

STRICTLY CONFIDENTIAL

ANNEXURE A: FORM OF CONTRACT¹

**CONTRACT
FOR
SUPPLY, DELIVERY, TESTING AND COMMISSIONING OF 2 UNITS
OF NEW LADEN REACH STACKERS AT EASTERN SEA LAEM
CHABANG TERMINAL CO., LTD**

**BETWEEN
EASTERN SEA LAEM CHABANG TERMINAL CO., LTD
AND
[INSERT FULL NAME OF CONTRACTOR]**

¹ Drafting Note: This document can also be used as a stand-alone document. If this document is NOT being used as part of the tender package then delete 'Annexure B: Form of Contract'.

STRICTLY CONFIDENTIAL

AGREEMENT DOCUMENT

The Contract is entered into on this [●] day of [insert month] [insert year] ("**Effective Date**")

Between:

Eastern Sea Laem Chabang Terminal Co., Ltd a company incorporated under the under the law of Kingdom of Thailand and having its registered office at [insert full address], hereinafter referred to as the "**Company**";

AND

[Insert full name of the Contractor], a [company] incorporated under the under the law of [Jurisdiction] and having its registered office at [insert full address], hereinafter referred to as the "**Contractor**",

WHEREAS

- A. The Company is in the business of [please provide a brief background] and is desirous of procuring the Deliverables.
- B. The Contractor is engaged in providing [please provide a brief background] .
- C. The Company wishes to procure and the Contractor has agreed to provide the Deliverables in accordance with the terms set out in the Contract (defined in clause 2 of this Agreement Document).

IT IS AGREED as follows:

1. DEFINITIONS

Capitalised words and phrases have the meanings given to them in clause 1 of Schedule 2 and clause 1 of Schedule 3.

2. CONTRACT²

The following documents (the "**Contract Documents**")³ shall be deemed to form and be read and construed as the entire agreement (the "**Contract**") between the Parties:

- (a) this Agreement Document⁴ and its schedules as follows:
 - (i) Schedule 1: Deliverables Specifications;
 - (ii) Schedule 2: General Terms and Conditions;
 - (iii) Schedule 3: Specific and Local Terms and Conditions;

² Drafting Note: please amend the list of the documents per the final agreed position.

³ Drafting Note: please note that the Schedules must be complete, duly filled, amended and agreed Schedules after negotiations and not the Schedules that are released to the Tenderers during the IITT phase for tendering. The Schedules forming the Contract Documents should be set out as Schedules to this agreement.

⁴ Drafting Note: please note that this Agreement Document replaces the concept of 'letter of acceptance' so please do not issue a letter of acceptance. If you want to record any agreed amendments to the terms, specifications, milestones etc then please amend the appropriate schedules and insert the amended schedules as schedules to this Agreement document. If for any reason, amendments to the Schedules are not preferred then amendments can be recorded either in this Agreement Document or in a separate document which document should be listed in clauses 2 and 3 of this Agreement document. Any amendments to the legal terms (i.e. Schedules 2 and 3 should only be undertaken by a legal counsel).

- (iv) Schedule 4: Schedule of Quotations;
- (v) Schedule 5: Payment Schedule;
- (vi) Schedule 6: Milestones;
- (vii) Schedule 7: Form of Securities;
- (viii) Schedule 8: Contractor Insurances; and

3. PRIORITY OF DOCUMENTS

The Contract Documents are to be taken as mutually explanatory of one another. If there is any ambiguity or discrepancy in the Contract Documents, the Company shall issue the necessary clarification or instruction to the Contractor, and the priority of the Contract Documents shall be as follows:

- (a) this Agreement Document (without the schedules)
- (b) Schedule 3: Specific and Local Terms and Conditions;
- (c) Schedule 2: General Terms and Conditions;
- (d) Schedule 1: Deliverables Specifications;
- (e) Schedule 4: Schedule of Quotations;
- (f) Schedule 5: Payment Schedule;
- (g) Schedule 6: Milestones;
- (h) Schedule 8: Contractor Insurances;
- (i) Schedule 7: Securities; and

4. CONSIDERATION

- 4.1 In fair and good consideration of the payment to be made under the Contract by the Company to the Contractor, the Contractor hereby covenants with the Company to execute and complete the Deliverable(s) in conformity with the provisions of the Contract.
- 4.2 The Company will pay the Contractor in consideration of the execution and completion of the Deliverables the Contract Price [of THB amount]]⁵ in the manner set out in Schedule 5.

5. SECURITIES AND CONTRACTOR INSURANCES

- 5.1 The Contractor shall provide the Company the following securities, meeting the requirements set out in clause 13 of Schedule 3, within thirty (30) days from the date of the Contract, failing which the Company shall be entitled to, without prejudice to any other rights and remedies of the Company, instruct the Contractor to immediately suspend the execution of the Deliverables until all the securities are provided:
 - (a) As set out in Schedule 6
- 5.2 The Contractor shall provide the Company, the following copies of the following Contractor Insurances or insurance certificates, meeting the requirements under clause 15 of Schedule 3, within two (2) weeks from the date of the Contract, failing which

⁵ Drafting Note: if the Contract Price is not a lump sum amount then please delete the language in square brackets.

the Company shall be entitled to instruct the Contractor to immediately suspend the execution of the Deliverables until such insurances are put in place:

- (a) [please set out the Contractor Insurances that are to be submitted by the Contractor shortly after signing of the Contract.]

6. **NOTICES**

The notices under the Contract shall be given in the manner set out in clause 19.1 of Schedule 2 to the following addresses:

The Company

Address: [insert the address]

Attn: [insert name of the person who should receive the notice]

Email: [insert the relevant email address]

The Contractor

Address: [insert the address]

Attn: [insert name of the person who should receive the notice]

Email: [insert the relevant email address]

7. **THE CODE**

The Contractor acknowledges it has read and has full knowledge of PSA's code on business ethics and conduct ("**The Code**"). The Code reflects PSA Group's business principles and offers guidance on what is expected of the PSA Group employees in dealing with critical issues. The Contractor shall respect The Code and agrees to work with the Company to comply with The Code. The latest version which may be found at: https://www.globalpsa.com/wpcontent/uploads/PSA_Code_Handbook.pdf.

8. **NATURE OF CONTRACT⁶**

For the purposes of clause 2 of Schedule 2, it is clarified that this Contract is not a Term/Rate basis Contract.

⁶ Legal Note: please note that this clause is required because of a difference between the procedure for execution of Capex contracts and Term/Rate basis contract (which are intended to cover the Opex contracts). After discussions with the Group Procurement and SG Procurement teams it has been decided that: (a) for Opex contracts, a Purchase Order will need to be issued by the Company before the Contractor executes the Deliverables and therefore there will not be a concept of Required and Optional Deliverables for the Term/Rate basis contracts; and (b) for Capex contracts, a Purchase Order is not required to be issued for the Required Deliverables and Optional Deliverable however a Confirmation Order will be required for Optional Deliverables.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS CONTRACT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.⁷

For and on behalf of

For and on behalf of

Eastern Sea Laem Chabang Terminal Co., Ltd **[insert full name of the Contractor]**

Name:
Designation:

Name:
Designation:

For and on behalf of

For and on behalf of

Eastern Sea Laem Chabang Terminal Co., Ltd **[insert full name of the Contractor]**

Name:
Designation:

Name:
Designation:

⁷ Drafting Note: Please ensure that the signature block is per PSA's delegation of authority. If two signatories are required then add more signature blocks.

SCHEDULE 1: DELIVERABLE(S) SPECIFICATIONS

[PART A: REQUIRED DELIVERABLES]

Please refer to Schedule 1 as Appended

SCHEDULE 2: GENERAL TERMS AND CONDITIONS

Please refer to Schedule 2 as Appended

SCHEDULE 3: SPECIFIC AND LOCAL TERMS AND CONDITIONS

Please refer to Schedule 3 As Appended

SCHEDULE 4: SCHEDULE OF QUOTATIONS

PART A: QUOTATIONS FOR REQUIRED DELIVERABLES

2 Units of Reach Stackers

PART B: QUOTATIONS FOR OPTIONAL DELIVERABLES

Spare Parts Price List

SCHEDULE 5: PAYMENT SCHEDULE

Terms of Payment - Offshore

Payment	Milestone	Documents Required
40%	Signing of the Factory Acceptance Certificate and Equipment Loaded and Secured on Vessel	- Mutually Signed Factory Acceptance Certificate
		- Clean on-board bill of lading
		- All insurance certificates
		- Packing List and Commercial Invoices
40%	Signing of the Conditional Acceptance Certificate by Buyer	-Warranty Bond
		-Mutually Signed Conditional Acceptance Certificate with attaching signed Site Acceptance Test and defect list
15%	Signing of the Final Acceptance Certificate by Buyer	-Mutually Signed Final Acceptance Certificate with signed defect list completion
5%	After Warranty Period End	-Mutually Signed Warranty Completion Certificate

Terms of Payment - Onshore

Payment	Milestone	Documents Required
80%	Signing of the Conditional Acceptance Certificate by Buyer	-Warranty Bond
		-Mutually Signed Conditional Acceptance Certificate with attaching signed Site Acceptance Test and defect list
15%	Signing of the Final Acceptance Certificate by Buyer	-Mutually Signed Final Acceptance Certificate with signed defect list completion
5%	After Warranty Period End	-Mutually Signed Warranty Completion Certificate

The general payment term is 45 days after invoice received date.

The Company shall be entitled to withhold payment of the value of any non-conformity with the requirements of this Contract. Subject to Contractor rectifying the non-conformance and performing its obligations in accordance with the requirements of Contract, The Company shall release any such withheld amounts within fourteen (14) days of Contractor's confirmation that it has accepted such rectification and performance by Contractor.

All sums due to Contractor under the Contract shall also be subject to any deductions or withholding taxes, service level enhancement, and contributions whatsoever and penalties or interest thereof which may be required under the laws in force in the Kingdom of Thailand

SCHEDULE 6: MILESTONES

Delivery, testing and commissioning within 90 days of order confirmation

SCHEDULE 7: FORM OF SECURITIES

Securities (Performance Bond) is to be provided as stated in Schedule 3, Chapter 13 (Securities)

A bond by way of a banker's guarantee issued by a reputable bank or by way of an insurance issued by a company acceptable to ESCO, payable immediately on demand shall be given to ESCO by the Contractor within thirty (30) days of the execution of the Agreement in respect of all the Contractor's liabilities and obligations under the Contract.

The bond shall be provided by financial institutions with good financial standing as having at least A-international rating by S&P, Moody's or Fitch shall be acceptable to ESCO

The Contractor must submit irrevocable and unconditional bond and ESCO shall be entitled to make a demand on and utilize the proceeds of the Bond at ESCO's sole discretion.

For any or all of the Bond, ESCO shall return the original copy thereof to the Contractor, and issue certificate(s) of release notes thereof duly signed and executed by the authorized representative of the Seller.

SCHEDULE 8: CONTRACTOR INSURANCES

Insurance is to be provided as listed in Schedule 3 , Chapter 15 (Risk, Insurance and Property)
