to the Supplier (by any written means, including via fax or e-mail), and each such Order shall be deemed to incorporate all of the terms and conditions of this Contract relevant thereto, including the Exhibits attached hereto. An Order may be for a portion or all of the Goods and quantities specified in the Bill of Quantities, and subsequent Order(s) may be issued for any remaining Goods and/or quantities, all at the Company’s discretion. It is clarified that in the event of a discrepancy between the provisions of the Tender Documents, including this Agreement, and the provisions of the Order, the provisions of the Order shall prevail, unless the Company specifies otherwise in the Order.
- 1.3. The Supplier undertakes to supply Goods conforming to the Technical Specifications, as indicated in each Order per its terms and the terms of this Agreement, as described in the Bill of Quantities, or in other quantities in the case of a partial Order.
- 1.4. 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.
- 1.5. The Company shall have the option, in its sole discretion, to extend the scope of this Agreement to include the Goods identified in the Bill of Quantities under the term “option”, by delivering written notice to the Supplier no later than 60 days following the Submission Deadline (i.e., on or before July 7, 2018). The Option may be exercised in full or in part. 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 this Agreement, and all terms, conditions and warranties described in this Agreement (including but not limited to terms of supply, price, invoicing and payment, and warranty of Goods, shall apply thereto.

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

- 2.1. The Supplier represents that it has read and examined this Agreement, including all documents attached hereto, that all of the provisions, conditions and plans are known and clear, and that it has the knowledge, capability and experience to fulfil the terms of this Agreement and supply the Goods in accordance with each relevant Order which may be issued pursuant to the terms of this Agreement.





- 2.2. The Supplier represents that all conditions of the Tender described in Section 3 of the Invitation are and have been fulfilled, and that all documents and/or written correspondence which it has presented to the Company in the course of the Tender process (including without limitation as implied by Section 4.11 of the Invitation) 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.
- 2.3. The Supplier represents that, to the best of Supplier's knowledge after ordinary commercial diligence..
- 2.4. The Supplier represents and undertakes that any and all Goods shall comply with the Technical Standards, and will forward, upon the Company's demand, documents attesting to compliance with such standard.
- 2.5. The Supplier represents and undertakes that the Goods supplied according to each Order will be of the type, quality, dimensions, material and processing specified in the Order which reflect the Technical Specifications and/or any samples, models or instructions provided by the Company related thereto. If the Tender Documents indicate that any item to be provided requires the Company's approval, the Supplier will not supply such item until the Company's approval is received.
- 2.6. If and to the extent that one or more declarations in the form of Annex E (each such declaration, a "**Manufacturer's Declaration**") was submitted by Supplier to Company (whether included in Supplier's bid to the Tender, or relied upon in Supplier's bid to the Tender based on a submission by Supplier to a previous tender), then the Supplier represents that, regarding each Manufacturer relevant thereto, to the best of Supplier's knowledge after ordinary commercial diligence: (i) such Manufacturer's production or participation in production of the Goods took place at the specific production site described in the relevant Manufacturer's Declaration; and (ii) each Manufacturer's Declaration is accurate in all material respects.
- 2.7. **It is clarified** that all Goods supplied must have been produced by the Manufacturers indicated by the Supplier in its bid with regards to each item type and/or production stage or process, and in the manner described in all relevant Manufacturers' Declarations (including with regards to type, production stage or process and/or specific production site), and only by such Manufacturers and in such manner. No deviation from the above will be regarded as *de minimis*. Each such deviation shall be regarded as a material lack of conformity in the Goods, unless specifically approved by the Company in writing, in its sole and unlimited discretion (whether or not commercially reasonable) and on a case-by-case basis. 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.



- 2.8. The Supplier is responsible for the quality of the Goods, including all of the parts, components and accessories thereof, and for the working order of such Goods for a period of 24 months from the date of supply thereof or 12 months from the date of commencement of use thereof by the Company, whichever is earlier (the “**Warranty Period**”), excluding Company’s failure to follow manufacturer’s instructions, or resulting from the willful or grossly negligent act or omission of the Company or any third party subsequent to the Goods’ delivery.
- 2.9. **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.
- 2.10. 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 any 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.
  - (b) The Supplier will be required as soon as possible 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 a corresponding function in accordance with the relevant Order. Any such repair and/or replacement shall be carried out as soon as possible, 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. The Supplier will indemnify the Company for any such expense immediately upon demand.
- 2.11. 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 meet the terms and conditions of this Agreement or the Tender Documents. 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.

### 3. **Supervision and Inspection**



3.1. Without prejudice to any of other terms and conditions of this Contract, the Company's representative will be entitled to check the quality of the Goods and their compliance with the Order prior to, upon or after receipt thereof, all at the Company's option and discretion, in order to determine whether the Goods comply with the Order.

3.2. The Company will not be charged for Goods found to be defective or inconsistent with the Order.

3.3. For the avoidance of doubt, 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.

#### **4. Prices**

4.1. The prices of the Goods (including delivery as described in Section 8 below) will be in accordance with the provisions of the Order alongside each unit, which shall be fixed according to the price quotes provided in the Bill of Quantities and subject to no adjustment for any reason whatsoever (other than as per applicable terms and conditions of the Tender, if any), unless agreed by the Parties in advance and in writing.

4.2. Supply and delivery will be as described in Section 8 below. Terms of payment and invoicing will be as described in Section 9 below.

4.3. It is hereby clarified that the Company will not be charged for items that are supplied other than in accordance with the terms and conditions of the Order.

#### **5. Changes to the Order**

5.1. The Supplier will not be entitled to introduce any change or modify any Order unless the Company's prior written consent is given thereto.

5.2. No change shall be made to any of the terms and conditions or provisions of the Order unless agreed in writing between the Company and the Supplier.

#### **6. The Company's Rights in the Case of Failure to Supply the Goods in a Timely Fashion**

6.1. Delivery of the Goods by no later than the Final Delivery Date (as defined in Section 8.2 below) is a fundamental condition of the Order, and time is of the essence. Failure to deliver the Goods or any part thereof by the Final Delivery Date (or circumstances in which such failure is reasonably foreseen) shall constitute a fundamental breach of the Supplier's undertaking according to such Order.

6.2. In any case of failure (or foreseen failure) to deliver the Goods in a timely fashion as described in Section 6.1 above, the Company may, at its sole discretion, do any of the following or any combination thereof, as several or concomitant remedies, each of the following remedies being without prejudice



to any other such remedy and without prejudice to any other right or remedy otherwise available to the Company:

- (a) cancel the entire Order or such part thereof that was not (or is foreseen likely not to be) performed in a timely fashion as described in Section 6.1 above;
- (b) order the Goods and/or similar products, in whole or in part, from other sources in order to make up the deficiency, and to charge the Supplier for any additional financial expense that the Company may incur thereby, which expense the Supplier will be required to reimburse immediately upon demand.
- (c) demand liquidated damages as follows:
  - (1) for a delay of up to two weeks, 0.25% of the value of the Order for each day of delay;
  - (2) for a delay of more than two weeks and up to four (4) weeks, 0.5% of the value of the Order for each day of delay; and
  - (3) for a delay of more than four (4) weeks – 1% of the value of the Order for each day of delay, up to a ceiling of 20% of the value of the Order.

## **7. Partial Supply**

The Supplier will not be entitled to make partial supply of an Order, unless under special circumstances and subject to a prior written approval by the Company to such partial supply. In case of partial supply without the Company's prior confirmation as aforesaid, the Company will be under no obligation to take possession of the Goods, and the Goods shall remain the possession and responsibility of the Supplier, and such partial supply will not be deemed a partial fulfilment of the Order. Alternatively, the Company may elect to take possession of the Goods as if partial supply were allowed, and conditions of payment for such partial supply as per the terms of this Agreement (mutatis mutandis), after a 10% discount as penalty for partial supply without Company's prior consent.

## **8. Supply and Delivery**

- 8.1. The Goods will be supplied DDP (Incoterms 2010) Company's warehouse at Ashkelon, as indicated in the Order in accordance with the Bill of Quantities, (including for this purpose, unloading the Goods at such warehouse), or to a different destination specified by the Company in advance, provided that the Supplier is reasonably compensated for any additional costs (the "**Destination Point**").
- 8.2. All Goods stated in the Order will reach their respective Destination Points by no later than the final date of supply stated in the Order, which shall be no later than 26 weeks following the Supplier's receipt of the Order, or an earlier date if agreed by the Parties (the "**Final Delivery Date**").



- 8.3. Prior to transporting the Goods to the Destination Point, the supplier will be required to issue a work permit, and arrive at the Destination Points 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.
- 8.4. 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.
- 8.5. The unloading process will be carried out at the location specified by the company's representative.
- 8.6. After unloading, a representative of the company will sign the delivery note, confirming that the Goods have arrived at the Destination Point, and were delivered in good condition.
- 8.7. The "delivery" of Goods shall be considered to have occurred once (i) the Goods are actually unloaded and delivered to the Destination Port, (ii) the Goods are found to be in conformity with the terms of the Order, and (iii) all relevant conditions of this Section 8 have been fulfilled
- 8.8. It is clarified that any goods supplied to a destination other than their respective Destination Port without prior coordination shall be considered undelivered, and the Company will not be liable for any payment therefor.
- 8.9. [Reserved]
- 8.10. The Goods shall be delivered new as manufactured, in conformance with the Technical Specifications and all other terms and conditions of the Tender and this Contract, together with any certificates of quality, manufacture and/or inspection or other documentation which are either: (a) mentioned in the Technical Specifications; or (b) reasonably requested by the Company in connection with the origin, manufacture, shipping, and/or quality of the Goods and/or their conformance with the Technical Specifications or other terms of this Contract.
- 8.11. It is clarified that no payment will be required upon delivery. The Company will pay the Supplier in response to an Invoice issued by the Supplier in compliance with the terms and conditions of Section 9 below.
- 8.12. The Goods shall 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.

## 9. Terms of Payment





- 9.1. The Supplier may submit an original written invoice to the Company conforming to the conditions of this Section 9 (an “**Invoice**”), at any time subsequent to receiving the Company’s written confirmation that all Goods pertaining to a particular Order have been delivered in full, as per the terms of this Agreement (including Section 8 hereof) and to the Company’s satisfaction. It is clarified that the Company is under no obligation to pay the Supplier, other than in response to an Invoice issued by the Supplier and submitted to the Company in compliance with the terms and conditions of this Section 9.
- 9.2. The currency of the Invoice must be in the currency attributed to the price quote relevant to the Order in accordance with Section 17.4 of the Invitation (the “**Invoiced Currency**”). Notwithstanding the above, regarding an Israeli Supplier, if the Invoiced Currency is not NIS, then the Company reserves the right to make payment either in the Invoiced Currency as per the Invoiced Amount, or in NIS as per the amount resulting from the Invoiced Amount after applying the foreign exchange rate for the Invoiced Currency published by Bank of Israel, current as of the date of the Invoice.
- 9.3. The amount indicated on the Invoice must be equivalent to the price quote relevant to the Order, in the Invoiced Currency (such amount, when duly invoiced as per the terms of this Agreement, the “**Invoiced Amount**”). It is clarified that the Invoiced Amount 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 this Agreement.
- 9.4. If and to the extent that Israeli VAT applies to the provision of the Goods, the Invoice must indicate such Israeli VAT as a separate item such that the Invoiced Amount is inclusive of such Israeli VAT. If, at any time and for whatever reason, the Company determines in its reasonable opinion that Israeli VAT applies to any Order or Invoice, the Company may unilaterally amend such Order or Invoice, such that Israeli VAT appears as a separate item and the total amount due, after the addition of Israeli VAT, is equal to the putative price quote or Invoiced Amount relevant to such Order or Invoice.
- 9.5. The Company shall pay the Invoiced Amount of each Invoice, by a bank transfer which shall be executed no later than 45 days following the last date of the calendar month on which the Invoice is actually received (the “**Payment Date**”).
- 9.6. It is clarified and stipulated that the Company will not be liable for any interest or pricing index differentials for any payment made up to 30 days subsequent to the Payment Date, or for any delay in payment due to either negligence of the Supplier or any Invoice’s lack of conformity to the terms of this Section 9.

## **10. Performance Guarantee**

- 10.1. The Supplier shall provide the Company with an autonomous bank guarantee in the form of or substantially equivalent to the form of bank guarantee attached as Exhibit C to this Agreement (the “**Bank Guarantee**”), which shall serve as a performance guarantee for the delivery of the Goods as



well as all other provisions of this Agreement, and the Company shall be entitled to demand payment from such Bank Guarantee for any debt, obligation, guarantee or undertaking arising out of or in connection with this Agreement (including without limitation any applicable remedy, whether sounding in tort, contract or otherwise), by any presentation complying with the terms of the Bank Guarantee.

10.2. The amount guaranteed by the Bank Guarantee shall be either (a) NIS 25,000; (b) € 6,500; or (c) US\$ 7,100 (the “**Guarantee Amount**”). The Bank Guarantee shall be valid until { *expiry date* } (the “**Guarantee Expiry Date**”), or the actual delivery of all Goods to Company’s satisfaction in accordance with the terms of this Agreement, 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

10.3. An autonomous bank guarantee conforming to Section 15.1 of the Invitation shall be considered a complying Bank Guarantee under this Agreement.

10.4. If a complying Bank Guarantee is not received by the Company within 7 days of the Effective Date, then the Company may, in its discretion, either (a) extend the deadline for receiving such Bank Guarantee for up to an additional 7 days, and exercise any of the remedies described herein upon the expiry of such extension period; or (b) terminate this Agreement without further penalty to Company, and demand immediate payment of the Liquidated Damages, in accordance with the terms of Section 14 of the Invitation.

10.5. If the Company demands payment of the Bank Guarantee or any part thereof, the Company will provide the Supplier with a copy of such demand and an indication of the date of presentation of such demand, and the Supplier shall, within 14 days of receipt of such notice (or within 14 days of the date of presentation, if later) cause the Bank Guarantee to be amended such that the amount of the Bank Guarantee is restored to the original Guarantee Amount.

10.6. In this Section 10, “**amendment**” of the Bank Guarantee includes issuance of a new or alternate bank guarantee which meets all the requirements of this Agreement as per such amendment. Upon provision of such validly issued alternate bank guarantee, the Company shall return the prior Bank Guarantee, and such alternate bank guarantee shall be deemed the amended Bank Guarantee for purposes of this Agreement.

## **11. Safety Instructions**

11.1. 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.

- 11.2. 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.
- 11.3. 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.
- 11.4. 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.
- 11.5. 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.
- 11.6. 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.
- 11.7. 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.

## **12. Confidentiality**

The Supplier undertakes to keep confidential any information that may be disclosed, delivered or become known to the Supplier, or any of its directors, officers, agents, sub-



contractors, representatives or employees (“**Supplier’s Representatives**”) in the course of its dealings, communications and undertakings with the Company, other than information which (a) is or becomes public domain without fault of Supplier or Supplier’s Representatives, (b) reflects general knowledge or experience in Supplier’s field of business or expertise, or (c) which Supplier is permitted to disclose by virtue of an explicit provision of this Agreement or the Company’s prior written approval. Neither Supplier nor Supplier’s Representatives shall use, disclose, publish or otherwise allow for exposure of such confidential information as described above to any person, other than Supplier’s Representatives on a strictly need-to-know basis, by any means whatsoever, without the Company’s prior written consent on a case-by-case basis. Supplier shall ensure that each of Supplier’s Representatives who is exposed to the confidential information as described above shall be bound by confidentiality covenants no less strict than as described in this paragraph. For sake of clarity it is emphasized that all information of the Company to which Supplier or Supplier’s Representatives may be exposed shall be assumed to comprise the confidential information and trade secret of the Company, unless specifically indicated otherwise by the Company.

### **13. Miscellaneous**

- 13.1. Nothing in this Agreement shall be interpreted as granting any right or remedy to any party other than the Supplier and the Company.
- 13.2. The relationship between the parties shall not be construed as comprising any partnership, agency or joint venture of any kind.
- 13.3. This Agreement comprises the entire agreement between the parties and supersedes all previous understandings or agreements.
- 13.4. Headings in this Agreement are provided for sake of convenience only and are not to be referred to in the interpretation of this Agreement.
- 13.5. No forbearance of either party shall be interpreted or deemed as a waiver of any kind unless explicitly set forth in writing, and no waiver shall be considered or interpreted to comprise any waiver or forbearance other than as strictly construed by the terms thereof. No amendment or modification to this Agreement shall be of any effect unless clearly set forth by the written agreement of the parties.

### **14. Jurisdiction and Governing Law**

This Agreement shall be governed by the laws of the State of Israel, without reference to its conflict of laws principles. Any dispute arising out of or in connection with this Agreement is irrevocably referred to the exclusive jurisdiction of the competent courts of Israel (Tel Aviv District).



**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 Exhibits are considered attached hereto and form an integral part hereof:

Exhibit A: Bill of Quantities [reference is made to Annex F of the Tender Documents]

Exhibit B: Technical Specifications [reference is made to Annex G of the Tender Documents]

Exhibit C: Form of Bank Guarantee





**Annex I: the Contract****Exhibit C: Form of Bank Guarantee**

[Date]

To: 1. Energy Infrastructures Ltd.

2. Oil Products Pipeline Ltd.

(hereinafter: “**You**”)Re: Guarantee Ref No. \_\_\_\_\_ (this “**Guarantee**”)

Dear Sirs,

We are instructed by \_\_[*name of Supplier*]\_\_ having registered office at \_\_[*Supplier's address*]\_\_, \_\_[*Supplier's jurisdiction*]\_\_ (“**Applicant**”), that said Applicant has entered with You a contract for the supply of certain goods as described therein known as Contract No. PD24000597 (the “**Contract**”), pursuant to a winning bid submitted in Your tender known as Public Tender No. PD24000597 (the “**Tender**”). The Applicant informs us that according to the terms of the Contract, a guarantee which meets certain conditions must be provided.

That being stated, we, \_\_[*name of bank and branch*]\_\_, a registered bank with offices at \_\_[*address*]\_\_, \_\_[*Supplier's jurisdiction*]\_\_, hereby irrevocably undertake to pay to You any sum or sums up to the maximum amount of [*select one: {25,000 New Israeli Shekels}/{6,250 Euro}/{6,800 U.S. Dollars}*], upon receipt of Your first written demand stating merely that the amount claimed is due to You from the Applicant by reason of the Applicant's obligation arising from or in connection with the Tender or the Contract, provided that our actual payment to You may be made at any time within fifteen (15) days of our receipt of such demand. A complying presentation will require no additional documentation, and may be submitted in hard copy to [*address for presentation or*] our address provided above.

We affirm that we are a banking corporation regulated by the banking authority of \_\_[*Supplier's jurisdiction*]\_\_, and possess the authorizations and licenses necessary to operate as a bank in such jurisdiction.

This Guarantee shall expire on {*expiry date*} (the “**Expiry Date**”), or upon the actual delivery of all Goods (as that term is defined in the Contract) to Your satisfaction in accordance with the terms of the Contract, as evidenced by an original document issued by You for the purpose of demonstrating the occurrence of such event. The above notwithstanding, You shall have the right to extend the Expiry Date for so long as all Goods (as that term is defined in the Contract) have not been actually delivered to Your satisfaction, for successive 60 day periods, if we receive from You an extension notice substantially similar to Form 1 attached hereto, submitted in hard copy to [*address for presentation or*] our address provided above.

This Guarantee is governed by and subject to the Uniform Rules for Demand Guarantee (URDG), 2010 Revision, ICC Publication No. 758 (the “**URDG**”). The supporting statement under Article 15(a) of the URDG is excluded.

Yours faithfully,

[*printed name, stamp and signature of bank*]

[Annex I, Exhibit C: attachment]

**Form 1**

[Date]

To: \_\_\_\_\_ [name of bank and branch]  
\_\_\_\_\_ [address] (hereinafter: “**You**”)

From: [Energy Infrastructures Ltd. and/or Oil Products Pipeline Ltd.] (“**we**” or the “**Company**”)

Re: Guarantee Ref No. \_\_\_\_\_ (the “**Guarantee**”)

Dear Sirs,

We reference the Guarantee whose reference number is stated above, provided to us regarding that certain contract for the supply of goods known as Contract No. PD24000597 by \_\_\_\_\_ [name of Supplier] (“**Applicant**”). The current expiry date of the Guarantee is \_\_\_\_\_ (the “**Expiry Date**”).

WHEREAS, the Guarantee provides that we have the right to extend the Expiry Date for so long as all Goods (as that term is defined in the contract: the “**Goods**”) have not been actually delivered to our satisfaction, for successive 60 day periods, by means of a complying extension notice submitted by us to the address prescribed above;

We hereby submit this extension notice to You, and hereby extend the Expiry Date for an additional 60 days (provided that this extension notice shall be received at the address prescribed above by no later than the current Expiry Date), such that the new expiry date of the Guarantee shall henceforth be \_\_\_\_\_.

We hereby represent that, as of the date prescribed above, not all of the Goods have been actually delivered to our satisfaction as per the terms of the Contract.

We kindly request Your confirmation of receipt of this extension notice.

Sincerely,

[signature]

The Company

