

# KAUNO KOGENERACINĖ JĖGAINĖ



**Contract of  
Main Transformer**

S-2018-SUT-11

2018 07 12

Vilnius

12.07.2018

**UAB KAUNO KOGENERACINE JEGAINĖ**  
**KAUNAS CHP PLANT****CONTRACT ON MAIN TRANSFORMER****1 CONTRACTING PARTIES**

UAB Kauno kogeneracinė jėgainė, as the “Purchaser”, VAT registration number LT100009225616, address: Aguonų str. 24, LT-03212 Vilnius, Lithuania, the Purchaser's representative: General Manager and Chief Finance Officer

UAB Elektrėnų energetikos remontas, as the “Contractor”, VAT registration number LT 100004451711, address: Savanorių pr. 109, LT-44208 Kaunas, Lithuania, the Contractor's representative: Director

**2 PREAMBLE**

The Parties have agreed, in accordance with the terms and conditions of this contract (the “**Contract**”), that the Contractor shall supply to the Purchaser the Works (the scope of which is specified below) and that the attached General Conditions NLM 10 E for the Supply and Erection of Machinery and other Mechanical, Electrical and Electronic Equipment (the “**NLM**”), as amended hereby, shall apply to the Works.

The Parties acknowledge that this Contract contains modifications to and deviations from the terms of the NLM and such amendments shall prevail over the terms of the NLM.

**3 DEFINITIONS**

The following capitalized terms used in this Contract shall have the meanings specified below. Capitalized terms used herein but not defined below shall have the respective meanings ascribed to them in the NLM.

“**Affiliated Company**” of a Party for the purposes of this Contract means any legal entity that is

- (a) directly or indirectly owning or controlling the Party, or
- (b) under the same direct or indirect ownership or control as the Party, or
- (c) directly or indirectly controlled by the Party

for so long as such ownership or control lasts. 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 of 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.

“**Clause**” means a clause of the NLM.

“**Contract**” shall have the meaning set out in Section 2 .

“**NLM**” shall have the meaning set out in Section 2 .

“**Party**” means the Purchaser or the Contractor, as the context may require, and “**Parties**” shall be construed accordingly.

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“Section” means any section of this Contract.

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**ANNEXES**

The following Annexes form an integral part of this Contract:

Annex 1	Technical Specifications
Annex 2	Documentation
Annex 3	Training of the Purchaser’s personnel
Annex 4	Quality assurance, inspections and testing
Annex 5	Dispatch instructions
Annex 6	Progress report template
Annex 7	Templates of financial guarantees
Annex 8	Instructions of invoicing
Annex 9	Supplier Code of Conduct
Annex 10	Site arrangements and responsibilities
Annex 11	Safety, health and environmental requirement
Annex 12	Insurances
Annex 13	Contractor’s offer
Annex 14	Price breakdown
Annex 15	General Conditions NLM 10 E for the Supply and Erection of Machinery and other Mechanical, Electrical and Electronic Equipment

In the event of any conflict, discrepancy or inconsistency between the content of the body of this Contract and any of the Annexes, the content of the body of this Contract document shall prevail. In the event of any discrepancy between any of the Annexes, the Annex with the lowest number shall prevail.

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**SCOPE OF THE WORKS AND THE PLANT. LAWS AND REGULATIONS**

The scope of the Works consists of the design, manufacturing, packing, transportation, installation, commissioning, testing, documentation, licensing and warranty obligations of Main transformer as set forth in more detail in this contract and it’s Annexes.

Assessing the nature of the Works and the Plant, the risk of unforeseen circumstances occurring during the performance of the Works, the Purchaser may purchase from the Contractor additional items and works that might be necessary in accordance with the aim and purpose of the original Contract. Additional items and works are not covered by the Contract, but directly related and necessary for the performance of the Contract and reaching the initial aim.

The following sentence shall be added to the second (2<sup>nd</sup>) paragraph of Clause 10 of the NLM:



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“Such provision of information is without prejudice to the first sentence of this paragraph and shall not entail any liability to the Purchaser in respect of the timeliness, correctness or completeness of such information.”

**6 MATERIAL AND SERVICES PROVIDED BY PURCHASER**

The Purchaser shall provide materials, equipment, facilities, utilities and/or services to the Contractor for the execution of the Works only to the extent expressly specified in Annex 10 hereto (reference is made especially to Clauses 12, 15, 16, 30, 40 of the NLM).

**7 ENVIRONMENT, HEALTH, SAFETY AND SUSTAINABILITY**

The Contractor shall comply with all relevant environmental, health and safety laws, regulations and authorities' decisions. Notwithstanding anything to the contrary in Clause 12 or elsewhere in the NLM, the Contractor shall be solely responsible for the safety of its personnel and its sub-contractors. The Contractor shall take at all times any reasonable precautions to maintain the health and safety of its personnel and take measures and comply with all instructions required or given by the Purchaser, including the EHS Requirements for contractors attached hereto as Annex 11.

The Contractor shall respect and comply with all applicable employment laws, regulations and practices in respect of its own personnel and its sub-contractors' personnel working at the Site.

**8 PURCHASER'S SUPPLIER CODE OF CONDUCT**

The Contractor shall at all times comply with the Purchaser's Supplier Code of Conduct attached hereto as Annex 9. 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;

c) the Contractor 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, at 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.

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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 itself or through the appointment of 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-fulfillment 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.

## **9 PURCHASER'S RESPONSIBILITY. PURCHASER'S DELAY**

The second (2<sup>nd</sup>) paragraph of Clause 22 shall be deleted.

All costs, expenses and losses incurred by the Contractor for which the Purchaser becomes liable pursuant to Clauses 23 and 26 of the NLM shall be reasonable and proven by the Contractor.

## **10 PRICE, TERMS OF PAYMENT AND INVOICING**

Clause 24 of the NLM shall be amended to read as follows:

“Unless otherwise agreed payment shall be made against invoice 45 days after the date of the invoice.”

This Section 10 shall replace the Clauses 24.1, 24.2 of the NLM.

The Purchaser shall pay to the Contractor the fixed lump sum Contract Price of 377 000 EUR for the Works under this Contract. Price breakdown is according to Annex 14.

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.

Total Contract Price under this Contract shall not exceed 501 787 EUR. Total Contract Price under this Contract shall mean the total amount to be paid by the Purchaser to the Contractor for the Plant and the Works as amended by variations (as permitted by this Contract and the applicable laws and regulations), value added tax applicable on the date of entering the Contract, all other taxes and similar mandatory payments payable by the Purchaser under the



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applicable laws and regulations. The Total Contract Price stipulates a maximum amount, which may be paid by the Purchaser for the Plant and the Works (including possible variations) under the Contract and shall not be exceeded during the validity term of the Contract. In case an applicable value added tax changes during the validity term of the Contract, the Total Contract Price shall be recalculated respectively to reflect the change in value added tax rate.

The Parties hereby agree that the purchase price shall not be adjusted based on any price indexes.

The Contract Price shall be paid to the Contractor against invoice in the following instalments:

10 %	of the Contract Price after signing of the Contract against an advance payment bond
5 %	of the Contract Price when all the requested initial data has been delivered defined in Annex 2.1.1
20 %	of the Contract Price after FAT of transformer has been completed (according to section 11)
55 %	of the Contract Price after transformer is ready for energising and signing of the erection acceptance certificate (according to section 11)
5 %	of the Contract Price after submission of the approved final documentation
5 %	of the Contract Price after the taking over of the Works

The Contractor shall provide the following first demand, irrevocable and unconditional guarantees issued by a bank acceptable to the Purchaser:

- (i) an advance payment bond as a security for the advance payment in the amount of such advance payment and in the form and contents acceptable to the Purchaser, which shall be valid from the due date of such advance payment until delivery of the Plant as provided by Section 11 Advance payment bond shall be submitted by the Contractor to the Purchaser not later than together with the invoice of the first part of the Contract Price as specified above; and
- (ii) a performance bond as a general security for the performance of the Contractor's obligations under this Contract in the amount corresponding to 15% of the Contract Price and in the form and contents acceptable to the Purchaser, which shall be valid from the date of submission to the Purchaser until one month after the taking over of the Works and submission of the warranty bond. The performance bond shall be submitted by the Contractor to the Purchaser not later than in 14 (fourteen) days after signing of this Contract, but if the Contractor has not duly submitted the performance guarantee, the Purchaser may unilaterally terminate this Contract by notifying the Contractor in writing and without an obligation to observe any notice period and any without any payment obligation towards the Contractor; and
- (iii) a warranty bond as a security for the Contractor's performance of its obligations under its defects liability under the Contract in the amount corresponding to 10% of the Contract Price, in the form and contents acceptable to the Purchaser, which shall be valid from the taking over of the Works until the expiry of the claims period in respect of defects as specified in Clause 58 of the NLM and Section 18 of this Contract.

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The Purchaser shall not be obliged to make any payments under this Contract until the Contractor has submitted to the Purchaser the above specified bonds. The Purchaser shall also have the right to interrupt payments, if after submission to the Purchaser any of the above mentioned bonds has been declared illegal or invalid or has not been properly prolonged at least 30 days prior to expiry of its initial validity period.

Any invoices shall be identified with the number of this Contract and sent to the Purchaser according to Annex 8.

**11 TIME SCHEDULE**

The Contractor shall deliver and perform the Works in accordance with the following time schedule:

- Factory Acceptance test (FAT) completed 19.03.2019
- Delivery of Main Transformer to Construction site 15.04.2019
- Main Transformer ready for energising 30.04.2019
- Take-over of delivery on 07.05.2020, at the latest

**12 DELIVERY TERM**

The Works shall be delivered by the Contractor DDP, 19 Veterinarų st, Biruliskiu village, LT-54469, Kaunas region, the Republic of Lithuania, (Incoterms 2010).

The Contractor shall pack and forward the Product according to the instructions specified in Annex 5 hereto

**13 RETENTION OF TITLE**

Clause 28 of the NLM shall be amended to read as follows:

“Title to and ownership of each item included in the Plant and the Works shall pass to the Purchaser at the moment when such item is delivered to the Site. For the avoidance of doubt the risk of loss shall pass to the Purchaser on taking over as set out in Clause 44.”

**14 REPORTING**

The Contractor shall provide to the Purchaser reports on the progress and the actual status of the Works during the entire time period of execution of the Works and as long as any obligations of the Contractor under this Contract are outstanding once a month at the latest business day of the month. The reports shall be provided in the format and with content reasonably requested by the Purchaser and shall, as applicable, include information on at least the following items: major achievements, major coming events, significant deviations from the planned and expected progress, and major risks or problems discovered or foreseeable, Annex 6.

**15 SUB-CONTRACTORS**

The Contractor shall be responsible for the performance of any of its sub-contractors as for its own.

Major sub-contractors used by the Contractor shall be approved in advance and in writing by the Purchaser. Any sub-contractor named in the Contract or subsequently approved by the Purchaser may not be substituted by the Contractor without the Purchaser's prior written consent



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which consent shall not be unreasonably withheld or delayed. The acceptance given by the Purchaser for the use of a certain sub-contractor does not in any way decrease the responsibility of the Contractor to execute the Works in accordance with the Contract.

List of the Contractor's sub-contractors is attached hereto as Annex 13.

**16****TAKING OVER OF WORKS**

The third (3<sup>rd</sup>) paragraph of the Clause 41 of the NLM shall be amended to read as follows:

“If the taking-over test cannot be carried out within one (1) year from May 2020 due to reasons solely attributable to the Purchaser, the taking-over test shall be deemed to have been satisfactorily completed.”

The first (1<sup>st</sup>) and second (2<sup>nd</sup>) paragraphs of the Clause 43 of the NLM shall be amended to read as follows:

“Once the Works have been delivered in accordance with this Contract, the agreed inspections and taking-over test (Clauses 39-42) have been performed acceptably, the defects and deficiencies found during the inspections and tests have been eliminated and all the documents have been delivered and accepted by the Purchaser, the taking over shall take place.

Defects and deficiencies which are unessential shall not prevent the taking over provided that a plan for remedying the defects and deficiencies has been made by the Contractor and accepted by the Purchaser prior to the taking over. The Purchaser is entitled to withhold a reasonable part of the Contract Price until the defects and deficiencies are repaired.”

The first sentence of the fourth (4<sup>th</sup>) paragraph of Clause 43 of the NLM shall be amended to read as follows:

“The Purchaser is not entitled to take the Works or any part of them into operation before taking over without the Contractor's prior consent, which consent, however, shall not be unreasonably withheld or delayed.”

**17****TIME FOR DELIVERY. DELAY**

In the second (2<sup>nd</sup>) paragraph of Clause 49 of the NLM “one per cent of the Contract Price for each commenced week of delay” shall be replaced with “        per cent of the Contract Price for each commenced day of delay” and “ten per cent” shall be replaced with “        per cent”.

If the document packages specified in the Annex 2.1.1 are delayed from their agreed delivery dates at the rate of EUR        per each document package per each day of delay, however, not in excess of        of the Final Contract Price in aggregate.

In the third (3<sup>rd</sup>) paragraph of Clause 50 of the NLM “ten per cent” shall be replaced with “        per cent”.

**18****LIABILITY FOR DEFECTS**

The liability period shall commence upon the take-over of the Works and last up to May 2022 (7.5.2022).

The time limit for the Contractor's liability set out in Clauses 56 and 57 of the NLM shall be extended from one (1) year to        years.

The third (3<sup>rd</sup>) paragraph of Clause 59 of the NLM shall be replaced with the following:



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“The Contractor shall carry out dismantling and re-installation of the part at its cost and expense.”

Clause 61 of the NLM shall be deleted.

In the first (1<sup>st</sup>) paragraph of Clause 65 of the NLM the wording “not exceeding 20 per cent thereof” shall be deleted.

In the second (2<sup>nd</sup>) paragraph of Clause 65 of the NLM the last sentence shall be deleted.

In Clause 66 of the NLM “two years” shall be replaced with “        years”.

## **19        PERFORMANCE GUARANTEES**

The performance guarantees and the respective liquidated damages are specified in Annex 1 hereto. In the event that the Works do not fulfil the said performance guarantees, the Purchaser shall be entitled to the liquidated damages. The amount of the liquidated damages may at the Purchaser’s discretion also be deducted from the forthcoming payments of the Contract Price. The maximum amount of such liquidated damages is 15 per cent of the Contract Price. In the event that the Purchaser has become entitled to the maximum amount of such liquidated damages such failure to achieve the performance guarantees shall be deemed to be a substantial defect referred to in Clause 65 (2<sup>nd</sup> paragraph) of the NLM in the performance of the Works and Clause 65 shall be applied.

## **20        QUALITY ASSURANCE**

The Contractor shall have a documented quality assurance system. The Contractor shall prepare a Works specific quality control programme. The Purchaser shall have the right at any time and on reasonable notice during the period of operation of the Works to have access to the documents and records relating to the Works.

## **21        DISPUTES. APPLICABLE LAW**

This Section 21 replaces Clauses 72 and 73 of the NLM.

“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.”

## **22        INDEMNIFICATION FOR DAMAGE CAUSED BY THE WORKS**

Clause 68 of the NLM shall be deleted and replaced with the following:

“The Contractor shall indemnify and hold harmless the Purchaser, the Purchaser's personnel, and their respective agents and representatives, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:

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(a) bodily injury, sickness, disease or death, of any person whatsoever arising out of the design, execution and delivery of the Works and/or the remedying of any defects, unless attributable to the negligence, willful act or breach of the Contract by the Purchaser, the Purchaser's personnel, or any of their respective agents or representatives, and

(b) damage to or loss of any property, real or personal, to the extent that such damage or loss:

- (i) arises out of or in the course of or by reason of the design, execution and delivery of the Works and/or the remedying of any defects, and
- (ii) is attributable to any negligence, willful act or breach of the Contract by the Contractor, the Contractor's personnel, their respective agents, or anyone directly or indirectly employed by any of them.

The Purchaser shall indemnify and hold harmless the Contractor, the Contractor's personnel, and their respective agents and representatives, against and from all claims, damages, losses and expenses (including reasonable legal fees and expenses) in respect of bodily injury, sickness, disease or death, which is attributable to any negligence, willful act or breach of the Contract by the Purchaser, the Purchaser's personnel, or any of their respective agents.”

**23 INDEMNIFICATION FOR ALLEGED INTELLECTUAL PROPERTY RIGHT INFRINGEMENTS**

The Contractor shall indemnify and hold the Purchaser harmless from and against any claim concerning alleged infringements of third party patent rights or other intellectual property rights as a result of the design, execution or delivery of the Works or the use or maintenance thereof.

**24 INSURANCE**

The Parties shall take out and maintain insurance as specified in Annex 12.

**25 TOTAL COMPENSATION OF THE CONTRACT**

The total amount of compensation which has defined in section 17, section 18 and section 19 is limited to the amount of the Contract Price taking account limitation Clauses 53 and 67 of the NLM.

**26 GROUNDS FOR RELIEF (FORCE MAJEURE)**

In Clause 69 of the NLM the circumstance “industrial dispute” shall be amended to read “nationwide industrial dispute” and the following circumstances shall not be regarded as grounds for relief: shortage of transport, general shortage of materials and restriction in the supply of power.

**27 ASSIGNMENT OF THE CONTRACT**

The Contractor shall not be entitled to assign the Contract to a third party without the prior written consent of the Purchaser. The Purchaser may in its sole discretion assign this Contract to any Affiliated Company.

**28 TERMINATION FOR SUBSTANTIAL BREACH**

Either Party shall have the right to terminate the Contract, in whole or in part, upon written notice to the other Party with immediate effect in the event that the other Party commits a substantial breach of any of the terms and conditions of the Contract and, if the breach is capable



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of being remedied, does not remedy such breach within thirty (30) days of written notice thereof.

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**SIGNATURES OF THE CONTRACT**

This Contract has been drawn up in duplicate, one (1) copy for each Party.

Place and date:

*Vilnius 12.7.18*

Place and date:

*Vilnius 12.07.18*

**UAB Kauno kogeneracinė jėgainė**

**UAB Elektrėnų energetikos remontas**