

# **KAUNO KOGENERACINĖ JĖGAINĖ**



## **Contract of SITE PREPARATION WORKS**

2017 11 07

Vilnius

# CONTRACT

7.11.2017

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## CONTRACT UAB KAUNO KOGENERACINĖ JĖGAINĖ KAUNAS CHP PLANT SITE PREPARATION WORKS

### 1 Preamble and Partners

UAB Kauno Kogeneracinė Jėgainė, as the Client, and UAB "Lemminkainen Lietuva" as the Contractor have entered into this Contract concerning the civil works detail of the Project specified under item 2 with the scope and the terms and conditions detailed hereunder.

### 2 Project and terminology

Lietuvos Energija, UAB and UAB Fortum Heat Lietuva have formed a joint venture company UAB Kauno kogeneracinė jėgainė (further – KKJ ) to build a Waste-to-Energy combined heat and power plant in Kaunas city, Lithuania.

The Client (with big initial letter)

The Employer; UAB Kauno kogeneracinė jėgainė  
Aguonų str. 24, LT-03212  
Lithuania  
VAT No: LT100009225616

Client`s representative:

General Manager  
Chief Finance Officer

The Contractor (with big initial letter)

Contractor of this site preparation works contract;  
UAB "Lemminkainen Lietuva"  
Granito str.4, LT-02241 Vilnius  
Lithuania  
VAT No: LT226575113

Contractor`s representative:

Managing director

EPCM-Consultant

AF-Consult Oy

The Project

Kaunas CHP Plant Project

The Plant (with big initial letter)

Kaunas CHP plant, covering the complete site area and all external connections (including but not limited to district heating, natural gas, electrical grid and road connections)

The Contract (with big initial letter)

This Contract

The Works (with big initial letter)

The civil works, other duties and services included to the scope of this Contract.

TDP

Technical Design Project for Kaunas CHP plant, which has been completed by Client.

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contractor(s):	other subsidiary contractor(s) and side contractors in contractual relationship direct with Client in project.
Main Civil Contractor	Contractor, who will be responsible totally for all civil works of the Plant after this Site Preparation Works contract.

## 3 Contract conditions, vocabulary and language

The General Conditions for Building Contracts YSE 1998 (hereinafter: YSE) and terminology outlined therein shall apply to this Contract. In addition, published concepts generally used in the construction industry shall primarily be applied.

Official Contract language and communication language in project is English.

The Contractor shall nominate certified Site Manager for Works, who will be highest person in Contractor`s organization at site and will be one of Contractor`s key person, See Section 20. Site Manager shall work full-time at site and must have communication skills with spoken and written English.

This Contract shall comply fully with legislation of Lithuania. In performance of the Contract shall be followed all laws, statutory orders, norms, standards and Euro-Codes valid in Lithuania as well as local requirements of authorities concerning works of the Contract so that also the final product of the Contract fulfill in every way the requirements of above mentioned official documents.

## 4 Contractor's obligation to render services

### Object of Contract

The undersigned Contractor is obliged, in return for the contract price agreed later in this document, to carry out the access roads to site, preparation and gravelling of construction area, site facility- and car parking areas (located out site area) as well as concrete works of lower part of waste bunker up to level +0.00 with side backfilling of the project specified in this Contract and its appendices.

### 4.1 Principal obligation to render services (YSE 1§)

As stipulated in YSE 1§, this Contract comprises all the works and measures required by this Contract and by the Contract appendices and which are stipulated therein in order to achieve the finished result specified in those documents and to hand over it to the Client in a form completed in accordance with the Contract documents.

The Contractor is responsible for the work of subcontractors assigned by it as it is for its own work. The Contractor shall submit to the Client for approval its subcontractors well in advance before making any agreements with them.

The Contractor works as a main contractor as well as is responsible for management duties at the site (YSE 4§) until Main Contractor of Civil Works arrive at site (expectedly on ). Latest one week after arriving of Main Civil Contractor to site shall be kept start-up meeting of Main Civil Contractor`s, where above mentioned duties will be shifted to the Main Contractor of Civil Works.

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## 4.2 Further obligations (YSE 2§):

The Contractor's work under the Contract comprises all measures and obligations outlined in YSE 2§ and required to achieve the finished result, unless separately stated in the Contract documents that some of these measures and obligations are the Client's responsibility. See Appendix 3.

## 4.3 Site services and facilities (YSE 3§)

The site services between the Contractor and the Client are specified in Appendix 3.

## 5 Contract documents (YSE 12§)

The Contract shall be carried out and completed in accordance with this Contract and its appendices comprising the Contract Documents, which form inseparable parts of this Contract. The order of priority is as stated below. In case of discrepancy between the appendices and this Contract, the Contract shall prevail.

Appendix 1.	Contract programme
Appendix 2.	Priced bill of quantities
Appendix 3.	Site Arrangements and Responsibilities
Appendix 4.1	Model document, surety for the construction period
Appendix 4.2	Model document, surety for the guarantee period
Appendix 5.	Time schedule
Appendix 6.	Invoicing instructions
Appendix 7.	Supplier code of conduct
Appendix 8.	Safety, health and environment requirements
Appendix 9	The General Conditions for Building Contracts YSE 1998
Appendix 10	Tender with appendices
Appendix 11.	Technical specifications and drawings according to drawing list, dated 30.6.2017

Furthermore, the common standards, work instructions and documents as well as publications referred to in the above-specified documents shall apply to this Contract.

## 6 Co-operation (YSE 7§)

YSE 7§ 3 paragraph replace with the following:

"3. The Contractor shall not be allowed to employ other subcontractors than those indicated by the Contractor in the Tender Form. The Contractor is allowed to change any of the said subcontractor subject to prior written approval of the Client and provision of evidence to the

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satisfaction of the Client showing that the newly employed subcontractor is at least of equal qualification compared to the subcontractor withdrawn."

## 7 Client's obligation to collaborate (yse 8§)

### 7.1 Permit acquisition

See Appendix 3 (Site Arrangements and Responsibilities)

### 7.2 Client`s plan documents and other documentation

See Appendix 3 (Site Arrangements and Responsibilities)

### 7.3 Client`s separate contracts and procurements connected with the Contract

N/A in The Contract

## 8 Work plan (YSE 9§, 10§ and 5§)

The Contractor is obliged to compile the Contract-specific detailed work plan within two (2) weeks of signing of the Contract.

The work plan shall include:

- Detailed time schedule.
- Site arrangement plan
- Quality plan
- Manpower plan

## 9 Contract period (YSE 17§)

The Contractor is entitled to start preparing its measures after Contract is signed. The Works at the site must commence at the latest three (3) weeks after signing of The Contract . The Client's representative must be informed of the commencement of the Work three (3) days before the commencement.

The building work must be executed in such a manner that all tasks included in the Contract are fully completed and ready for handover to the Client on

The Contract includes the following intermediate objectives with penalty:

No:1

Key event:

**UEB**

Bottom slab of waste bunker concreted

Key date:

No:2

Key event:

**UEB**

Waste bunker walls up to level +0.00 concreted and form works removed

Key date:

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Should the Contractor find out that an intermediate objective may not be achieved by the given key date, it must immediately inform the Client's representative thereof in writing.

## 10 Penalty for delay (YSE 18§)

If the completion of the intermediate objective specified in Item 8 is delayed, the Contractor shall pay a penalty for delay of % of the contract price for each calendar day.

In addition, a separate penalty for delay of % of the final contract price for each calendar day shall be paid in case the total contract period is exceeded.

The maximum sum of penalty payments is % of the final total price of the contract.

## 11 Force majeure (YSE 20§)

YSE 20§ 1 paragraph replace with the following:

"1. The contractor is entitled to receive a reasonable extension to the building contract period if the obstacle to completion of the building contract in accordance with the contract is circumstances beyond its control which the contractor could not reasonably foresee at the time of conclusion of the contract and which it could not prevent such circumstances or consequences thereof (force majeure). Force majeure shall be understood by the Parties as defined in the Rules for Release from Responsibility in Case of Force Majeure approved by Resolution of the Government of the Republic of Lithuania No 840 of 15 July 1996, to the extent to which the latter do not contradict the Civil Code of the Republic of Lithuania."

## 12 Product liability (YSE 28§)

YSE 28§ 1 paragraph replace with the following:

„Under the legal acts of Republic of Lithuania, product liability rests with the contractor either as product manufacturer or as the party putting the product into use.

## 13 Guarantee period (YSE 29§)

The guarantee period comprises two (2) years after the Client has approved and taken over all works included in the Contract. Additionally requirements specified in Lithuanian Law of the Construction (paragraph 36) shall be fulfilled.

## 14 Surety

### 14.1 Contractor's sureties (YSE 36§)

The surety for the construction period is 10% of the contract price. The surety for the guarantee period is 2.0 % of the final contract price. The surety for the guarantee period shall be valid first two (2) years and one (1) month after take-over of the Contract Works.

Only an unconditional first demand bank guarantee taken in the name of the Client is accepted as surety. Acceptance of the Client for the Contractor's guarantee bank is required. Surety document templates are attached in Appendices 4.1 and 4.2

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## 14.2 Client's surety (YSE 37§)

The Client grants no surety for the Contractor.

## 15 Insurance (YSE 38§)

The Client effects and maintains an EAR/CAR insurance for the Works. The insurance coverage shall commence upon arrival of the goods and materials at the site and end at the date of the take-over of the Works with extension to cover the obligations of the warranty period.

The insurance value will be the contract price with deductibles amount to not less than 50 000 EUR per incident. In respect of losses related to this Contract, the deductible shall be referred to the Party whose personnel are liable for the incident

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 Client, the Contractor and his subcontractors in any tier.

The Contractor shall take out and maintain other necessary insurances such as

- Sufficient third party liability insurance minimum 2 000 000 EUR, which deductibles amount to not more than 50 000 EUR.
- Insurances necessary for his own labour during their stay in Lithuania
- At his discretion, insurance for his working machines, equipment and other temporary goods

## 16 Contract price (YSE 39§)

The Contract is a unit price contract without any fixed cost part.

The contract price, exclusive of value-added tax is 5 449 047,54 Euro, and the value-added tax of 21 % totals 1 144 299,98 Euro, adding up to a total of 6 593 347,52 Euro

The final contract price will be comprised of the actually completed units (quantities of works) and the corresponding unit prices and additional works ordered during contract period.

See Appendix 1 section 10.

Total Contract Price under this Contract shall not exceed 5.993.952,33 EUR without VAT. Total Contract Price under this Contract shall mean the total amount to be paid by the Client to the Contractor for the Plant and the Works as amended by variations (as permitted by this Contract and the applicable laws and regulations)

## 17 Payment of contract price (YSE 40§)

The Client does not pay any advance payment to the Contractor.

The contract price shall be paid on a monthly basis in accordance with actual work progress. From each monthly invoice shall be reduced retention of 10% for last invoice.

Last invoice is payable after all works are completed and handed over acceptably to the Client as well as the Client has received the Contractor's guarantee period surety and as built documentation. See Appendix 1. Section 13.

The term of payment is 45 days net. The payment period starts when the Client has received an invoice based on the Contract. See Appendix 1. Sections 10. Interest for Client's delayed

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payment shall be calculated in accordance to Law on Prevention of Delayed Payment Under Commercial Transactions.

Any invoices shall be identified with the number of this Contract and sent to the Buyer according to Appendix 6.

In accordance to Law on public procurements carried out by the water supply, energy, transport or post services field Contracting Authorities (which will get into force on 1st of July 2017) the Contractor has to submit an invoice by using electronic system "E.sąskaita" (electronic system "E.sąsakita" is available by link [www.esaskaita.eu](http://www.esaskaita.eu))

## **18 Price links**

The unit prices forming the basis of the contract price payment shall not be linked to any indices. (YSE 48§).

## **19 Modifications, additions in design and effects to contract price (YSE 44§, 45§ and 47§)**

Concerning the changes of some quantity and adjusting of its unit price in the bill of quantity what in YSE 44§ is specified is not valid. Unit prices are fixed in spite of quantity changes.

For modification and additional works due to changes in plans shall primarily apply corresponding unit prices attached to the Contract documents.

If modification or additional work is agreed using cost price according to YSE 47§ the overhead costs are 12%.

All additional works need written order from the Client before start of works.

## **20 Title and confidentiality (YSE 51§, 52§ and 53§)**

The Contractor shall not receive right of ownership to any plans delivered by the Client or the Consultant or received in any other manner.

All information and documents related to this Agreement that are not common knowledge, publicly available or legally obtained by the Contractor or by the Consultant from a third party shall constitute confidential information. The Contractor may not hand over any information submitted by the Client or the Consultant or confidential information about the Client or the Consultant or the Client's contractual partners related to the Contract under this Agreement, nor express the content thereof to a third party without the Client's consent.

The Contractor may not use confidential information for any other purpose than the execution of the Contract agreed upon herein. The non-disclosure obligation regarding confidential information shall extend beyond the validity of this Agreement, until the information becomes public. The Contractor is responsible for ensuring that its employees and subcontractors involved in the execution of this Contract are committed to the above-stated non-disclosure obligation.

## **21 Ordering additional and modification work**

See section 16 of this contract.

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## 22 Supervision

The Client's site manager shall be appointed in the Contract start-up meeting.

## 23 Key persons and other resources of Contractor

The Contractor shall have key persons as follows:

- Project manager, responsible for the Contractor's procurements:
- Construction Manager, responsible for the Contractor's management and civil works at site:
- Work Safety supervisor:

## 24 Health and safety at work (YSE 57§)

For the Client, the Site Manager, who will be appointed in the Contract start-up meeting, shall be responsible for ensuring that the general management on the site is sufficient from the safety viewpoint. The Client shall also provide general site instruction and EHS Plan. The permanent Contractor Work Safety supervisor must be assigned.

The Contractor shall compile work risk assessment as well as safety instructions and provide its own employees and the employees of other contractors with sufficient familiarisation with these instructions and obligations specified in Appendix 8.

The Contractor must provide the Client with a list of the names and social security codes of its employees and the employees of its subcontractors involved in the Contract.

## 25 Termination of agreement

In addition to the provisions of YSE 78§, the Client is entitled to terminate this Agreement and/or take any necessary measures at the Contractor's cost, if the Contractor fails to execute the Works in accordance with the jointly approved plan (YSE 5§).

## 26 Resolution of disputes (YSE 92§)

This Contract shall be governed by and construed in accordance with the laws of the Republic of Lithuania, without giving effect to Lithuanian provisions, policies or principles relating to choice or conflict of laws.

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 relating to the Contract, or the breach, termination or validity thereof shall be finally settled by arbitration in accordance with the Arbitration Rules of the Central Chamber of Commerce of Sweden.

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

## 27 Signatures

There are two identically worded copies of this Agreement, one for each party.

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Place, Vilnius Date, 7.11.2017

Client

Contractor

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