PURCHASE AGREEMENT FOR AUTOMATED WAREHOUSE STORAGE EQUIPMENT

Entered into this ...... in February, 2021

By and between

**Iscar Ltd.**

POB 11, Migdal Tefen

Israel

(hereinafter "**Iscar**")

on the first part.

A N D

**SFA Engineering Corpration**

38, Yeongcheon-ro, Hwaseong-si

Gyeonggi-do 18472

Korea

(hereinafter the: "**Supplier**")

on the second part.

Each of Iscar and the Supplier may be refereed to also as a "**Party**", and jointly be referred to also as "**Parties**".

**WHEREAS** the Supplier represents that it is in possession of certain know-how, skills and experience relating to the development, programming and implementation of designated turn key automated warehouse solutions; and

**WHEREAS** Iscar desires to purchase from the Supplier the Equipment (as defined below) including implementation, installation and training required for its effective utilization at 3 (three) Iscar's Sites, all based on Supplier's implementation of best-in-class practices for design, know-how, skills and experience (hereinafter the "**Project**"); and

**WHEREAS** the Supplier received Iscar’s request to be provided with a comprehensive price proposal, studied its contents, received all of the required clarifications and has full knowledge and understanding of the full scope of the Project and Iscar’s requirements regarding the Equipment as they are reflected in the Specification (as defined below) and as they will be reflected in the Detailed Design (as defined below); and

**WHEREAS** Based on thescope of this Project**,** the Supplier agreed to develop, plan, supply, implement install and construct the Equipment, all for Iscar’s full satisfaction and within the agreed timeline, and further agreed to provide training and technical assistance in order to provide Iscar with the ability to operate the Equipment; and

**WHEREAS** the Supplier represent and undertakes that the Equipment, once provided and installed shall: (a) meet the Detailed Design; and (b) shall meet any and all Acceptance Tests (as defined below);

**NOW THEREFORE**, in consideration of the promises and the mutual covenants hereinafter contained, the Parties hereby agree as follows:

1. **PREAMBLE, ADDENDA AND EXHIBITS**
	1. The preamble to this Agreement and any addenda and exhibits attached hereto, shall constitute an integral part hereof.
	2. The Agreement documents are to be taken as mutually explanatory of one another, but in case of ambiguities and without derogating from the Supplier’s obligations to bring such ambiguities to the attention of Iscar, in the event of any conflict among the provisions within any of the Agreement documents, the Supplier will be obligated to comply with the stricter provision, to be determined by Iscar at its sole discretion. Any such conflict will be brought to the attention of the Iscar immediately upon its discovery by the Contractor.
	3. The headings of the paragraphs of this Agreement are intended solely for convenience of reference and are not intended to govern, limit or aid in the construction of any term or provision hereof or to determine the validity of this Agreement or any term or provision hereof.
2. **DEFINITIONS**
	1. In this Agreement, unless the context specifically warrants otherwise, the words appearing hereunder shall bear the meaning assigned thereto, respectively:

|  |  |
| --- | --- |
| **"Acceptance Tests"** | The First Phase Acceptance Tests and Final Acceptance Tests, as defined and specified in the Acceptance Tests Schedule attached as **Exhibit C** to this Agreement and forms an integral part thereof. The acceptance tests shall be applied to the Equipment in Iscar's Sites and shall be performed by the Supplier and approved by Iscar's Representatives.  |
| **"Alteration"** | shall have the meaning ascribed to it in section 4.3 of this Agreement. |
| **"Bank Guarantees"** | shall have the meaning ascribed to it in section 12.1.2 of this Agreement. |
| **"Confidential Information"** | with respect to any Disclosing Party, shall mean any information, whether a trade secret or not and whether proprietary or not, which relates to the Disclosing Party's business in any way or manner, which is generally unknown to entities other than such Disclosing Party and its affiliates and which is of value to such Disclosing Party, including but not limited to, the terms and conditions of this Agreement and any information as to manufacturing processes, pricing of products, sales information, sales quantities, inventories, know-how, designs, software, drawings, business plans, contracts and leases with other entities, financial statements, manufacturing and raw material costs, expense data, marketing strategies, customer and/or supplier lists, employee and personnel matters, licenses, and licensors. |
| **"Containers"** | shall have the meaning ascribed to it in section 6.1 of this Agreement. |
| "**Date of Satisfactory Performance**" | Shall mean the first date after which the Equipment has: (a) been fully installed and running in process; and (b) Iscar signed the Acceptance Test Certificate after successful completion of the Final Acceptance Tests to the full and sole satisfaction of Iscar; and (c) the training of Iscar's staff has been completed entirely by the Supplier; and (d) title to the Equipment has been fully transferred to Iscar’s sole ownership.  |
| **“Detailed Design”** | shall have the meaning ascribed to it in section 4.2 of this Agreement. |
| **“Disclosing Party”** | Shall mean the Party who has disclosed its Confidential Information and to whom such Confidential Information belongs, and shall include such Disclosing Party’s employees, officers, directors, shareholders, agents and affiliates. |
| **“Equipment”** | Shall mean that certain equipment, software (including, but not limited to, Viastore WMS software or any other WMS software to be pre-approved by Iscar) and services which will be provided by Supplier to Iscar, within the scope of this Agreement, in accordance with the Specifications and Detailed Design and the Project Schedule. |
| **“Force Majeure”** | Shall mean any cause not reasonably within the control of a Party preventing either Party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented including without limitation strikes, lock-outs or other industrial disputes (whether involving the workforce of the party so prevented or of any other party), act of God, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm  |
| **“Iscar Representatives”** | Shall mean Mr. Harry Dickman and/or any other person designated by Iscar from time to time. The Project Manager shall be responsible for communications of any nature whatsoever pertaining to the subject matter of this Agreement, between the Supplier and persons or entities acting on its behalf, on the one hand, and Iscar and persons or entities acting on its behalf on the other hand. The above shall not derogate from Iscar's right to approach the Supplier at all times in any other way or manner.  |
| **“Iscar Sites” and each one of them “Iscar Site”** | Shall mean that certain structures located at Iscar's premises in Migdal Tefen, Israel as further identified in the Specifications and Detailed Design.  |
| **"Late Delivery Penalty"** | Shall mean the late delivery penalty specified in section ‎13 of this Agreement. |
| **"Receiving Party"** | Shall mean the party to whom a Disclosing Party’s Confidential Information has been delivered and the party who owes such Disclosing Party the obligations described in this Agreement with respect to such Confidential Information and shall include such Receiving Party’s employees, officers, directors, shareholders, agents and affiliates. |
| “**Project Consideration**” | Shall mean the total, conclusive and final amount which the Supplier will be entitled to receive as an agreed and full consideration for the Project from Iscar (and/or an entity designated by it), and which is further specified in section ‎11 of this Agreement.  |
| **“Project Schedule”** | Shall mean the applicable time schedule and installation plan for the performance and the completion of the Project in Iscar's Sites, attached as **Exhibit B1 and B2** to this Agreement, forming an integral part thereof. |
| **“Supplier Project Manager/Supervisor”** | A suitable Project Manager for the entire project to be designated by Supplier. The Supplier Project Manager shall be responsible for communications of any nature whatsoever pertaining to the subject matter of this Agreement, between the Supplier and persons or entities acting on its behalf, on the one hand, and Iscar and persons or entities acting on its behalf on the other hand.  |
| **"Spare Parts Inventory"** | shall have the meaning ascribed to it in section 10.1 of this Agreement. |
| **"Specification"** | Shall mean the all technical specifications and layouts stipulated in **Exhibit A** for the various parts of the Equipment and the services to be delivered by the Supplier as Part of the Project, forming an integral part thereof. |

1. **DECLARATIONS AND WARRANTIES**
	1. The Supplier hereby warrants and declares towards Iscar as follows:
		1. The Supplier is financially stable and financially capable of executing its undertakings subject to this Agreement and is further capable of issuing all of the required guarantees in accordance with the terms and provisions of this Agreement.
		2. The Supplier has the know-how, skills and experience relating to the Equipment.
		3. The Supplier is entitled to enter into this Agreement and there are no legal impediments or other restrictions to its full and complete performance of this Agreement.
		4. The Supplier has obtained all requisite insurance policies, in accordance with section 17 of this Agreement.
		5. The Supplier has examined Iscar's Sites including but not limited to: plans, drawings, equipment, WMS and other computer software and IT infrastructure and all circumstances surrounding the development, delivery, installation and customization of the Equipment and found them suitable for the provision of its Equipment and conduct of the Project, all in accordance with the terms and provision of this Agreement.
		6. The Supplier shall retain sole responsibility and liability toward Iscar, at all times, for the execution of the work and fulfillment of all undertakings hereunder, regardless of whether the Supplier performs all the works on its own or partly through others on its behalf, including sub-contractors, employees, or any others.
		7. The Supplier shall ensure that all persons performing the work, including its: employees, consultant, agents and sub-contractors, have entered into written contracts consistent with the foregoing, and it shall hold Iscar harmless from any lawful claim of any such person.
		8. The Supplier shall fully cooperate with Iscar's Representatives, comply with Iscar Representatives' request for information, meet with Iscar Representatives as reasonably requested by Iscar and ensure that Iscar Representatives shall have access to documentation and/or to any other relevant matter hereof including access to documentation and or any other relevant matter in the possession of its sub-contractors as reasonably required by Iscar.
		9. The Supplier shall ensure that the Equipment and any part thereof shall meet any and all requirements of the Specifications which were established in the study and analysis carried out pursuant to this Agreement and that the Equipment will be capable of being operated in accordance with its Specification and Iscar’s requirements which are reflected in this Agreement.
		10. In case so requested, the Supplier shall ensure that the Equipment will be compatible with Iscar's existing computer software and/or hardware installed on the Iscar's Sites. Supplier shall cooperate with Iscar or any third-party nominated by Iscar to assure that the Equipment is fully compatible with Iscar's WMS.
		11. The Supplier shall ensure that, unless otherwise agreed, the Equipment shall be manufactured in Korea or in any EU member country and shall be considered as a product made in Korea or any such EU member country, as applicable, for the purpose of calculating the applicable customs duties.
2. **THE PROJECT**
	1. Subject to the entire terms and conditions set forth in this Agreement and in return for the Project Consideration specified in section ‎11 of this Agreement, Supplier will construct, plan, develop, customize, install and implement the Equipment at Iscar's Sites, in accordance with the respective Project Schedule and in form suitable for the operational requirements and purposes of Iscar as reflected in this Agreement. For the avoidance of doubt, it is agreed that reasonable adjustments and matchings (if needed) of the Project Schedule may be discussed in good faith by the Parties and finalized, within 60 (sixty) calendar days from the first arrival of the Supplier to any of Iscar's site.
	2. Supplier shall be responsible to prepare a detailed design portraying the means by which the provisions of **Exhibit A** (Specification) shall be effectuated and implemented (the "**Detailed Design**"). The Detailed Design shall be prepared by Supplier based on final measurements taken by or else verified by Supplier and shall be submitted to Iscar's approval within the time frame stipulated under the Project Schedule. For the avoidance of doubt, it is hereby agreed that the Project Consideration takes into account possible deviation from preliminary measurements conducted jointly by the Parties, and that no additional costs will be levied upon Iscar in connection with deviations from the preliminary measurements. The Supplier shall not conduct any change in the approved Detailed Design or deviate therefrom absent the prior written confirmation from Iscar's Representative.
	3. During the course of the development and deployment of the Equipment, Iscar may request from the Supplier Project Manager at any time, at its discretion, to carry out modifications, additions and/or reductions ("**Alteration**") to the approved Detailed Design. Iscar's request will be given in writing. Upon receipt of such a request, the Supplier shall check the feasibility of the request and will, within reasonable time, inform Iscar in writing of the possible consequences for the Specification, for the Project Consideration and for the Project Schedule, if any. Should it be deemed necessary, the respective Project Consideration and the respective Project Schedule shall be adjusted accordingly by a mutual consent of the Parties.
	4. Alterations involving additional time and/or additional cost will be carried out by Supplier at the most competitive price.
3. **REQUIRED TECHNICAL TARGETS AND OBJECTIVES**
	1. The Supplier guarantees that the Equipment shall conform with the technical targets and objectives stipulated in **Exhibit A** (Specification) and as later be effectuated and implemented in the Detailed Design. Overall availability of 99% is agreed for the Equipment as defined in this Agreement. Calculation, checking and acceptance will be carried out in accordance with FEM guidelines 9.221 and 9.222.
4. **SHIPMENT**
	1. Unless otherwise agreed in writing, the Equipment shall be shipped using 40ft containers, in an amount as shall be established by Supplier and approved by Iscar within the framework of the Detailed Design ("**Containers**") whereby:
		1. Containers containing racking system, and other ancillary equipment, shall arrive to Israel from a source to be approved by Iscar;
		2. Containers containing designated conveyors, robots and other equipment related thereto, shall arrive to Israel from Korea.
	2. Supplier shall pay for transportation of Equipment to the port of shipment, loading costs, any exportation duties (or similar charges) and the cost of unloading, mobilization and mounting of the Equipment at Iscar's Sites.
	3. Iscar shall bear the cost of marine freight transport, insurance, unloading and loading to an inland carrier at the arrival port, transportation from the arrival port to the relevant Iscar Site, storage costs of up to 5 (five) Containers at any given time and for a period not to exceeding 5 (five) business days per container.
	4. Supplier shall be responsible to carefully schedule shipments so to meet the date designated therefore in the Project Schedule, taking into account the following:
5. The maximum number of 40ft containers that could be situated at any one of Iscar's Sites at any given time will be determined by Iscar during the Detailed Design process;
6. Iscar shall not bear storage costs of more than 5 (five), 40ft containers at any given time and for a period not to exceeding 5 (five) business days per container.
7. Iscar shall provide Supplier with 1 (one) mid-size forklift trucks for unloading of the Equipment at Iscar's Sites however, Supplier shall be required to self-provide sufficient qualified manpower and all other equipment necessary for the unloading and installing the Equipment.
	1. The Supplier undertakes warrants and commits that the delivery of the Equipment shall not be later than the date designated therefore in the Project Schedule and acknowledge that any delay caused by circumstances for which the Supplier is responsible might result in the application of Late Delivery Penalties and eventually in the termination of the Agreement as mentioned in section ‎19 of this Agreement.
	2. The Equipment shall be marked and delivered with proper certification (such as Country of Origin Certificate) attesting that the Equipment is a product "Made in Korea\applicable EU country" for the purpose of customs duties.
	3. Title to the Equipment and any part thereof shall passed to Iscar on arrival to the relevant Iscar's site, risk shall pass to Iscar upon Date of Satisfactory Performance.
8. **INSTALLATION AND ACCEPTANCE TEST**
	1. The Installation of the Equipment shall commence upon its delivery to the relevant Iscar’s Site. The Installation shall take place at the time designated therefore in the Project Schedule.
	2. Immediately following the Equipment’s installation in the relevant Iscar's Site, the Supplier shall provide adequate experts (experienced in the field of the Equipment) for the inspection of any and all parts of the Equipment, in order to verify that the Equipment meets its Specifications and Detailed Design and is suitable for Iscar's requirements as reflected in this Agreement.
	3. Any repairs, corrections, retesting and/or any other measures necessitated by, or resulting from, the aforementioned testing, shall be borne exclusively by the Supplier, including full shipment/reshipment costs.
	4. Upon completion of the installation, customization, development and implementation of the Equipment and following its inspection as described in section ‎7.1 above, Supplier shall notify Iscar that the Equipment is ready for First Phase Acceptance Tests and for Final Acceptance Tests and shall carry out the Acceptance Tests in coordination with Iscar’s Representative.
	5. The Acceptance Tests are specified in the Acceptance Tests Schedule attached as **Exhibit C.**
	6. Supplier undertakes to commence and complete the Acceptance Tests for the full satisfactory of Iscar at the time designated therefore in the Project Schedule.
	7. Any and all Acceptance Tests performed by the Supplier, in connection with the fulfillment of this Agreement, shall be fully documented in English by the Supplier, and three (3) copies of said documentation or any part thereof, shall be delivered to Iscar as soon as practical, and shall be, at all times prior to said delivery, made available to Iscar for examination and inspection.
	8. All costs for repairs, corrections, retesting and any other measures which are necessary for the Equipment to pass the Acceptance Tests or resulting from said testing as mentioned in this section ‎7 shall be borne by the Supplier.
	9. In the event that the Equipment fails to pass an Acceptance Test, Iscar shall afford Supplier the opportunity of rectifying, replacing and retesting the Equipment at Iscar's respective Site for a period of no longer than 30 days. For the avoidance of any doubt, any and all cost and expense with respect to the rectifying, replacing and retesting shall be exclusively borne by the Supplier.
	10. In the event that the Equipment or any part thereof fails to pass successfully the First Acceptance Tests or Final Acceptance Tests and the Supplier failed in its attempts to correct such failures within the abovementioned period of 30 calendar days, then, Iscar shall be entitled to terminate this Agreement immediately for cause of Material Breach. Such termination to take effect forthwith upon receipt of notice to that effect by the Supplier and without prejudice to any other remedies available to Iscar e.g., damages, expenses etc.
	11. Should Iscar terminate the Agreement pursuant to section 7.10 above, Supplier shall be obliged to immediately remove the Equipment from Iscar's respective Site, without further delay. For the avoidance of any doubt, all expenses emanating from the Equipment’s removal shall be borne exclusively by the Supplier.
	12. Upon successful completion of the Acceptance Tests to Iscar’s full satisfaction, Iscar shall sign the Acceptance Test Certificate for the relevant Iscar's Site.
9. **TRAINING OF ISCAR'S PERSONNEL**
	1. The Supplier undertakes to provide all necessary training to Iscar's personnel at Iscar's Sites and\or if so requested by Iscar, at Supplier's facility in South Korea, in order to enable Iscar’s personnel to efficiently self- operate, self-manage and self-maintain the Equipment, all in accordance with the appropriate Equipment Specification and Detailed Design and in compliance with Supplier's top standards. Iscar undertakes to provide sufficiently qualified personnel for such training. The training will be conducted during installation, or as shall else be requested by Iscar, and shall be completed until the commencement of the Acceptance Test of the equipment. The training will be held in English.
	2. As part of the Detailed Design process, the Supplier will submit for Iscar's review, comment and approval a detailed training program encompassing all training undertakings of the Supplier pursuant to this Agreement ("**Training Program**"). Once approved by Iscar the Training Program will become part of the Specifications.
	3. For the avoidance of doubt, the Parties agree and acknowledge that any and all costs in relation to this section ‎8 (other than travel expenses for Iscar's personnel sent for training at Suppliers facility in South Korea, if any) are included within the Project Consideration and no additional payment of any kind shall be required by Supplier from Iscar for any of the training activities performed by Supplier.
10. **SUPPORT AND MAINTENANCE**
	1. Commencing as of the earliest Date of Satisfactory Performance, Supplier shall render Iscar, through its highly trained skilled personnel, technical support and maintenance services, to be available by means of:

(1) Telephone - 24 hours a day, 7 days per week in the English language for the duration of the Warranty Period; and

(2) Physical - adequate personnel, as shall be agreed upon between the Parties, which will be positioned by Supplier at Iscar's Site, for a reasonable period of time. The Parties will negotiate in good faith the terms and conditions for the positioning of the required Personnel, all in order to allow smooth and uninterrupted operation of the Equipment.

The technical and maintenance support services as required by Iscar for the proper operation and maintenance of the Equipment, including but not limited to: solving technical problems, providing advice on technical questions, providing clarifications and guidance and/or providing full preventive and ongoing maintenance and/or any other support required by Iscar for purpose of efficiently operate and maintain the Equipment. Supplier shall not halt, pause or discontinue its handling of any problems and/or omission until such problem is fully solved to Iscar’s satisfaction.

* 1. For the avoidance of doubt, the Parties agree and acknowledge that any and all costs in relation to this section ‎9 are included within section 11.2 of the Agreement and no additional payment of any kind shall be required by Supplier from Iscar for any of the service rendered to Iscar to the extent such additional payments are not resulting from alternations agreed in accordance with section ‎4.3 of this Agreement.
	2. At any time prior to the conclusion of the respective periods stipulated in subsections 9.1(1) and 9.1(2) Iscar shall be entitled to extend the foregoing technical support services for additional twelve (12) months periods under similar terms as those enacted herein under this Agreement in consideration for an additional aggregate payment as will be mutually agreed by the Parties in accordance with common business practice in the automated warehouse industry.
1. **SPARE PARTS**
	1. For the purpose of securing the performance of the Equipment in accordance with its Specification and Detailed Design, and enabling Iscar’s personnel to replace defected pieces of the Equipment within the ongoing work of the Equipment, Supplier shall, in addition to any other obligations it may have under this Agreement, place at Iscar’s sites, an agreed quantity of spare parts as shall be recommended by Supplier and specified in a separate annex which will be attached to the Detailed Design, as shall be amended from time to time by mutual consent of the Parties, provided however, that Iscar shall retain the right to remove spare parts from the said annex, at its sole discretion (“**Spare Parts Inventory**”). Iscar shall designate adequate and secure storage facility and shall hold the Spare Inventory under standard consignment terms. Iscar shall be allowed, in its sole discretion, to utilize the spare parts. Supplier Iscar will inform Supplier of spare parts used by it and Supplier shall replenish Spare Parts Inventory to allow Iscar smooth and uninterrupted operation of the Equipment. Replenishment of Spare Parts Inventory shall be free of charge during the Warranty Period, subject to reasonable usage standards.
	2. Once Iscar utilize a certain spare part from the Spare Parts Inventory, it will inform the Supplier about such utilization and, the Supplier shall immediately replenish the used part. The Parties agree and acknowledge that: (a) the price for any replaceable part utilized by Iscar from the Spare Parts Inventory shall be fair and reasonable, considering prevailing market prices at the time said items are ordered and which in no event exceed the prices charged by the Supplier to customers purchasing the same or similar items in like or similar quantities; and (b) Iscar shall not be required to pay for any Spare Parts Inventory consumed during the Warranty Period, with the exception of wear & tear parts, which if utilized by Iscar and following notice on such use to Supplier, shall be paid to the Supplier by Iscar soon after such utilization and following receipt of Supplier invoice for such part and shall be paid in addition to the overall price of the Spare Parts Inventory.
2. **PROJECT CONSIDERATION**
	1. As a full and total consideration for the Equipment and the provisions of all services of the Project described in this Agreement and its Exhibits, Iscar shall pay the Supplier the total, conclusive and final amount of $11,460,000 (eleven million four hundred and sixty thousand US Dollars), all subject to and in accordance with the payment terms, as described in section 12 below, and as detailed in **Exhibit E** (hereinafter the "**Project Consideration**").
	2. Notwithstanding anything stated to the contrary in the Agreement and or its Exhibits, but subject to sections 4.3 and 6.2, it is hereby clarified agreed and acknowledged by the Supplier that the Project Consideration encompasses any and all of payments for the complete and full delivery and installation of the Equipment in Iscar's sites in accordance with the Project Schedule, including but not limited to, development cost, training as specified in section 8, travel expenses, labor and equipment costs, permits and licenses costs, installation and warranty and software including without limitation, WMS including its installation and integration and perpetual software license for all PLC components (currently at least 8 Samsung programing units containing Simatic and Mitsubishi software), all in accordance with the provisions of this Agreement and no further payments shall be paid by Iscar for the Project.
	3. The Project Consideration shall be paid in accordance with the Payment Terms indicated in section ‎12 below.
	4. Each of the Parties agrees and acknowledges that the Project Consideration amounts shall remain fixed and are not subject to any additional changes, except as specifically permitted by the provisions of this Agreement or as agreed for Alterations.
	5. Notwithstanding anything to the contrary herein, Iscar shall have the right to offset any amounts owed to it by the Supplier under this Agreement against any amount owing by Iscar to Supplier, whether either such liability is liquidated or unliquidated, present or future, accrued or contingent.
3. **PAYMENTS TERMS**
	1. During the course of the Project, payments shall be made by Iscar to Supplier, in accordance with the progress of the work and based on milestones established in the respective Project Schedule. Accordingly, the Project Consideration shall be payable in installments as follows:
		1. **15%** (fifteen **percent)** of the respective Project Consideration shall be paid by Iscar (or an entity designated on its behalf) as down payment (hereinafter the "**First Payment**").

The First Payment shall be paid by Iscar following the prior delivery by the Supplier to, and the acceptance by Iscar of an unconditional autonomous and irrevocable swift banker's guarantee (issued by a bank approved by Iscar's finance department) essentially in the form as per **Exhibit D** in the amount of 15% (fifteen percent) of the respective Project Consideration (hereinafter “**First Payment Bank Guarantee**”). The First Payment Bank Guarantee shall remain in full force and effect for the duration of this Agreement and until the lapse of the Warranty Period.

In the event that the First Payment Bank Guarantee shall expire prior to the expiration of the Warranty Period, it shall be extended for additional periods or replaced by the Supplier with a replacement bond, at least sixty (60) days prior to its expiry. In case that the Supplier fails to comply with the aforesaid, Iscar may collect on the First Payment Bank Guarantee and retain that amount as security in place of the First Payment Bank Guarantee.

* + 1. **15%** **(fifteen percent)** of the respective Project Consideration for each of Iscar's Sites shall be due and payable to the Supplier following approval of the Detailed Design with respect to the relevant Iscar Site (hereinafter "**Second Payment**"); and The Second Payment, for each of Iscar's Sites, shall be paid by Iscar following the prior delivery by the Supplier to, and the acceptance by Iscar of an additional unconditional autonomous and irrevocable Bank Guarantee (issued by a bank approved by Iscar's finance department) in the amount of 15% (fifteen percent) of the respective Project Consideration (hereinafter “**Second Payment Bank Guarantee**”; the “**First Payment Bank Guarantee**” and the “**Second Payment Bank Guarantee**” hereinafter, collectively the “**Bank Guarantees**”). Each Second PaymentBank Guarantee shall remain in full force and effect until 100% of the Containers (as such term is defined in section 6.1), respective to the specific Site had arrived at Iscar's Sites.

In the event that any of the Second Payment Bank Guarantees shall expire prior to the arrival of 100% of the Containers (as such term is defined in section 6.1) at Iscar's Sites, it shall be extended for additional periods or replaced by the Supplier with a replacement bond, at least sixty (60) days prior to its expiry. In case that the Supplier fails to comply with the aforesaid, Iscar may collect on that certain Second Payment Bank Guarantee and retain that amount as security in place of the Second Payment Bank Guarantee which had expired.

* + 1. **35% (thirty five percent)** of the respective Project Consideration for each of Iscar's Sites, shall be payable following the provision of a bill of lading evidencing at least 80% of the Containers, respective to the specific Site had been shipped successfully.
		2. **10% (ten percent)** of the respective Project Consideration for each of Iscar's Sites, shall be payable following completion of the First Phase Acceptance Test and issuance of the First Phase Acceptance Test Certificate by Iscar with respect to the relevant Iscar Site.
		3. **15% (fifteen percent)** of the respective Project Consideration for each of Iscar's Sites shall be payable following completion of the Date of Satisfactory Performance with respect to the relevant Iscar Site.
		4. **10% (ten percent)** of the respective Project Consideration for each of Iscar's Sites, shall be payable 60 days following the Date of Satisfactory Performance with respect to the relevant Iscar Site.
	1. Unless specifically mentioned otherwise, all payments by Iscar indicated in this section ‎12 shall be paid within 30 (thirty) days following the end of the calendar month of invoice receipt by Iscar.
	2. Collection of Bank Guarantees
		1. The Bank Guarantees furnished by the Supplier shall secure the fulfillment by the Supplier of all of its obligations under or in connection with this Agreement and the payment by the Supplier of any amount which may become payable by the Supplier to Iscar in connection with this Agreement.
		2. Iscar shall be entitled to collect any of the Bank Guarantees or any part thereof from time to time following the Supplier's breach of any of its obligations under this Agreement.
		3. Immediately following collection of any of the Bank Guarantees or any part thereof, the Supplier shall furnish Iscar with a new guarantee in the amount of the collected guarantee. In the event of a partial collection of any of the Bank Guarantees, the Supplier shall furnish a supplementary guarantee for the amount collected.
		4. Collection on any of the Bank Guarantees or any part thereof, under this Section 12, shall not derogate from Iscar’s right to terminate this Agreement, nor from its right to any remedy accorded by law or this Agreement or relieve the Supplier of its liabilities and undertakings including its liability for indemnification under this Agreement.
1. **LATE DELIVERY PENALTIES**
	1. The Supplier undertakes to strictly comply with the Project Schedule, with the understanding that the Supplier has been advised of the importance of its compliance with the Project Schedule and of the particularly damaging consequences that could result to Iscar from a delay or breach of Supplier's obligations. Accordingly, without derogating from any other remedy to which Iscar may be entitled at law or under this Agreement, any failure to comply with the Project Schedule may result in the application of the Late Delivery Penalty.
	2. In case of any delay in the completion of the installation of the Equipment as indicated in the Project Schedule which is caused by any circumstances in the sphere of the Supplier, Iscar reserve the right to apply automatically a contractual penalty of **0.1%** of the total Project Consideration per working day of delay (5 working days per week). It is agreed that the Iscar, shall be entitled to automatically deduct the amount of such penalties from the respective Project Consideration and that the overall penalty shall be limited to max. 7%.
	3. For the avoidance of doubt, the Late Delivery Penalty shall not be regarded as Iscar's sole remedy and does not release the Supplier from any of its obligation to perform any part of the Project, in strict accordance with the term and provision of this Agreement and/or its Exhibits and shall only be considered as a lump sum compensation for all claims within the time of the late delivery.
	4. This section ‎13 does not preclude the right for Iscar to terminate this Agreement, under the conditions defined in the "Termination" section ‎19 of this Agreement.
2. **WARRANTIES FOR THE EQUIPMENT**
	1. The Supplier warrants that the Equipment furnished to Iscar will conform to its Specifications and Detailed Design and will be free from all defects and will be adequate for the purposes stated herein.
	2. The Supplier warrants that the Equipment and its related accessories shall conform to all the applicable requirements regulations and standards of the European Union as well as Israeli standard SI 413 part 2.1.
	3. The warranties specified in sections ‎14.1 and ‎14.2 shall apply, separately for each of Iscar's Sites, for a period of three (3) years from the Date of Satisfactory Performance for the relevant Iscar's Sites (“**Warranty Period**”). If any deficiency is found in the Equipment during said period, the Supplier will correct the deficiency by immediately repairing, adjusting, modifying, replacing or adding to the Equipment without any further cost to Iscar. The Parties agree and acknowledge that in cases where the defect reoccurs with respect to a certain part of the Equipment, the Supplier shall replace the defective part entirely to a new one, and the warranty for such new part shall last for a period of 3 years following such replacement.
	4. Supplier is aware and agrees that (a) in case of a breach of its warranties and (b) if the Supplier does not remove a defect within a reasonable time from Iscar's notice to the Supplier, Iscar has the right to redeem and operate the First Bank Guarantee in respect of the defect in question and to the extent that Iscar has claims resulting from the breach of warranty without obtaining Supplier prior consent as provided herein.
	5. For avoidance of doubt, Supplier's obligations through the Warranty Period, shall not derogate from any of its liabilities according to section ‎15, to ensure the proper and order function of the Equipment, anytime thereafter.
	6. At any time prior to the conclusion of the Warranty Period Iscar shall be entitled to extend the Warranty Period for any additional twelve (12) months under similar warranty terms as those enacted herein under this Agreement in consideration for an additional aggregate payment, and payment amount shall be discussed also signed in a separate contract of Warranty.
3. **SUPPLIER’S LIABILITY AND IDENMINIFICATION**
	1. WITHOUT DEROGATING FROM SUPPLIER'S OBLIGATIONS UNDER THE WARRANTY INDICATED IN SECTION 14 ABOVE, THE SUPPLIER UNDERTAKES TO INDEMNIFY AND TO SAVE AND HOLD ISCAR AND/OR ANY OF ITS EMPLOYEES, AFFILIATES AND/OR ANY OTHER RELATED THIRD PARTY, FREE AND CLEAR FROM ANY AND ALL DAMAGES, CLAIMS, LOSSES AND EXPENSES, INCLUDING ATTORNEY'S FEES TO WHICH ISCAR MAY BE EXPOSED OR WHICH ISCAR MAY SUFFER AS A RESULT OF SUPPLIER’S FAILURE TO COMPLY WITH ITS OBLIGATIONS UNDER THIS AGREEMENT AND/OR OF ANY AND ALL BREACH OF REPRESENTATIONS AND WARRANTIES OF THE SUPPLIER HEREIN CONTAINED WHETHER INTENTIONAL OR INADVERTENT, COMMITTED BY THE SUPPLIER OR ANYONE ACTING ON ITS BEHALF, INCLUDING ANY SUB-CONTRACTOR OR EMPLOYEE THEREOF. FURTHERMOE, SUPPLIER SHALL INDEMNIFY ISCAR AND HOLD IT HARMLESS AGAINST ANY AND ALL ACTIONS, CLAIMS, DEMANDS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING ATTORNEY'S FEES AND COSTS OF DEFENSES OR SUIT) ARISING FROM OR INCURRED BY REASON OF ANY BREACH OF ITS WARRANTY, INCLUDING BY REASON OF ANY INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, DESIGN, TRADEMARK, NAME, COPYRIGHT, OR OTHER PROTECTED RIGHT WITH RESPECT TO THE WORK, THE PROJECT OR ANY HARDWARE, SOFTWARE, MATERIAL, THINGS, PROCESS OR METHODS USED OR SUPPLIED BY SUPPLIER OR ITS SUB-CONTRACTORS.
	2. The Supplier shall be solely liable for any and all damage or loss, whether bodily or monetary, incurred by Iscar, to any of its employees, or any third party, stemming from an action or omission, whether direct or indirect, of the Supplier and/or its employee(s) and/or any of its sub-contractors and/or anyone else acting on its behalf during the execution of its undertakings hereunder.
	3. In the event of any claim made or action brought against Iscar in respect of any matter covered by the Supplier indemnity, Iscar shall notify Supplier within reasonable time and if so required by Iscar, Supplier must at its expense assume the defense of the claim or action and any negotiations for settlement thereof, all subject to Iscar's prior written approval.
	4. For the avoidance of doubt, it is hereby clarified that the approval of the Detailed Design by Iscar or anyone on its behalf, shall not relieve the Supplier from any of its obligations or liabilities under this Agreement, including responsibility for its acts, errors, omissions, discrepancies and non-compliance and the Supplier shall have the responsibility and liability for the Equipment.
4. **NO EMPLOYMENT RELATIONS; SUPPLIER’S LIABILITY FOR EMPLOYEES AND WORKPLACE SAFETY**
	1. Iscar and Supplier agree and acknowledge that Supplier, including any of its subcontractors, is an independent contractor. As such, Supplier is not a legal agent of Iscar and does not have the power to enter into any contract on behalf of it, nor to make any representations on behalf of it.
	2. The Supplier undertakes that it, as well as any of its subcontractors, will fulfill, adhere and comply with all laws applicable to employers, including taxes, social benefits, and any other payment incurred by an employer for its employees, and provide its employees and/or anyone on its behalf with workplace conditions that meet all regulatory and legal standards. Supplier undertakes to indemnify and hold Iscar or any third party harmless for any claim or liability imposed thereupon for the breach of any of the Supplier’s undertakings in this clause.
5. **INSURANCE**
	1. Without derogating from the Supplier's liability and obligations in accordance with this Agreement or under any applicable law, and without having Iscar assume any liability whatsoever toward the Supplier, Iscar declares that it shall procure an Erection All Risk Insurance Policy for the Project, as detailed below (hereinafter: the "**Construction Insurance**").
	2. Subject to the conditions, restrictions and limits of the insurer's liability and the deductible amounts included therein, the Construction Insurance includes the following insurance chapters:
		1. Section 1: Damage to Project

## Covering on an "All Risks" basis physical loss or damage which shall be caused to the Equipment at Iscar's Sites during the period of performance of the Project's works.

* + 1. Section 2: Third Party Liability

## Liability toward a third party for unforeseen physical injury or property damage which shall be caused at Iscar's Sites during the period of performance of the Project's works with limit of liability of US$2,500,000 per occurrence and in the aggregate for the period of insurance.

* 1. It is agreed that the Construction Insurance shall be extended to include the Supplier and its Subcontractors as additional insureds under the policy. The Supplier will reimburse Iscar for payment of the premiums and Iscar's expenses at a rate of 0.3% of the Project Consideration in respect of this insurance by deduction of 0.3% of any amount, or any part thereof, that is due to the Supplier from Iscar (before any deduction or offset to which Iscar is entitled). Iscar reserves the right to increase the reimbursement as may be required from the Supplier due to changes that may apply to the amount of the premium paid by Iscar.
	2. It is hereby explicitly agreed that procurement of the Construction Insurance by Iscar shall not, in any event, impose liability on Iscar, and the Supplier is precluded from raising any claim against Iscar and/or anyone on its behalf regarding the existence, nature and extent of the Construction Insurance, as stated.
	3. Upon Supplier's request, The Supplier will be provided with a copy of the Construction Insurance. The Supplier undertakes to (i) study and inspect the content of the Construction Insurance; (ii) be thoroughly apprised of all its conditions prior to commencing the Project; and (iii) fulfill at its own cost all of the terms set forth therein, including without limitation, provisions concerning safety measures for the prevention of fire, hot works procedures, etc.
	4. The Supplier herein declares and affirms that it waives any claim, plea or demand of any type whatsoever against Iscar or anyone acting on its behalf, in the matter of the contents or scope of the Construction Insurance or the coverage that it provides or the identity and nature of the Construction Insurance insurer.
	5. The Supplier shall bear all deductibles set forth in the Construction Insurance with respect to the Project. Iscar is entitled to deduct or offset such amounts from any payment due to the Supplier in accordance with the terms of this Agreement.
	6. Should an event occur which is insured according to Section "1" of the Construction Insurance, Iscar shall forward monies to the Supplier from any insurance benefits actually received from the insurer for the damage suffered by the Supplier or damage for which the Supplier is liable to the maximum amount required to reinstate the loss and/or the damage. If the insurance benefits received are insufficient to fully compensate all those insured under the Construction Insurance Policy, the benefits will be divided by Iscar according to its sole discretion. For the avoidance of doubt, any negotiation with the Insurer in connection with the Construction Insurance and/or the entitlement to receive benefits form the insurer shall be conducted solely by Iscar.
	7. The Supplier acknowledges that Iscar may execute changes in the Construction Insurance policy. However, any change which reduces the extent of coverage given to the Supplier shall be approved in advance and in writing by the Supplier.
	8. The Supplier undertakes to comply with all the conditions of the Construction Insurance and to inform Iscar immediately of any incident that may be a cause of action on the basis of the Construction Insurance and to cooperate with Iscar as may be required to maintain and exercise Iscar's rights according to the insurance.
	9. The Supplier will be liable to Iscar and/or anyone acting on Iscar's behalf for insurance benefits that are withheld as a result of a breach of the conditions of the policy by the Supplier and/or those acting on the Supplier's behalf.
	10. Without derogating from Supplier's liability pursuant to this Agreement and/or in accordance with any law, the Supplier will obtain and maintain, at its own expense with a duly licensed insurer in Israel or a reputable insurance company having an S&P and/or A.M. Best rating of not less than A-,or equivalent, during the term of this Agreement and in respect of the Product Liability insurance, until the later of for 3 years following the latest Date of Satisfactory Performance or the expiration of the Warranty Period of the last Iscar site expires, which ever the following minimum insurance coverage (hereinafter: **"Supplier's Insurances"**).
		1. **Product Liability Insurance -** Product Liability Insurance covering the liability arising from any bodily injury or property damage caused by the Project or any part thereof after the first Date of Satisfactory Performance up to a limit of liability of US$ 5,000,000 (five million US Dollars) for each claim and in total for an annual period of insurance.

The insurance shall be extended to indemnify Iscar and/or anyone acting on its behalf in respect of its liability for errors and/or omissions of the Supplier, subject to a cross liability clause.

* + 1. **Employers Liability** **/Workers Compensation**
			1. Employers Liability Covering the Liability of the Supplier towards those employees employed in Israel for bodily injury and/or occupational disease caused during the period of the insurance while or in connection to the execution of the Project. The insurance will be affected to a limit of liability of KRW 200,000,000. -any one person and KRW 500,000,000. any one occurrence. The policy is extended to indemnify Iscar should Iscar be considered the employer of any of Supplier's employees.
			2. Workers Compensation/ covering the liability of the Supplier towards employees as required according to applicable law.
	1. The Supplier's Insurances shall include the following provisions: (1) The Supplier alone is responsible for payment of the premiums and the deductibles stated in the Supplier's Insurances; (2) The policies shall include a worldwide territorial limits and jurisdiction cover. (3) The Supplier Insurance’s will contain an explicit clause according to which the insurer may not cancel them and/or reduce their scope of coverage unless the insurer has first sent to Iscar notice by registered mail of its intention to do so 30 days in advance. (4) the insurance is primary and the insurer shall have no right or claim relating to insurance affected by Iscar or on Iscar's behalf.
	2. If any of the Supplier Insurances are on claims-made basis, the following conditions shall also apply: (1) The policies shall be maintained by the Supplier during the entire period of the Agreement, and for an additional period until the end of the statute of limitation; (2) The policies shall apply retroactively from the commencement date of the Project, even if this date is prior to the inception date of the policy; (3) The policies will be subject to an Extended Discovery Period of damages and claims for a period of additional 12 (twelve) months.
	3. Determination of the limits of liability as detailed in the Supplier's Insurances is construed to be a minimum requirement imposed upon the Supplier which does not derogate from its liability according to this Agreement and/or law.
	4. The Supplier shall deliver to Iscar an insurance certificate evidencing that all the Supplier's Insurances are in place ("**Insurance Certificate**"), duly signed by its insurer upon signing of this Agreement and either way prior to the beginning of any of the works at any of Iscar's Sites. The Supplier shall deliver to Iscar at the beginning of every new insurance period an updated Insurance Certificate. The Insurance Certificate shall be attached to the Agreement and marked **Exhibit F**.
	5. The Supplier will not have any allegation and/or demand and/or claim against Iscar and/or anyone on its behalf as well as anyone towards whom Iscar has waived its rights to claim, or has undertaken to indemnify, in writing prior to the occurrence of the damage, in respect of any damage to the property owned and/or in the responsibility of the Supplier, expect towards those who caused damaged maliciously.
	6. The Supplier is obliged to include in any agreement with its subcontractors involved in the performance of the works pursuant to this Agreement, provisions identical to the provisions of clause 17, obligating them to effect and to maintain, the same insurance policies that the Supplier is obliged to effect and maintain according to clause 17.1, subject to the required changes in accordance to the nature and the scope of the works provided by such subcontractors, throughout the entire period in of the works by subcontractors pursuant to the Agreement, and for any additional period as specified in clause 17. Alternatively, the Supplier shall procure that its subcontractors are included as co-insured in the Supplier’s Insurances.
1. **MATERIAL BREACH**
	1. The infringement by any of the Parties of one or more of the provisions specified in sections ‎3, 6, ‎7.10, ‎9, ‎14, ‎15, 17 and ‎20 of this Agreement, and any of the subsections thereof, shall constitute a material breach for all purposes of this Agreement ("**Material Breach**").
2. **TERMINATION**
	1. Iscar shall have the right to terminate this Agreement immediately, at any time, by providing a written notice to the Supplier upon the following cases:
		1. The Supplier's (i) insolvency, adjudication of bankruptcy; and/or (ii) written admission of inability to pay debts as they mature; and/or (iii) assignment for the benefit of creditors; and/or (iv) application for the consent to, or the actual appointment of any receiver or trustee in bankruptcy; and/or (v) filing of a voluntary petition in bankruptcy; and/or (vi) readjustment of debt; and/or (vii) commencement of any proceedings in connection with its dissolution and/or liquidation; and/or (viii) becoming subject to the any winding-up petition which is filed against the Infringing Party which is not cleared within 14 days thereafter; and/or (ix) initiation of or becoming subject to any winding-up and/or reorganization proceedings and/or any other similar proceeding; and/or
		2. The Supplier's Material Breach as per section 18.1. which is not cured and remedied within 30 (Thirty) calendar days following the occurrence thereof;
		3. The Parties inability to agree upon a Detailed Design by the time stipulating in the Project Schedule, in which Supplier shall return the First Payment and any additional payment made, if made, by Iscar.
	2. Without derogating from the above provisions, Iscar shall also have the right to terminate this Agreement, in whole or in part, for convenience, by providing 30 (thirty) days written notice to the Supplier to that effect (“**Convenience Termination**”).
	3. In the event of any termination (including Convenience Termination), the Supplier shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to stop work. The Supplier shall not be paid for any work performed or costs incurred after the date of notice of a Convenience Termination which reasonably could have been avoided. Further, the Supplier shall not be paid, and in no event, shall Iscar be obligated to pay, lost or anticipated profits or unabsorbed indirect costs or overhead.
	4. Subject to the terms of this Agreement and only in the event of Convenience Termination, within ninety (90) days after the effective date of termination, Supplier may submit to Iscar a claim reflecting the percentage of the work performed prior to the effective date of termination, plus reasonable charges that Seller can demonstrate to the satisfaction of Iscar have resulted from the termination. In no event shall Iscar be obligated to pay the Supplier any amount in excess of the respective Project consideration. The provisions of this section shall not limit or affect the right of Iscar to cancel this Agreement for default.
3. **CONFIDENTIALITY**
	1. Each Party acknowledges that in the course of negotiating this Agreement it has or may have acquired, and that during the term of this Agreement it may acquire, information about the other Party that is of a special and unique character and constitutes Confidential Information with respect to such other Party.
	2. During the Term of this Agreement, and for a period of 3 (three) years following termination or expiration thereof (or with respect to any Confidential Information constituting a trade secret – so long as applicable law shall protect such Confidential Information as a trade secret) –
		1. Receiving Party, shall not, directly or indirectly, disclose to, exploit or otherwise use for its own benefit or for the benefit of any person, corporation or entity, any Confidential Information regarding the Disclosing Party; provided however, that neither Party, as a Receiving Party, shall be under obligation to keep confidential any information which (i) is available to the general public through no breach of this Agreement; or (ii) was otherwise lawfully in the Receiving Party's possession prior to the time in which it was disclosed to the Receiving Party and as shall be proved by written records of the Receiving Party; or (iii) was independently developed by the Receiving Party; or (iv) is required to be disclosed pursuant to a final order of a competent judicial authority, from which no appeal is or can be made.
		2. Receiving Party shall be entitled to disclose Confidential Information pertaining to Disclosing Party, to any employee, officer, director, agent or attorney of the Receiving Party who has a need to know such Confidential Information, provided that the Receiving Party shall nevertheless be responsible for any violation of the Receiving Party’s obligations hereunder by such employee, officer, director, agent or attorney.
	3. Confidential Information, to any extent disclosed hereunder, shall remain the sole property of Disclosing Party, shall be held by Receiving Party for the account of Disclosing Party and shall be promptly returned to Disclosing Party, upon the latter's request anytime.
	4. The Parties acknowledge that a breach of any covenant contained herein by either Party may result in irreparable injury to the business of the other Party and that the remedies at law for such a breach may be inadequate. Accordingly, the Parties agree and consent that, in addition to all other remedies available to Disclosing Party at law and in equity, the Disclosing Party shall be entitled to both preliminary and permanent injunctions to prevent and/or halt a breach or threatened breach by either Party of any covenant contained herein.
	5. Without derogating from the foregoing, it is hereby further clarified that any publication containing reference to Iscar and/or the IMC Group, the Specification and/or the Project Consideration shall first be coordinated with and approved in written by Iscar.
4. **FORCE MAJEURE**
	1. If either Party is prevented or delayed in the performance of any of its obligations under contract by Force Majeure, that Party shall forthwith serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to Force Majeure, and shall subject to service of such notice have no liability in respect of the performance of such of its obligations as are prevented by the Force Majeure events during the continuation of such events, and for such time after they cease as is necessary for that Party, using all reasonable endeavors, to recommence its affected operations in order for it to perform its obligations.
	2. If either Party is prevented from performance of its obligations for a continuous period in excess of three (3) months, either Party may terminate this Agreement in unilateral extrajudicial way, by sending to the other Party a formal written notice and indicating the date of Agreement termination, upon completion of indicated term. Section 19.4 shall apply mutatis mutandis.
5. **GOVERNING LAW AND ARBITRATION**
	1. This Agreement shall be exclusively governed by and construed in accordance with the laws of the State of Israel
	2. Both Parties irrevocably consent to the service of any and all process in any such action or proceeding by the mailing of copies of such process to their address specified hereby.
	3. The Parties shall attempt to amicably settle any disputes which may arise between them with respect to any matter concerning the validity, breach, interpretation or performance of this Agreement and matters thereto related. Failing to reach such amicable settlement, the matter shall be referred to arbitration to be conducted in the English language, in Haifa, Israel under the prevailing rules of arbitration of the International Chamber of Commerce ("**ICC**") as such shall be in force for at the relevant time. The arbitrator shall be such person as the Parties shall jointly appoint within 10 (ten) days following a written demand for arbitration by either of the Parties. Failing to reach an agreement regarding the nomination of an arbitrator, the head of the ICC's representative institution in Israel shall appoint the arbitrator at the request of any of the Parties, a copy of which shall be sent to the other Party by the Party requesting it.
	4. Awards made pursuant to this section shall be enforced in accordance with the New York Convention 1958 and should include costs, including a reasonable allowance for attorney's fees, and judgment may be entered upon any award made hereunder in any court having jurisdiction over the Parties and/or their assets. The Parties agree, to the extent permitted by applicable law, that the arbitrator's award shall be binding~~.~~ and exclude any right of application or appeal to the Israeli courts or any other courts in connection with any question of law arising in the course of the arbitration or with respect to any award made, but without derogating from the Israeli court's competence to rule on questions of law arising in the course of, during and/or as a result of the said arbitration.
	5. The provisions of this section ‎22 and all sub-sections thereof shall survive the termination of this Agreement for any reason whatsoever, and will be deemed to constitute a separate agreement between the Parties for all purposes of referring disputes between them to arbitration in connection with the subject matter of this Agreement.
6. **MISCELLANEOUS**
	1. **Entire Agreement:** This Agreement together with its Exhibits constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof, and, excluding the Purchase Agreement signed by and between the Parties on July 1st, 2018, it cancels and overrides any prior agreement, arrangement or understandings between the Parties with respect to the subject matter thereof (written or oral) and/or any other terms, conditions or stipulations which may appear on any purchase order, receipt and/or any other document issued by or on behalf of the Supplier. Any amendment or waiver thereto shall be made only by a written instrument duly signed by both Parties hereof.
	2. **Taxes, Duties, Fees**: The Supplier shall be responsible for obtaining any and all licenses, taxes, duties and fees required for exportation and importation of the Project to the Iscar's Sites in accordance with the applicable Incoterms stipulated in the Agreement.
	3. **Assignment:** The Supplier shall not assign or subcontract any of its obligations under this Agreement in whole or in part, to a third party without the prior written approval of Iscar. The Supplier shall furnish Iscar a written list of the sub-contractors the Supplier proposes to employ (if any) before assigning any of its obligations to such sub-contractors.
	4. **Waiver:** Omission or delay on the part of any party in requiring due and punctual fulfillment of any of the obligations of the other party hereunder shall not be deemed a waiver of such obligation, or any other obligations, present or future, or of any resulting remedy for the breach thereof.
	5. **Severability:** The invalidity or unenforceability of any particular provision of this Agreement shall not in any manner or way effect any other provisions hereof and this Agreement shall be construed if possible as if amended to conform to legal requirements, failing which it shall be construed as if any such offending provision were omitted.
	6. **Notices:** Any notice, declaration or other communication required or authorized to be given by any Party under this Agreement to any other Party shall be in writing and shall be personally delivered, sent by facsimile transmission or sent by electronic means (such as by e-mail), sent by registered mail or dispatched by courier, and addressed to the other Party at the address stated at the header of this Agreement or to such other address as any of the Parties may be entitled to amend by notice in accordance with the provisions of this Section. Any notice shall operate and be deemed to have been served upon its intended recipient Party if (i) personally delivered – upon such delivery which shall be evidenced by the signature of an employee or representative of that intended recipient Party; and/or (ii) if sent by fax or by other electronic devices used to transmit electronic data (such as e-mail) – on the next business day following delivery thereof; and/or (iii) if sent by recognized courier – on the third business day following delivery thereof to said courier and provided that a written evidence is produced by and/or obtained from said courier with respect to its delivery at the address of the intended recipient Party; and/or (iv) if sent by post - on the tenth business day following mailing thereof, provided that it was sent by registered mail to the last known address of the intended recipient Party.
	7. **Counterparts**: This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[*Signature page to follow*]

**IN WITNESS WHEREOF,** the Parties hereto have caused this Agreement to be executed in the page below, by their duly authorized representatives as of the date first above written.

**\_­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Iscar Ltd. SFA Engineering Corpration**

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

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

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

|  |
| --- |
| Exhibits: |
| **Exhibit A -**  | Specifications |
| **Exhibit B -**  | B1: Project ScheduleB2: Installation Plan |
| **Exhibit C -**  | Acceptance Tests |
| **Exhibit D -**  | Form of Bank Guarantee |
| **Exhibit E** - | Project Consideration |
| **Exhibit F -**  | Supplier's Insurance Certificate |

**Exhibit A - Specifications**

**Exhibit B1 - Project Schedule**

**Exhibit B2 - Installation Plan**

**Exhibit C- Acceptance Tests**

**Exhibit D - Form of Bank Guarantee**

**Exhibit E - Project Consideration**

**Exhibit F - Supplier's Insurance Certificate**