

KAUNO KOGENERACINĖ JĖGAINĖ



Contract of
Civil construction works of waste to energy power plant

S-2018-SUT-7

2018 05 07

Vilnius

**CONTRACT
NO:**

**KAUNAS CHP PLANT PROJECT
MAIN CIVIL WORKS**

**CONTRACT
No:**

7.5.2018
1(11)

**UAB KAUNO KOGENERACINĖ JĖGAINĖ
KAUNAS CHP PLANT
MAIN CIVIL WORKS**

1 Contract Parties

UAB Kauno Kogeneracinė Jėgainė, as the Client, and Panevezio statybos trestas AB 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 representatives:

- Contractual matters
- Coordination and technical matters

The Contractor (with big initial letter)

Contractor of this Main Civil Work Contract;
Panevėžio statybos trestas AB
Address P. Puzino str. 1, LT-35173,
Panevėžys
VAT No: LT4773296910

Contractor`s representative:

- Contractual matters
- Coordination and technical matters

EPCM-Consultant

AF-Consult Oy filialas

The Project

Kaunas CHP Plant Project

The Plant (with big initial letter)

Kaunas CHP plant, covering

- Complete site area inside boundaries.
- External areas consist of parking area, laydown area and site access road connection junctions.

**CONTRACT
No:**

7.5.2018
2(11)

- Site external connections including district heating, natural gas, electrical grid

The Contract (with big initial letter)

This Contract=the Main Civil Work Contract

The Works (with big initial letter)

The civil works, other duties and services included to the scope of this Contract, including modifications and additional works in accordance with YSE 43§ and 46§ ordered by the Client during period of this Contract as stated in the relevant documents comprising the Contract.

TDP

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

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 the project is English.

This Contract shall comply fully with all mandatory 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 the authorities concerning the 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 all Works 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§), also to site management duties (construction management, work safety duties) under local laws to the extent defined in Section 3.1 of Appendix 1). §). Latest one

CONTRACT

No:

7.5.2018
3(11)

week after arriving to site shall be kept start-up meeting of the Contract, where above mentioned duties will be shifted from the site preparation contractor to the Contractor.

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 1, Section 3.2

4.3 Site services and facilities (YSE 3§)

The site services between the Contractor and the Client are specified in Appendix 1, Section 3.3.

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, dated 23.1.2018
Appendix 2.	Scope of Works and Delivery Limits, dated 23.1.2018
Appendix 3.	Instructions to the Tenderer, dated 23.1.2018
Appendix 4.	Breakdown of Tender price, dated 22.2.2018, signed 2.3.2018
Appendix 5.	Priced Bill of Quantities (14 pcs) with notes, dated 22.2.2018
Appendix 6.	Unit price list for miscellaneous works, dated 23.1.2018, signed 1.3.2018
Appendix 7.1	Model document, surety (guarantee) for the construction period
Appendix 7.2	Model document, surety (guarantee) for the guarantee period
Appendix 8.	Invoicing instructions, dated 7.4.2017
Appendix 9.	Time schedule, dated 10.2.2018
Appendix 10.	Quantity surveying construction works three parts, dated 23.1.2018
Appendix 11.	Supplier code of conduct
Appendix 12.	Safety, health and environment requirements
Appendix 13.	The General Conditions for Building Contracts YSE 1998
Appendix 14.	Publication-Building 90.The Finnish building classification system.
Appendix 15.	N/A
Appendix 16.	Tender with appendices, dated 2.3.2018
Appendices 17-20.	N/A

CONTRACT

No:

7.5.2018

4(11)

Appendix 21. Soil Investigation Report, dated 5.11.2013

Appendix 22. Technical design documents according to document list, dated 5.12.2017

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

Contract period (YSE 17§)

The Contractor shall start his measures for the Works right after signing this Contract.

The Contract milestones and completion of the Works of the Contract are based on that the Contractor can start the Work at the immediately after signing of this contract, but Works shall be started latest on 27 of April 2018.

The 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 4th May 2020 (=end of contract period).

It is acknowledged that the Time Schedule is based on the assumption that the necessary permits and utility connections (e.g. gas, electric power) from the authorities/ municipality are issued in due time according to Appendix 9. Further, the CAR insurance provided by the Client is valid.

The Contractor shall proceed in his work so that the various stages are completed according to the Time Schedule (Appendix 9). The agreed milestones no. 1- 8 and completion of the Contract are as follows:

No. 1: Boiler building foundations including and final floor concrete slab at level +0.00 with equipment foundations as well as water treatment room frame including concrete slab at level +6.84 completed and ready for Boiler Plant installation.

- 5th October 2018

No.2: Waste bunker concrete structures at level +22.50 ready for fuel feed hopper installation.

- 5th December 2018

No. 3: Foundations and other concrete structures of Flue Gas Treatment Plant as well as side backfilling ready for Flue Gas Treatment Plant installations.

- 4th January 2019

No. 4: Grab crane building structures ready for crane lifting

- 4th February 2019

No. 5: Electrical and automation rooms in electrical / office building surface finishing works completed, rooms dust free and ready for electric/automation cabinet installation.

- 5A; Rooms at levels +0.0, +4.4 and 7.1 11th February 2019
- 5B; Rooms at levels +20.2 25th February 2019

No. 6: Turbine building weather closed

- 29th April 2019

No. 7: Slag handling building completed and ready for mechanical equipment installations.

- 23rd September 2019

CONTRACT

No:

7.5.2018

5(11)

No. 8: Completion of the Works and the Works are ready for hand over to the Client in part of building objects 2-14 according to document Price Breakdown, Appendix 4

- 30th November 2019

Completion of the Works and the Works are ready for hand over to the Client

- 4th May 2020

Target date for the state inspection on construction completion of Kaunas CHP plant

- 7th May 2020

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, providing necessary particulars on the cause of foreseen delay and additional remedies which Contractor will apply in order to minimize or avoid possible delay.

If the Target date for the state inspection on construction completion of Kaunas CHP plant is delayed (postponed) due to reasons beyond Contractor's control for more than 180 (one hundred and eighty) calendar days, the provisions of the Agreement regarding release of second part of retention money (Section 14) and submission of the surety for the guarantee period (Section 11) shall apply. This however shall not release the Contractor from obligation to remedy all outstanding defects in Works and submit all documentation. The Client reserves his right to request additional sureties from Contractor to secure performance of said obligations.

7 Penalty for delay and Success Fee (YSE 18§)

7.1 Penalties of delay

If the completion of the main milestones specified in Section 6 of this Contract is delayed, the Contractor shall pay a penalty for delay to the Client as follows:

- Milestones no: 1 and 2 a sum corresponding to _____ of the Contract Price for each calendar day.
- Other milestones no: 3-8 and completion of the Works, a sum corresponding to _____ of the Contract Price for each calendar day.

The maximum sum of penalty payments is _____ of the Final Contract Price of the contract, specified under Section 13

Each penalty for the delay of milestone shall be treated as separate issue.

The Contractor is not liable to pay any other penalty payments, liquidated damages or indemnification relating to delay from his side, except for direct loss incurred by the Client due to Contractor's gross negligence or deliberate fault.

7.2 Success Fee related completion of the milestones

If the Contractor meets key event completion of the milestones mentioned in Section 6 of this Contract he is entitled to receive success fees as follows:

CONTRACT No:

7.5.2018
6(11)

- Milestone 1, success fee of 50 000 €
- Milestone 2, success fee of 50 000 €
- When the completion of the key events of both milestones 1 and 2 achieved, total success of 150 000 €

The maximum sum of success fee for meeting milestones is EUR 150 000.

For avoidance of doubts, success fee forms a part of the Contract Price.

8 Force majeure (YSE 20§)

YSE 20§ 1 paragraph replaced 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 reasonable control which the contractor could not reasonably foresee at the time of conclusion of the contract and which circumstances or consequences the Contractor could not by any reasonable means have prevented (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."

9 Product liability (YSE 28§)

YSE 28§ 1 paragraph replaced with the following:

"1. 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"

10 Guarantee period (YSE 29§)

The guarantee period comprises two (2) years after approved final state inspection of Kaunas CHP plant. Additionally requirements concerning guarantee for civil works specified in Lithuanian Law of the Construction (paragraph 36) shall be fulfilled.

11 Surety

11.1 Contractor's sureties (YSE 36§)

The surety for the construction period is 10% of the Contract Price.

The surety for the guarantee period is 5.0 % of the Final Contract Price. Guarantee period shall start from the successful final state inspection of Kaunas CHP plant in accordance to the Contract. The surety for the guarantee period shall be valid first two (2) years and three (3) month from the start of the guarantee period.

CONTRACT No:

7.5.2018
7(11)

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 7.1 and 7.2

11.2 Client's surety (YSE 37§)

The Client grants no surety for the Contractor.

12 Insurances (YSE 38§)

12.1 General Liabilities

Neither Party shall be liable to the other Party for any indirect or consequential damages, including, without limitation, lost profit or loss of production. However, in case of willful misconduct or gross negligence the limitation shall not apply.

The Contractor shall be always liable for any and all damages based on personal injury, however always provided and to the extent that such damage is a result or consequence of Contractors professional negligence, deliberate misconduct or fault under applicable laws, this contract or general standards of prudence.

12.2 General requirements for insurances

All policies on insurance specified in this Section 12 shall be endorsed to be primary and not excess in respect of losses arising out of or in connection with the work at the Site.

Each Party shall upon the other Party's request produce certified copies of the policies or insurance certificates with the necessary information, including expiry date relating to all insurances taken out by each Party.

If one of the Parties fails to take out insurance according to his obligations under this Section 12, then the other Party is entitled to take out such insurance and claim a refund from the Party in default.

The Party that is obliged to provide insurance in accordance with this Section 12 shall be responsible for the payment of all deductible amounts with respect to that insurance unless the damage is one for which the Contract specifies that the other Party is liable.

When any incident occurs for which cover is granted under one of the Parties' insurance policies, the other Party shall notify that Party without undue delay, enclosing a description of the incident giving rise to the insurance claim. When the claim is handled by the Party whose insurance policy covers the claim, the other Party shall provide him with reasonable assistance, without claiming compensation.

12.3 Client's insurances

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

CONTRACT No:

7.5.2018
8(11)

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.

12.4 Contractor`s insurances

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

- Sufficient third party liability insurance minimum 10 000 000 €, which deductibles amount to not more than 50 000 €.
- Insurances necessary for his own labour during their stay in Lithuania
- At his discretion, insurance for his working machines, equipment and other temporary goods

13 Contract price (YSE 39§)

The Contract is a unit price contract with fixed cost part.

The Contract Price is 27 999 909,00 € without value-added tax, and value-added tax of 21% totals 5 879 980,89 €, adding up to a total of 33 879 889,89 €.

The Contract Price consist of unit price part being 24 051 309,00 € without value-added and fixed costs part being 3 948 600,00 € without value-added.

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 plus fixed costs part specified above.

Total Contract Price under this Contract shall not exceed 33.599.890,80 EUR without VAT. Total Contract Price under this Contract shall mean the maximum total amount that the Client is entitled to pay to the Contractor for the Works as amended by modifications, changes and additional works order (as permitted by this Contract and the applicable laws and regulations). In case actual and undisputed estimate of Works under this Contract exceeds Total Contract Price, the parties to the Contract shall seek for a solution to finalize the Works in accordance to Project schedule, including (but not limited to) entering additional contractual arrangements.

See appendix 1, Section 6.1

14 Payment of contract price and invoicing (YSE 40§)

14.1 Payments

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

The Contract Price shall be paid monthly as following;

- Fixed costs part based on equal principal payment system related to duration of the contract period
- Unit price part based on actual progress of the Works during invoicing period

CONTRACT No:

7.5.2018
9(11)

From each monthly invoice shall be reduced retention of 10% for last invoice. This retention of 10% concerns also modification- and additional works.

The Client releases retention by following order:

- First part of retention money is released against the invoice when the Works according to milestone no: 8 are completed and handed over acceptably to the Client (reference to Clause 7 of the Agreement), defect list and defect removal schedule is agreed between the Parties. The amount of this release is targeted at 50% (fifty percent) of retention amount; however, the remaining retention amount for second release shall in no case be less than the value of the outstanding work in defects list agreed between the Parties;
- Remaining retention money (second release) is released against the invoice after completed CHP plant successfully passes state inspection on construction completion, as well as the Client has received the Contractor's guarantee period surety and as built documentation.

See Appendix 1, Section 6.2.

14.2 Invoicing

The Contractor's invoices must always be based on the bill of quantities or an additional work offer(s) accepted by the Client and a sum of fixed part specified in the Appendix 1, Section 6.2.3.1.

The sums of the fixed costs and the unit price part as well as corresponding retentions shall be specified clearly in invoices.

All invoices shall be identified with the number of this Contract and sent to the Client according to Appendix 8.

The term of payment is 45 days net. The payment period starts when the Client has received an invoice based on the Contract. The Client's note period concerning invoice is seven (7) calendar days starting from receiving date is 7 (seven) calendar days.

The Client is not responsible for delay of payment, due to inaccuracy or insufficiency in invoice.

Interest for Client's delayed payment shall be calculated in accordance to Law on Prevention of Delayed Payment Under Commercial Transactions.

15 Modifications and additional works in (YSE 44§, 45§, 47§)

With modifications and additional works due to changes in design shall be applied primarily unit prices attached in the contract documentation; Bill of quantities and unit price list for miscellaneous works. Unit prices attached to the contract documentation are fixed in spite of quantity changes according to YSE 45§ paragraph 2.

If works of modification or addition includes tasks, of which unit prices are not attached in the contract documentation, the Client and the Contractor shall try to agree new unit prices for these tasks or shall try to agreed fixed price for total modification or additional work.

If the parties do not find an agreement concerning price for modification or additional work with above mentioned means the Client have a right to order modification or additional work by cost price method according to YSE 47§.

CONTRACT No:

7.5.2018
10(11)

If used cost price method the Contractor is obliged to show to the Client received tenders and own calculations upon Client's request before additional works are ordered.

Overhead costs for the rates of works ordered under cost price method are 5%.

For the purposes of modifications and additional works (YSE 44§, 45§, 47§) and Success fee under Clause 7.2 of the Contract the Total Contract Price shall not be exceeded during the Contract validity period.

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

Only the representatives of the Client named in Section 2 or persons with separate written authorisation from the Client have mandates to decide or change contractual issues and to accept binding orders for additional and modification work.

16 Price links (YSE 48§)

The unit prices and costs of fixed part forming the basis of the Contract Price payment as well as unit prices in list for miscellaneous works shall not be linked to any indices, 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 (fixed part of the Contract Price and respective unit rates adjusted) 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 (fixed part and/or affected unit rates). If an agreement is not reached within 30 (thirty) days after the commencement of such negotiations, and the Contractor does not agree to continue the Works for the initially agreed Contract Price (modified by possible variations), the Client 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.

17 Title of (YSE 51 and 52§)

Ownership of the goods and building components as well as other individual supplies and services intended for the purposes of the Project shall pass to the Client when they have been delivered to the Site.

18 Copyright and confidentiality (YSE 54§)

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

**CONTRACT
No:**

7.5.2018
11(11)

All information and documents related the Contract 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 the Contract, 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 the Contract, until the information becomes public. The Contractor is responsible for ensuring that its employees and subcontractors involved in the execution of the Contract are committed to the above-stated non-disclosure obligation.

19 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§) (unless said reasons are attributable to the Client) and fails to take necessary corrective actions and measures even when demanded to do so by the Client.

20 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.

21 Signatures

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

Place, Vilnius Date, 7.5.2018

Client

Contractor
