

Contract no. [XX]

between

Norske tog AS

(hereinafter referred to as NT)

and

[XX]

(hereinafter referred to as the Contractor)

for delivery of

Trainsets

**Signatures:**

For NT:	
Date:	Sign.:
	Name in block capitals:
Date:	Sign.:
	Name in block capitals:
For Contractor	
Date:	Sign.:
	Name in block capitals:
Date:	Sign.:
	Name in block capitals:

### Version log

Version	Date (when released)	Author	Approval	Changes in sections/req ID
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<b>1.</b>	<b>GENERAL .....</b>	<b>10</b>
1.1	About NT .....	10
1.2	The objective of the Contract.....	10
1.3	The Contract and order of priority .....	10
<b>2.</b>	<b>SCOPE OF DELIVERY AND DELIVERY SCHEDULE .....</b>	<b>10</b>
2.1	Scope of Delivery.....	10
2.2	Primary Delivery.....	10
2.3	Options.....	10
2.4	Delivery Schedule.....	11
<b>3.</b>	<b>OBLIGATIONS OF THE CONTRACTOR – GENERAL RULES.....</b>	<b>11</b>
3.1	System Function.....	11
3.2	Interchangeability .....	11
3.3	Responsibility for Design, Materials and Workmanship.....	11
3.4	Compliance with laws and regulations.....	12
3.5	Testing and Authority Approvals.....	12
3.6	The Contractor’s description of the Delivery .....	13
3.7	Configuration Management .....	13
3.8	Acknowledged standards, open interfaces and interoperability etc .....	13
3.9	Quality assurance and traffic safety .....	13
3.10	Key Personnel.....	13
<b>4.</b>	<b>ASSIGNMENT AND SUBCONTRACTING.....</b>	<b>14</b>
4.1	Assignment .....	14
4.2	Subcontractors .....	14
4.3	Assignment of Subcontract .....	14
<b>5.</b>	<b>MAINTENANCE .....</b>	<b>15</b>
5.1	General.....	15
5.2	Maintenance Tender Obligation.....	15

5.3	Software Maintenance and Support .....	15
<b>6.</b>	<b>DELIVERY, TESTS, OWNERSHIP AND PASSING OF RISK .....</b>	<b>16</b>
6.1	General.....	16
6.2	Tests and Inspection .....	16
6.2.1	Pre-delivery Tests.....	16
6.2.2	Inspection and Tests at Production Plant.....	17
6.3	Terms of Delivery.....	17
6.4	Pre-PTO tests and PTO.....	17
6.4.1	General .....	17
6.4.2	Pre-PTO tests .....	17
6.4.3	Conditions for PTO .....	18
6.5	Transfer of risk .....	19
6.6	Transfer of ownership and title .....	19
6.7	Test Operation Period .....	19
6.7.1	Fleet requirements .....	19
6.7.2	Individual requirements.....	19
6.8	FTO .....	20
6.9	Costs in connection with Tests etc. ....	20
6.10	Responsibility and Liability during Tests etc .....	20
<b>7.</b>	<b>PRICES, PAYMENTS AND GUARANTEES .....</b>	<b>21</b>
7.1	Prices.....	21
7.2	Payments of the contract prices .....	21
7.2.1	Invoicing .....	21
7.2.2	Retention .....	21
7.3	Guarantees.....	21
7.3.1	General .....	21
7.3.2	Advance Payment Guarantees.....	21
7.3.3	Warranty Period Guarantee .....	21
7.3.4	Parent Company Guarantee.....	22
7.3.5	Validity of guarantees .....	22
<b>8.</b>	<b>DELAY.....</b>	<b>23</b>
8.1	General.....	23
8.2	Notice of Delay .....	23
8.3	Extension of time.....	23
8.4	Liquidated Damages .....	23
8.4.1	Delay of PTO .....	23
8.4.2	Delay of Documentation, training, spare parts etc. ....	23

8.4.3	Maximum amount of liquidated damages .....	23
8.5	Force Majeure .....	23
9.	TERMINATION.....	24
9.1	Termination for cause.....	24
9.2	Reimbursement in the event of termination .....	24
9.3	NT's right to compensation in the event of termination .....	24
9.4	Right to complete Works.....	25
9.5	Termination for Convenience .....	25
10.	DOCUMENTATION AND DRAWINGS.....	25
10.1	General.....	25
10.2	Ownership to documents and information .....	25
11.	TRAINING .....	26
12.	WARRANTY.....	26
12.1	Technical warranty .....	26
12.2	Extended technical warranty .....	26
12.3	Systematic fault warranty .....	26
12.4	Warranty Obligations - Remedies .....	27
12.4.1	Correction of defect .....	27
12.4.2	Renewed Warranty .....	27
12.4.3	Marking of components .....	28
12.4.4	Risk and responsibility at the Contractor's premises .....	28
12.4.5	Right to request Replacement .....	28
12.4.6	End of Warranty Certificate.....	28
13.	INSPECTION, AUDIT AND ACCESS TO CONTRACTOR'S PREMISES.....	28
14.	CONFIDENTIALITY.....	29
15.	VARIATION TO THE WORKS .....	29
15.1	General.....	29
15.2	Variation Orders.....	29
15.3	Request for Variation Order.....	30
15.4	Time limit.....	30

<b>15.5</b>	<b>Dispute resolution</b> .....	<b>30</b>
15.5.1	Disputed variations to the Contract.....	30
15.5.2	The expert's opinion .....	30
15.5.3	Final decision.....	31
<b>15.6</b>	<b>Alternative Solutions</b> .....	<b>31</b>
<b>16.</b>	<b>SPARE PARTS, OBSOLESCENCE MANAGEMENT AND CONSIGNATION STORE</b> .....	<b>31</b>
16.1	Supply of spare parts.....	31
16.2	Right to purchase from subcontractors .....	31
16.3	Consignation store .....	31
16.4	Obsolescence management.....	31
<b>17.</b>	<b>RELIABILITY AND AVAILABILITY PERFORMANCE</b> .....	<b>32</b>
17.1	Reliability and availability warranty .....	32
17.2	Reliability performance compensation .....	32
17.2.1	Significant Falts .....	32
17.2.2	Major Faults.....	33
17.3	Bonus.....	33
17.3.1	Significant Faults .....	33
17.3.2	Major Faults.....	33
<b>18.</b>	<b>WARRANTY FOR LIFE CYCLE COSTS (LCC)</b> .....	<b>33</b>
<b>19.</b>	<b>INTELLECTUAL PROPERTY RIGHTS</b> .....	<b>34</b>
19.1	Intellectual property rights – warranties.....	34
19.2	Rights pertaining to information provided by NT .....	34
19.3	Rights to data .....	34
19.4	Licence to use Standard Software .....	34
19.5	Licence to use customisations and material developed for the Customer .....	35
19.6	Reverse engineering of integrated circuits and programmable logic controllers.....	35
19.7	Licence to use documentation .....	35
19.8	Deposit of source code and documentation.....	35
19.9	Indemnification .....	36
<b>20.</b>	<b>OPTIONS EXERCISE</b> .....	<b>36</b>

<b>21. INVENTIONS .....</b>	<b>37</b>
<b>22. LIABILITY - LIMITATION OF LIABILITY.....</b>	<b>37</b>
22.1 General.....	37
22.2 Third Party Liability .....	38
22.3 Limitation of liability.....	38
<b>23. INSURANCE .....</b>	<b>38</b>
23.1 The Deliveries .....	38
23.2 Third party liability .....	38
23.3 The Contractor's plant and equipment.....	39
23.4 Employees .....	39
23.5 Other insurances .....	39
23.6 Documentation .....	39
23.7 Expansion of insurances if an Option is called .....	39
<b>24. MISCELLANEOUS.....</b>	<b>39</b>
24.1 General.....	39
24.2 Changes of Production Plant .....	39
24.3 Signature of the Contract and Amendments .....	39
24.4 Prevention of loss .....	39
24.5 Headings .....	39
24.6 Language.....	40
24.7 Representative of the Parties .....	40
<b>25. REQUIREMENTS FOR RESPONSIBLE BUSINESS CONDUCT.....</b>	<b>40</b>
25.1.....	40
25.2 Inspection and Monitoring.....	40
25.3 Sanctions.....	40
<b>26. DISPUTES .....</b>	<b>40</b>
<b>27. LIST OF EXHIBITS.....</b>	<b>41</b>







## 1. General

### 1.1 About NT

NT is a Norwegian company wholly owned by the Norwegian state represented by the Ministry of Transport and Communications.

NT's main purpose is to procure and rent out rolling stock to railway operators in Norway.

### 1.2 The objective of the Contract

The paramount objective of the Contract is to facilitate the procurement of reliable, cost-effective Trainsets with high capacity and a high level of standardisation, on terms and conditions as stated in this Contract.

### 1.3 The Contract and order of priority

The Contract consists of these Contract Conditions and the Exhibits listed in clause 27.

All documents comprising the Contract are intended to be read and construed as being mutually explanatory of each other. However, in the event of inconsistency or conflict between any of the documents comprising the Contract, the following order of priority shall apply:

- 1) These Contract Conditions and Exhibit P
- 2) Exhibits A-L
- 3) Exhibit N
- 4) Exhibit O

Notwithstanding the provisions of clause 1.3, where there is a reference to two or more standards of performance applying in the case of conflicting standards the higher standard shall always apply. Where the Contractor requests, NT shall determine which of the incompatible standards is to be taken as the higher for the purposes of this paragraph. If the Parties have amended a provision of the Contract, the Amendment to Contract shall prevail in the event and to the extent of a conflict.

## 2. Scope of Delivery and Delivery Schedule

### 2.1 Scope of Delivery

The complete Delivery shall be in accordance with this Contract.

Notwithstanding the specificity of the descriptions of the Delivery to be provided by Contractor under this Contract, the obligations of Contractor under this Contract also comprise all activities, functions, services and responsibilities that are reasonably and necessarily required for the Delivery fulfilling the requirements and purpose.

Contractor acknowledges and confirms that it prior to signing of the Contract has had an opportunity to carry out a thorough examination of documentation and all other information relevant to the Delivery and that Contractor has asked and received adequate answers from NT to all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Delivery and perform all other obligations under the Contract.

### 2.2 Primary Delivery

The Contractor shall deliver the Primary Delivery described in Exhibit A1, in accordance with the terms set out in the Contract, within the timeframes set out in Exhibit C and according to the prices as specified in Appendix B-1 to Exhibit B.

### 2.3 Options

NT retains the right to exercise the Options as set out in Exhibit A1. Option prices shall be in accordance with Appendix B1.

NT may exercise the Options by following the procedure set out in clause 20.

Unless otherwise expressly stated in writing, the provisions of the Contract shall apply for the delivery of Options.

## 2.4 Delivery Schedule

Milestone dates for the Delivery are defined in the Delivery Schedule as set out in Exhibit C.

Delivery ahead of the Delivery Schedule, or Delivery based on a tighter schedule than agreed, shall not take place without the prior written consent of NT.

## 3. Obligations of the Contractor – General Rules

### 3.1 System Function

In the design and manufacturing process, the Contractor shall give careful attention to the operational conditions that apply to the intended use of the Trainsets. Each Trainset shall constitute a properly functioning Trainset in all respects.

The Trainset shall be fit for use in a smoothly functioning system of modern, rapid and safe train operations exposed to all operational conditions relevant to the Norwegian railway system. Without limitation, this implies that the Contractor shall take into consideration any climatic and geographical conditions, existing standards, the condition of the infrastructure including the signalling system, and the existing rolling stock which shall be able to operate on the same infrastructure simultaneously with the Trainsets without interface problems. For unforeseeable changes after the Effective Date, the conditions for Variations in clause 15 shall apply.

NT shall utilise the Trainsets on the railway network during the entire life cycle of the Trainsets. Thus, NT requires that the Trainsets are solid and durable, and well-functioning both in total and in each individual system it consists of. Further, NT requires that the Trainsets are safe in operation, comfortable, environmentally friendly, economic in operation, convenient to use and easy to maintain at a low cost.

It is Contractors responsibility to thoroughly examine the conditions in Norway and do the necessary adoptions to the Trainsets. The information prepared by NT/referred to by NT to operational and climatic conditions is included for information purposes only and shall not in any way relieve Contractor from its responsibility as set out in the Contract.

### 3.2 Interchangeability

The Trainsets shall as far as possible be interchangeable and identical. In addition, all spare parts, consumables, reparable components and modules shall be interchangeable between all Trainsets, without any need for modifications or alterations unless such interchangeability is not feasible due to changes in norms or standards, or for specific factual differences applying to the Trainsets in question.

### 3.3 Responsibility for Design, Materials and Workmanship

Contractor is responsible for the correct and proper design of the Delivery, as well as for the quality of equipment, materials, spare parts and components associated with the Delivery.

The Contractor shall deliver all Trainsets complete and ready for immediate use, in commercial operation, with such fittings and auxiliary equipment as are necessary for their utilisation and service which can normally be expected for the Delivery, even if this is not expressly written in the Contract. The Trainsets shall be fit for the intended use as stipulated in this Contract.

The technical specifications for the Delivery are NT's minimum technical requirements. Contractor is in addition responsible for ensuring that all other functional requirements are fulfilled.

The Contractor shall be fully responsible whether or not NT has been presented/ inspected/ ordered/ approved or rejected the design, manufacturing process, equipment, spare parts, calculations, documents etc.

The responsibility of the Contractor shall extend to any remedial actions or corrective measures undertaken by the Contractor in fulfilment of any obligations under this Contract, including the obsolescence management obligations as set out in clause 16 and the warranty obligations as set out in clause 12.

If NT requests specific designs, manufacturing processes, materials, spare parts or components, the Contractor is obliged to examine the request. If the Contractor finds that he cannot take full responsibility for the implementation of the request, the Contractor must make a clear statement in writing with a detailed description of the effects of the request, set out his reasons for coming to this decision and explicitly refuse to implement the request. Should the Contractor fail to make such statement in writing and proceed to implement the request, the Contractor will automatically be fully responsible for the request and its consequences. This also applies to any materials and components provided by NT, which are to be installed in the Trainsets.

Should the Contractor make such statement in writing and NT nevertheless orders the request to be implemented, despite Contractors advise, NT shall accept responsibility for the consequences of the implementation of the request to the extent Contractor has explicitly stated these consequences as a reason for not implementing the request.

### 3.4 Compliance with laws and regulations

The Contractor shall keep himself informed of, and comply with, laws and regulations which apply on any site where the Work is performed.

The Deliveries shall comply with applicable laws and regulations in force at the time of the PTO for each Trainset, including, without limitation, laws and regulations relating to occupational safety, environmental protection, and protection in general against hazardous or disturbing effects of operation of the Trainsets.

If the current laws and regulations should be changed or amended after the Effective Date, the Delivery shall be carried out as far as technically possible. If such changes or amendments necessitate a Variation and this affects Contractor's costs or progress, either party may request a change in the Contract Price and/or Delivery Schedule reflecting the effect of such changes or amendments. Clause 15 shall apply accordingly.

If the Contractor processes personal data on behalf of NT in connection with this Contract, the Contractor shall process data in accordance with instructions from NT, this Contract and applicable data protection laws.

### 3.5 Testing and Authority Approvals

The Contractor is responsible for conducting all required tests, in addition to tests and verifications as described in these Contract Conditions, Exhibit I and Exhibit D.

The Contractor shall, at his own cost, provide NT with all documentation and take every action required to obtain all necessary authorisations and approvals for the putting into service of the Trainsets in accordance with the Contract, without any restrictions of any kind. NT's responsibility is strictly limited to the role of being the official applicant for vehicle type authorization and submitting the finalized application, based on the Documentation delivered by the Contractor. In this respect, NT shall when requested by the Contractor, provide the following cooperation in a timely manner:

- A) signing the necessary applications (where NT's signature is required);
- B) supplying any necessary information in NT's possession;
- C) supplying appropriately qualified representatives to attend meetings with affected Parties, as may be necessary; and
- D) other involvement that may reasonably be required

The obligations of the Contractor in relation to the approval process are described further in Exhibit I, Exhibit A5 and Exhibit O .

Each Trainset shall be accompanied by all necessary documentation, as well as certificates and permits necessary for the immediate direct use and operation of the Trainset. One-time submittals (e.g. type test reports), however, shall only be submitted once.

### 3.6 The Contractor's description of the Delivery

The Contractor's detailed description of the Delivery is set out in Exhibit O. This description contains specified information on how the Contractor intends to deliver Trainsets fulfilling the requirements in Exhibit A and other parts of the Contract.

The Contractor is obliged to deliver the Trainsets as described in Exhibit O if and to the extent this description fulfils the requirements in Exhibit A and other parts of the Contract. NT shall have neither risk nor responsibility for anything in the Contractor's description being suited to fulfil, or lead to fulfilment, of the requirements in the Contract.

If the Contractor's specifications on any part is not suited to fulfil the requirements in Exhibit A or other parts of the Contract, the Contractor, at his own risk and cost, shall change his description on the relevant parts and deliver the Trainsets according to the requirements in Exhibit A and other parts of the Contract. The Contractor shall give prior written notice to NT.

The Contractor may, with NT's prior written consent, depart from other parts of the description set out in Contractor's description as long as the requirements set out in Exhibit A and other parts of the Contract are fulfilled. NT shall at its sole discretion be entitled to refuse such consent.

To the extent NT agrees to change or amend any requirements as set out in Exhibit A and/or other parts of the Contract, this shall be detailed in writing. Clause 15 shall apply accordingly.

### 3.7 Configuration Management

The Contractor shall provide and maintain a configuration management system in accordance with the requirements in Exhibit A3.

### 3.8 Acknowledged standards, open interfaces and interoperability etc

All Software and components shall be designed, developed and manufactured in accordance with generally acknowledged railway industry standards regarding i.a. architecture, development and maintainability. All Software and components shall be designed so as to communicate via open interfaces and to facilitate interchangeability, extensibility and interoperability with Standard Software and components as far as this is applicable and possible (both from a technical and a commercial point of view) having regard to the proposed system design of the Delivery as described in the system specification of the Contractor.

All relevant Software of the Delivery, both safety-related and non-safety-related, shall be designed, developed and tested according to the latest version of EN 50657. All other software that does not contribute to, and is segregated from, rolling stock operational functions shall be designed, tested and verified according to generally acknowledged and applied railway industry standards.

### 3.9 Quality assurance and traffic safety

Contractor shall have in place an implemented and documented quality assurance system in accordance with NS EN ISO 9000-series (latest edition) and an existing Quality Control Plan (QCP) which shall be reflected in the organization of the production and design work according to Exhibit D.

The Traffic Safety documentation shall be worked out in accordance with Exhibit I and submitted to NT within the agreed dates.

### 3.10 Key Personnel

The Contractor shall not replace or reduce the efforts of Key Personnel listed in Exhibit D without NT's prior written approval, unless such replacements are necessary due to e.g. termination, voluntary resignation, sickness, or similar reasons. The Contractor shall notify NT without undue delay after the

Contractor gains knowledge of any prospects to such replacements. In the case of such replacement, the Contractor shall replace the personnel with someone with equal or better qualifications.

If the Contractor replaces any of the Key Personnel without consent or valid reason as set forth above, the Contractor is liable to liquidated damages as specified below.

If the Contractor replaces any of the Key Personnel as set forth in Exhibit D without valid reason or consent, NT is entitled to liquidated damages in an amount of EUR 500,- per person for each calendar day until the replaced person returns, or a fixed fee of EUR 20000,- for each Key Personnel removed on a permanent basis.

NT can at any time demand that the Contractor replaces personnel that NT deems unsuited. NT's demand shall be written and grounded.

#### 4. Assignment and Subcontracting

##### 4.1 Assignment

The Contractor shall not assign the Contract or any part of the obligations under the Contract, unless approved in writing by NT in advance. NT shall not unreasonably withhold or delay its consent.

NT reserves the right to assign whole or parts of the Contract or any of its rights or obligations hereunder to any third party, provided that NT can demonstrate that the assignee has the financial strength to fulfil NT's obligations under the Contract.

##### 4.2 Subcontractors

The Contractor shall list Subcontractors used for performance of the Works, as specified in Exhibit K. The Contractor shall notify NT in advance of any extensions or alterations to the list in Exhibit K unless the extension/alterations regards minor purchases or limited use of hired labor. NT reserves the right of non-approval for valid reasons.

The Contractor shall ensure that the obligations necessary for the Contractor's performance in accordance with the Contract are passed on to any Subcontractors.

The Contractor shall remain fully responsible to NT for parts of the Delivery that are carried out by Subcontractors, and any and all acts or omissions of his Subcontractors and for persons directly or indirectly employed by them in the same way as the Contractor is liable for the acts or omissions of persons directly employed by him.

In its agreements with Subcontractors listed in Exhibit K, the Contractor shall reserve the right for NT to make claims directly towards the Subcontractors, and the Subcontracts shall be assignable to NT. Where such cases arise, the Contractor shall assist NT in presenting and enforcing any claim towards Subcontractors. This does not in any way release the Contractor from his own liabilities and warranties under the Contract.

If any Subcontractor is in breach of the Requirements for Responsible Business conduct set out in clause 25, NT shall have the right to request that such Subcontractor is replaced. The new Subcontractor shall be subject to NT's prior written consent. The cost of such replacement shall be borne by Contractor.

##### 4.3 Assignment of Subcontract

NT reserves the right to assign any contract/part deliveries with NT's subcontractors to the Contractor, provided that such contract/part delivery is directly relatable to the delivery of Trainsets. Upon such assignment, the Contractor assumes NT's rights and obligations under the contracts, with effect for performance completed as well as performance to complete. The Contractor's mark-up on the prices set out in the transferred contract is specified in Exhibit B. The mark-up is calculated based on the final and total price (excl. VAT) of the transferred contract.

The specific contracts/part deliveries that NT will assign to the Contractor are specified in Exhibit J. NT also reserves the right to assign other contracts/part deliveries, in whole or in part, to the Contractor. NT shall present the contract/terms for the part delivery prior to assignment. The Contractor has the right to oppose to the assignment of such other contract/part delivery if it is objectively justified that the

assignment will materially affect the Contractors own performance. Following assignment of a contract/part delivery, the Contractor assumes the same risk and responsibility for the assigned contract/part delivery as for the Delivery in general. The assigned contract/part delivery shall in no way be distinguished from the Delivery in terms of the Contractors obligation to deliver a complete Delivery in accordance with the terms and requirements set forth in the Contract.

## 5. Maintenance

### 5.1 General

NT may wholly or partly carry out all maintenance, repair, overhaul, modifications and/or upgrading of the Trainsets in-house, and/or under a separate maintenance contract with Contractor and/or by a separate maintenance contract with a third-party maintenance contractor, and/or by a separate or integrated part of a lease agreement with Operator(s) and/or by a combination of these alternatives.

All of NT's maintenance-related rights and obligations under this Contract shall apply irrespectively of who carries out the maintenance, i.e. even if carried out by a third-party maintenance contractor acting in competition with Contractor.

All of Contractor's obligations under this Contract shall apply irrespectively of by whom the maintenance is carried out, always provided that the maintenance is carried out properly and in accordance with the Contractor's documentation.

### 5.2 Maintenance Tender Obligation

The Contractor is obliged to, upon request from NT or an Operator, to prepare and submit a tender for the performance of maintenance services, and if applicable reflecting full services according to ECM.

The tender shall be bound by the commitments of LCC, maintenance obligation, reliability, availability, maintenance program and all other obligations related to maintenance including but not limited to maintenance management system and reporting, spare-parts and components as defined in this Contract. The scope of such maintenance services is to be further defined by NT and designated Operator if decided to request such maintenance services.

### 5.3 Software Maintenance and Support

The Contractor undertakes to continue the development of the software and databases used for the maintenance and operation of the Delivery throughout the lifetime of the Trainsets, and to notify NT of any new versions and releases capable of improving the Delivery. Unless otherwise stated in a separate maintenance and operation agreement, Contractor undertakes to offer such new releases and versions under terms no less favourable than the standard maintenance terms generally offered in the market by the Contractor and/or its Subcontractors. The software maintenance services shall include a service level in accordance with generally accepted industry practice.

The software maintenance services shall include correction of errors and delivery of new versions, upgrades and updates, including security patches, on a level that supports the continuous and secure operation of the Trainsets. Any new versions, upgrades, updates and patches shall be accompanied by appropriate documentation in the form of a release note or similar.

In connection with the delivery of new versions of the software, upon request and subject to a reasonable fee, the Contractor shall provide assistance, including installation and configuration, service and support, as well as training of NT's and/or the operators' personnel, as necessary for NT's and/or the operators' use of the software.

The Contractor shall keep himself updated and advise NT on new technologies or software that could be implemented to improve the performance of the Delivery, and also to advise NT on performance requirements desirable but not implemented in the Delivery.

For the avoidance of doubt, the provisions of clause 19 below shall apply accordingly to any new versions, upgrades and updates of and patches to the software included in the Delivery.

The Contractor's maintenance services pursuant to the above shall not affect the Contractor's obligations and responsibility, including the warranties and guarantees, under the Contract.

## 6. Delivery, tests, ownership and passing of risk

### 6.1 General

The procedure for inspections prior to delivery from Production Plant, PTO and FTO of the Trainsets is set out in these Contract Conditions, Exhibit A5 and Exhibit I. The procedure consists of the following steps:

- a) Type Tests according to Exhibit A5 and Exhibit I,
- b) First article inspections according to Exhibit I,
- c) Pre-delivery tests according to clause 6.2.1,
- d) Production Plant Inspection according to clause 6.2.2,
- e) Pre-PTO tests according to clause 6.4.2,
- f) Delivery by means of PTO according to clause 6.4.3. which is the actual hand over of the Trainsets together with documentation for approval. Transfer of risk and ownership takes place at the same time according to clause 6.5 and 6.6,
- g) Test Operation Period according to clause 6.7,
- h) Final Take Over (FTO) according to clause 6.8,

The procedures and content of each test and inspection shall be described in the Contractor's Verification and Validation Plan, as specified in Exhibit I, and shall be subject to NT's review and approval.

The successful execution of each test and inspection set forth above shall be documented in reports and necessary certificates, and shall be confirmed by NT in writing.

NT shall be entitled to participate at any tests and inspections, and shall be notified in due time prior to any such tests and inspections.

### 6.2 Tests and Inspection

#### 6.2.1 Pre-delivery Tests

Tests on test tracks in accordance with this clauses shall be performed by having a number of Trainsets undergo a test before delivery from the Contractor's Production Plant comprising at least 1000 Trainset kilometres (the "Pre-delivery Test") for the first Trainset and at least 500 km for the Trainsets two and three to be delivered. The tests shall be fully performed prior to any Trainsets arriving in Norway.

The notice specifying the program, date and place for commencement of Pre-delivery Tests shall be provided by the Contractor to NT in writing not less than 15 days in advance of the commencement of the Pre-delivery tests. The notice shall include a Pre-delivery Test programme for NTs review and approval.

Imperfections, faults, deficiencies and other matters of discrepancies revealed during the Pre-delivery Tests, shall be listed in a protocol signed by both Parties, the «Pre-delivery Test protocol». Unless otherwise agreed, any imperfection, faults, deficiency or other matter of discrepancy shall be remedied immediately.

If the number of defects on a Trainset during the Pre-delivery Test exceed zero (0) significant failures or zero (0) major failures, ref. Exhibit A4-1, then NT is entitled to extend the Pre-delivery Test until the relevant Trainset has produced a continuous distance of at least 1000 Trainset kilometres without exceeding the above number of failures.

If any of the limits of significant and major failures above are exceeded for any of the Trainsets which have been used to carry out the Pre-delivery Test, then the Contractor shall inform NT of the defect(s) which have caused the Trainset to exceed any of the limits set out in reasonable detail. NT is then entitled to demand that further Trainsets, in addition to the first three (3) to be delivered, will be subject to a Pre-delivery Test.



## 6.2.2 Inspection and Tests at Production Plant

First article inspection shall be performed on the first Trainset in the Primary Delivery, as further defined in Exhibit I.

When the Contractor declares each Trainset ready for dispatch from the Production Plant, NT shall be entitled to make a Production Plant Inspection of each Trainset at the Contractor's Production Plant to ascertain that the Trainset fulfils the requirements of the Contract and is ready and complete for dispatch.

The Production Plant Inspection shall include a possibility to test the mobility of the Trainset over a short distance, conducted by Contractor.

The notice specifying the programme, date and place for commencement of Production Plant Inspection shall be provided by the Contractor to NT in writing not less than 15 days in advance of the commencement of the Production Plant Inspection.

The notice shall include a Production Plant Inspection programme being part of the Verification and Validation programme. Unless otherwise agreed, a period of up to 10 days shall be made available to NT for conducting the Production Plant Inspection.

Imperfections, faults, deficiencies and other matters of discrepancies revealed during the Production Plant Inspection, shall be listed in a protocol signed by both Parties, the «Production Plant Inspection Protocol». Unless otherwise agreed, any imperfection, faults, deficiency or other matter of discrepancy shall be remedied immediately.

If any Trainset or part of any Trainset fails to pass the tests conducted during the Production Plant Inspection, NT may request a new test to be undertaken in relation to the defective component and depending systems on the same terms and conditions. All reasonable costs of NT directly related to the rejected test shall be borne by the Contractor upon an invoice from NT, or alternatively deducted by NT from the relevant part payment.

If NT fails to attend the notified Production Plant Inspection, the Contractor is authorised to proceed with the Production Plant Inspection. The Production Plant Inspection is deemed to have occurred and the Contractor is authorised to sign the protocol on its own.

## 6.3 Terms of Delivery

The Contractor shall deliver the Trainsets at a to-be-decided location within the Oslo-area, Norway, unless otherwise agreed in writing.

All costs related to transport, custom duties and other fees and taxes related to the Delivery shall be borne by the Contractor.

Other deliverables, including but not limited to Spares and Special Tools, shall be packaged for safe transport, protected towards environmental influence and delivered according to Incoterms 2010 DDP at a to-be-decided location within the Oslo-area, Norway, unless otherwise agreed in writing.

## 6.4 Pre-PTO tests and PTO

### 6.4.1 General

At PTO the Trainsets shall be ready for immediate use and operation by NT, for both single-and multiple train operation.

NT will issue a PTO Certificate when all the conditions in clause 6.4.3 are met.

If NT should accept PTO of a Trainset, which does not fulfil the above requirements, NT shall be entitled to withhold a reasonable amount of the part payment due at the time for PTO until the requirements are fulfilled.

### 6.4.2 Pre-PTO tests

The Contractor shall test the Trainsets in Norway before PTO.

Such tests to be performed by the Contractor shall comprise of 10 000 Trainset kilometres for the first Trainset and 3 000 Trainset kilometres for all the following Trainsets in the Delivery (the "Pre-PTO tests").

A notice specifying the content, date and place for commencement of Pre-PTO tests shall be provided by the Contractor to NT in writing not less than 30 days in advance of the commencement of the Pre-PTO tests. The notice shall include a Pre-PTO test programme for NTs review and approval.

The Contractor accepts that the main parts of the testing must be conducted during nights, and that there will be limited testing possibilities during June, July and August.

The Contractor shall obtain all necessary permits, track access and authorisations before conducting these tests. NT shall, as far as the operational situation makes it possible, contribute and make the necessary arrangements for conducting these tests, provided that the Contractor present his needs in due time for planning and implementation.

Imperfections, faults, deficiencies and other matters of discrepancies revealed during the Pre-PTO tests, shall be listed in a protocol signed by both parties, the «Pre-PTO test protocol». Unless otherwise agreed, any imperfection, faults, deficiency or other matter of discrepancy shall be remedied immediately.

If the number of defects on a Trainset during the Pre-PTO Test exceed zero (0) significant failures or zero (0) major failures, ref. Exhibit A4-1, then NT is entitled to extend the Pre-delivery Test until the relevant Trainset has produced a continuous distance of at least 3 000 Trainset kilometres without exceeding the above number of failures before acceptance.

#### 6.4.3 Conditions for PTO

NT will not issue a PTO for a Trainset which contains components or parts that do not fulfil technical or functional requirements and specifications stipulated for such components or parts if such shortcoming(s) affect the safe, reliable and/or commercial operation of the Trainset or in relation to which there is another valid reason for rejecting PTO, notwithstanding that the Trainset in other respects fulfils the requirements specified in the Contract.

Further NT will not issue the PTO Certificate until the following conditions are met:

- the Contractor has remedied all defects and carried out all corrective maintenance on the Trainset (including, but not limited to, defects and need for corrective maintenance discovered during the testing or otherwise).
- the Contractor has reset/zeroed all preventive maintenance intervals on the Trainset.
- the Contractor has provided all Documentation and Training to be provided in accordance with the project time plan in connection with the delivery of the Trainset in question and the Documentation fulfils all requirements and specifications set out in this Agreement.
- the Contractor has provided all Special Tools that shall be provided prior to or in connection with the delivery of the Trainset in question and these fulfil all requirements and specifications set out in this Contract;
- the Supplier has established the Consignation store and stocked it with the necessary volume of spare parts in connection with delivery of the Trainset in question and these spare parts meet all requirements and specifications under this Contract.
- All required tests and inspections as summarized in clause 6.2, or otherwise necessary according to the Verification and Validation Plan, have been performed and approved by NT.
- All deliveries relating to the Trainset in question agreed to be made prior to PTO have been delivered and approved by NT.
- The necessary authority approvals of the Delivery for use on Norwegian tracks for commercial service is obtained by the Contractor.
- All other obligations of the Contractor relating to the Trainset in question according to the Contract which are to be performed prior to PTO are fulfilled.
- The Contractor has submitted the Warranty Period Guarantee as set forth in clause 7.3.3.
- PTO Certificate is set up and signed by both parties.

The Contractor shall notify NT in writing as soon as the conditions above are met. NT shall issue the Certificate without undue delay which states that the PTO has taken place. If any defects or outstanding activities/deliveries as specified above are of minor or no importance for the operational use of the Trainsets, NT may nevertheless decide to issue the PTO Certificate provided that the Contractor has presented a reasonable rectification plan.

#### 6.5 Transfer of risk

The Contractor carries the risk of loss of or damage to the Trainsets until the PTO set out in clause 6.4.3 has been completed and the PTO Certificate has been signed.

The Contractor shall procure and maintain adequate insurance coverage until the risk has passed to NT, cf. clause 23.

#### 6.6 Transfer of ownership and title

The ownership and title to the Delivery shall pass to NT progressively as the Works are being performed, and in full at PTO of each Trainset.

The ownership shall pass to NT at arrival at Production Plant, or when paid for by NT if payment has been made earlier. As soon as deliverables arrive at Production Plant the Contractor shall mark them with identification number and NT's name.

#### 6.7 Test Operation Period

Following delivery of the Trainsets at PTO, the Trainsets shall demonstrate a continuous period in service operation satisfying the requirements listed below, to reach FTO. For each failed test, the specified period will be prolonged with one (1) month before a new evaluation of target fulfilment will be undertaken.

##### 6.7.1 Fleet requirements

The fleet of Trainsets passed PTO shall demonstrate from PTO of the first Trainset 8 months and 500 000 km in operation not exceeding the committed values:

- The number of significant failures ref. Exhibit A 05-1, shall not exceed the committed values, as defined in Exhibit A 05-1.
- The number of major failures ref. Exhibit A 05-1, shall not exceed the committed values, as defined in Exhibit A 05-1.

##### 6.7.2 Individual requirements

In addition to the requirements set out in clause 6.7.1, each Trainset, individually, shall demonstrate a period in service operation:

- For the first 10 Trainsets passed PTO, 5 months and 70 000 km in service operation
- For the next 10 Trainsets passed PTO, 3 months and 40 000 km in service operation
- For the next Trainsets passed PTO, 1 month and 15 000 km in service operation

Each Trainset shall in these periods satisfy the following requirements:

- The number of significant failures shall not exceed the requirements as specified in A4-1,
- The number of major failures shall not exceed the requirements as specified in ref. A4-1,
- The total time for repairs or remedy requiring that the Trainset has to be taken out of service shall not exceed the requirements as specified in Appendix A4-1.

Failures that are irrelevant for the verification will be excluded. Irrelevant failures are defined in A4-1 SoW RAM.

If a failure results in the Contractor having to repair or remedy the Trainset, the failure is not regarded as remedied or repaired until necessary documentation with respect to the implemented repair or remedy is received in writing by NT.

Repair or remedy shall be carried out as soon as possible, unless otherwise agreed with NT in advance. Such agreement shall not constitute an acceptance of a delay in the FTO dates or any reduction of the Contractor's liability for interruptions in the Scheduled Service as set forth below.

The total time for repairs or remedy shall be counted only in half and whole days. I.e. one failure requiring that the Trainset has to be taken out of service will count minimum one half day, because it is not possible to use the train in service. The time for repairs or remedy shall be counted from the moment the Trainset in question arrives at the agreed upon maintenance facility in Norway up and until the moment the Contractor informs NT that the repairs or remedy have been finalised.

If the repair or remedy leads to an interruption in the Scheduled Service, the Contractor shall pay to NT a fee of EUR 10 000,- per day (Between 12 and 24 hours is 1 day) for the period of time of the interruption of the Scheduled Service. The fee is EUR 5 000,- for a period of time less than 12 hours out of service.

Prior to the beginning of any Test Operation Period, NT and the Contractor shall agree upon a group composed of both NT and the Contractor which shall be responsible for the monitoring and verification of the requirements and the conditions as they are defined in this clause.

Such group shall also be responsible for the monitoring and verification of the requirements and conditions relating to the reliability/availability performance according to clause 17 and the LCC warranty pursuant to clause 18.

#### 6.8 FTO

FTO of each Trainset shall take place when the requirements for the Test Operation Period in clause 6.7 have been completed and FTO certificate has been issued.

Before FTO can take place, both parties shall inspect the Trainset to clarify if any faults or defects are present, whereby such inspection shall take place on the last day of the Test Operation Period provided that the Contractor has given 1 week prior notice.

The Parties shall make records of their observations made during the inspection for FTO and agree upon a reasonable period for the Contractor to remedy any faults or defects identified.

NT shall have the right to withhold a reasonable amount of payment until such defects are completely eliminated.

NT shall issue a FTO Certificate immediately after approved FTO has taken place.

#### 6.9 Costs in connection with Tests etc.

NT shall bear costs related to track access, its manpower and energy consumed during test runs performed according to the approved test plans related to type- and approval Tests when the Tests are carried out on rails in Norway.

All other costs related to these or any other tests, controls or inspections shall be borne by the Contractor irrespective of when or where the test is performed. Likewise, NT shall provide, if possible, the Contractor, free of charge for the latter party, with the necessary access and right to use the relevant workshop, the infrastructure, the energy, the jacks etc. and shall further provide the Contractor, again free of charge for latter party, with drivers needed for any tests.

Notwithstanding the above and anything to the contrary, should Contractor fail any scheduled tests and/or inspections requiring any new tests and/or inspections to be performed, Contractor shall carry all costs incurred in relation to or as a result therefrom, including all costs incurred by NT.

#### 6.10 Responsibility and Liability during Tests etc

If Tests are necessary to trace faults or defects after PTO or FTO of the Trainsets, Contractor shall be responsible for all costs of such test runs and for the remedy of faults and defects traced at the Tests, if the faults and defects are attributable to Contractor.

If the Contractor, due to causes attributable to him, is to perform tests after the ownership and risk has passed to NT according to clause 6.5 and 6.6 and the Trainset(s) or any part thereof during the testing will be under the Contractor's control, the risk of loss of or damage to the Trainsets or any part thereof shall pass back to the Contractor for the test period. The Contractor shall further be liable for and indemnify NT in accordance with clause 22.1 and for any loss of or damage to NT property or employees. The Contractor shall take out insurance-coverage for his liability during such testing in accordance with clause 23 hereinafter, unless otherwise agreed between the Parties.

## 7. Prices, Payments and Guarantees

### 7.1 Prices

The Contract prices and Payment Terms are specified and defined in Exhibit B.

Payment plan is specified in Exhibit B and shall be updated continuously by the Contractor (e.g. price, schedule changes) during the Contract execution and duly communicated to NT for review and acceptance.

### 7.2 Payments of the contract prices

#### 7.2.1 Invoicing

All payments shall be effected within 30 days after receipt of the correct invoice. and provided Contractor has submitted the required Contractor's guarantees in a form conforming to Exhibit G and in accordance with clause 7.3 Guarantees. Further requirements for invoicing are defined in Exhibit B.

Payment of part of the contract price does not imply that NT has approved the results of prior tests, or inspection or delivery. Nor does part payment imply that NT has waived its rights to claim compensation (liquidated damages), subject to clause 8, deductions from the purchase price or any other rights set out in this Contract.

#### 7.2.2 Retention

NT is entitled to set off or retain an amount which equals the value of any outstanding works until these works have been completed by Contractor. This right extends also to claims NT may have in relation to other contracts with the Contractor.

### 7.3 Guarantees

#### 7.3.1 General

The Contractor shall, at its own cost, provide duly executed guarantees as set forth in clause 7.3.2 and 7.3.3, issued by a first class international financial institution, located in a country acceptable to NT, whose long-term debt credit rating is not less than A – Standard and Poor's or otherwise acceptable to NT, with a text substantially to Exhibit G.

#### 7.3.2 Advance Payment Guarantees

As a precondition for any payments from NT the Contractor shall, as a security for Advance Payments, provide an unconditional on demand bank guarantee in favour of NT, with a text substantially conforming to Exhibit G.

The bank guarantee shall cover the total amount of Advance Payments to be made pursuant to Exhibit B and shall be reduced proportionally with the PTO of every Trainset. The bank guarantee shall be valid until the PTO of the last Trainset.

#### 7.3.3 Warranty Period Guarantee

As a precondition for achievement of PTO the Contractor shall provide a duly executed guarantee, valid for an amount equal to ten (10%) percent of the Total Primary Delivery Price from the PTO of the first Trainset with a validity equal to the contractual scheduled date for FTO of the last Trainset in the Primary Delivery. If FTO of the last Trainset in the Primary Delivery will not be achieved prior to the expiry date of the guarantee, the Contractor shall provide a new guarantee in accordance with clause 7.3.5 with an expiry date that is aligned with the new expected date for FTO of the last Trainset. Also in accordance with clause 7.3.5, and as a precondition for FTO for the last Trainset, the Contractor shall issue a guarantee valid for an amount equal to five (5%) percent of the Total Primary Delivery Price and with a validity equal to the contractual scheduled date for the Extended technical warranties except for no. 7 and 8 under clause 12.2

Prior to the expiry of the Extended technical warranties except for no. 7 and 8 under clause 12.2 a new guarantee valid for an amount equal to two (2%) percent of the Total Primary Delivery Price shall be provided by Contractor in accordance with clause 7.3.5.

The guarantee shall remain valid until the systematic fault warranty set forth in clause 12.3 has expired, or alternatively be renewed on an annual basis.

The warranty period guarantee shall cover any claims NT may have against the Contractor in accordance with the Contract and is not limited to claims pursuant to clause 12.

#### 7.3.4 Parent Company Guarantee

As a precondition for any payment from NT, the Contractor shall deliver a parent company guarantee with a content conforming to the text in Exhibit G, duly executed by Contractor's ultimate parent company, or other entity with the required financial and operational capabilities to be approved by NT at its absolute discretion.

The Contractor shall provide to NT such financial or other information that NT may reasonably require, substantiating that the guarantor is an appropriate company with sufficient means to fulfil its obligations under the guarantee. The Contractor shall provide updated financial information on an annual basis to NT.

As a condition for delivery of the parent company guarantee, the Contractor shall also submit a legal opinion from his external legal counsel covering the capacity, power and authority of the parent company guarantor to provide the Parent Company Guarantee and the legality, binding nature and enforceability of the same.

#### 7.3.5 Validity of guarantees

If the guarantees in clause 7.3.2 to 7.3.4 for any reason ceases to be valid or otherwise will expire, the Contractor shall provide NT with replacement guarantees no later than 21 days in advance of such expiry. If the Contractor fails to do so, NT may immediately call the outstanding balance of the existing guarantees and hold the proceeds as security for Contractor's compliance with his obligations and liabilities under the Contract. If Contractor subsequently provides guarantees as required, NT will return the balance of the proceeds.

If the rating of the guarantee issuer drops below the threshold stipulated above NT, acting reasonably, shall have the right to renegotiate the guarantees or request guarantees from another bank or financial institution with sufficient rating. If the parties fail to agree, NT may withhold a proportionate share of the payment or call the outstanding balance of the guarantee and hold the proceeds as security for Contractor's compliance with his obligations and liabilities under the Contract. If Contractor subsequently provides new or amended guarantees acceptable to NT, NT will return the balance of the proceeds.

If in accordance with the Contract the original Contract Price is increased by more than 5%, the Contractor shall submit new guarantees reflecting the increase in the Contract Price. The same obligation shall apply for each 5% increase in the Contract Price calculated from the date of any re-issued guarantees pursuant to this paragraph.

## 8. Delay

### 8.1 General

The Contractor shall commence the Works immediately after Effective Date in order to meet the dates stipulated in the Delivery Schedule. The Contractor shall proceed with the Works with due expedition and without delay.

### 8.2 Notice of Delay

If the Contractor has reason to believe that the Works cannot be performed in accordance with the Delivery Schedule or any other agreed date, or if it is anticipated that there will be a delay in any other element of the Work, the Contractor shall immediately notify NT in writing, stating the reasons for the delay, whether the delay is caused by NT or the Contractor, and indicate the date when delivery is expected to take place.

If the delay is caused by circumstances within the Contractor's risk, then the Contractor shall implement all necessary measures in order to maintain the Delivery Schedule and to reduce the possible delay. NT may at any time instruct the Contractor to implement such measures without any cost to NT.

If the delay is caused by circumstances within NT's risk, NT's instruction to take such measures shall be in accordance with procedures in clause 15.

### 8.3 Extension of time

If the delay is due to circumstances specified in clause 8.5 (Force Majeure) or to circumstances for which NT is responsible, the Contractor is entitled to an extension of time.

### 8.4 Liquidated Damages

#### 8.4.1 Delay of PTO

If PTO of a Trainset does not take place within the dates specified in Exhibit C Delivery and Delivery Schedule and if the delay is not caused by events covered by clause 8.3, liquidated damages shall automatically accrue in accordance with this clause 8.4.1.

For each commenced calendar day each Trainset is delayed, liquidated damages shall be payable in the amount of 0.1 % of the Contract Price of the respective Trainset.

#### 8.4.2 Delay of Documentation, training, spare parts etc.

If the delivery of Documentation does not take place within the milestones set out in the documentation plan according to Exhibit C and the delay is not caused by events covered by clause 8.3, then NT is entitled to liquidated damages in an amount of EUR 500,- for each calendar day for each Documentation delivery that is delayed according to the milestones set out in the documentation delivery plan. Such liquidated damages are limited to the Documentation deliveries specified in AppendixC-1 clause 2.1 and 2.2, irrespective of version, in addition to any other Documentation delivery that is not considered inessential for training, testing/verification, approval, maintenance or otherwise the intended use of the Trainsets.

If the delivery of training, spare parts and/or special tools is delayed and the delay is not caused by events covered by clause 8.3, then NT is entitled to liquidated damages in an amount of EUR 2 000.- for each calendar day the training, spare parts and/or special tools are delayed.

#### 8.4.3 Maximum amount of liquidated damages

The total amount of liquidated damages payable for delays shall in no event exceed 20 % of the Contract Price or Total Option Delivery Price, as the case may be.

### 8.5 Force Majeure

Neither party shall be considered to be in breach of contract if performance of any of the obligations is prevented by Force Majeure.

A party invoking Force Majeure shall inform the other party in writing of the circumstances that have occurred. The notification shall be delivered without undue delay after the party has received knowledge of the circumstances giving rise to Force Majeure. If any party fails to give such notification, said party loses its right to invoke the Force Majeure-situation according to this clause.

If the circumstances which a party has invoked as Force Majeure cease to exist and prevent performance of the obligations under the Contract, the party shall immediately notify the other party, and also notify the other party when performance of the obligations in question can be resumed.

If a Force Majeure event persists without interruption for more than 150 calendar days, NT shall be entitled to terminate the Contract with effect for Trainsets not preliminarily taken over. Each of the Parties shall bear their own costs and losses (extra expenses, lost revenue, etc.) that affect either party.

For the purposes of this clause, any impacts related to entry into Norway for personell, caused by or related to covid-19, shall be considered as an event of Force Majeure and the parties shall in good faith discuss measures and allocation of time and cost in order to reduce the impact of such events. For impacts outside of Norway, a documented material worsening of the covid-19 situation compared to the date of tender shall be considered an event of Force Majeure.

## 9. Termination

### 9.1 Termination for cause

NT may terminate the Contract, in whole or in part, in the event of a material breach of contract.

Without prejudice to the above, NT may in any event terminate the Contract, if:

- a) Maximum liquidated damages as set out in clause 8.4 have accrued.
- b) There is a delay in the delivery of any Trainset, exceeding 150 days of the relevant milestone, or it is evident that such delay will occur,
- c) The contract liability limit, according to clause 22.3, has been reached,
- d) A Trainset or part of a delivery has a fault or error that has a significant negative impact on the safe or reliable operation of the Trainset and where the fault or error amounts to a material defect..
- e) The Contractor or the guarantor under the Parent Company Guarantee is subject to an insolvency event,
- f) The Contractor or a Subcontractor substantially or repeatedly deviates from the requirements set out in Exhibit L-1 and Exhibit L-2.
- g) If the maximum number of failures according to tables in clause 17 is reached for the same Trainset, cf. clause 17.2.2.

For clarity, the right to terminate the Contract in whole for Trainsets already delivered shall be limited to events where there is a material breach related to these Trainsets, or where the grounds for termination set out in a) –hg) applies to Trainsets already delivered.

### 9.2 Reimbursement in the event of termination

Subject to the provisions of this clause 9, if the Contract wholly or partially is terminated, the Contractor shall within 30 days of termination reimburse any part payments made by NT for the terminated part up to the date of termination including interest according to the Official Norwegian Interest Rate running from the respective dates of payment. Interest shall not be calculated if termination is caused by Force Majeure.

### 9.3 NT's right to compensation in the event of termination

When the Contract is terminated, NT shall be entitled to compensation as follows:



- a) Accrued damages for delay in the form of liquidated damages at the rates set out in clause 8, and damages for delay calculated on the basis of the number of days the relevant milestones would have been exceeded, had Contractor completed the Works.
- b) Damages for defects and other breaches of contract.

#### 9.4 Right to complete Works

Upon the termination of the Contract for Trainsets not already delivered but which have entered into production, NT shall have the right to take over the Works, documents and any other rights necessary to enable NT to complete the Works either by NT itself or with help from others.

The Contractor shall be entitled to payment for Trainsets and parts of the Works as well as the Work documents, any special tools and spare parts that are taken over by NT, less any amounts due from Contractor to NT.

#### 9.5 Termination for Convenience

NT may by notice to Contractor cancel the Contract in total or in part, with the consequence that the performance of the Works and Delivery identified in the cancellation notice ceases.

If requested by NT, the Contractor shall provide a binding estimate of the cost that will be incurred in relation the Works and Delivery in question.

Following such cancellation NT shall pay to the Contractor:

- The unpaid balance due to the Contractor for the part of the Work already performed.
- All necessary and documented termination charges and administration costs incurred in connection with the cancellation.
- A fee equal to 5% of the remaining part of the Contract Price relating to Work not performed.

NT may also terminate the contract for convenience without any further liability if a Force Majeure event persists without interruption for more than 150 days.

### 10. Documentation and Drawings

#### 10.1 General

NT shall receive complete documentation and drawings in accordance with Exhibit A3. The documentation shall be delivered to NT in accordance with milestones set out in Exhibit C.

Existence or non-existence of remarks or objections, approvals or acceptance by NT, NT inspectors or other representatives, shall not constitute a waiver of any of NT's rights or the Contractor's obligations under this Contract and shall not relieve the Contractor of his sole responsibility for the design and construction or any other obligations under this Contract.

#### 10.2 Ownership to documents and information

All descriptions and specifications, logos and other material transferred from NT to Contractor shall remain NT's property and shall not be transferred to a third party without NT's written consent.

All drawings, descriptions and other documents prepared by the Contractor and/or any of its Subcontractors relevant to the design, manufacture, operation and maintenance of the Trainsets, remain the property of the Contractor and/or the Subcontractor(s).

The Contractor is obliged to keep all drawings, descriptions and documents available for a period of 25 years after PTO of the last Trainset. When the period of 25 years has lapsed, the Contractor shall either continue to keep the documents referred to above available to NT, or ask NT if they want to take over such descriptions, drawings and documents, at no cost for NT.

The Contractor shall ensure that clause 10.2 also applies to Subcontractors and is implemented in any subcontract.

## 11. Training

The Contractor shall deliver a training program and training according to Exhibit A05-5.

The training of the NT appointed instructors shall ensure the instructors a basis of competence and practical skills giving them the ability to ensure a correct use of the rolling stock from PTO.

## 12. Warranty

### 12.1 Technical warranty

The Contractor warrants that the Works and the Deliveries, including all repairs, are free from any defects and will achieve any performance requirements stipulated in the Contract and that they in all other aspects satisfy the relevant specifications, drawings, standards and regulations listed in the Contract.

Further, the Contractor warrants that the Deliveries can be utilised in accordance with their intended use and that they at the time of the PTO for each Trainset satisfy all applicable laws and regulations or other requirements imposed by any relevant official authority.

This warranty shall commence at PTO for each Trainset and apply to all faults and deficiencies discovered until 2 years after the FTO of each Trainset. The warranty, including the extended warranty following clause 12.2, shall not apply for normal wear and tear or for faults/deficiencies caused by non-compliance with maintenance obligations.

### 12.2 Extended technical warranty

For the parts listed below an extended warranty period shall apply from FTO of each Trainset.

No	Items	Warranty time
1	Axles	6 years
2	Monoblock wheels	4 years or 1 mill km
3	Complete wheel sets inclusive of brake discs and axle bearings, excluding monoblock wheels	6 years
4	Surface treatment incl. internal and external painting	6 years
5	Insulating windows	5 years
6	Entrance system	5 years
7	Car body, bogie frames and other load bearing structures	Lifetime
8	Trainset – Corrosion damage	Lifetime

The warranty regarding the corrosion is related to the pass-through corrosion and corrosion which causes structural damages, including fatigue.

### 12.3 Systematic fault warranty

The Contractor warrants the system function for the Trainsets, and that the Trainsets will be free from any systematic faults as set out below.

A systematic fault is a fault which occurs, or is likely to occur, in a substantial part of identical components or systems. If the Parties do not agree whether a fault is systematic, there shall be a presumption that the fault is systematic if:

- a) At least 10 % of identical components or systems within the Fleet fail with similar failure modes within a period of 2 years, unless the Contractor demonstrates that the faults have different root causes; or
- b) If the fault is attributable to on-board computer software used for train management and control, including all sub-systems.

When a systematic fault occurs, the Contractor is obliged to rectify the fault. Rectification of systematic faults shall comprise all necessary activities to correct already occurred faults and to prevent such faults

to be repeated. The liability of the Contractor arising from this systematic fault warranty shall be subject to the provisions in clause 12.4. The Contractor and NT shall develop and agree upon a reasonable rectification plan, considering the seriousness of the systematic faults and its likely effect on the operation of the Trainsets. The Contractor shall have the right to provide evidence that a systematic fault is limited to a certain production batch or a part of the Trainsets. Rectification of the systematic fault shall then be limited to the affected Trainsets, systems or components.

The systematic fault warranty shall commence at PTO for the first Trainset and apply for 10 years after the FTO for the last delivered Trainset. The systematic fault warranty shall not apply for normal wear and tear of components and systems.

## 12.4 Warranty Obligations - Remedies

### 12.4.1 Correction of defect

Upon notice of a defect covered by warranty, the Contractor shall commence adequate corrective measures without undue delay. The Contractor shall pay special attention to NT's interests in limiting the consequences that the warranty case may cause to ongoing operations.

While waiting for warranty action, NT is entitled to use a faulty or not approved spare part if it is usable as provisional exchange component, provided that the spare part satisfies the relevant minimum technical and safety requirements.

The Contractor shall bear all costs incurred from correction of defects such as costs for identification of defects, transport, dismantling, assembly, installation, carrying out, testing, and supervision of inspection and provisional and final correction of defects.

Any corrective measures shall be carried out at premises appointed by NT unless the circumstances dictate that the corrective measures must be performed at the Contractor's premises. Contractor shall be granted the necessary access to the appointed premises free of charge to carry out actions under the technical warranty. Such warranty work shall as far as possible be performed during the scheduled maintenance periods.

At the request of the Contractor and to the extent that the necessary resources are available, NT may arrange for the dismantling and reassembly of components and systems that shall be sent to the Contractor. In such case, the Contractor shall reimburse the reasonable costs of any dismantling and reassembly work, as well as all reasonable transportation costs, fault tracing and other reasonable investigations necessary to discover the fault.

If a situation covered by the systematic fault warranty results in modification of the design, the Contractor shall carry out the same modification to the other Trainsets, components and spare parts. Any modification in the design shall in its entirety satisfy the specifications of the Contract. The Contractor shall make necessary additions and changes to the specifications, documentation, training, spare parts, maintenance equipment etc. and provide NT with copies of these.

If the Trainsets or components show clear signs of abnormal wear and tear prior to the expiry of the warranty period set in clause 12.1 and 12.2, and such abnormal wear and tear is attributable to the Contractor, the Contractor shall at his own cost repair or replace the Trainset or parts of it and take any action to prevent further similar wear and tear from occurring in the future. Such abnormal wear and tear will be regarded as a fault.

NT has the right to require that the Contractor, as part of the warranty action, demonstrates by appropriate means, with or without the involvement of NT, that the defect has been rectified.

If the Contractor is unable or unwilling to remedy a defect covered by warranty within reasonable time or after a reasonable number of attempts after NT's notice, NT may carry out the correction itself or by a third party. In such case the Contractor shall pay to NT all necessary cost incurred.

### 12.4.2 Renewed Warranty

Any component of the Delivery that have been replaced, repaired or modified under the warranty shall be subject to the same warranty as the original components.

The renewed warranty period shall apply from the day when the components have been replaced, repaired or modified, and where appropriate, any restriction on the use of the Trainset that may have been imposed as a consequence of the respective fault has been lifted.

The warranty period for the Trainset shall be extended by any time during which the Trainset is unusable as a consequence of faults covered by the warranty.

#### 12.4.3 Marking of components

Components which have been replaced, repaired or modified as a result of warranty obligations shall be suitably marked to facilitate subsequent checking of the effect of the corrective measures.

#### 12.4.4 Risk and responsibility at the Contractor's premises

If corrective measures are undertaken at the Contractor's premises, the Contractor shall be liable for any loss or damage to NT's property while at the Contractor's premises. This responsibility shall also include damage or loss caused by accident or by third parties.

#### 12.4.5 Right to request Replacement

If a fault or deficiency covered by warranty hereunder is substantial or if the fault or deficiency continues to exist despite a reasonable number of attempts of corrective actions undertaken by the Contractor as stipulated in clause 12.4.1, then NT shall have the right to request that the part of the Delivery in question is replaced with a new part within reasonable time.

If a fault, repeated faults or multiple faults covered by the warranty obligations set out in this clause 12 is material or cause the Trainset as such to be demonstrated unfit for its intended purpose, NT shall have the right to request that the Trainset in question is replaced with a complete new delivery within reasonable time.

#### 12.4.6 End of Warranty Certificate

When the technical warranty period set out in clause 12.1 and 12.2 has lapsed for the last delivery of Trainsets under a Delivery and provided the Contractor has fulfilled all the obligations as described in the Contract – including warranty repairs, outstanding Items, etc., NT shall sign and issue an End of Warranty Certificate for the respective periods.

The End of Warranty Certificate shall state that the Contractor will be discharged from any liability for warranty claims in relation to the Trainsets covered by the Delivery in question and where NT has not presented any warranty claims prior to the expiry of the warranty period. The End of Warranty Certificate does not apply to cases of systematic faults, and all instances and situations attributable to the Contractor's gross negligence or willful misconduct.

### 13. Inspection, Audit and Access to Contractor's Premises

NT shall have the right to undertake quality audits, safety audits, inspections and verifications of all relevant aspects related to the Contractor's and any Subcontractor's part of the Works. NT shall have the right to access to Contractor's and Subcontractors' premises.

NT shall have the right to appoint inspectors or any other category of personnel with the authority to survey all relevant parts of the Contractor's activities related to performance of the Contract. During working hours such personnel shall have access to the Contractor's offices and Production Plants, where the Works or parts thereof are performed. NT is responsible for its employees and inspectors within Contractor's premises and for any acts and work done not according to laws and security standards.

The Contractor shall make arrangements for the personnel to be given all the necessary insight to form a correct assessment of the quality of the Works. In general the Contractor shall facilitate their tasks. The Contractor shall notify NT of any relevant tests to be carried out so that NT can send personnel to each test that is to be conducted.

The Contractor shall provide NT's personnel with all necessary gauges and measuring instruments available in the relevant Production Plants, as well as all necessary assistance, free of charge. The Contractor shall also, free of charge, place a suitable office for 2 persons with ordinary office facilities at the disposal of NT's personnel.

The Contractor shall use all its reasonable efforts to provide a right for NT's personnel to be admitted also to the offices and Production Plants of any Subcontractors used in connection with performance of this Contract.

Any surveys/inspections etc. carried out by NT shall not in any way disturb the production processes of the Contractor and/or his subcontractors and it does not relieve the Contractor of his liability and responsibilities under this Contract.

#### **14. Confidentiality**

All information exchanged between the parties shall be treated as confidential and shall not be disclosed to a third party without the other party's written consent unless such information:

- (a) may be disclosed to a third party in accordance with clause 19 and 21;
- (b) is already and rightfully known to the party in question at the time the information was received;
- (c) is or becomes part of the public domain other than through a fault of any of the parties or their employees;
- (d) is rightfully received from a third party without any confidentiality obligation.

The Contractor shall not publish information concerning the Works or the Contract without NT's written acceptance. Such acceptance shall not be unreasonably withheld.

The provisions of this clause shall not prevent a party from disclosing confidential information to the extent the party in question is compelled to do so according to applicable law. In such cases, the other party shall be notified prior to disclosure. Upon such notice, Contractor shall have a right to make a statement regarding whether the information is considered confidential.

Each of the parties may use or disclose confidential information to a third party to the extent necessary for the performance of and control of the Works, modifications and repairs, sales/lease, and any other commercial use of the Trainsets. In such cases the parties shall ensure that the third party signs a written confidentiality agreement substantially similar to the provisions of this clause.

If not stated otherwise in this Contract, NT may not give direct competitors of Contractor access to Contractor's or Subcontractor's know how, drawings, descriptions, software programmes or other technical information that is not generally known or publicly available without Contractors written consent.

#### **15. Variation to the Works**

##### **15.1 General**

NT has the right to order Variations to the Works. A Variation may involve an increase or a reduction of the Works to be performed by the Contractor or have other implications to the Works, including changes to the quality, quantity, nature, or execution of the work or parts thereof as well as changes to the Delivery Schedule.

The Variations shall not, however, affect the overall nature of the Contract nor go beyond what the parties could reasonably expect at the date of Contract, especially with regards to safety and other substantial technical risks.

Without prejudice to the above, upon calling off delivery of optional Trainsets under the Contract, cf. clause 2.3 above, NT may order any variant of the standard Trainset, as indicated in Exhibit A1.

##### **15.2 Variation Orders**

Variations to the Works shall be ordered by means of a Variation Order in the prescribed form attached in Exhibit D, Appendix D-1. All Contractor's obligations under the Contract also applies to Variation Orders. Upon receipt of a Variation Order, the Contractor shall implement the Variation without undue delay.

Variation Orders shall preferably have a fixed price and shall be determined according to the following principles:

- a) If Exhibit B contains rates/prices covering the Variation in question, such rates/prices shall apply.
- b) In other cases, rates/prices for the Variation in question shall reflect the general price level expressed in the Contract.

The implications to the price and Delivery Schedule shall reflect the actual impact of the Variation on the Contractor's production.

When NT issues a Variation Order, the Contractor shall without undue delay submit an estimate to NT. NT may also require submission of such estimate prior to issuing a Variation Order.

The estimate shall contain:

- a) a description of the Variation to the Works,
- b) a detailed schedule for the execution of the Variation showing the required resources and milestones,
- c) the effect on the Contract Price with an explanation of how it is calculated in accordance with this clause, and
- d) the effect on the Delivery Schedule.

The Contractor shall be prepared to submit relevant background material in order to explain the effects of the Variation in further detail.

Subject to the limitations which follows from clause 15.1, NT may require the Contractor to undertake special measures to avoid Variations having an effect on the Delivery Schedule, or to limit delays as much as possible.

### 15.3 Request for Variation Order

If the Contractor receives instructions from NT which in his opinion amounts to a Variation to the Works, including that NT has failed to comply with its contractual obligations, the Contractor shall without undue delay and before the execution of the work in question notify NT in writing.

The Contractor shall without undue delay send NT a request for a Variation Order, together with a first estimate prepared in accordance with clause 15.2. The Contractor shall send a final version to NT within reasonable time after the first estimate.

### 15.4 Time limit

If the Contractor fails to submit a request for a Variation Order within the time limits stated in clause 15.3, this shall constitute a waiver of the Contractor's right to claim extension of time and/or additional cost and consequently the Contractor is obliged to perform the Variation as if it is part of the original scope of work.

### 15.5 Dispute resolution

#### 15.5.1 Disputed variations to the Contract

Following clause 15.3, if NT disputes that the works in question constitutes a Variation, the Contractor shall nevertheless proceed with the works in question and the Contractor shall have the right to request that the disputed Variation shall be provisionally resolved by an independent expert, cf. clause 15.5.2.

The parties shall within one (1) week meet and in good faith discuss a jointly agreed expert. If no such agreement can be made each party hereby agrees that the appointment shall be referred to Oslo Chamber of Commerce, Institute for Arbitration and Alternative Dispute Resolution. The appointment of the experts shall be made pursuant to Article 7 of the Mediation Rules.

Each of the parties shall within 10 working days after the appointment of the expert submit, with a copy to the other party, the relevant documentation together with a written submission. The parties shall have the right to submit one additional written submission to the expert with a copy to the other party within 10 working days following the deadline for the first submission. The expert shall make his reasoned decision within 30 days of the appointment.

The cost of the expert shall be borne by the party who loses the dispute, whereas each of the parties shall bear his own costs in connection with the dispute.

#### 15.5.2 The expert's opinion

If the expert accepts the Contractor's view that the works in question amounts to a Variation, it shall be treated as an ordinary Variation Order until resolved by agreement or court proceedings or in accordance with clause 15.5.3.

If the expert accepts NT's view that the works in question does not require a Variation Order to the Contract then the work shall be treated as part of the scope of Works until resolved by agreement, court proceedings or in accordance with clause 15.5.3.

#### 15.5.3 Final decision

If no agreement has been reached or no court proceedings have been initiated within 3 months from the date the expert made his decision, then this decision becomes final.

#### 15.6 Alternative Solutions

If the Contractor suggests improvements or alternative solutions which will be to the benefit of NT, or both parties, he shall send NT a request for a Variation Order in accordance with clause 15.3.

### 16. Spare parts, obsolescence management and consignment store.

#### 16.1 Supply of spare parts

The Contractor shall be in the position to supply, to the full extent, NT with all components and spare parts for the ordered Trainsets, also including High-Cost Components and special tools, throughout the Lifetime of the Trainsets, cf. Exhibit A05-3.

#### 16.2 Right to purchase from subcontractors

NT shall be entitled to purchase and have manufactured spare parts directly from all Subcontractors at its own risk and according to the Contractor's documentation delivered under this Contract without any reductions or impact on the Contractor's warranty obligations.

#### 16.3 Consignment store

The Contractor shall keep all parts and components needed for preventive and corrective maintenance as a consignment store as specified in Exhibit A4-3, until the end of the technical warranty period following from clause 12.1 of the last delivered Trainset. All costs related to the consignment store shall be borne by the Contractor.

#### 16.4 Obsolescence management

The Contractor shall notify NT in writing without undue delay after he gains knowledge that materials, spare parts, tools, software, components, consumables and any other items no longer will be produced/available (collectively referred to as the "Obsolete Items"), with suggestions for purchasing items to cover the remaining lifetime of the Trainsets. The Contractor shall, where possible, pre-store items which are in danger of becoming obsolete.

The Contractor shall during the lifetime of the Trainsets be obliged to replace the Obsolete Items with other items of a similar type that is interchangeable and compatible with the Trainsets. The replacement items must be of comparable or better quality, and be of the same form, fit and function as the Obsolete Items and must comply with the specifications and requirements of the Contract. If the Trainsets require to be modified as a consequence of Obsolete Items, such modifications shall be performed by the Contractor.

Furthermore, the Contractor shall during the Lifetime of the Trainsets update any documentation, including lists of spare parts and training program as a result of the Obsolete Items.

The Contractor shall be entitled to receive payment for work performed pursuant to this clause in connection with replacing the Obsolete Items and/or perform modifications to the Trainsets. All costs incurred in connection with the preparation of the report and updating any documentation shall be borne by the Contractor.

In addition, the Contractor shall on an annual basis prepare a written obsolescence report which shall be submitted to NT. Contractor's obligation to prepare such report shall commence at FTO of the first Trainset and continue throughout the Lifetime of the Trainsets. The report shall include all items that will

or may become obsolete or unavailable during the next year and/or the remainder of the Lifetime of the Trainsets.

The report shall provide a detailed plan with a binding time schedule as to how and when the Contractor intends to meet its contractual obligations set out in this clause by replacing the Obsolete Items and/or perform modifications to the Trainsets. Such plan shall be subject to NT's written approval prior to being implemented by the Contractor.

## 17. Reliability and Availability Performance

### 17.1 Reliability and availability warranty

The Contractor warrants that the Trainsets that have passed FTO, shall fulfil the Reliability/Availability Performance Requirements in Exhibit A 05-1 (RAM).

The reliability/availability warranty for the Primary Delivery and any subsequent Trainset Option Delivery includes two consecutive 12-month periods where the average accumulated km or each Trainset must be larger than 270 000 Trainset km, the "base period". In case the average accumulated km product for each Trainset is not achieved, the last period will be prolonged until the average accumulated km production is achieved for each Trainset.

During the base period, the number of failures for both significant faults and major faults must be equal to or lower than their respective expected number of faults. The expected number of faults is the product of the cumulative kilometre production for the Primary Delivery or any subsequent Trainset Option Delivery—as applicable—and the warranted failure rate from the final LCC status, rounded down to the nearest integer.

In addition, the fleet availability and the availability for each Trainset must be higher than or equal to the warranted values.

If any warranted values are not met in the base period, the verification continues in a first extended period consisting of the second period in the base period and a third 12-month period creating a new verification period where the same requirements as for the base period shall be fulfilled. If any warranted values are not met in the first extended period, the verification shall continue in a second and final extended period consisting of the second period in the first extended period and a fourth 12-month period, creating a new verification period where the same requirements as for the base period shall be fulfilled.

If, during the reliability/availability warranty, it is evident that any of the warranted values will not be met, the Contractor shall free of charge in all Trainsets supplied and affected, without undue delay remedy the faults or deficiencies and make arrangements to prove that the shortcomings have been rectified, hereunder that any necessary modifications of the design have been carried out, whether or not the technical warranty period for any such Trainset has expired.

Remedy actions taken due to the reliability/availability performance shall be implemented by the Contractor in a manner, and at a date and place as designated by NT, which do not affect the availability of the Trainsets. If the Contractor is unable or unwilling to perform the necessary remedies to meet the reliability/availability requirements, NT is entitled to after notification to Contractor within reasonable time, at Contractor's cost, perform the necessary remedies themselves or by use of a third party.

### 17.2 Reliability performance compensation

The Contractor shall warrant the reliability requirements according to clause 17.1 above and Exhibit A 05-1.

If the requirements for reliability are not fulfilled for the second extended period as defined in 17.1, NT is entitled to an agreed amount according to the tables in clauses 17.2.1 and 17.2.2 below:

#### 17.2.1 Significant Faults

In case more faults are recorded than the expected number of significant faults as stated in clause 17.1, either for the Primary Delivery or any subsequent Trainset Option Delivery, NT is entitled to the below amounts:



Deviation	Amount to be paid (EUR) per Trainset
2-3 extra faults	
4-5 extra faults	
6-7 extra faults	
8-14extra faults	
15 or more extra faults	

#### 17.2.2 Major Faults

In case more faults are recorded than the expected number of major faults as stated in clause 17.1, either for the Primary Delivery or any subsequent Trainset Option Delivery, NT is entitled to the below amounts:

Deviation from the expected number of major faults	Amount to be paid (EUR) per Trainset
15-19 extra faults	
20-24 extra faults	
25-34 extra faults	
35-49 extra faults	
50 or more extra faults	

#### 17.3 Bonus

##### 17.3.1 Significant Faults

In case less faults are recorded than the expected number of significant faults as stated in clause 17.1, the Contractor is entitled to the below amounts:

Deviation from the expected number of significant faults	Bonus to be paid (EUR) per Trainset
1 fault less	
2 or more faults less	

##### 17.3.2 Major Faults

Deviation from the expected number of major faults	Bonus to be paid (EUR) Per Trainset
5 -9 faults less	
10 or more faults less	

#### 18. Warranty for Life Cycle Costs (LCC)

From FTO and throughout the Lifetime of the Trainsets, the Contractor warrants:

that the total LCC (LCC-Total), as specified in A05-2 SoW LCC

a) , shall not be exceeded;

- b) that the total maintenance (LCC-MAI-Total), as specified in A05-2 SoW LCC, shall not be exceeded by more than 2%;
- c) that the sum of cost for High-Cost components (LCC-INV-31-Total) and cost for special tools (LCC-INV-32-Total), as specified in A05-2 SoW LCC, shall not be exceeded by more than 2%;
- d) that the total energy consumption (LCC-ENE-Total), as specified in Exhibit A05-2 (LCC calculation), shall not be exceeded by more than 2%;

If NT orders any Options and/or issues any Variation Orders affecting the Trainsets fulfillment of the guaranteed values in the exhibits stated above, the values shall be recalculated to reflect the incorporation of such Options and/or Variations. In this case the Fixed Evaluation Parameter (FEP) and Fixed LCC Parameter (FLP) shall be agreed upon.

If the Contractor after the verification period and any remedial actions or corrective measures, fails to demonstrate that the LCC values in this clause section (a), (b), (c), and (d) are fulfilled, the Contractor shall compensate NT the difference between the verified and the warranted LCC.

Contractor's aggregate liability for compensation in accordance with this clause 18 shall be limited to 15% of the Total Primary Delivery Price or Total Option Delivery Price, as the case may be.

## **19. Intellectual Property Rights**

### **19.1 Intellectual property rights – warranties**

The Contractor warrants that he is entitled to grant to NT such rights to use and maintain software, databases, integrated circuits, programmable logic controllers, patents and other intellectual and industrial property rights as required to meet the requirements of the Contract and to operate, maintain and modify the Delivery throughout its lifetime.

NTs right to modify the Delivery is granted only to the extent the modifications do not negatively impact the safe and reliable operation of the Delivery.

### **19.2 Rights pertaining to information provided by NT**

NT retains all rights and title to, and all information embedded in, any software, documentation and any other material provided by NT to the Contractor except as expressly stated herein. The Contractor may use such information solely for the purpose of fulfilling his obligations under the Contract. Software source codes, handbooks and any other documentation provided by NT during the development of the software shall be returned/delivered to NT after the expiration of the Contractor's obligations under the Contract. The proprietary rights also apply to adjustments or changes or copies of such software.

### **19.3 Rights to data**

NT retains all rights and title to any data, including metadata, collected and further processed by means of any component included in the Delivery. The Contractor may request NT to share such data with the Contractor, on terms further agreed upon by the Parties.

Under no circumstances may the Contractor withhold data to which NT holds the rights pursuant to the above.

The processing of personal data is governed by clause 3.4 above.

### **19.4 Licence to use Standard Software**

The Contractor retains the copyright to Standard Software.

As an integral part of the Delivery, the Contractor grants NT a perpetual, royalty free licence for a required number of users to use the Standard Software for the management, use and maintenance of the Delivery in accordance with its purpose.

The licence includes the right to produce copies of the Standard Software to the extent necessary to use the Delivery as intended. The licence also includes the right to sublicense the Standard Software to

any Operators of the Trainsets and providers of maintenance services to NT or the Operators, provided that such third party is bound by adequate confidentiality undertakings.

Upon release of any update or upgrade of the Standard Software, the licence granted shall automatically include such update or upgrade.

#### 19.5 Licence to use customisations and material developed for the Customer

The Contractor retains the copyright to customisations and software, integrated circuits and programmable logic controllers developed specifically for the Customer (hereinafter "the customisations").

As an integral part of the Delivery, the Contractor grants NT a perpetual, royalty free, expanded licence for a required number of users to use the customisations for the management, use and maintenance of the Delivery in accordance with its purpose. The expanded licence includes the right use for any purpose, copy, sublicense, modify and develop the customisations, either on its own or with the assistance of a third party, provided that such party is bound by adequate confidentiality undertakings.

#### 19.6 Reverse engineering of integrated circuits and programmable logic controllers

The Contractor grants NT a right to reverse engineer and manufacture any integrated circuits and programmable logic controllers included in the Delivery. NT's exercise of the right to reverse engineer and manufacture is subject to the Contractor failing to deliver the agreed integrated circuits and programmable logic controllers. NT may manufacture integrated circuits and programmable logic controllers only to the extent necessary for the management, use and maintenance of the Delivery in accordance with its purpose. NT may not exercise such right to reverse engineer and manufacture before NT has given the Contractor the possibility to correct such lack of delivery without undue delay, and subsequently issued a written notification to the Contractor that the right to reverse engineer and manufacture will be exercised should the Contractor not correct the lack of delivery within 14 calendar days.

NT may engage a third party to perform the reverse engineering and/or manufacture of the integrated circuits and programmable logic controllers, provided that such third party is bound by confidentiality undertakings.

NT's rights include the right to grant equivalent rights to any operators of the Trainsets and providers of maintenance services to NT or the operators.

#### 19.7 Licence to use documentation

Upon delivery of documentation in accordance with Exhibit C, the Contractor grants NT a perpetual, royalty free licence to use the documentation, including without limitation any drawings, descriptions, specifications, user manuals and maintenance manuals, delivered in accordance with the Contract.

The licence includes the right to produce the number of copies NT deems necessary, and to modify and supplement the documentation at NT's own risk.

The licence also includes the right to sublicense the documentation to any operators of the Trainsets and providers of maintenance services to NT or the operators, provided that such operators and service providers are bound by adequate confidentiality undertakings.

#### 19.8 Deposit of source code and documentation

No later than at the time of PTO of the first Trainset or Trainsets, the Contractor shall place in escrow with an agreed third-party a copy of the complete source code and associated documentation to the Standard Software and customisations, as defined in clauses 19.4 and 19.5 above, included in the Delivery. Furthermore, following release of an update or upgrade of the source code or documentation, without undue delay, the Contractor shall deposit an up-to-date version.

If the parties fail to come to an agreement on the appointment of an escrow agent, the Contractor shall place the source code and documentation in escrow with Nordic Trustee.

The escrow agreement shall be based on the escrow agent's standard escrow terms. However, the terms and conditions of escrow shall explicitly state that the escrow agent shall release to NT or its successor a complete copy of the source code and documentation should:

- a) the Contractor become insolvent,
- b) NT or its successor terminate the Contract due to the Contractor's material breach according to clause 9.1, or
- c) the Contractor for any other reason than the Contractor's justified termination of the Contract, as determined by a final court decision or agreement between the parties, cease to perform under the Contract.

Upon release from the escrow agent, NT or its successor shall be entitled to use, copy, modify and develop the source code and documentation to the extent necessary for the further management, use and maintenance of the Delivery in accordance with its purpose.

#### 19.9 Indemnification

The Contractor shall indemnify, defend and hold NT harmless against any and all damages, liabilities, losses, costs and expenses associated with any claims or proceedings brought against NT based on an allegation that NT's use of the Delivery or any part thereof infringes a third party's rights, including copyrights or rights to patents, designs or trademarks, whether registered or not. This does not apply to any infringement or alleged infringement which refers to a specific device or procedure which NT, after having concluded the Contract, has prescribed.

In the event of an alleged infringement, the Contractor shall do either of the following, at his own cost and risk:

- a) ensure for NT the right to continue using the Trainset or part through alternative license arrangement,
- b) replace the Trainset or part with an equivalent non-infringing product, or
- c) modify the Trainset or part so that an infringement no longer exists.

The Contractor may not take remedial actions under a) – c) above that imply a reduction of the quality or standard of the Contractor's performance under the Contract, unless approved by NT in writing.

Each Party shall inform the other Party without undue delay in the event of receipt of a claim based on an infringement or alleged infringement of a third party's rights. The Parties shall cooperate in good faith in the defence of the claim and provide such assistance and information as may reasonably be expected. The parties shall also cooperate and discuss in good faith if defence of the claim shall be the preferred approach prior to invoking Contractor's obligations pursuant to a) –c) above.

A Party may not settle a dispute with an allegedly infringed third party without the prior written approval of the other Party.

#### 20. Options exercise

NT may exercise the Options set out in Exhibit A1 by completing and submitting to the Contractor the Options Order Form in Appendix D-2 to Exhibit D. The Contractor shall confirm receipt of an Options Order without undue delay.

No later than 21 days of receipt of an Options Order, the Contractor shall submit to NT a complete description of the delivery under the Option Order. The description shall include:

- A detailed description of the Delivery
- A complete Delivery Schedule with milestones as indicated in Exhibit C
- Prices

The prices shall be in accordance with those set out in Exhibit B.

If NT accepts, he shall return to Contractor a signed copy of the description together with the associated Options Order. The Contractor shall commence and complete his performance in accordance with the Delivery Schedule.

The Contract Conditions set out herein shall apply accordingly for Options, however such that each Options Order shall be considered as a separate contract. Appendices and exhibits will be issued and amended to the extent required for the Option in question. For clarity, Contractor shall also issue new Guarantee documents and insurances reflecting the values and scope of work of the Option.

## **21. Inventions**

Inventions made by the Contractor during the performance of the Works shall be the property of the Contractor. However, NT will retain ownership of inventions, processes, designs, documents and production rights which are predominantly based on information passed over to the Contractor from NT.

The Contractor shall notify NT of such inventions which shall be NT property and the Contractor shall provide the necessary assistance to enable NT to acquire patents to the inventions.

NT shall pay the Contractor for all reasonable costs in connection with such assistance including but not limited to compensation to the Contractor's employees or others in accordance with applicable law or general agreements concerning compensation for inventions.

Inventions which are jointly developed by the Contractor and NT within the framework of this Contract shall be jointly owned. The Parties may not license, assign, transport or transfer their ownership to such jointly owned inventions to a third party without the other party's written consent.

The Contractor's sale to a third party of components, parts or Trainsets incorporating joint inventions shall be subject to the Parties reaching an agreement on royalty which reasonably reflects the other party's ownership to the invention.

In the event that both Parties agree that joint inventions should be subject to an application for a patent, and both Parties wish to apply for a patent, such application shall be filed jointly by the Parties.

In the event that one of the Parties states in writing that it does not wish to apply for a patent, the other party has the right to proceed with the patent application without the written consent of the non-applying party, and the non-applying party waives its rights to any ownership and royalty rights to the patent. However, the patentee shall grant the non-applying party a non-exclusive, non-assignable, non-transferrable, free right and license to use such patented joint inventions.

All costs and expenses associated with the filing and maintenance of such patent shall be borne by the filing party/parties.

All costs and other claims associated with the remuneration of employees based on the provisions of the Norwegian Act of 17 April 1970 No. 21 relating to the right to employees' inventions, or similar legal grounds, shall be borne by the respective employer. The Parties shall ensure that all rights to inventions made by their employees are, to the extent such claims are provided for in the law, claimed by the Parties in accordance with the stipulations set forth in the Act relating to the right to employees' inventions.

For any invention made by the Contractor during the performance of the Works in relation to the Trainsets, the Contractor will grant NT an irrevocable royalty free non-exclusive right to use such invention in accordance with this clause.

## **22. Liability - Limitation of Liability**

### **22.1 General**

The Contractor is liable for all losses and damages suffered by NT as a result of the Contractor being in breach of his obligations under this Contract, subject to the limitations set out in 22.3

The Contractor's obligations as well as the limitations and exceptions to liability provided for in this clause 22 shall apply even if NT terminates the Contract. In addition to the other rights of NT stated in this Contract, NT is also entitled to seek compensation according to law, subject to the limitations set out in clause 22.3.

#### 22.2 Third Party Liability

The Contractor is liable for, and shall indemnify NT for, all losses and damages suffered by third parties as a result of the Delivery not being in conformity with this Contract, to the extent such liability follows from law, such as third-party product liability.

#### 22.3 Limitation of liability

Except for causes attributable to Contractor's wilful misconduct or gross negligence, the Contractor's liability under the Contract is limited to 30% of the Contract Price. This limit applies for Contractor's liability for liquidated damage according to clause 8.4 and liability for reimbursement, defects and damages according to clause 9.2 and 9.3.

Contractor's indemnity obligations are explicitly excluded from this limit.

Compensation according to clauses 17.2 and 18 is also excluded from above limit, but subject to separate limitations pursuant to the relevant provisions.

All consequential and indirect losses or damages (including but not limited to loss of profit, loss of turnover, loss of interest, etc.) shall be excluded from the Contractor's liability. For the avoidance of doubt, claims from Operators attributable to Contractor's breach of the Contract shall not be considered as consequential or indirect losses or damages, subject to these not being classified as indirect losses for the Operator as such.

### 23. Insurance

The Contractor shall take out at his own cost and expense an insurance programme in accordance with standard market coverage for the relevant risk exposure. The programme shall as a minimum include the following insurances to be fully effected no later than 30 days after signing of the Contract or before the Contractor begins any work. Thereafter the Contractor shall maintain the insurances until minimum 24 months after FTO of the last Trainset.

#### 23.1 The Deliveries

The Contractor shall insure on a broad «all risks»-form the Deliveries with the Contractor as policy holder, to their full replacement value.

- a) from Effective Date until the signing of PTO Certificate of the last delivered Trainset in a Delivery, including planning, manufacturing, transportation, testing and commissioning, against any loss or damage caused by any of the Contractor's risks, and
- b) from the signing of PTO Certificate of the last delivered Trainset in a Delivery until 24 months after the date of PTO of the last Trainset against any loss or damage which is caused by the Contractor in completing any outstanding work or complying with his obligations according to the contract  
ii)

#### 23.2 Third party liability

The Contractor shall procure a third-party liability coverage, for any death or personal injury and loss of or damage to any physical property arising out of the performance of the Works and occurring before the end of technical warranty period, not including extended warranty, limited to 24 months after FTO Certificate.

Such insurance shall be effected before the Contractor begins any work and shall remain in full force and effect until expiry of the technical warranty period not including extended warranty.

### 23.3 The Contractor's plant and equipment

The Contractor shall insure his own plant and equipment, including all stationary buildings, machinery and mobile equipment etc.

### 23.4 Employees

The Contractor shall take out group accident coverage and other workers' compensation and employer's liability coverage in accordance with actual statutes.

### 23.5 Other insurances

- i) Automobile Liability coverage,
- ii) All other statutory required coverage.

### 23.6 Documentation

The Contractor shall whenever reasonable, required by NT, produce the certificates of insurance. If the documentation is not delivered in accordance with this clause NT is entitled to take out insurances to cover the relevant not yet covered risks at Contractors cost.

### 23.7 Expansion of insurances if an Option is called

The insurance shall cover the Primary Delivery, cf. clause 2.2, and any Options as and when subsequently called off by NT in accordance with clause 20. The Contractor shall ensure that the coverage is adequate at all times and procure supplementary coverage as necessary.

## 24. Miscellaneous

### 24.1 General

Any action or inaction of NT or failure of NT, on any occasion, to notify, invoke or enforce any right or provision of this Contract shall not be construed to be a waiver by NT of its rights hereunder, and shall not prevent NT from enforcing such provisions or right on any future occasion.

In case any provision of this Contract conflicts with laws and regulations issued by virtue of law, the respective provision of the Contract shall be revised if that is possible in view of the intention of the provision. All other provisions of the Contract shall remain in force.

The unenforceability or invalidity of any provision of this Contract shall not affect the enforceability or validity of the balance of this Contract. In the event that any such provisions should be or become invalid for any reason, the parties hereto will consult each other and agree on a legally acceptable manner of giving effect with the commercial objectives contained in such invalidated provision.

### 24.2 Changes of Production Plant

Any change of production plants is subject to prior consent of NT, cf. Exhibit H.

### 24.3 Signature of the Contract and Amendments

The Contract is made out in two signed originals, one for each party. The Contract contains all terms agreed to by the parties, and sets aside all documents formerly exchanged between the parties.

Any Amendment to this Contract shall be made in writing and signed by both parties.

### 24.4 Prevention of loss

A party who alleges that the other party is in breach of the Contract shall take measures necessary to mitigate loss, provided that this can be accomplished without unreasonable cost or inconvenience.

### 24.5 Headings

The headings that appear in the Contract are exclusively of an editorial character and consequently they shall not be accorded legal significance in interpreting and applying the Contract.

#### 24.6 Language

If not otherwise agreed, all communication during the course of this Contract and all written material and software developed as a part of the deliveries according to this Contract shall be in English.

#### 24.7 Representative of the Parties

Each party shall appoint a representative with authority to act on its behalf in all matters concerning the Contract, and appoint a deputy to act in his stead. Each party may, by giving 14 days' notice to the other party, substitute a representative or deputy.

A representative or his deputy may delegate specific tasks to one or more persons appointed to him. In such case the other party's representative shall be notified of the authority given to such appointed person or persons.

The representatives of the parties shall be specified in Exhibit D.

### 25. Requirements for Responsible Business conduct

#### 25.1

The Contractor undertakes to comply with NT's Code of ethical conduct for suppliers, cf. Appendix L-1 and NT's Contract performance clauses for safeguarding human rights and protecting the environment in the supply chain, cf. Exhibit L – 2.

#### 25.2 Inspection and Monitoring

In order to monitor compliance with the conditions stipulated in this clause, the Contractor shall:

- 1) As soon as possible upon NT's request supply NT with information concerning Work and employment conditions of employees that perform work for delivery under this Contract,
- 2) Permit inspection, by NT or an independent third party appointed by NT, at the workplace where work is being performed for delivery under this Contract,
- 3) Ensure that relevant information concerning work and employment conditions of employees that perform work for delivery under this Contract is available at the workplace for inspection by NT or an independent third party appointed by NT, and
- 4) Not punish, dismiss or otherwise discriminate against employees who perform work under this Contract and who disclose information about compliance with the stipulations of clause "*Fundamental Rights of Employees*".

#### 25.3 Sanctions

In case of breaches of clause 25.1 or 25.2, the general sanctions of this contract applies with the additions and clarifications as specified in Exhibit L – 2.

### 26. Disputes

This Contract shall be governed by and interpreted in accordance with Norwegian law.

Disputes arising out of the Contract or as a result thereof, and which are not resolved by negotiations, shall be subject to the jurisdiction of the Norwegian courts and settled by court proceedings in Norway. The Contractor hereby submits to the jurisdiction of the Norwegian court, the Oslo City Court.

The parties may alternatively agree that the dispute shall be resolved with final effect through arbitration. Any arbitration proceedings shall take place in Oslo in accordance with the Norwegian Act on Arbitration Proceedings of 14 May 2004 No. 25. The arbitral tribunal shall consist of a panel of three arbitrators,



jointly appointed by the Parties. The Parties agree that the arbitration proceedings shall be held confidential and that the arbitration award shall not be published, unless otherwise agreed in writing.

**27.** List of Exhibits

Exhibit A	Scope of Work, A1 to A11
Exhibit B	Payment and Price Schedule
Exhibit C	Delivery and Delivery Schedule
Exhibit D	Project Execution and Administration
Exhibit E	Standards and Specifications
Exhibit F	Drawings
Exhibit G	Contractor's Guarantees
Exhibit H	Production Plant and site for maintenance
Exhibit I	Traffic safety and security
Exhibit J	Assignment of NT's agreements
Exhibit K	Subcontractors
Exhibit L	Sustainability, A1 and A2
Exhibit M	-
Exhibit N	-
Exhibit O	Contractor's Specifications
Exhibit P	-