



REQUEST FOR QUOTATION

SUPPLY & DELIVERY OF 4 UNITS TELEHANDLER FOR POHNPEI, CHUUK, KOSRAE, YAP

VITAL FSM PETROLEUM CORPORATION

April 15, 2025

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SECTION I- Introduction

The Federated States of Micronesia Petroleum Corporation (FSMPC) was established under Public Law 15-08. Vital FSM Petroleum Corporation operates five petroleum storage and handling terminals and depot throughout the Federated States of Micronesia (Yap, Kosrae, Pohnpei, Chuuk and Nauru) The Corporation serves all sectors including international aviation, marine, commercial and retail service station markets.

Vital FSM Petroleum Corporation, seeking quotation for Supply & delivery of 4 units of telehandlers to Pohnpei, Chuuk, Kosrae, Yap. Vital FSM Petroleum is looking for both Electric and ICE (Internal Combustion Engine) for comparison and will choose which of the following forklifts is suitable to enhance our operational capabilities and obtain the best value for money. This RFQ outlines the specifications and requirements for both electric and internal combustion engine (ICE) telehandlers.

Company Name:	VITAL FSM PETROLEUM CORPORATION		
RFQ NO	2025-06		
DATE OF ISSUE	4/15/2025		
LAST DAY OF RFI	4/25/2025		
DEADLINE OF SUBMISSION	5/2/2025		
ELECTRONIC REPOSITORY E-MAIL	rfp@fsmnpc.com		
NOTICE OF AWARD	5/16/2025		

All communication with regards to this RFQ need to be directed to Vital FSM Petroleum Corporation Bids & tender Team via E-mail @ rfp@fsmnpc.com.

SECTION II- General Requirements

1. The telehandlers must comply with relevant safety and operational standards (ANSI, OSHA, etc)
 - OSHA 29 CFR 1910.78 (Powered Industrial Trucks)
 - NFPA 505 (fire safety requirements for forklifts used in hazardous and non hazardous areas)
 - NFPA 70 (electrical classification for hazardous locations)
 - UL 558 & UL 583 (safety standards for internal combustion and electric trucks).
 - ANSI/ITSDF B56.1 (safety standard for forklifts)
2. Warranty Information: Minimum Manufacturer's warranty period of 1 year
3. Performance Specification:

3.1 Electric Telehandler

- a) Maximum Lift Height: Minimum [4 meters].
- b) Forward Reach: Minimum [insert reach, e.g., 2.29m/ft].
- c) Mast Type: [telescopic,]
- d) Power Source: 110 or 220V Volts 60 hz
- e) Capacity – 2.5 - 3Ton
- f) Battery Type: [lithium-ion or equivalent].

Battery Requirement Explosion -Proof Design

- Sealed battery compartments to prevent sparks or arcing.
 - Non-sparking materials (e.g., corrosion-resistant, non-ferrous components).
 - Thermal management systems to avoid overheating.
 - Lithium-ion batteries may require additional safety measures (e.g., built-in battery management systems).
 - Traditional lead-acid batteries must be sealed and vented safely to avoid gas buildup.
 - Certification ATEX (EU) Or IECEx (International) certification for hazardous environment UL583 (US) EE & EX rated (per OSHA and UL standards)
- g) Charging Port / Stations:

- Explosion-Proof Chargers: If charging must occur in Zone 1, use chargers certified for hazardous areas (e.g., ATEX/IECEx-rated).
 - Ventilation: Ensure adequate ventilation to disperse hydrogen gas (a by-product of lead-acid batteries or lithium-Ion).
- h) Operating Time on Full Charge: Minimum 6-8 Hrs/Day.
- i) Drive System: 4-wheel drive with differential lock feature.
- j) Dimensions: Overall Length, Width & Height, Wheelbase 1.75meters
- k) Ground Clearance: Minimum
- l) Weight: Maximum
- m) Tires: [Specify tire type, e.g., pneumatic,]
- n) Optional Attachment: Drum Holders, Soop Buckets

3.2 Internal Combustion Engine

- a) Lifting Capacity: Minimum [2.5Tons].
- b) Mast Tilt Backward/Forward Reach: Minimum [6/12 degrees].
- c) Maximum Lift Height: Minimum [3meters].
- d) Fork thickness/width/length: 35*100*920mm
- e) Mast Type: [telescopic,]
- f) Engine Type: Diesel
- g) Engine Power/torque: Minimum .131/185Nm
- h) Fuel consumption: 2.35/2.55L/Hr
- i) Dimension: Overall Length, Width & Height
- j) Ground Clearance: Minimum [insert clearance].
- k) Tires: pneumatic,
- l) Weight: Maximum 2530kg – 3680kg
- m) Optional Attachment: Drum holders, and scoop buckets
- n) Spark Arrester

4. Ergonomic operator cab with visibility and ease of controls.

- a) Stabilization technology (e.g., outriggers or automatic levelling).
- b) Fork and attachment options (please specify included attachments).
- c) Safety features including but not limited to: Seat belts
- d) ROPS/FOPS (Roll Overprotective Structure/Falling Object Protective Structure).

5. Required Documentation

- a) Detailed technical specifications for each telehandler model. Both electric and Internal Combustion Engine (ICE)
- b) Ex Certification markings and Declaration of Conformity for hazardous area use.
- c) Pricing breakdown CIF Pohnpei, Chuuk , Kosrae , Yap
- d) Lead time for delivery.
- e) Maintenance and service information.
- f) Yearly Preventive Maintenance Cost both Electric & ICE
- g) Training Cost for Maintenance both Electric & ICE
- h) Trade References Companies that you have previously supplied for the last 3 years

6. Submission Instructions

Please submit your quotation electronically to rfp@fsmnpc.com and reference the RFQ 2025-06. Include all relevant documentation as attachments item # 5. In-Complete Documents shall be considered as non-responsive.

SECTION III-Instructions to bidders

1. Bidders are responsible for obtaining all addenda via Vital FSM Petroleum Corporation or by other sending RFI2025-06 at rfp@fsmnpc.com .
2. Familiarization with Requirements. It is the Bidder responsibility to examine the entire solicitation package and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting a Quotation. Negligence in preparing a Quotation confers no right of withdrawal after due date and time.
3. Cost of Quotation Preparation. Vital FSM Petroleum Corporation is not responsible for the cost related to developing, presenting, or providing a response to this solicitation.
4. Inquiries
 - a. Contact person. Any inquiry related to this solicitation, including any request for inquiries regarding standards referenced in the RFP should be directed to the attention of Vital FSM Petroleum Corporation "Bids & Tender Team " at rfp@fsmnpc.com and per the additional directions contained within this RFP. The Bidder's shall not contact or direct inquiries concerning this solicitation to any other Vital FSM Petroleum Corporation staff.
 - b. Submission of inquiries. All inquiries shall be submitted in writing via electronic mail as outlined and shall refer to the appropriate solicitation number, page and paragraph. Vital FSM Petroleum Corporation shall consider the relevancy of the inquiry but is not required to respond in writing.
5. Offer and Acceptance Period. All quotation shall remain valid and irrevocable for Sixty (60) Days after the due date of quotations.
6. Currency and Incoterms. All quotation shall be in USD\$ CIF.

7. Conflict of Interest. No employee or official of Vital FSM Petroleum Corporation may have any direct or indirect interest, financial or otherwise, in the respondent, including, but not limited to, any joint venture partners or subleases.
8. Submission of Multiple Quotation. No offer shall submit more than one quotation to this RFQ. Collusion among respondents, the submission of more than one quotation under different names by any entity or individual, or an ownership interest in more than one respondent by any entity or individual shall be a cause for rejection of all such quotation with consideration.
9. Quotation Preparation. All quotation shall be submitted on the form provided in this solicitation. It is permissible to copy these forms if required.
10. Quotation will submitted by mail (Courier) or electronically to the address stated in Section III and e-mail address provided under this section.
11. Signature. The person authorized to sign the quotation shall submit the offer and Acceptance page with an original signature.
12. References. The quotation shall include a minimum of (3) current business references. References should be similar to the scope of work as defined in this document; said references shall include name, company, address, telephone number and services provided.
13. Descriptive Literature. Bidder's submitting a quotation for the equipment other than those specified shall submit brochure or descriptive catalogue giving detailed specifications of the equipment or services offered along with their quotation.
14. When submitting via mail (courier) the quotation should clearly marked on the envelope the RFQ # 2025-3, the name, and address of the Bidder's.
15. Late Quotation. Late quotation shall not be opened and will be returned to the Bidder's.
16. No Modification. Modification shall not be permitted after quotation have been opened.
17. Withdrawal of Quotation. Quotation may be withdrawn at any time prior to the specified quotation due date and time. An offer or (or authorized representative) may withdraw the response by notifying the designated contact for this solicitation in writing.
18. Conformance to RFP. Each received quotation will be checked for compliance with the submission requirements of this RFP and to ensure that the quotation is fully responsive to the specification listed.
19. Disqualification. A Bidder's who is currently debarred, suspended, or otherwise lawfully prohibited from any private or public procurement activity may have its quotation rejected.
20. Vital FSM Petroleum Corporation reserves the right to obtain Bidder's clarifications where necessary to arrive are full and complete understanding of Bidder's product, service, and /or solicitation response. Clarification means communication with a Bidder's for the sole purpose of eliminating ambiguities in the quotation and does not give Bidder's an opportunity to revise or modify it Quotation
21. Response Rejection. Submission of additional terms, conditions, and /or agreement with quotation may result in the quotation rejection.
22. Vital FSM Petroleum Corporation Rights. Vital FSM Petroleum Corporation Inc. reserves the right to award in a manner deemed most advantageous to the company. Vital FSM

Petroleum Corporation reserves the right to reject a quotation of any Bidders who has previously failed to perform competently in any contract with the company.

23. Notification. The selected successful Bidder's will be provided a notification of Award, and a contract will be prepared which will include by reference this solicitation, the Bidder Quotation, and any other contractual language as may be required by FSM Petroleum Corporation.
24. Shortlisting of Bid. For responses received within the prescribed closing date and time, The evaluation team will scrutinize the offers received to determine whether they are complete and as per requirement, and also whether all the required documents, as asked for and is required to evaluate the responses have been submitted
25. Evaluation. All submitted Quotation shall be evaluated using the evaluation criteria refer to Section IV- Evaluation Criteria.

Section IV- Evaluation Criteria

Evaluation Criteria	Weight	Max Points	Rationale
Technical Specification	20%	20	Core functionality (lift capacity, reach, height) is critical for operations.
Performance	15%	15	Efficiency, speed, and adaptability impact productivity.
Safety Features	15%	15	Safety is non-negotiable and reduces risk of accidents.
Durability & Build Quality	10%	10	Long-term reliability reduces downtime and maintenance costs.
Cost & Value	15%	15	Balance between upfront cost and long-term operating expenses.
Brand & Support	10%	10	Reliable brands with strong support ensure smooth operations.
Compliance & Standard	5%	5	Regulatory compliance is mandatory but often standardized.
Customization & Flexibility	5%	5	Specialized needs may require specific attachments or configurations.
Delivery & Leadtime	3%	3	Duration of Delivery , Transit Times
Environmental Impact	2%	2	Emission Rating
	100%	100	

SUPPLY AGREEMENT

Supply, Delivery & Commissioning of 4 Units 3.0 Tons Telehandler

This Supply Agreement (hereinafter referred to as the “Agreement”), entered this. Date

BY AND BETWEEN

Vital FSM Petroleum Corporation, a corporation duly organized and existing under the laws of the Federated States of Micronesia, having its registered address at P.O. Box 1762, Kolonia, Pohnpei, Federated States of Micronesia (FSM), hereinafter referred to as the “Buyer”;

and

(Company Name) a corporation duly organized and existing under the laws of Australia having its registered address at **(Address)**

(both hereinafter referred to as the “Parties” and each separately – as the “Party”).

RECITAL:

WHEREAS, Buyer is in need of certain equipment and products in accordance with the specifications, documentation, and instructions specified in the Technical Documentation (as hereafter defined);

WHEREAS, Seller has offered to supply the equipment and products required by the Buyer in accordance with the Buyer’s specifications and instructions, and Buyer has agreed to purchase from the Seller the said equipment and products, subject to the terms and conditions of this Agreement;

NOW, THEREFORE, for and in consideration of the foregoing premises, and of the mutual covenants and agreement hereinafter set forth, the Parties, for themselves, their successors and permitted assigns, hereto mutually agree as follows:

The Parties hereby agree as follows:

1. DEFINITIONS

In this Agreement, the below terms shall have the following meaning and shall apply to this Agreement and its annexes, and the meaning related to these words shall be as indicated herein, except where the context otherwise requires:

“Equipment” shall mean 4 Units 3.0 Tons Telehandler designed, manufactured, produced, erected, tested, delivered, commissioned, and supplied by the Seller according to this Agreement and technical specification attached to this Agreement as Annex 1 & 3.

“Technical Documentation” shall mean the technical documentation in English, which shall be provided to the Buyer by the Seller according to technical specification attached to this Agreement as Annex [1,2].

“Delivery Place” shall mean the port at One **(1)** Unit will be delivered in Chuuk Island and One **(1)** Unit will be delivered in Yap .**(1)** Unit will be delivered in Kosrae and **(1)** Units will be (Pohnpei) in the Federated States Of Micronesia.

“Products” mean the brand-new equipment, and Technical Documentation that are to be provided by the Seller to the Buyer according to this Agreement.

“Total Purchasing Price” shall mean the Total Products Purchase Net Price, increased by taxes and duties according to applicable law provisions.

2. SCOPE OF THE SUPPLY

2.1 Upon remuneration as mentioned below, the Seller hereby agrees to sell, design, produce, assemble, and deliver the Equipment, including delivery of the Technical Documentation, according to specification stated in Annexes (1,2,)

2.2 The Seller shall deliver the fully erected Equipment to the Delivery Place according to the design documentation made on the basis of the technical specification, such as general arrangement drawing, flow diagrams, list of critical safety devices, manufacturer data report after completion and all technical documentation mention in Annex 1.

2.3 The Seller shall, at its own cost and expense, be bound to conduct all necessary final mechanical, electrical and hydraulic adjustments.

2.4 If a Party becomes aware of an error or defect of a technical nature in a document which was prepared for use in the supply of the Equipment and performance of any services, such Party shall promptly give notice to the other Party of such error or defect requires rectification or adjustments.

2.5 The Seller shall supply the Equipment and perform the services with the highest degree of skill and diligence, applying the most stringent standards prevailing in the industry for this purpose, to the full satisfaction of the Buyer.

2.6 Any other equipment and services not expressly included in this Agreement shall be subject to the additional charges or fees as may be agreed by the Parties, provided, that, any materials, equipment, services, tasks, or features that are deemed essential, necessary, or incidental to the performance and execution by the Seller of its obligations under this Agreement shall not be subject to additional charges or fees.

3. PRICE

3.1 For and in consideration of the Equipment and performance of the services, the Buyer agrees to pay the Seller the total Purchasing Price in an amount equal to **Commercial Quotation & Specification** refer Annex 1.

3.2 The Seller shall bear all costs and payments related to the supply of the Products to the Buyer, such as cost of freight & Insurance.

4. PAYMENT TERMS AND CONDITIONS:

4.1 Payment terms are followings:

4.1. 35% of the Total Purchasing Price shall be paid in advance within 30 working days from the moment of signing this agreement, succeeding milestone payment schedule shall follow as agreed under Annex 2 . In case of delay to pay the advance fee due to the Buyer's fault or fault of any party controlled by the Buyer, then the Delivery Term as provided in Article 5 below shall be extended appropriately.

4.2 In case of delay to pay advance or any other payment by more than three (3) months (except when the Buyer is justified to withhold or suspend payment as when the Seller commits a breach of any of its obligations under this Agreement), the Seller shall be entitled to terminate this Agreement upon written notice addressed to the Buyer. Termination of the Agreement shall be effective as from the date of submission of the written termination notice. In case of such early termination of the Agreement by the Seller, the Buyer shall compensate all the costs the Seller has borne.

4.3 The Seller shall not be entitled to charge statutory interests upon the Buyer, if any payment in favor of the Seller is not made on time.

4.4 The Seller shall be deemed to have satisfied itself as to the correctness and sufficiency of the Total Purchasing Price. Unless otherwise expressly stated in this Agreement, the Total Purchasing Price covers all the Seller's obligations under this Agreement and all things necessary for the supply of the Equipment and Products and the proper execution and completion of the services and the remedying of any defects.

4.5 Except as otherwise expressly stated in this Agreement:

4.5.1 The Seller is deemed to have obtained all necessary information as to risks, contingencies and other circumstances which reasonably could be expected to influence or affect the Equipment and Products and the services.

4.5.2 By signing this Agreement, the Seller accepts total responsibility and risk for having foreseen all difficulties and costs of successfully supplying the Equipment and Products and completing the services; and

4.5.3 The Total Purchasing Price shall not be adjusted (and the Seller shall not be entitled to any extension of time or any other revision to, or relief from, any provision of this Agreement) to take account of any unforeseen difficulties.

5. TERMS AND SCHEDULE OF SUPPLIES

5.1 The Seller shall supply the Product to the Delivery Places according to CIF conditions (INCOTERMS 2010) and shall cover the equipment with marine insurance coverage ICC Clause A. Production lead-time and Factory Acceptance Test shall be 10Months from the date of receipt of signed engineering drawings that will be released within 15Days of receiving downpayment. Delivery of the Equipment shall be within 45Days after completion of the Factory Acceptance Test and Commissioning

5.2 In case of the Buyer's delay to make payment as described in the Article 4 above, the delivery deadline shall be extended by the same period, except when the Buyer is justified to withhold or suspend payment as when the Seller commits a breach of any of its obligations under this Agreement.

6. LIABILITY FOR DELAY

6.1 In case the delivery of the Equipment and Products or any portion thereof will be delayed or not performed in accordance with the terms and conditions hereof and the Technical Documentation, the Seller must immediately, and in no case later than seventy two (72) hours from knowledge of the reason(s) thereof, notify the Buyer in writing of such delay or nonperformance. The Buyer's acceptance of the Seller's notice shall not constitute a waiver of any of the Sellers's obligations.

6.2 Notwithstanding the foregoing provision, the Buyer shall be entitled to calculate contractual penalty for delay by the Seller in the delivery of the Equipment and Products, or any portion thereof, to the Buyer. The contractual penalty shall be a minimum amount equivalent to 0.2% to a maximum 0.5% of the contract value of the Total Purchasing Price for each day delay. Total amount of the contractual penalty for such delay must not however exceed 0.5% of the Total Purchasing Price for delayed delivery of the Equipment and Products. Payment of the contractual penalty shall not exclude the Buyer's right to claim compensatory damage from the Seller upon general principles and applicable laws or terminate this Agreement and shall not release the Seller from its obligation to finish and supply the Equipment and Products or perform its other obligations under this Agreement.

6.4 The Seller's liability for delay can never exceed the invoice value of the delayed item. Furthermore, the Seller is not liable for any delays that arise that is not the fault of the Seller and over which the Seller has no control, including force majeure (such as strikes or lock-outs) or weather conditions which make production or transport impossible or disproportionately expensive. There does not need to be an objective impediment in order for the Seller to invoke force majeure. It is sufficient for the Seller to cite a subjective impediment. On any such delay, the delivery will be postponed until a time as soon as possible after the impediment has ended. The Seller will notify the Buyer of the occurrence of the impediment and the new delivery date.

6.3 The contractual penalty referred to above shall be payable by the Seller to the Buyer within (30) days from demand.

7. TRANSFER OF RISK AND OWNERSHIP RIGHT

7.1 The ownership right of the equipment and technical documentation related thereto shall be transferred to the Buyer as at the moment of acceptance of the Equipment by the Buyer. Risk of loss or damage of the Equipment or Technical Documentation related thereto shall be passed to the Buyer as from the moment of acceptance of the Equipment by the Buyer.

7.2 The Seller shall be bound to provide insurance of the Equipment against all risks during production, transportation and assembly until the moment of acceptance of the Equipment by the Buyer.

7.3 Any and all amounts that are to be paid by the Seller to an insurance company in the form of a deductible due to or pursuant to a claim on an insurance policy require or contemplated by this Agreement shall be for the sole account and be paid by the Seller, regardless of which party paid, obtained, or is responsible for procuring or maintaining such insurance.

7.4 Any and all insurance required to be obtained by the Seller under this Agreement shall, if the stated period of coverage, the term, or the life thereof be for a year or less only, be renewable every year at the expense of the Seller.

8. THE SELLER'S OBLIGATIONS

8.1 The Seller shall

- (i) comply with all applicable safety rules and regulations imposed by applicable law as well as those imposed by the Buyer; and
- (ii) take care of the safety of all persons involved, and all personal property used, in the supply of the Equipment and Products and the performance and completion of the services. The Seller shall ensure that its employees and personnel observe and abide by said regulations.

8.2 The Seller shall ensure that all Equipment and Products, as well as, all materials, tools and other equipment, whether purchased, rented or otherwise owned by the Seller or furnished by the Seller in relation to this Agreement, are in safe and good condition, capable of performing the function for which they are intended.

8.3 The Seller shall be liable, and shall indemnify the Buyer, for any and all claims arising out of or incident to the Seller's grossly negligent or willful supply of the Equipment and Products and execution and performance of the services under this Agreement, where such execution and performance gives rise to penalties and fines or any remedial action due to violation or non-observance of laws and regulations relative to safety, pollution and environment.

8.4 The Seller shall perform and fulfill its obligations under this Agreement in a competent and professional manner, and shall establish and utilize such techniques and procedure that will ensure the safety of its personnel, employees, and the Buyer and its

employees and representatives, and preserve and protect the Equipment and Products and other materials, supplies, and equipment needed for the completion of the work contemplated herein.

8.5 The Seller shall be responsible for the adequacy, stability and safety of the Products and Equipment and of all other materials and equipment subject of this Agreement. The Seller shall, whenever required by the Buyer, submit details of the arrangements and methods which the Seller will adopt to ensure such adequacy, stability or safety. No significant alteration to these arrangements and methods shall be made without the written consent by the Buyer.

8.6 The Seller shall be responsible for the performance and functionality of the Equipment and Products and other materials, supplies, and equipment furnished by the Seller or supplied by third-party suppliers of the Seller, which are incorporated into the Equipment and/or Products or used in the performance of the services, and for the works completed or in progress.

8.7 The Seller shall be solely responsible for any damage to, or destruction or loss of, except to the extent caused by any act or omission of the buyer,, of the Equipment and Products and other materials, tools and equipment owned or rented by the Seller and which are used or intended for use in the performance of its obligations under this Agreement.

8.8 The Seller shall obtain the prior written consent of the Buyer before subcontracting any or all aspects of the services and its other obligations under this Agreement.

9. CHANGES IN TECHNICAL DOCUMENTATION

9.1 The Seller hereby reserves the right to introduce changes in technical documentation without charging the Buyer in respect to the design details, construction, or organization of the Products, provided that such changes shall constitute improvement as determined by the Buyer, in favor of the Buyer, as regards value or usefulness of the Products. For the avoidance of doubt, any expenses incurred due to changes or revisions of the specifications and instructions provided in the Technical Documentation, except when such changes or revisions are attributable to the fault or negligence of the Buyer or request of the buyer, shall be for the sole account of the Seller.

9.2 The Buyer shall have the right to make any changes or revisions in the design, drawings and Product specifications from time to time by making a written request with the Seller. As soon as possible after receipt of such request, the Seller shall inform the Buyer in writing, which, if any, changes it can accept, and which modifications, if any,

may be necessary because of such changes of terms and conditions contained in this Agreement, including but not limited to change of price and supply schedule. If the proposed changes are accepted in writing by the Buyer, the Seller shall perform the required changes to the Products; in another case, the Seller shall not perform any changes.

10. THE BUYER'S PARTICULAR OBLIGATIONS

10.1 If, due to any change of laws applicable for the Products in the Buyer's country, occurring after the date of execution of this Agreement, cost of the Products shall be changed, the amount of such change costs shall be added or deducted to the Total Purchasing Price. Such kind of change must be additional in relation to the specification and must be agreed prior in writing between the Buyer and the Seller.

10.2 The Buyer shall be responsible for free-of-charge organization and fulfilment of the following conditions in the Delivery Place:

- (i) The Buyer shall provide the Seller with appropriate area for unloading, testing and putting the Equipment into operation; the area shall be free from any rubble and devices or other Buyer's activity;
- (ii) The Buyer shall be bound to organize unloading area, free of any terminal charges;
- (iii) The Buyer shall be bound to remove any bollards and obstacles from the unloading area, should it be necessary to unload the equipment from a barge to a wharf;
- (iii) The Buyer shall provide the Seller with information on strength parameters of the wharf and site;
- (iv) The Buyer shall provide with water, power supply and general lighting in the Delivery Place;
- (v) The Buyer shall provide with testing weights to perform burden tests in order to test the Equipment and put it into operation in the Delivery Place; and
- (vi) The Buyer shall organize customs clearance, if such obligation is required under the existing and applicable laws.

11. CHECK AND INSPECTION

11.1 The Buyer and/or its authorized representatives shall be entitled to inspect at all times the quality of materials use by and workmanship of the Seller during the production process. The Seller shall present to the Buyer detailed Monthly reports on production progress and level of the Product completion.

11.2 After each significant performance stage, the Seller shall allow access, in reasonable terms, to the Seller's and its subcontractors' work, in agreed terms, upon Buyer's notification to the Seller, submitted one week in advance.

12. OPERATING TESTS BEFORE ACCEPTANCE AND PUTTING INTO OPERATION

12.1 The Seller shall be bound to put the Equipment to use. During the put-to-use process, the Equipment shall be launched (operated) and acceptance tests shall be performed, as provided in Article 14 of this Agreement.

12.2 Acceptance tests shall be performed according to the Annex[7]. The Seller shall inform the Buyer on putting into use and tests in reasonable advance, at least 7 days before the planned date of receipt, so that the Buyer may send its representative(s). Should the Buyer's representative(s) be not present, the Buyer shall be provided with test report that shall be deemed proper.

12.3 Should the tests show the Equipment is inconsistent with this Agreement, the Seller shall, at its own expense and account, remedy all defects immediately in order to ensure the Equipment's consistency with this Agreement. Then, upon the Buyer's request, new tests shall be performed at the Seller's costs, which shall be repeated until the Equipment is consistent with this Agreement and all defects are removed, unless the defect's character is not material (not affecting operational performance and safety requirements). A list of nonmaterial defects shall be made and the Seller shall be bound to remedy defects specified in the list.

13. ACCEPTANCE

13.1 The Equipment shall be deemed accepted upon performance of acceptance tests, according to the Annex [1], and all the acceptance tests have been finished successfully according to this Agreement.

13.2 Minor defects that do not affect to the Equipment's safety and operational performance negatively and do not disable the Equipment's acceptance. Such defects shall be specified in the list as "items of the fault list" and the Seller shall be bound to remedy all specified shortcomings within 3 months of acceptance of the Equipment by Buyer.

13.3 The Buyer shall not be entitled to put the Equipment into operation (except for testing and inspection purposes in accordance with this Agreement) before acceptance

thereof by the Buyer. If the Buyer puts the equipment into operation before the acceptance without the Seller's consent, the Equipment shall be deemed accepted.

14. WARRANTY/GUARANTEE

14.1 The Seller hereby guarantees that the Equipment is free from defects caused by a defective design, materials or workmanship that negatively affect or disable proper electrical or mechanical functioning of the Equipment. Should such defects appear during the guarantee period, the Seller shall supply proper spare parts and an employee to perform the works, all free-of-charge.

14.2 The engine warranty shall apply for 1 year as from the moment of the Equipment acceptance by the Buyer. The fueling system warranty shall apply for 1 year as from the moment of the Equipment acceptance by the Buyer.

The Seller will provide after sales support to the Buyer at a rate of AUD 1,400/Day Rates Technician, excluding airfare, hotel, and meals.

14.3 The Buyer shall be bound to inform the Seller on found Equipment's defects that the Buyer demands to be repaired under this guarantee, without undue delay. The Seller shall contact the Buyer and repair the defects as soon as practically possible during normal working hours after receiving such information.

14.4 This guarantee shall be granted provided that the Equipment is used, operated, serviced according to the Seller's written instructions. The following parts shall be excluded from the guarantee:

- I. consumable parts
- II. those which repair, improvements or adjustments have been made or commenced by the Buyer or any third party, without the Seller's previous consent;
- III. those with defects not notified to the Seller during the abovementioned guarantee period;
- IV. Those with faults or damages caused by negligence non-attributable to the Seller, accident, misuse, overuse, improper assembly (if not performed by the Seller).

15. LIMITATION OF LIABILITY

Excepting situations explicitly referred to in this Agreement, the Parties' liability under this Agreement shall be limited to amounts of factual and direct losses suffered by the other Party.

In no case shall the Parties be liable for any indirect or consequential damages, losses, or liabilities or the other Party's lost profits.

16. FORCE MAJEURE

16.1 As used herein, "Force Majeure" shall mean any circumstance beyond the reasonable control of a Party which effectively prevents such party from performing its obligations hereunder; provided, that, such circumstance, despite the exercise of reasonable diligence, cannot be or could not be prevented, avoided, or removed by such Party and is not attributable to the negligence or misconduct of such Party. Force Majeure events include:

- (a) acts of God;
- (b) acts of war or the public enemy, whether war be declared or not, invasion, armed conflict or act of a foreign enemy, blockade, embargo, revolution and public disorders, including insurrection, rebellion, civil commotion, sabotage, riots, and violent demonstrations;
- (c) strikes, lockouts, riots, labor disputes, in any such case which are widespread or nationwide;
- (d) floods, tidal waves, explosions, fires, earthquakes, typhoons and other natural calamities; or (e) any other event of similar nature which prevents the Parties from performing their obligations under this Agreement.

16.2 No Party shall be liable for any failure or delay in the performance of its obligations under this Agreement in case of, but only to the extent caused by, any event of Force Majeure; provided, that the relief granted by this Section shall be available only if and to the extent the Party claiming relief has and continues to take all steps reasonably within its control to mitigate the effects of such Force Majeure event.

16.3 The Party seeking to rely on an event of Force Majeure to excuse failure or delay in the performance of its obligations shall notify the other Party as soon as reasonably possible of the nature of Force Majeure claimed and the extent to which the Force Majeure claimed affects the Party's obligation under this Agreement, and such Party shall resume the performance of its obligations as soon as reasonably possible after the event of Force Majeure no longer exists.

16.4 In the event that Force Majeure lasts continuously for a period of at least [1] month from the date of occurrence thereof, then both Parties shall meet to consult and agree on the necessary arrangements, for further implementation of this Agreement, if this is

possible or can be expected, or to arrange for termination of this Agreement, but without prejudice to their rights and obligations which have already accrued prior to such termination. It is understood that each Party shall fulfill its contractual obligations as they have fallen before the occurrence of Force Majeure.

16.5 The Parties will consult with each other and take all reasonable steps to minimize the losses of any Party resulting from Force Majeure.

17 APPLICABLE LAW AND SETTLEMENT OF DISPUTES

17.1 This Agreement shall be subject to the United Nations Convention for Contracts on the International Sale of Goods. Where the United Nations Convention for Contracts on the International Sale of Goods does not apply, this Agreement shall be governed by FSM law provisions.

17.2 Any disputes arising from or related to this Agreement shall be settled according to Arbitration Rules of the Arbitration Court at the International Chamber of Commerce by one or more arbitrators appointed according to the abovementioned rules. The arbitration proceeding shall take place in UNCITRAL and shall be conducted in English. The Parties hereby declare that a decision made as a result of the arbitration proceeding shall be binding for both Parties.

18 ASSIGNMENT

None of the Parties can assign or otherwise transfer this Agreement or rights thereof without explicit written consent of the other Party; such consent shall not be withheld unreasonably.

19 PARTIAL INVALIDITY

19.1. In case any provision of this Agreement becomes or is declared, by a competent court, illegal, unenforceable, or invalid, this Agreement shall be still applicable and legally effective, either necessarily modified by the court concerned, or upon excluding such provision from the Agreement, provided that any such modification or excluding have no significant affect to either Party's economic benefits under this Agreement.

19.2 No modifications of this Agreement shall be legally effective unless agreed in written and executed by appropriately authorized representatives of the Buyer and the Seller.

20 ENTIRETY OF THE AGREEMENT

This Agreement constitutes the entire agreement and arrangements between the Parties and shall supersede any and all previous oral or written agreements and correspondence, any previous obligations between the Parties of this Agreement, related to design, production, assembly and testing the Equipment.

21 CONFIDENTIALITY AND INTELLECTUAL PROPERTY

21.1 Each Party (the "Receiving Party") shall ensure that no Confidential Information of the other Party (the "Disclosing Party") shall be disclosed to third parties except:

- (a) when consented to in writing by the Disclosing Party;
- (b) when such disclosure is required by applicable law, by order of a court or by order of a regulatory authority or stock exchange; or
- (c) disclosures made by a Party to its affiliates or related companies, lenders, professional advisors, employees, agents, or authorized representatives. The Receiving Party shall not accept Confidential Information from others on behalf of the Disclosing Party unless it is necessary and acquired pursuant to a written agreement with the Disclosing Party. "Confidential Information" means all data and information disclosed (whether before or after the date of this Agreement and whether or not in writing, or in the form of computer discs, whether or not communicated verbally or by any other means and whether directly or indirectly) by a Disclosing Party (or by another person on behalf of that Party) to the Receiving Party in whatever form, tangible or intangible, that is not generally known to the public and relates to the operations, businesses, technology, practices, products, marketing, sales, services, finances, or legal affairs of the Disclosing Party or of any third party doing business with or providing information to the Disclosing Party, including this Agreement, information about this Agreement, and negotiations pertaining to this Agreement, as well as, actual or prospective customers, business partners, market opportunities, business, sales, marketing, technical, financial and legal plans, proposals and projections, product information, know-how, design rights, trade secrets, concepts, techniques, processes, methods, systems, designs, programs, codes, formula, research, experimental work and work in progress.

21.2 The Receiving Party shall not use the Confidential Information except in the performance of its obligations under this Agreement. The Receiving Party shall not reproduce or otherwise copy any Confidential Information without the express prior written consent of the Disclosing Party except for a reasonable number of copies necessary to accomplish the purposes of this Agreement and subject to the condition that all such copies shall, upon reproduction, contain appropriate proprietary and confidential notices and legends that may appear on the original Confidential Information.

21.3 Without limiting the foregoing, the Receiving Party shall use utmost efforts to prevent any unauthorized disclosure or use of Confidential Information, including the exercise of necessary security measures and applying the degree of care which applies to their own Confidential Information, such as but not limited, to keeping all documents and other material bearing or incorporating any of the Confidential Information separate from all other documents and materials.

21.4 Any consent given by the Disclosing Party for disclosure of Confidential Information shall be so given upon the condition (whether or not set out in the Disclosing Party's written consent to the disclosure) that the Receiving Party shall procure that each person or entity to whom disclosure is made shall, prior to disclosure, execute a confidentiality agreement with the Disclosing Party on the same terms as are set out in this Section.

21.5 The Seller shall disclose any information that the Buyer reasonably requests in order to verify the Seller's compliance with this Agreement.

21.6 The provisions contained in this Section shall be effective from the date of signing of this Agreement and survive the termination or expiration of this Agreement for a period of two (2) years after such termination or expiration.

21.7 "Intellectual Property" means all trade names, trademarks, service marks, copyrights and other intellectual property rights of the Buyer and its affiliates, including, but not limited to intellectual property related to or created by virtue of the supply and delivery of the Equipment and Products, and in relation to the performance and execution of the services under, this Agreement. Any and all Intellectual Property of the Buyer, as well as the Intellectual Property of the Buyer's affiliates or subsidiaries, will remain its exclusive property as well as the exclusive property of the individual affiliates or subsidiaries. The Seller shall not assert any claim thereto and shall use such Intellectual Property strictly as set forth in this Agreement and only during the term of this Agreement. The Seller shall not do any act or thing inconsistent or contrary with the ownership of such Intellectual Property by the Buyer or its affiliates or subsidiaries. The Seller shall take reasonable care to protect this Intellectual Property from improper usage, such as but not limited to infringement, damage, colorable imitation and other similar acts (hereinafter collectively referred to as "improper usage") and shall notify the Buyer of such improper usage not later than five (5) days from the time the Seller becomes aware of or discovers such improper usage. The Buyer shall have the right to seek and obtain an injunction to prohibit or restrain the Seller from using the Intellectual Property of the Buyer or its affiliates or subsidiaries, and the Seller hereby waives its right to object to the granting of any equitable relief that the Buyer may seek in relation to the injunction.

21.8 The Parties expressly recognize that additional Intellectual Property rights may be created in the performance of this Agreement. The Parties expressly agree that all rights, title to and interest in (including patent rights, copyrights, trade secret rights and any other rights) in any work, idea or information created, conceived or reduced to practice in the course of the performance of this Agreement shall belong to the Buyer.

21.9 The Technical Documentation and all other technical data, evaluations, reports and work product of the Seller hereunder shall become the property of the Buyer and shall be delivered to the Buyer upon termination of this Agreement or upon completion of the services performed hereunder.

21.10 The Seller shall fully indemnify, protect and save harmless the Buyer from and against any and all claims, damages, expenses, actions, or other proceedings arising out of or resulting from the infringement of any patent right, design, process, trade mark or any other protected right in connection with the Equipment and Products and the performance of the services. The Buyer shall immediately notify the Seller upon any claim being made or any action brought against the Buyer.

22 REPRESENTATIONS AND WARRANTIES

22.1 Each of the Parties hereby represents and warrants that:

22.1.1 It is a corporation duly organized, validly existing, and in good standing under the laws of its incorporation, with all requisite powers to carry on its business as presently conducted;

22.1.2 It has full power and authority to enter into this Agreement, and has taken all the necessary action to authorize the entry into and delivery of this Agreement, and the transactions contemplated hereby, and the performance of its obligations hereunder;

22.1.3 This Agreement has been duly executed and delivered by it and constitutes its legal, valid, and binding obligation, enforceable in accordance with its terms; and

22.1.4 Neither the execution and delivery of this Agreement nor the transactions contemplated hereby will conflict or constitute a breach or default under

- (i) any applicable law, and regulations applicable to it,
- (ii) any provision of its articles of association or by-laws; and
- (iii) any agreement, contract, or instrument binding upon it or any of its assets, real or personal.

22.2 The Seller hereby further represents and warrants to the Buyer the following:

22.2.1 There is no litigation, claim, or dispute pending, or to the Seller's knowledge threatened against or affecting its properties, the adverse determination of which might materially and adversely affect its financial condition or operations or impair its ability to perform its obligations under this Agreement or any instrument or agreement required hereunder;

22.2.2 It has not gone into liquidation or passed any resolution for winding up or that no petition for winding up has been presented against it, and that no receiver or manager has been appointed or is threatened to be appointed in connection with the aforementioned processes;

22.2.3 It has not failed to disclose any material information to the Buyer. Information is material where had the Buyer known of such fact at any stage of the negotiation, signing, and execution of this Agreement, the Buyer would not have entered into this Agreement;

22.2.4 It has the power to own its assets and carry on its business as it is being conducted and as proposed to be conducted;

22.2.5 This Agreement is binding upon all its heirs, successors-in-interest, permitted assigns, agents, or representatives;

22.2.6 There are no violations or outstanding notices of violations of any law, regulation, ordinance, order, or other requirement of any government authority having jurisdiction over or affecting any part of the business of the Seller; and

22.2.7 All governmental, corporate, and other requirements, licenses, authorizations and permits necessary or desirable in connection with the entry into, performance, validity, and enforceability of, and the transactions contemplated by, this Agreement, as well as the supply of the Equipment and Products and performance of the services, have been obtained or effected and are in full force and effect.

22.3 The Seller warrants that the Equipment and Products, including all other materials furnished and/or installed Delivery Place by the Seller, shall comply with the specifications and instructions provided in the Technical Documentation and this Agreement and shall be free from defects in materials or workmanship for a period of one (1) year from and after the date of issuance of the certificate of completion and acceptance.

23 TERMINATION

23.1 The Buyer may, without any liability, terminate this Agreement based on the following:

- (a) The Seller is adjudged bankrupt or insolvent;
- (b) The Seller makes a general assignment of its assets or business for the benefit of its creditors;
- (c) If a trustee, receiver, judicial manager, liquidator, administrator, or conservator is appointed for the Seller or for any of its property;
- (d) If the Seller files a petition for insolvency, suspension of payments, or to reorganize under the bankruptcy or similar laws; or if the other party ceases its business operations or permits its license or authority to conduct its business to expire or be revoked without said license being immediately renewed; or
- (e) The Seller commits a material breach of any of its representations, warranties and covenants herein, without prejudice to any civil or criminal action that may be brought by the Buyer against the Seller in connection with such breach.

23.2 The Seller's breach of any of its covenants, representations and warranties herein, or its violations of any of the terms or conditions of this Agreement, shall entitle the Buyer to cancel and terminate this Agreement, without prejudice to any legal action that may be brought against the Seller in connection with such breach. the Buyer will, provide the Seller a period of [30] days within which to cure any such breach, without prejudice to the right of the Buyer to terminate this Agreement if said breach is not remedied within the cure period herein contained, or even prior to its expiration thereof, if the Buyer determines that it is impossible or impracticable for the Seller to remedy such breach.

23.3 Upon termination of this Agreement due to any cause provided herein:

- (a) The Seller shall turn-over all the remaining Equipment and Products, including the other materials, supplies, tools, and equipment furnished by the Seller and paid for by the Buyer in connection with this Agreement;
- (b) The Buyer shall make payment of any unpaid amounts or portions of the Total Purchasing Price and any other amount payable by the Buyer to the Seller under this Agreement payable up to and including the termination date within [30] days from the date of termination, except as otherwise provided herein; and
- (c) When requested by the Buyer, the Seller shall, in good faith, cooperate with the Buyer and provide assistance in the proper turn-over of the works not completed by the Seller, as well as, the Equipment and Products, documents, and other materials, supplies, equipment, and other properties belonging to the Buyer under this Agreement.

23.4 Termination of this Agreement with or without cause shall not release the Seller from any liability which at the time of termination has already accrued to the Buyer or which thereafter may accrue in respect of any act or omission prior to such termination.

23.5 The termination of this Agreement shall be in addition to, and not in lieu of, other rights and remedies of the parties under this Agreement and existing provisions of law.

23.6 Provisions, which by their express terms shall survive the termination or expiration of this Agreement, shall survive such termination or expiration.

24 LIABILITY AND INDEMNIFICATION

24.1 The Seller shall be liable and shall indemnify the Buyer for any and all losses or damages suffered by the Buyer arising out of or in connection with the Seller's breach of this Agreement or its obligations, covenants, representations or warranties hereunder, as well as, the performance or non-performance of its obligations under this Agreement.

24.2 The Seller shall answer for and indemnify the Buyer against any damage to or loss of properties of the Buyer and bodily injuries and/or death of the personnel, officers, agents, guests and representatives of Buyer arising from any act, omission, fault, negligence or lack of due diligence by the Seller, its representatives, personnel or agents, whether in the fulfillment of its obligations or the exercise of its rights under this Agreement.

24.3 The Buyer shall not, in any manner, be answerable or accountable for any loss of or damage to property, injury to or death of any persons caused or incurred during the time of and/or consequent to the supply and delivery of the Equipment and Products and performance of the services under this Agreement, all of which shall be for the account of the Seller, except to the extent that the loss of or damage to property, injury to or death of any persons is caused by an act or omission of the buyer.

24.4 The Seller shall assume full responsibility and shall not hold the Buyer answerable or accountable for, and indemnify the Buyer against, any amount, claim, liability, or sum arising from any cause of action, civil or criminal, with respect to:

- (i) licenses, taxes, permits and similar requirements that the Seller is obligated to obtain under this Agreement; and
- (ii) the relevant laws, local ordinances, and rules and regulations, all of which shall be for the account of the Seller.

24.5 The liability of the Buyer in any particular instance shall be confined solely and exclusively to the payment of the consideration due to the Seller for the supply and

delivery of the Equipment and Products and performance of the services hereby contracted and accomplished by the Seller.

24.6 The Seller's failure to answer for the damages or to indemnify in accordance with the provisions of this Section shall be a ground for the Buyer to terminate this Agreement without notice to the Seller, and without prejudice to the Buyer's other rights and remedies under the law and this Agreement.

25 NOTICES

25.1 All notices, request, consents, and other documents ("Notices") required under this Agreement shall be given/served either by personal delivery in writing, by fax, through registered mail or sent through reputable courier services return receipt requested, postage prepaid and properly addressed to the party or its designated agent/representative, or through electronic mail.

Notices shall be addressed as follows:

If to the Buyer: Garry D. Garsain
Email: Garry.Garsain@fsmpc.com

If to the Seller: (Name)
Email: address

Such Notices shall be deemed served or given:

(a) On the date of actual delivery, if personally served at the address of the party to whom the Notice is given between the hours of 8:00 a.m. and 5:00 p.m. on any business day.

(b) If sent by facsimile, when such Notice is successfully transmitted during business hours. However, if the Notice is not sent during business hours, such Notice shall be deemed served at the next business hours it has been successfully transmitted.

(c) On the day the Notice is sent, if sent through a reputable courier service.

(d) Seven (7) calendar days after mailing, if sent through registered mail.

(e) If sent through electronic mail, upon receipt by the sender of confirmation of delivery to the email address of the recipient, whether or not acknowledgment of a "receipt requested" notice from the recipient is transmitted.

25.2 Any Party may change its address for receipt of Notices at any time by giving written notice thereof to the other Party. The duly authorized representative of that Party may sign any notice given under this Agreement on behalf of the Party. Either Party may change the manner by which Notice is to be given provided that the other Party was advised of such change in writing, duly received.

26 MISCELLANEOUS PROVISIONS

26.1 This Agreement and its attachments shall take effect on the date that this Agreement and its attachments are signed by the Parties and shall continue in full force and effect until the full delivery and acceptance of all the Equipment, Products, and services in accordance herewith.

26.2 Nothing contained or implied in this Agreement shall be construed as creating a joint venture, partnership or agency, franchise relationship or taxable entity between the Parties, nor shall the Seller have the right, power or authority to create any obligations or duty, express or implied, on behalf of the Buyer, it being understood that the parties are independent entities vis-à-vis one another and none of the parties shall have any authority to make statements, representations or commitments of any kind, or to take any action, which shall bind or commit any of the Parties or other Party.

26.3 There shall be no employer-employee relationship between the Seller (including its subsidiaries and affiliates) and or its personnel and employees on the one hand and the Buyer and its personnel and employees, on the other hand. Liabilities for injuries or damages to the Seller's personnel and employees or injuries or damages to the person or property of third persons or the Seller or its personnel and employees arising from or in connection with the performance and execution by the Seller of its obligations as contemplated under this Agreement shall be the sole responsibility of the Seller.

26.4 No waiver by a Party of any breach of this Agreement shall be held or construed to be a waiver of any other subsequent or antecedent breach of this Agreement. Failure of a Party to exercise a remedy or to insist in the performance of any of the covenants of this Agreement shall not be construed as abandonment, cancellation or waiver of such covenant. No waiver by a Party shall be deemed to have been made unless expressed in writing and signed by its authorized representatives.

26.5 The Parties shall do and execute, or procure to be done, and executed all such further acts, deeds, documents and things as, may be necessary, to give full effect to the terms and intent of this Agreement.

26.6 This Agreement may be executed by the Parties in counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

27 ANNEXES

1. Detailed technical specifications for each telehandler model. Both electric and Internal Combustion Engine (ICE)
2. Ex Certification markings and Declaration of Conformity for hazardous area use.
3. Pricing breakdown CIF Pohnpei, Chuuk, Kosrae, Yap
4. Lead time for delivery.
5. Maintenance and service information.
6. Yearly Preventive Maintenance Cost both Electric & ICE
7. Training Cost for Maintenance of both Electric & ICE
8. Trade References Companies that you have previously supplied for the last 3 years

For the Buyer:

FSM Petroleum Corporation

For the Seller:

(Name of Authorized Signatory)

(Name of Company)

SAMPLE

SAMPLE