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**ORGALIME TURNKEY CONTRACT FOR INDUSTRIAL WORKS**  
**MAIN CONTRACT DOCUMENT, PROJECT KAUNAS**  
**TURBINE PLANT**

CONTRACTOR		PURCHASER	
Name and address Siemens Osakeyhtiö Lithuanian Branch J.Jasinskio str. 16C, LT-03163 Vilnius Lithuania		Name and address UAB Kauno kogeneracinė jėgainė Aguonų str. 24 LT-03212 Vilnius Lithuania	
VAT-number LT100004911916		VAT-number LT100009225616	
Telephone	Telefax	Telephone	Telefax
E-mail		E-mail	
Reference		Reference	

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The following Contract has been entered into between the above-named contractor and purchaser, hereinafter called the Contractor and the Purchaser respectively.

The following provisions supplement and modify the text of ORGALIME Turnkey Contract for Industrial Works General Conditions version March 2003 ("**General Conditions**"). In case of conflicts, inconsistencies or discrepancies between the provisions of the General Conditions and this Main Contract Document, this Main Contract Document shall prevail.

## 1 DEFINITIONS (CLAUSE 2)

Add a new definition: "**Affiliated Company** means a legal entity that is (i) directly or indirectly owning or controlling the party, (ii) under the same direct or indirect ownership or control as the party or (iii) directly or indirectly controlled by the party, for so long as such ownership or control lasts. For the purposes of this definition ownership or control shall exist through direct or indirect ownership of more than forty percent (40%) of the nominal value of the issued equity share capital or more than forty percent (40%) of the shares entitling the holders to vote for the election of the members of the board of directors or persons performing similar functions."

Add a new definition: "**Checklist** has the same meaning as Site Arrangements, Appendix 4.1."

Replace the definition of Contract Price in Sub-clause 2.3 with the following: "**Contract Price** means the price defined in Section 8 of the Main Contract Document."

Add a new definition: "**Contractor** has the same meaning as supplier."

Add a new definition: "**Latent Defect** means a defect in design, material and/or workmanship of Works which may cause significant failure or malfunction and which exists at the time of taking over, but is not discoverable through any of the test completed or other inspection carried out by qualified engineer during or before (i) the Original Defects Liability Period or (ii) the Maximum Defects Liability Period, provided that such defect arises as a result of an act or omission on the part of the Contractor or Sub-contractor in violation of elementary rule of diligence. The Contractor shall be liable for Latent Defects discovered in Works until completion of the first scheduled major overhaul of the turbine or within a period of eight (8) years after taking over, whichever even occurs first."

Add a new definition: "**Final Contract Price** means the total amount to be paid by the Purchaser for the Works as amended by variations (as permitted by this Contract and applicable Laws and Regulations), excluding value added tax in the country where the Site is located."

Add a new definition: "**Total Contract Price** means a Final Contract Price, value added tax applicable on the date of entering the Contract, all other taxes and similar mandatory payments payable by the Purchaser under the Laws and Regulations. The Total Contract Price stipulates a maximum amount which may be paid by the Purchaser for the Works (including possible variations) under the Contract and shall not be exceeded during validity term of the Contract. In case an applicable value added tax changes during validity term of the Contract, the Total Contract Price shall be recalculated respectively to reflect the change in value added tax rate, yet without altering Contract Price and (or) Final Contract Price for this sole reason

Add a new definition: "**Purchaser** has the same meaning as employer, client or customer."

Add a new definition: "**Notice To Proceed (NTP)** means Purchaser's written notice to Contractor to continue Works in full scope, including *inter alia* release of Contractor's procurement for materials, equipment and manufacturing. It is understood by the parties that prior to NTP the Contractor is expected to perform the Works in limited scope (necessary engineering and administrative project management works, preparing documents according to Appendix 6.1 and 6.2) and the Purchaser is expected to pay only the portion of Contract Price which shall be paid prior to release of NTP under Sub-clause 9.1 according to payment schedule and conditions provided therein. If the Contractor so desires, he may perform other Works before NTP at its own cost and risk, and in such a case the Purchaser shall not have an obligation



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to compensate such part of Works in case the NTP is not issued, especially for the purposes of Sub-clause 18.3 and Clause 19. It is expected that NTP will take place  $6 \pm 2$  months after the Commencement Date, and Time for Completion and all interim milestones of Appendix 5 will be adjusted accordingly after release of NTP. For avoidance of doubts the release of NTP within time frame specified above shall not be a reason for extension of Time for Completion under Contract or entitle the Contractor for additional compensation. In case actual NTP date deviates from the above specified, the impact on documentation submittal schedule (Appendix 6.1 and 6.2) only will be agreed between Parties. If the Purchaser has not issued the NTP within twelve months after the Commencement Date, the Contractor shall have the right to terminate the Contract for the Contractor's convenience by serving a written notice to the Purchaser. In case of such notice the Parties shall conclude a termination protocol as provided by Sub-clause 18.2, and the Contractor shall be entitled to the payment as provided by Sub-clause 18.3 (subject to the above described limitations). ”

Delete definition of “Gross Negligence”.

#### 1.1 Commencement Date/ Conditions Precedent (Sub-clause 2.1)

The Commencement Date shall occur when the Contract has been signed.

#### 1.2 Site (Sub-clause 2.13)

The Site is at the green field site at the address 19 Veterinarų st, Ramučiai Village, Karmėlava County, Kaunas District, Republic of Lithuania.

#### 1.3 Project Representative, Site Representative (Sub-clause 2.10, Sub-clause 2.14, Sub-clause 6.1)

Contractor's representatives:

Project Supervisor:

Project representative:

Purchaser's representatives:

Project Supervisor:

Project Representative:

## 2 APPENDICES, PRIORITY (CLAUSE 3)

Sub-clause 3.2, replace the second paragraph with: This Main Contract Document incorporates the following Appendices which apply in the following order after it. For the avoidance of doubt it is not allowed to state in an Appendix that the said Appendix supersedes or changes another Appendix with a lower number in the list of Contract Appendices.

	Contract Appendix
General Conditions (Orgalime Turnkey Contract for Industrial Works - March 2003)	0
Guarantees and Warranties	1
Table of Load Points	1.1
Contractor's Heat Balance Sheets	1.2
Scope of the Works and Delivery Limits	2
Main Flow Diagram	2.1
Site Layout	2.2
Technical Specifications	3

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Technical Specification of the Turbine Plant	3.1
Technical Specification of the Generator Unit	3.2
Electrical Power Equipment of Steam Turbine	3.3
Specification of Steam Turbine Automation and Instrumentation	3.4
Pre-Conditions for Mechanical Completion, Trial Run And Taking Over	3.5
Site Obligations	4
Installation Arrangements	4.1
Dispatch Instructions	4.2
Safety, Health and Environmental Responsibilities	4.3
Preliminary Project Schedule	5
Documentation Exchange Schedule	6
Schedule of Information Exchange, Turbine	6.1
Schedule of Information Exchange, Generator	6.2
Instructions for Data Collection	6.3
Binder Label Template	6.4
Index Page Template	6.5
CD/DVD Cover Template	6.6
Document Data Sheet Template	6.7
QA/QC Requirements	7
Quality Control Requirements	7.1
Contractor's Technical Specifications	8
Price Specification	9
Financial Guarantees	10
Advance Payment Guarantee	10.1
Performance Guarantee	10.2
Warranty Guarantee	10.3
Contractors Parent Company Guarantee (if applicable)	10.4
Supplier Code of Conduct	11

### 3 SCOPE OF THE CONTRACT (CLAUSE 4)

Sub-clause 4.2, the scope of Works: The Contractor undertakes, in accordance with this Contract, to perform for the Purchaser as a turnkey delivery:

The supply of one complete ready installed, commissioned and trial run completed Turbine Plant with auxiliaries in the Purchaser's power plant in Site specified in Sub-clause 2.13. The turn-key supply also includes the training of the Purchaser's personnel in the operation and maintenance of the Works.

The equipment and systems to be purchased shall be delivered complete within the scope and delivery limits defined in Appendix 2 and 2.1. Any and all works, machinery and equipment, within the limits of delivery, required to fulfil the operating characteristics and performance requirements and for the proper functioning and safe and reliable operations of the Works shall be part of the scope of supply, even if they are not especially defined or specified in this Contract. This means, among other things, that within the delivery limits all necessary equipment, piping, valves, safety devices, instrumentation etc. shall be included in the delivery unless specifically and expressly excluded in this Contract from the delivery.

The Contractor shall work in close co-operation with the Purchaser or his authorised representatives including but not limited to consultants and coordinators and also with the Purchaser's other contractors related to the Site including but not limited to contractors of piping, electrical equipment, control system and civil works.



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The expression "is included in the delivery" means that the said equipment or work item is also included in the Contract Price.

Sub-clause 4.3, first paragraph, add the following new sentence: "The Contractor is aware of the Laws and Regulations which can be applicable to the Works, which have been adopted by the Parliament, Government or other legislative bodies of the Republic of Lithuania on or before Commencement Date".

Sub-clause 4.3, second paragraph, delete the last sentence and add the following new sentence: "However, the Purchaser's assistance does not decrease the Contractor's responsibility in ascertaining the Laws and Regulations in the country of the Site and this does not create any liability on the Purchaser."

Sub-clause 4.5, add the first sentence: "The Subcontractors provided in Contractor's Initial Tender and/or added to Final Tender by the request of Purchaser are stated in the list of subcontractors (Appendix 8). These subcontractors are considered to be approved by the Purchaser. However, prior to signing any contract with such Subcontractors, the Contractor shall inform the Purchaser in advance. Purchaser may propose to the Contractor another Subcontractor stated in the list of subcontractors preferred by the Purchaser, but, if the selection of another Subcontractor preferred by Purchaser generates additional costs to the Contractor, that shall be agreed between the Parties based on Clause 8 (Variations), as amended by the Main Contract Document."

Sub-clause 4.5., add the following sentence: "In case the Contractor proposes change of any Subcontractor not mentioned in Subcontractor's list included in Appendix 8 hereto, the Contractor shall furnish the Purchaser to the Purchaser's satisfaction evidence proving that the qualification of the new proposed subcontractor is at least equal to the initial Subcontractor."

#### 4 DOCUMENTATION (CLAUSE 5)

Sub-clause 5.3, replace the end of first sentence "no later than 21 days after receipt of the documentation" with the following: "no later than 14 days after receipt of the documentation, but 21 days after receipt of Operation and Maintenance documentation and documentation subject to separate design review meeting (such as PI-diagrams, layout drawings, automation basic design)."

Sub-clause 5.3, add the following sentence: "The review by the Purchaser does not imply any liability on the Purchaser and shall not decrease the Purchaser's rights to require the completion of the Works in accordance with this Contract."

Add new Sub-clause 5.5. in the following wording: "Without prejudice to the provisions of Appendix 6 hereto, all correspondence and documents in relation to the Contract and the Works shall be delivered in English language. Any documents and materials required for the authorities (including, but not limited to documents for any permit applications, commissioning etc.), as well as training and Operation & Maintenance documentation shall be delivered in Lithuanian language. Also any other documents and materials shall be submitted in Lithuanian language, if so required under the Laws and Regulations applicable in the Republic of Lithuania. Costs and expenses related to preparing or translation of the documents and materials into Lithuanian language shall be covered by the Contractor. The reasonable translation costs and expenses of any document not expressly mentioned in the Appendix 6 to be delivered in Lithuanian language, but which shall be delivered in Lithuanian language under this Sub-clause, shall be borne by the Purchaser, at the Purchaser's discretion either by compensating the Contractor its costs related thereto or by arranging such translations by Purchaser itself."



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**5 REPRESENTATIVES, CO-ORDINATION, EXTENSION OF TIME (CLAUSE 6)**

Sub-clause 6.2, replace in its entirety with the following: "The Contractor shall prepare all needed time schedules according to the Appendix 5 and 6.

Sub-clause 6.5, replace the first part of the sentence with: "The Contractor shall be entitled to reasonable extension of Time for Completion, which shall be agreed by the parties as an amendment of the Contract, if the Time for Completion will be delayed by: [original list a.-h. from General Conditions]"

Sub-clause 6.5, second paragraph, replace in its entirety with the following: "The Contractor shall give an initial notice to the Purchaser without undue delay and at the latest within 10 working days after the time when the Contractor becomes aware of or should have realised the need for extension according to Sub-clause 6.5 first paragraph. If reasonably practicable, within 21 working days from giving the initial notice the Contractor shall give the Purchaser a detailed notice which shall state the reason for the extension, reasonably appropriate evidence on the impact of the delay on the critical path of the time schedule of the Contractor, as well as the consequences of delay including the level of estimated compensation referred to under Sub-clause 7.6. Based on the said reasonably detailed notice the Parties shall agree on the conditions of the amendment to the Contract, if any. Contractor shall in no case be entitled to the above described extension, if the particular circumstances serving as the ground for the extension in any way depend on the Contractor or any of its Subcontractors, suppliers or service providers."

Sub-clause 6.5, add a new third paragraph: "The Contractor shall be deemed to have the knowledge of and he shall take into account the simultaneous work by other contractors performed at the Site. Such work of other contractors employed by the Purchaser shall neither entitle the Contractor to extension of Time for Completion nor to any additional compensation provided that the works of the other contractors do not cause considerable delay to the Contractor's performance which an experienced contractor would not normally expect to meet in contract implementation in corresponding circumstances. However the last two sentences do not apply in the situation in which the works of the other contractors impede the completion of any of the activities being on the critical path of the Contractors time schedule."

**6 WORK ON THE SITE (CLAUSE 7)**

Sub-clause 7.5, replace the second paragraph with: "The Contractor shall upon the Purchaser's Site Representative's request submit the site register to the Purchaser's Site Representative and provide any explanations, if so requested."

Sub-clause 7.6, first paragraph, add to the first sentence after "additional": "non-avoidable and proven".

Sub-clause 7.6, first paragraph, replace the last number "h") by "g").

Sub-clause 7.6 second paragraph, add after "...the compensation shall cover": "additional, incurred and proven costs of the Contractor".

Sub-clause 7.6, second paragraph, add after the second paragraph: "The compensation and time extension under Clause 6.5 shall be agreed in writing between the parties in an amendment to the Contract."

Sub-clause 7.6, last paragraph, delete it.

**7 VARIATIONS (CLAUSE 8)**

Sub-clause 8.1, delete second paragraph starting with: "The Contractor shall not, however, be obliged to---"



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Sub-clause 8.2, add second paragraph : "The Contractor shall have obtained knowledge of the conditions at the Site. The Contractor shall not have right to demand variations based on conditions at Site except for conditions that a skilled and experienced contractor could not have reasonably foreseen."

Sub-clause 8.3 add second paragraph: "

Assessing the nature of the Works to be provided, the risk of unforeseen circumstances occurring during the Works, the Purchaser may purchase any additional works that might be necessary in accordance with the original Contract. Additional works – are not covered by the Contract, but directly related and necessary for the performance of the Contract. In all cases, the Contract Price based on the above mentioned reasons, including variation, shall not increase by more than 10 (ten) % during the effective term of the Contract. In a case the Contract Price increases by more than described amount, all additional works have to be acquired by using separate procurement procedure, if and when so required by the applicable Laws and Regulations.

Sub-clause 8.5 add at the end of the first paragraph: "Potential effect of the variation on the Contract Price proposed in the Contractor's notification shall always be calculated based on the following rules: *i*) specific additional works costs are calculated based on the evaluation of the direct (salary and related charges, construction products and machinery, machinery costs) costs and shall not be greater than the costs incurred by the Contractor to acquire them; and *ii*) overhead costs and a profit margin shall not exceed 15% of the direct costs under *i*) and shall be agreed between the Parties at each particular case. Upon Purchaser's request or if so required by competent state or municipal authorities, the Contractor shall provide all the necessary evidence and explanations that the value of additional works under the variation is calculated based on the above described principles."

Sub-clause 8.6, replace in its entirety with the following: "If examination of the variation requested by the Purchaser requires extensive study, the parties shall separately agree whether the study itself shall be treated as a variation or not."

Sub-clause 8.7, first paragraph, delete last sentence.

Sub-clauses 8.8, 8.10, 8.11 and 8.12, delete the Sub-clauses.

Sub-clause 8.9, first paragraph, delete.

Sub-clause 8.9, replace the second paragraph with: "The Contractor shall not be obliged or entitled to carry out a variation or a disputed variation before the parties have reached a written agreement on how it shall be carried out and its consequences and taking into consideration provisions of Sub-clause 8.5 (first paragraph), except for cases that the Purchaser deems need of immediate variation, for safety and/or environmental protection reasons, in which case the Contractor shall carry out the variation immediately even if the Parties have not reached a written agreement on the consequences."

## 8 PAYMENT, FINANCIAL SECURITY (CLAUSE 9)

Clause 9 add the following before Sub-clause 9.1: Contract Price. The Contract Price is fixed and shall not be adjusted, except for each 12 months after conclusion of the Contract the Contract Price may be adjusted by a mutual agreement of the Parties in accordance with the construction cost price index (type of construction "Engineering constructions") announced by the Lithuanian Statistics Department. The Contract Price may be changed as provided herein only if during the latter 12-month period the above mentioned price index has changed by more than 20 %. In case the above mentioned price index exceeds 20% in the latest 12-months period, the Parties shall commence negotiations to assess the actual impact of the changes in the prices to the Contract Price and costs (especially given the very specific nature of the Works) and agree in good faith on a fair adjustment level to the Contract Price. If an agreement is not reached within 30 (thirty) days after the commencement of such negotiations, and the

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Contractor does not agree to continue the Works for the initially agreed Contract Price (modified by possible variations), the Purchaser shall have the right to unilaterally terminate the Contract by a written notice to the Contractor. Agreed adjustment of the Contract Price shall be executed in written and signed by both Parties. Any adjustments to the Contract Price based on this clause shall only apply to the part of the Works to be performed after signing of the agreed Contract Price adjustment, and to the respective part of the Contract Price, but shall not have an effect to the Works performed before the agreed adjustments and the respective part of the Contract Price. Any adjustments to the Contract Price shall not apply to the Works delayed by the Contractor, which, if performed on due time, would not be subject to adjustments.

Contract Price: EUR 5.920.000,-

Total Contract Price: EUR 7.879.520,- VAT included

The delivery shall be DDP (Delivered Duty Paid) at Site, VAT excluded, according to INCOTERMS 2010.

The Contract Price is exclusive of VAT within the country of the Site. VAT shall be paid by the Purchaser to the Contractor or, if the provisions on reverse charge are applicable in accordance with the applicable law, to the tax authorities.

Sub-clause 9.1 Payment shall be made as follows:



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The Purchaser shall pay the instalments against an invoice (45 days net), after receiving the correct and complete invoice and subject to validity of all the necessary guarantees as specified in Sub-clause 9.6 and securities for the Contractor's performance on the due date of the relevant payment and provision of the necessary supporting documents, if any.

The rate of interest on late payment (Sub-clause 9.3) shall be Euribor of 12 months added with 4% per annum.

The rate of interest on amounts to be repaid (Sub-clause 19.13) shall be Euribor of 12 months added with 4% per annum.

On request of the Contractor and subject to a separate agreement between the parties on the terms and conditions thereof, the Purchaser will provide the Contractor with a document reasonably proving the Purchaser's financial capability to properly fulfil its payment obligations under this Contract.

Sub-clause 9.2, delete Sub-clause 9.2.

**Sub-clause 9.4** replace the first sentence with the following: The Contractor may suspend the Contract by notice to the Purchaser if the Purchaser – despite a reminder and a notice that the Contractor intends to suspend the Contract unless he receives payment – has failed to pay an amount, not reasonably disputed by the Purchaser based on contractual payment terms, within 30 days after the due date. The Contractor may not, however, suspend the Contract after the Purchaser has paid the amount due together with the accrued interest on late payment.

Sub-clause 9.6, replace Sub-clause 9.6 with the following: "The Purchaser shall not be obliged to disburse any payments under this Contract until the Contractor has arranged for and delivered to the Purchaser first demand, irrevocable and unconditional guarantees as specified below, issued by a bank (except Parent Company Guarantee, when applicable) holding long-term borrowing rating (on the date of issuing the respective guarantee) not lower than A- (A minus) assigned by Fitch Ratings (or an equivalent rating assigned by Standard&Poor's or Moody's) and registered in the Republic of Lithuania or another European Union Member State or a member state of the European Economic Area (EEA), or another international bank holding the above mentioned long-term borrowing rating.

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**Option A: Bank guarantees**

- (1) Together with the invoice regarding 1st instalment, the Contactor shall deliver to the Purchaser advance payment guarantee in the form and contents provided in Appendix 10.1 hereto (the **Advance Payment Guarantee**) in the amount at least equal to the particular instalment. All Advance Payment Guarantees shall be valid at least until all the major parts (turbine, generator, gearbox, district heat exchangers) are delivered to the Site and transferred into the Purchaser's ownership (in accordance with time schedules provided in Appendix 5 or the actual dates of completion of relevant milestones whichever later) In case the initially submitted Advance Payment Guarantees are limited with a specified date, which occurs prior to meeting of the above described conditions, the Contractor, as described below, shall be obliged to ensure the necessary prolongations and uninterrupted validity of all the Advance Payment Guarantees until the above described conditions are met.
- (2) The Contractor shall provide the Purchaser with a performance guarantee (the **Performance Guarantee**) in the form and contents provided in Appendix 10.2 hereto and in the amount corresponding to 10% of the Contract Price, within 14 days after NTP release and valid until the signing of the protocol of taking over by the Purchaser, or until the date on which the Works are deemed to have been taken over (according to Clause 14 of the Contract).
- (3) The Contractor shall provide the Purchaser with a warranty guarantee (the **Warranty Guarantee**) in the form and contents provided in Appendix 10.3 hereto and in the amount corresponding to 5% of the Contract Price, which shall be valid from the issuance of the protocol of taking over or from the date on which the Works are deemed to have been taken over (according to Clause 14 of the Contract) until the Original Defects Liability Period has expired and a new Warranty Guaranty for the Extended Defects Liability Period has been submitted (if applicable). Upon expiration of the Original Defects Liability Period, the Contractor shall provide a new Warranty Guarantee in the amount corresponding to the amount of any outstanding defects liability obligations, if any, and such new Warranty Guarantee shall be valid until the end of the Extended Defects Liability Period.

**Option B: Bank guarantees + Parent company guarantee**

This Option B may be used by the Contractor only in case the potential issuer of guarantee has been approved by the Purchaser, based on evaluation of its financial standing and reputation. The Contractor willing to use this Option B shall apply the Purchaser with necessary particulars on the Commencement Date at latest. The Purchaser shall announce his decision on acceptance of financial standing and reputation of the potential issuer no later than in 15 (fifteen) days. In case the decision is negative, the Contractor shall be required to fulfil all requirements under Option A as a condition precedent for any of Purchaser's payments in accordance with the Contract.

Together with the invoice regarding 1<sup>st</sup> instalment, the Contactor shall deliver to the Purchaser advance payment guarantee (the **Advance Payment Guarantee**) in the form and contents provided in Appendix 10.1 hereto in the amount corresponding to 10 % of the Contract Price, which shall be valid until all the major parts (turbine, generator, gearbox, district heat exchangers) are delivered to the Site and transferred into the Purchaser's ownership (in accordance with time schedules provided in Appendix 5 or the actual dates of completion of relevant milestones whichever later). In case the initially submitted Advance Payment Guarantee is limited with a specified date, which occurs prior to meeting of the above described conditions, the Contractor, as described below, shall be obliged to ensure the necessary prolongation and uninterrupted validity of the Advance Payment Guarantee until the above described conditions are met.



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The Contractor shall provide the Purchaser with a performance guarantee (the **Performance Guarantee**) in the form and contents provided in Appendix 10.2 hereto and in the amount corresponding to 10% of the Contract Price, within 14 days after NTP release and valid until the signing of the protocol of taking over by the Purchaser, or until the date on which the Works are deemed to have been taken over (according to Clause 14 of the Contract).

The Contractor shall provide the Purchaser with a warranty guarantee (the **Warranty Guarantee**) in the form and contents provided in Appendix 10.3 hereto and in the amount corresponding to 5% of the Contract Price, which shall be valid from the issuance of the taking over protocol or from the date on which the Works are deemed to have been taken over (according to Clause 14 of the Contract) and valid until the Original Defects Liability Period has expired and a new Warranty Guaranty for the Extended Defects Liability Period has been submitted (if applicable). Upon expiration of the Original Defects Liability Period, the Contractor shall provide a new Warranty Guarantee in the amount corresponding to the amount of any outstanding defects liability obligations, if any, and such new Warranty Guarantee shall be valid until the end of the Extended Defects Liability Period.

Furthermore, within 14 days after NTP release the Contractor shall provide the Purchaser with a parent company guarantee (the **Parent Company Guarantee**) corresponding at least to the form provided for in Appendix 10.4 hereto and in the form and content accepted by the Purchaser. The Parent Company Guarantee shall be irrevocable, unconditional and shall establish liability for all the obligations of the Contractor as the Contractor itself. Parent Company Guarantee shall be valid until all of the Contractor's obligations, including without limitation obligations relating to Original Defects Liability Period and Extended Defects Liability Period (if applicable) have been completed.

In the event any financial security including but not limited to the Advance Payment Guarantee, the Performance Guarantee the Warranty Guarantee and the Parent Company Guarantee (if applicable) provided pursuant to this Clause 9 expires prior to the discharge of the obligations secured by it, the Contractor shall extend the validity of the respective financial security or issue a replacement financial security at the latest thirty (30) days prior to the expiry of the financial security to be replaced without the need of a request or notice by the Purchaser to that effect. However, in case the relevant guarantees need to be extended because the Contractor is not able to complete fulfillment of its obligations according to the agreed Times Schedule (as amended from time to time) solely because of the reasons not attributable to the Contractor or any of its Subcontractors, the Purchaser shall compensate reasonable direct costs of such extension of the guarantees issued by a bank."

Sub-clause 9.7, add a new Sub-clause 9.7 reading: "Ownership of the Works including individual supplies and services and any part thereof shall pass to the Purchaser when they have been brought to the Site."

## 9 PURCHASER'S RIGHT TO SUSPEND THE WORKS (CLAUSE 10)

Sub-clause 10.3, replace the first part of the first sentence with: "The Purchaser shall compensate the Contractor for proven, additional and necessary expenses arising from [original list a)- e) from the General Conditions]:"

Sub-clause 10.3, item e), add after word "other" the words " additional, necessary and proven".

## 10 TESTS AND INSPECTION (CLAUSE 11)

Sub-clause 11.3, replace "seven days" with "fourteen days" and add at the end of the Sub-clause the following sentence: "If the Purchaser doesn't come nor Parties agree on a different date, then the tests can be carried out without the presence of the Purchaser."

Sub-clause 11.6, delete the last sentence.



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**11 MECHANICAL COMPLETION (CLAUSE 12)**

Sub-clause 12.1, replace in its entirety : "The Contractor shall give a notice to the Purchaser when he considers that a particular system being part of the Works is mechanically complete and ready for commissioning.

Commissioning of the particular system being part of the Works may be started only after Purchaser has signed a mechanical completion certificate of this system. The certificate shall be given without undue delay, however not later than within 5 working days after receipt of Contractor's notice, unless there are safety related or other essential defects which prevent the start of commissioning. After the safety related or other essential defects have been removed by the Contractor, the Purchaser shall without unnecessary delay sign the mechanical completion certificate of the particular system being part of the Works."

Sub-clause 12.2, delete the Sub-clause

Sub-clause 12.3 delete the Sub-clause

**12 TESTS ON COMPLETION (CLAUSE 13)**

Clause 13: replace in its entirety with the following: "Tests on Completion shall be performed in the manner and the Works shall fulfil the requirements as specified in the Contract Appendix 3.1 and 3.5.

The Contractor shall notify the Purchaser of the time when the Tests on Completion can commence. The notice shall be given in such time as to reasonably enable the Purchaser to attend the Tests on Completion and perform his obligations in connection with these tests."

**13 TIME FOR COMPLETION, TAKING OVER (SUB-CLAUSE 2.18, CLAUSE 14)**

Sub-clause 14.1, replace in its entirety by: "Once the Works have been executed in accordance with this Contract, commissioning and Tests on Completion have been performed in accordance with Clause 13, the defects and deficiencies found during the inspections and tests have been eliminated, taking over of the Works by the Purchaser shall occur when protocol of taking over is signed by the Purchaser as described in the procedure in Appendix 3.5.

Defects and deficiencies which are unessential shall not prevent the signing of the protocol of taking over provided that the defects and deficiencies and the times for their elimination are listed in such records and it includes a provision allowing the Purchaser to withhold respective part of the Contract Price until the defects and deficiencies are repaired."

The Works shall be ready for taking over 33 months from NTP date at the latest ("Time for Completion").

Sub-clause 14.2, fourth dash, delete the latter part of the sentence: "and the 180-day limitation period for claiming such liquidated damages starts (16.5)"

Sub-clause 14.2, delete the penultimate paragraph after the seventh dash starting with; "The Contractor is no longer obliged to keep a Builder's All Risk Insurance for the Works---"

Sub-clause 14.3, replace the Sub-clause with the following: " The protocol of taking over shall specify (i) the remaining defects and deficiencies, (ii) the timetable for the rectification of such defects and deficiencies, (iii) the amount corresponding to such defects and deficiencies that the Purchaser is entitled to withhold from the upcoming payments to the Contractor.

Sub-clause 14.4, replace the Sub-clause with the following: "The Purchaser shall not without prior consent of the Contractor, which consent, however, shall not be unreasonably withheld or delayed, be entitled to take the Works or any part of them into operation or otherwise use or dispose of the Works before they have been taken over in accordance with Sub-clause 14.1."



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Sub-clause 14.6, replace in the first paragraph "Works shall be deemed to have been taken over 90 days" with "Defects Liability Period shall be deemed to have been started 90 days and Works shall be deemed to have been taken over 180 days", and add to the end of the first paragraph the following: "However, the Contractor shall perform the Tests on Completion later in the agreed way. The Purchaser shall cover the additional direct costs of the Contractor."

Sub-clause 14.6, replace the second paragraph by the following: "If, however the Tests on Completion are performed prior to Taking Over, but the analysis of the Tests on Completion reveal later that the conditions for the Taking Over were not reached in the Tests on Completion, the Defects Liability Period shall cease during the period when there are losses caused to Purchaser by a remarkable lack (e.g. >10 % deviation between actual and guaranteed value under liquidated damages) of performance and shall continue only after the Tests on Completion are successfully performed by the Contractor. For avoidance of doubt, this provision does not deprive the Purchaser from other rights and remedies under the Contract and Laws and Regulations".

#### **14 TESTS AFTER COMPLETION (CLAUSE 15)**

Add to the beginning of Clause 15: "The Tests After Completion shall be carried out within 360 days after taking over in the manner specified in the Contract Appendix 3.1.

Sub-clauses 15.2 and 15.3, replace the whole 15.2 and 15.3 with: "The Tests After Completion shall be carried out by an independent third party selected and paid by the Purchaser. The selected third party shall prepare a detailed procedure for carrying out the Tests After Completion and present it to both Parties for approval 90 days prior to the date agreed for the commencement of the Tests After Completion.

The Works shall fulfil the requirements as specified in the Contract Appendix 1 at the Tests After Completion."

Sub-clause 15.4, item c), add sentence: "The Contractor shall specify in the Contract those wear and tear parts that shall be replaced prior to such tests."

Sub-clause 15.8, second paragraph, delete.

Sub-clause 15.9, second paragraph, replace the paragraph with: "The Contractor shall be entitled to repeat the Tests After Completion excluding availability measurements only once for absolute (make good) guarantees and twice for guarantees under liquidated damages (as specified in Appendix 1). Costs of the repeated Tests After Completion shall be paid by the Contractor."

Sub-clause 15.9, add a new paragraph: "If, at the repeated Tests After Completion, the Works fail to fulfil the performance guarantees, as specified in the Contract, the Purchaser is entitled to liquidated damages for failing performance pursuant to Clause 16."

Sub-clause 15.10, first paragraph, replace the word "The Contractor" with the words "The Purchaser or a third party referred to in Sub-clause 15.2".

Sub-clause 15.10, replace in the second paragraph the last sentence with following: "A copy of the report shall be without delay submitted to the Contractor."

#### **15 LIQUIDATED DAMAGES (CLAUSE 16)**

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**16 DEFECTS (CLAUSE 17)**

Sub-clause 17.1, replace the Sub-clause with "The Contractor shall, in accordance with this Clause 17, remedy any defects, including Latent Defects, which are due to faulty design, materials or workmanship. Any reference made under this Clause 17 to the defects shall also apply to the Latent Defects except for the period during which the Purchaser shall be entitled to a remedy in respect of the Latent Defect."

Sub-clause 17.2, replace the Sub-clause with: "Except for the Latent Defects, the Contractor shall be liable for defects for a period of 24 months after taking over or 40 months after delivery of main equipment to the Site, whichever occurs earlier."

Sub-clause 17.4, replace the Sub-clause with "Notwithstanding Sub-clause 17.3 the Contractor shall not be liable for any defect, except for the Latent Defect for more than two years after the expiry of the Original Defects Liability Period referred to in Sub-clause 17.2".

Sub-clause 17.6, add to the end of the paragraph: "provided that an experienced professional contractor could not have discovered such errors or omissions."

Sub-clause 17.8, add to the beginning of the first paragraph "Except for the Latent Defect" and delete the second paragraph. Add to the end of the third paragraph: "Notwithstanding the foregoing, the Purchaser shall have right to a remedy and make a claim in respect of Latent Defect as long as such claim is possible pursuant to the applicable Laws and Regulations and the Contract."

Sub-clause 17.14, replace "15 percent" with "30 percent".

Sub-clause 17.15, add the word "unreasonably " after the word "Purchaser".

Unless otherwise required by mandatory provisions of the applicable law, the Contractor's liabilities and the Purchaser's remedies in respect of defects in the Works and any damage to the goods resulting there from whether arising from breach of Contract or warranty, negligence or otherwise are solely and exclusively as stated in this Clause 17, and the Contractor shall have no liability of any kind for any such defects or damage which appear after expiry of the Original Defects Liability Period (or Extended Defects Liability Period, if applicable) described above, except liability for Latent Defects. The Contractor's warranty obligations shall not extend to accidents not attributable to the Contractor or its Subcontractors, Purchaser's or third party's neglect, or repairs to the Works which have been made without the Contractor's approval.

The Contractor shall have no liability for the costs of dismantling, transportation, re-assembly and re-installation of any goods not delivered by Contractor or its Subcontractors. These costs shall be borne by the Purchaser.

**17 TERMINATION FOR THE PURCHASER'S CONVENIENCE (CLAUSE 18)**

Sub-clause 18.2, delete the last three sentences.

Sub-clause 18.4, replace the Sub-clause with the following: "In addition to the amounts referred to in Sub-clause 18.3 the Purchaser shall pay a termination fee equal to a reasonable profit of the Contractor, which however shall not exceed 1% of the Contract Price if the termination notice is issued before 60 days from the Commencement Date and 2% of the Contract Price if the termination notice is issued between 60 to 150 days from the Commencement Date. Thereafter the Purchaser shall pay a termination fee equal to a reasonable profit of the Contractor which shall however not exceed 3 % of the part of the Contract Price which is not paid at the date of cancellation.

Sub-clause 18.7, first paragraph, add at the beginning of the first paragraph: "Ownership of the Works is transferred to the Purchaser when they are brought to the Site or paid for according to Sub-clause 18.3 a or b and termination fee according to Sub-clause 18.4, whichever event occurs first."



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**18 TERMINATION FOR DEFAULT (CLAUSE 19)**

Sub-clause 19.1, delete the second paragraph in its entirety.

Sub-clause 19.2, first sentence, delete the words "Test on Completion".

Sub-clause 19.2, add the second paragraph: "Notwithstanding the above mentioned, the Purchaser shall not be entitled to terminate the Contract based on failure to meet the availability guarantee."

Sub-clause 19.3, add the following second paragraph: "Further, a breach of the Supplier Code of Conduct or Section 28 below may be considered as a substantial breach of the terms and conditions of this Contract entitling the Purchaser to terminate this Contract with immediate effect. Should the Purchaser have such right to terminate this Contract, the Purchaser shall also, without any liability to Contractor, be entitled to cease performing of its obligations under this Contract until the investigations by the relevant authorities regarding the Contractor's (or Subcontractor's, as the case may be) breach in connection with fulfilment of this Contract have come to an end and/or the applicable court has rendered in the matter a non-appealable and final decision.

Sub-clause 19.4, replace the first paragraph with: " If the Contractor suspends his payments, or if there are otherwise reasonable grounds to assume that the Contractor is insolvent or becoming insolvent and if the Contractor, at the Purchaser's request, fails to provide a reasonable security for his fulfilment of the Contract, the Purchaser may terminate the Contract by notice to the Contractor.

Sub-clause 19.4, second paragraph: delete words "insurance company guarantee".

Sub-clause 19.5, replace the second paragraph with: "The compensation including liquidated damages shall not exceed the sum of the Contract Price."

Sub-clause 19.9, replace the first sentence with: "In case of termination in accordance with any of the Sub-clauses 19.1-19.4 the Purchaser shall be entitled to and in the event of Force Majeure in accordance with Clause 24.3, and if the Contractor so requires, the Purchaser shall be obliged to take over that part of the Works which is completed and free from defects and which can be used for works of the same or a similar type without extensive work."

**19 INSURANCE (CLAUSE 21)**

Sub-clause 21.1, first paragraph, delete wording "in the joint name of the Contractor and the Purchaser or naming the Purchaser as co-insured"

Sub-clause 21.1, item a), add new sentence: "Any transportation to be done by the Contractor from the Site and back shall be covered by the Marine Insurance as well."

Sub-clause 21.1, delete item b) and c).

Sub-clause 21.2, item a), replace penultimate sentence by: "The amount of the general third party liability insurance shall not be less than EURO 5,000,000.00 in aggregate and the deductible shall not be more EUR 50,000.00 for any one loss."

Sub-clause 21.3, add a new item d): "The Purchaser shall effect and maintain an EAR/CAR insurance for the Works. The insurance coverage shall commence upon arrival of any goods and materials at the Site and end at the date of the taking over of the Works with extension to cover the obligations of the defects liability period.

The insurance value will be the Contract Price with deductibles not exceeding EUR 50,000.00 per incident. In respect of losses related to this Contract, the deductible shall be referred to the party who caused the incident.



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The EAR/CAR insurance shall cover the property at the Site, any storage area in the immediate vicinity of the Site and any transportation within such areas. As insured shall be mentioned the Purchaser, the Contractor and his subcontractors in any tier."

Sub-clause 21.4, second paragraph, replace word "policies" with "extracts of the policies with relevant information".

## **20 CONFIDENTIALITY (CLAUSE 22)**

Sub-clause 22.1, add the following words to the end of the first paragraph: "or is requested to be disclosed by a statutory institution, regulator or financing institution or required to be disclosed pursuant to the rules of a relevant stock exchange, or is disclosed to the Affiliated Company subject to adequate confidentiality obligation."

## **21 RIGHTS TO COMPUTER SOFTWARE, INFRINGEMENT OF THIRD PARTIES' INTELLECTUAL PROPERTY RIGHTS (CLAUSE 23)**

Sub-clause 23.1, add a new paragraph: "However, the Contractor shall provide such information regarding the software as may be necessary for the Purchaser to adapt and accommodate the software into the Purchaser's systems."

Sub-clause 23.2, third paragraph, replace word "forthwith" with the word "promptly".

## **22 FORCE MAJEURE (CLAUSE 24)**

Sub-clause 24.1, add at the beginning of the paragraph: "Force Majeure means an exceptional event or circumstance:

- (a) Which is beyond the parties' control,
- (b) Which the party could not reasonably have avoided or overcome,
- and
- (c) Which is not attributable to either party"

Sub-clause 24.1, first paragraph, delete words "currency and trade restrictions" and "shortage of transport, general shortage of materials".

Sub-clause 24.1, add new sentence at the end of first paragraph: "Delayed or defective delivery by a sub-contractor shall not be considered Force Majeure unless the sub-contractor meets the requirements referred to above in respect of Force Majeure and the object to be delivered by the sub-contractor cannot be acquired elsewhere on reasonable terms."

## **23 LIMITATION OF LIABILITY (CLAUSE 25)**

Sub-clause 25.1, replace by: "The remedies for breach of Contract which are specified in these conditions shall be the sole remedies available. Notwithstanding anything contained in the Contract to the contrary, neither Party shall, whether in contract, tort (including negligence) or otherwise, be liable for or obliged to indemnify the other party for loss of profit, loss of power, loss of use or production, loss of information and data, loss of contracts, loss of revenue, costs of capital or costs of purchased or replacement power and any indirect or consequential damages or losses. Any damages for breaches of confidentiality, the Purchaser's obligation to pay the full price for work completed as well as possible interest on late payment and the Contractor's obligation to pay liquidated damages shall not be affected thereby."

Sub-clause 25.2, add a new Sub-clause reading: "The Contractor's maximum aggregate liability for damages to the Purchaser arising during and/or as a result of the performance or non-performance of the Contract from any cause whatsoever shall be limited to 100% of the Final Contract Price. Contractor's liability for any damage caused to the Purchaser's property (except Works) shall be limited to EUR 500,000 (five hundred thousand euros) per occurrence and EUR

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2,000,000 (two million euros) in aggregate. The limitation of liability set out in this Clause 25 shall not apply to (i) loss or damage caused by wilful misconduct or gross negligence; (ii) claims for personal injury or death; (iii) damages arising out of or in connection with any infringement or third parties' intellectual property rights referred to in Clause 23."

## 24 NOTICES AND LANGUAGE (CLAUSE 26)

Sub-Clause 26.1, in the second sentence delete words "or in the site register referred to in Sub-clause 7.5,"

Sub-clause 26.2, replace the paragraph with the following: "This Contract has been drawn up in the English language. In case versions of the Contract have been prepared in several languages the English version shall prevail"

## 25 ARBITRATION (SUB-CLAUSE 27.1)

Replace Sub-clause 27.1 in its entirety with the following:

"During the performance of the Contract, any dispute in connection with the Contract shall be settled amicably by the parties. If no agreement can be reached, the dispute shall be submitted exclusively to arbitration and any dispute, controversy or claim arising out of or in connection with the Contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.

The arbitration shall be conducted in the English language and the place of arbitration shall be Stockholm, Sweden."

## 26 APPLICABLE LAW (SUB-CLAUSE 27.2)

Replace Sub-clause 27.2 in its entirety: "The Contract shall be governed by and construed in accordance with the laws of the Republic of Lithuania, as if executed and to be performed wholly within the Republic of Lithuania, without giving effect to Lithuanian provisions, policies or principles relating to choice or conflict of laws."

## 27 PURCHASER'S SUPPLIER CODE OF CONDUCT

Add a new Clause 28 "Purchaser's Supplier Code of Conduct" reading: "The Contractor shall at all times comply with the Purchaser's Supplier Code of Conduct attached hereto as Appendix 11 in connection with fulfilment of the Contract. The Contractor's representative shall be responsible for ensuring that all the Contractor's concerned personnel are familiar with the Purchaser's Supplier Code of Conduct.

The Contractor represents, warrants and undertakes to the Purchaser on the date hereof as follows:

a) neither the Contractor nor, to the best of the knowledge of the Contractor, any director, officer, agent, employee, affiliate of or person acting on behalf of the Contractor, is engaged in any activity or conduct which would violate any applicable anti-bribery or anti-corruption law or regulation or has used or is using child labour or forced labour in connection with the fulfilment of this Contract;

b) the Contractor has instituted and maintains policies and procedures designed to prevent bribery and corruption and the use of child labour and forced labour by the Contractor and the group of companies it belongs (the "**Group**") to and by persons associated with the Contractor and the Group;



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- c) the Contractor, in connection with fulfilment of Contract, complies duly with the Supplier Code of Conduct; and
- d) the Contractor will inform the Purchaser as soon as legally possible on any change in above stated (a-c) matters.

Notwithstanding anything to the contrary set out in this Contract, any breach of the Supplier Code of Conduct by the Contractor shall be considered as a substantial breach of terms and conditions of this Contract entitling the Purchaser to terminate this Contract with immediate effect, should the Purchaser not, as its sole discretion, consider the breach to be minor. In such case the Contractor shall rectify the breach within a time period specified by the Purchaser. The Contractor shall at its own cost indemnify the Purchaser and hold the Purchaser harmless against

- a) any cost and expense incurred by the Purchaser due to the termination of this Contract;
- b) all additional costs and expenses incurred from making a cover purchase, including, but not limited to, the possible difference in price; and
- c) any consequence, liability, damage and/or cost or expense that may cause to the Purchaser due to the action, circumstance and/or matter which constitutes the breach of Supplier Code of Conduct.

Further, in order to ascertain the compliance of this Clause, the Purchaser shall during the validity of this Contract have the right to inspect or to appoint an independent auditor to inspect the Contractor's (or Subcontractor's, as the case may be) premises and such records, as well as such documents as the Purchaser may reasonably require. Such audit shall be conducted in accordance with applicable data protection and competition law rules and regulations. Such audit shall be conducted at the Purchaser's expense, except in those cases where the auditor detects material deviations from contractual obligations, in which case the reasonable costs of the audit shall be borne by the Contractor, in addition to any rights the Purchaser may have as a consequence of Contractor's (or Subcontractor's, as the case may be) non-fulfilment of its contractual obligations. The parties shall agree on the date and time of the audit. Any and all reports or

records or notes taken by the auditor shall be maintained by the auditor and the Purchaser in confidence, but may however be used and disclosed in any dispute resolution proceeding between the parties or to the extent disclosure is required by competent authorities.

If Purchaser and/or Contractor suspects that there is a breach of Fortum's Supplier Code of Conduct by a Subcontractor, Purchaser, with the assistance of Contractor if so agreed between the Parties, shall have a right to conduct audit of such Subcontractor.

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**28 ASSIGNMENT**

Clause 29, add a new Clause "Assignment" reading: "Neither party shall be permitted to assign the Contract nor any part thereof"

This Contract has been made in two copies, one for each party.

Place/Date

Place/Date

**UAB Kauno kogeneracinė jėgainė**

**Siemens Osakeyhtio Lithuanian  
Branch**