

**ORGALIME TURNKEY CONTRACT FOR INDUSTRIAL WORKS****MAIN CONTRACT DOCUMENT,****DCS SYSTEM FOR KAUNAS CHP PLANT PROJECT****No. S-2018-SUT-28**

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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 10"

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: "**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: "**Key Employee**" means a person in a specific role and/or with specific skills that can only be replaced or changed by the Contractor with Purchaser's approval, as set out in Section 5."

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.

"**Milestone**" means intermediate time schedule targets of the Scope of Works defined in Appendix 1.7 to the Contract, signing a "**Milestone Completion Protocol**" by the Purchaser is a confirmation of completion of a given Milestone by the Contractor.

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

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

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

Within fourteen (14) days from the signing of the Contract the Contractor shall have provided the Advance Payment Guarantee and Performance Guarantee to the Purchaser, in the form and substance as per Appendix 7.

In case the Contractor has not submitted a proper Performance Guarantee within 30 days from the signing of the Contract, the Purchaser shall have the right to unilaterally terminate this

Contract by submitting a written notification to the Contractor without an obligation to observe any notice period and without any payment obligations towards the Contractor.

## 1.2 Site (Sub-clause 2.13)

The Site is at 19 Veterinarų st, Biruliskiu village, LT-54469, Kaunas region, the 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 Representative: Mr.

Purchaser's representatives:

Project Representative: Mr.

## 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
Technical Specification	1
Document instruction	2
Training of the Purchaser's personnel	3
Quality Assurance, Inspections and Testing	4
Dispatch instructions	5
Progress report template	6
Templates of financial guarantees	7
Instruction of invoicing	8
Supplier Code of Conduct	9
Site Arrangements and Responsibilities (Checklist)	10
Safety, health and environmental requirements	11
Insurances	12
Contractor's offer	13
Price breakdown	14

## 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 DCS system ready installed, commissioned and trial run completed in the Purchaser's power plant on 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 1 and 13 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.

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 publicly known proposals for changes in 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 following sentence: "In case the Contractor proposes change of any Subcontractor not mentioned in Subcontractor's list included in Appendix 13 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, 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 2 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 2 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 the Purchaser itself."

#### **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 1 and 2. All Contractor's requirements on the Purchaser with respect to the Co-ordination Time Schedule have been specified in the Contract."

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 the 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 seven (7) 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. Within 14 days from giving the initial notice the Contractor shall give the Purchaser a detailed notice which shall state the reason for the extension, sufficient 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 detailed notice the Parties shall agree on the conditions of the amendment to the Contract, if any.

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."

Add a new sub-clause 6.6: "The Contractor shall not, without Purchaser's prior written consent, change any Key Employee, unless such change is beyond the reasonable control of the Contractor (such as the incapacity of such person or the termination of such persons' employment relationship). In the event that any Key Employee ceases to be available for any reason, then the Contractor shall notify Purchaser thereof without delay and, promptly and at no cost to Purchaser, replace such person with another person of at least equal competence, qualification and experience. The Contractor shall bear all additional costs incurred as a consequence of any such replacement.

In the event that Purchaser, in its sole discretion, considers that any Key Employee is lacking the necessary competence or Purchaser finds it difficult to collaborate with such person, then Purchaser shall have the right to request that such person shall be replaced, without undue delay and at no cost to Purchaser, and the Contractor agrees to replace such person.

The Contractor's project organization is set forth in Appendix 13. The Contractor shall only in compelling circumstances and with the prior written consent of the Purchaser have the right to substitute a Key Employee (as defined in Appendix 13, Annex 5.1) engaged in the performance of the services with a person of comparable qualification. Should a need for such substitution arise the Contractor shall give the Purchaser immediate notice of such need and the Purchaser shall respond without unreasonable delay, but not later than within 5 days from the receipt of the notice. In the case the person substituted as marked as a Key Employee in the project organization (Appendix 13), the Contractor shall be liable to pay 30 000 € to the Purchaser for substituted Key Employee (Key Employee shall be defined as personnel in Contractor's project organisation as following: Project Manager, Lead design engineer and Commission manager/lead engineer at site) unless the substitution is made because of termination of the employment contract, sickness preventing continued and uninterrupted work, maternity leave or similar permissible or compelling reasons or is made with the prior approval of the Purchaser.

## **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---"

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 8.6, 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 account consideration provisions of Sub-clause 8.5 first paragraph, except for cases that the Purchaser deems need of immediate variation, especially 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. Taking into account the nature of the Works, the Parties hereby agree that the Contract Price shall not be adjusted based on any price indexes.

Contract Price: 799.600,00 EUR

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.

Maximum amount of Total Contract Price under this Contract shall not exceed EUR 879.560,00. (DIRECTIVE 2014/25/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL Article 89).

Sub-clause 9.1 Payment shall be made as follows:

**1<sup>st</sup> instalment**

10% of the Contract Price as an advance payment, after signing of the Contract, against Advance Payment Guarantee in the form specified in the Appendix 7

**2<sup>nd</sup> instalment**

25% of the Contract Price, after the specification of system hardware is accepted by the Purchaser and system is ready for application software implementation at the Contractor's facility

**3<sup>rd</sup> instalment**

25% of the Contract Price, after FAT (factory acceptance test) is accepted by the Purchaser

**4<sup>th</sup> instalment**

20% of the Contract Price, after SAT (site acceptance test) is accepted by the Purchaser (after synchronization)

**5<sup>th</sup> instalment**

15% of the Contract Price after taking over, against Warranty Guarantee in the form specified in the Appendix 7

**Last instalment**

5% of the Contract Price after receipt of the final as built documentation in accordance with Appendix 2

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 and 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 2% per annum.

The rate of interest on amounts to be repaid (Sub-clause 19.13) shall be Euribor of 12 months added with 2% per annum.

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

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 within 30 days after the due date. The Contractor may not, however, suspend the Contract after the Purchaser has paid the amount due.

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 accepted by the Purchaser:

- (1) Together with the invoice regarding the instalment 1 specified in Sub-clause 9.1 above, the Contractor shall deliver to the Purchaser advance payment guarantee in the form and contents provided in Appendix 7 hereto (the **Advance Payment Guarantee**) in the amount at least equal to the particular instalment. The Advance Payment Guarantee shall be valid at least until all the major parts of the Works are delivered to the Site and

transferred into the Purchaser's ownership. 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 prolongations and uninterrupted validity of the Advance Payment Guarantee 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 7 hereto and in the amount corresponding to 15% of the Contract Price, within 14 days after signing of the Contract and valid until the signing of the protocol of taking over by the Purchaser and submission of the Warranty Guarantee to the Purchaser.
- (3) The Contractor shall provide the Purchaser with a warranty guarantee (the **Warranty Guarantee**) in the form and contents provided in Appendix 7 hereto and in the amount corresponding to 10% of the Contract Price, which shall be valid from the issuance of the protocol of taking over 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.

In the event any financial security including but not limited to the Advance Payment Guarantee, the Performance Guarantee and the Warranty Guarantee 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."

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 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.

## **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)**

Add to the beginning of Clause 13: "Tests on Completion shall be performed in the manner and the Works shall fulfil the requirements as specified in the Contract Appendix 1 and 4. If the Works failed to fulfil the guaranteed performance specified in Appendix 1.8 the Purchaser is entitled to liquidated damages as per Chapter 15 of this Contract."

## **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 9.5.

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 7.5.2020 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."

Sub-clause 14.6, replace in the first paragraph "90 days" with "180 days" and add to the end of 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, second paragraph to be deleted in its entirety.

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

Replace the Clause 15 with following: "The availability guarantee shall be verified as specified in Appendix 1 and 4. If the Works failed to fulfil the guaranteed availability specified in Appendix 1 the Purchaser is entitled to liquidated damages as per Chapter 15 of this Contract.”

**15 LIQUIDATED DAMAGES (CLAUSE 16)**

Sub-clause 16.1, second and third paragraph to be replaced with the following paragraphs:  
"The Purchaser shall be entitled to liquidated damages for delay of Time of Completion at a rate of 0.14% of the Final Contract Price per each commencing day of delay.

The Purchaser shall be entitled to liquidated damages for delay, if a penalized main interim milestone is delayed, where applicable as extended under Sub-clause 6.5, at a rate of 0,05% of the Final Contract Price per each commencing day of delay. The penalized main interim milestones are defined in Appendix 1.7. (Project Time Schedule).

If the delivery of information or documents specified in Appendix 2.1.1 to be supplied by the Contractor is delayed, the Contractor shall pay EUR 1,500 (one thousand five hundred) as liquidated damages for each commencing day of delay. The maximum amount of such liquidated damages shall be 1.0% of the Final Contract Price. The payment of such liquidated damages shall be made against Purchaser's invoice as soon as the delay with the delivery of the information or documentation specified in Appendix 2 is verified.

The Purchaser shall be entitled to liquidated damages without need to prove that he has incurred loss or damage. The aggregate maximum amount of liquidated damages for delay shall not exceed 15 % of the Final Contract Price.

Payment of liquidated damages for delay shall constitute the Contractor's sole liability and Purchaser's exclusive remedy for delays by the Contractor, however, subject to the provisions of Clause 19."

Sub-clause 16.2, replace with: "In the event that Tests After Completion show that the Works do not fulfil the performance guarantees and availability guarantee specified in the Contract, the Purchaser shall be entitled to the liquidated damages specified in Appendix 1.

The Purchaser shall be entitled to liquidated damages without need to prove that he has suffered loss or damage.

The total amount of liquidated damages for failing to achieve the guaranteed performance shall not exceed 20 % of the Final Contract Price. The total amount of liquidated damages for failing performance of control loops and other control functions shall not exceed 7% of the Final Contract Price. The total amount of liquidated damages for failing performance of execution cycles shall not exceed 3% of the Final Contract Price

The Purchaser shall be entitled to liquidated damages without need to prove that he has suffered loss or damage.

The total amount of liquidated damages for failing performance, including availability, shall not exceed 20% of the Final Contract Price.

Payment of such liquidated damages for failing to achieve the guaranteed performance shall constitute the Contractor's sole liability and Purchaser's exclusive remedy for failure to fulfil the performance guarantees subject to liquidated damages, however, subject to provisions of the Clause 19."

Sub-clause 16.3, replace with: "The aggregate total of liquidated damages payable by the Contractor shall not exceed 20 % of the Final Contract Price."

Sub-clause 16.4, replace the Sub-clause with: "Liquidated damages for delay shall be paid by the Contractor against invoice within 30 days, but the Purchaser may at its discretion also fully or partially set off the liquidated damages against the instalment relating to taking over, except liquidated damages for delay with delivery of the documentation which shall be paid as specified in Sub-clause 16.1. Liquidated damages for performance guarantees verified with Tests After Completion shall be paid against invoice within 30 days."

Sub-clause 16.5, delete in its entirety.

**16 DEFECTS (CLAUSE 17)**

Sub-clause 17.2, replace the Sub-clause with: "The Contractor shall be liable for defects for a period of 24 months after the date of taking over.

Sub-clause 17.4, replace the words "one year" with "two years".

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, second paragraph, delete it.

Sub-clause 17.14, replace "15 percent" with "50".

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

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

Sub-clause 18.1, add the following sentence: "Such a notice to the Contractor can be submitted by the Purchaser not later than 36 months from the Commencement Date."

Sub-clause 18.2, delete the last three sentences.

Sub-clause 18.4, delete the Sub-clause.

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

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

Sub-clause 19.3, add the following second paragraph: "Further, any breach of the Supplier Code of Conduct or Section 27 below shall always 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 seize 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 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 or Subcontractor (if any) suspends his payments, or if there are otherwise reasonable grounds to assume that the Contractor or Subcontractor (if any) is insolvent or becoming insolvent and if the Contractor, at the Purchaser's request, fails to provide a security for his fulfilment of the Contract, the Purchaser may terminate the Contract by notice to the Contractor.

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."

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 2,000,000.00 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.

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."

## **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."

Add new Sub-clause 22.4 as follows: "The Purchaser gives the Contractor right to publish the press release on the execution of the Works, provided that the content of such a publication shall not violate provisions of this Section and shall be agreed with the Purchaser."

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

Sub-clause 23.1, replace the entire Sub-clause by:

"The Purchaser's right and license to use the Software is subject to the terms and conditions of a separate license agreement that the parties shall enter into prior taking over in all material respects."

Sub-clause 23.2, third paragraph, delete word: "forthwith".

Add new Sub-clause 23.4 as follows:

"The Contractor represents and warrants that except as specified in Appendix 1 the Software does not contain, does not interface with, does not require, is not linked to and does not make any use of any Open Source Software as defined in the license agreement)."

## **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 "fire", "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 25.2, 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 200,000 (two hundred thousand euros) per occurrence and EUR 500,000 (five hundred thousand euros) in aggregate. The limitations of liability set out in this Clause 25 shall not apply to (i) loss or damage caused by the Supplier by wilful misconduct or Gross Negligence; (ii) claims for personal injury or death; (iii) the Supplier's breach of confidentiality provisions in Clause 22 this Contract or Purchaser's Supplier Code of Conduct in Clause 27 this Contract; or (iv) damages arising out of or in connection with any infringement by the Supplier of 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 has been prepared in several languages the English version shall prevail ("Ruling Language")."

## **25 ARBITRATION (CLAUSE 27)**

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 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 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: "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."

## **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 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 withdrawal from 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.

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 prices; 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.

If Purchaser and/or Contractor suspects that there is a breach of 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."

## 28 ASSIGNMENT

Add a new Clause 30, "Assignment" reading: "Neither party shall be permitted to assign the Contract nor any part thereof, except for the Purchaser to an Affiliated Company provided,

however, that the Purchaser shall remain secondarily liable for the obligations of the assignee under the Contract."

## 29 EXPORT CONTROL

Add a new Clause 31, "Export Control" reading: "The Contractor's obligation to fulfil this Contract is subject to the proviso that the fulfilment is not prevented by any impediments arising out of national and international foreign trade and customs requirements or any embargos or other sanctions; the impediment of which cannot be avoided by Contractor".

Contractor shall indemnify and hold harmless Purchaser from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any non-compliance with export control regulations by Contractor and/or its subcontractors, and Contractor shall compensate Purchaser for all direct losses and expenses resulting thereof, unless such non-compliance was not caused by fault of the Contractor. For the avoidance of doubt, Contractor shall not in any event be liable for indirect costs due to the non-compliance with export control regulations.

## 30 PERSONAL DATA

By concluding the Contract, the Parties shall confirm that they understand that Regulation (EU) No 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (hereinafter referred to as the Regulation) shall be directly applied from 25 May 2018. The Parties shall confirm that if in order to ensure proper implementation of the Contract personal data shall be processed, the Parties shall undertake to conclude a separate agreement on processing of data by means of which they shall establish the object and duration of processing of data, kind and object of processing of data, kinds of personal data and sub-categories of data, as well as rights and obligations of the controller.

If the need to manage personal data shall become apparent after the conclusion of the Contract, the Parties shall undertake to immediately conclude an additional agreement to the Contract on processing of data and to take other necessary measures in order to ensure compliance with the requirements of the Regulation. The Parties shall recognize that signing of an additional agreement on processing of data shall not be considered as a principle modification of terms and conditions of the Contract.

This Contract has been made in two (2) copies, one for each party.

**UAB Kauno kogeneracinė jėgainė**

**Emerson Process Management Sp. Z.o.o.**

Place and date:

Place and date:

General Director

Country Manager Poland, Baltics and Ukraine

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(Signature)

\_\_\_\_\_  
(Signature)

Chief Finance Officer

Proxy

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(Signature)

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(Signature)