

UAB KAUNO KOGENERACINE JEGAINĖ

NO. S-2018-SUT-25

KAUNAS CHP PLANT

CONTRACT ON SHUT-OFF VALVES, STRAINERS AND SMALL SAFETY VALVES

**1 CONTRACTING PARTIES**

UAB Kauno kogeneracinė įėgainė, as the “Buyer” VAT registration number LT100009225616, address: Agonų str. 24, LT-03212 Vilnius, Lithuania, the Buyer's representative: General Director and Chief Finance Officer

and Oy Konwell Ab, as the “Seller” VAT registration number FI04840795, address: Ruosilantie 10, 00390 Helsinki, Finland, the Seller's representative: Chief Executive Officer

**2 PREAMBLE**

The Parties have agreed, in accordance with the terms and conditions of this contract (the “Contract”), that the Seller shall supply to the Buyer the Product (the scope of which is specified below) and that the attached General Conditions NL 09 E for the Supply of Machinery and other Mechanical, Electrical and Electronic Equipment (the “NL”), as amended hereby, shall apply to the supply of the Product.

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

**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 NL.

“**Affiliated Company**” of a Party means for the purposes of this Contract 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 NL.

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

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

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

“**Product**” means the object or objects which the Seller shall deliver according to the Contract, including but not limited to products, materials, services, goods or rights of use or ownership

to be supplied by the Seller to the Buyer. The term “Product” includes software and documentation.

“Section” means any section of this Contract.

## **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	Seller’s offer
Annex 11	Price breakdown
Annex 12	General Conditions NL 09 E for the Supply 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 shall prevail. In the event of any discrepancy between any of the Annexes, the Annex with the lowest number shall prevail.

## **4 SCOPE OF SUPPLY**

The scope of the Product consists of design, manufacturing, testing at the factory, packing, transportation, documentation, licensing and warranty obligations of shut-off valves, strainers and small safety valves as set forth in more detail in Annex 1 and Annex 10.

The Product shall fulfil Lithuanian laws and regulations.

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

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

This Section 5 shall replace Clause 17 of the NL.

Payment shall be made against invoice 45 days after the date of the invoice.

The Buyer shall pay to the Seller the fixed lump sum purchase price of 857 802 EUR for the Product under this Contract. Price breakdown is according to Annex 11.



The purchase price is exclusive of VAT within the country of the site. VAT shall be paid by the Buyer to the Seller or, if the provisions on reverse charge are applicable in accordance with the applicable law, to the tax authorities.

Total Purchase Price under this Contract shall not exceed EUR 1 037 940,42. Total Purchase Price under this Contract shall mean the total amount to be paid by the Buyer to the Seller for the Product 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 Buyer under the applicable laws and regulations. The Total Purchase Price stipulates a maximum amount, which may be paid by the Buyer for the Product (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 Purchase 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 purchase price shall be paid to the Seller against invoice in the following instalments:

10 %	After signing of the Contract against an advance payment bond;
5 %	After initial data delivered defined in Annex 2.1.1
70 %	After goods have been delivered to site
5 %	After documents have been delivered and accepted by the Buyer
10 %	After the taking over of the Product and submission of a warranty bond

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

- (i) an advance payment bond as a security for the advance payment (if any) in the amount of such advance payment and in the form and contents acceptable to the Buyer, which shall be valid from the due date of such advance payment until the taking over of the Product. Advance payment bond shall be submitted by the Seller to the Buyer not later than together with the invoice of the first part of the purchase price as specified above;
- (ii) a warranty bond as a security for the Seller's performance of its obligations under its defects liability under the Contract in the amount corresponding to 10% of the aggregate purchase price under the Contract, which shall be valid from the taking over of the Product until the expiry of the claims period in respect of defects as specified in Clause 33 of the NL and Section 12 of this Contract.

The Buyer shall not be obliged to make any payments under this Contract until the Seller has submitted to the Buyer the above specified bonds and guarantee. The Buyer shall also have the right to interrupt payments, if after submission to the Buyer any of the above mentioned bonds or performance guarantee 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 Buyer according to Annex 8.

## 6

### TIME SCHEDULE

The Seller shall deliver the Product in accordance with the following time schedule:

- DDP delivery to site 15.02.2019
- Take-over of delivery May 2020 (7.5.2020) at the latest

## 7 DELIVERY TERM

The Product shall be delivered by the Seller DDP, Kaunas, Lithuania, a new CHP power plant 19 Veterinarų st, Biruliskiu village, LT-54469, Kaunas region, the Republic of Lithuania (Incoterms 2010).

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

## 8 REPORTING

The Seller shall provide to the Buyer 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 Seller 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 Buyer 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

## 9 TAKING OVER OF THE PRODUCT

Commissioning tests of the Delivery will be carried out together with commissioning of the Plant and the take-over of the Delivery take place after successfully performed commissioning.

Once the Delivery has been delivered in accordance with this Contract has been executed (the agreed inspections and tests have been performed acceptably, the defects and deficiencies found during the inspections and tests have been eliminated and all documents have been delivered and accepted by the Buyer) and Taking over protocol has been signed by both Parties, 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 Seller and accepted by the Buyer prior to the taking over.

## 10 TIME FOR DELIVERY. DELAY

In the second (2nd) paragraph of Clause 13 of the NL “one per cent of the agreed price for each commenced week of delay” shall be replaced with “0.14 per cent of the agreed price for each commenced day of delay”. In the third (3rd) paragraph of Clause 13 of the NL “ten per cent” shall be replaced with “15 per cent”.

In the third (3rd) paragraph of Clause 14 of the NL “ten per cent” shall be replaced with “30 per cent”.

## 11 RETENTION OF TITLE

Clause 20 of the NL shall be amended to read as follows:

“Title to and ownership of each item included in the Product shall pass to the Buyer at the moment when the possession of such item passes to the Buyer.”



**12 LIABILITY FOR DEFECTS**

The time limit for the Seller's liability set out in Clauses 23 and 24 of the NL shall be extended from one (1) year to two (2) years.

The third paragraph of Clause 26 of the NL shall be deleted.

Clause 27 of the NL shall be deleted.

In the first paragraph of Clause 32 of the NL the wording "not exceeding 20 per cent thereof" shall be replaced with "not exceeding 100 per cent thereof".

In the second paragraph of Clause 32 of the NL the last sentence shall be deleted.

In Clause 33 of the NL "two years" shall be replaced with "four years".

**13 QUALITY ASSURANCE**

The Seller shall have a documented quality assurance system. The Seller shall prepare a quality control programme for the Product. The Buyer shall have the right at any time and on reasonable notice during the period of operation of the Product to have access to the documents and records relating to the Product.

**14 BUYER'S SUPPLIER CODE OF CONDUCT**

The Seller shall at all times comply with the Buyer's Supplier Code of Conduct attached hereto as Annex 9. The Seller's representative shall be responsible for ensuring that all the Seller's concerned personnel are familiar with the Buyer's Supplier Code of Conduct.

The Seller represents, warrants and undertakes to the Buyer on the date hereof as follows:

a) neither the Seller nor, to the best of the knowledge of the Seller, any director, officer, agent, employee, affiliate of or person acting on behalf of the Seller, 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 Seller has instituted and maintains policies and procedures designed to prevent bribery and corruption and the use of child labour and forced labour by the Seller and the group of companies it belongs to (the "**Group**") to and by persons associated with the Seller and the Group;

c) the Seller complies duly with the Supplier Code of Conduct; and

d) the Seller will inform the Buyer 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 Seller shall be considered as a substantial breach of terms and conditions of this Contract entitling the Buyer to terminate this Contract with immediate effect, should the Buyer not, at its sole discretion, consider the breach to be minor. In such case the Seller shall rectify the breach within a time period specified by the Buyer.

The Seller shall at its own cost indemnify the Buyer and hold the Buyer harmless against

a) any cost and expense incurred by the Buyer 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 Buyer 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 Buyer shall, during the validity of this Contract, have the right itself or through the appointment of an independent auditor to inspect the Seller's (or sub-supplier's, as the case may be) premises and such records, as well as such documents as the Buyer 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 Buyer'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 Seller, in addition to any rights the Buyer may have as a consequence of Seller's (or sub-supplier'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 Buyer 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.

## **15 DISPUTES. APPLICABLE LAW**

This Section 15 replaces Clauses 39 and 40 of the NL.

“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 in connection with the Contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.

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

## **16 INDEMNIFICATION FOR DAMAGE CAUSED BY THE PRODUCT**

Seller shall be responsible of the Product like it has been set the Product Liability Directive (85/374/EEC) and the laws of the Republic of Lithuania.

Clause 35 of the NL is deleted and replaced with the following.

“The Seller shall indemnify and hold harmless the Buyer, the Buyer'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:

(a) bodily injury, sickness, disease or death, of any person whatsoever arising out of the design, execution and delivery of the Product and/or the remedying of any defects, unless attributable to the negligence, willful act or breach of the Contract by the Buyer, the Buyer'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 Product and/or the remedying of any defects, and
- (ii) is attributable to any negligence, willful act or breach of the Contract by the Seller, the Seller's personnel, their respective agents, or anyone directly or indirectly employed by any of them.

The Buyer shall indemnify and hold harmless the Seller, the Seller'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, wilful act or breach of the Contract by the Buyer, the Buyer's personnel, or any of their respective agents.”

**17 INSURANCES**

For Seller's information The Buyer effects and maintains an EAR/CAR insurance for the Product. 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 Product with extension to cover the obligations of the warranty period.

**18 INDEMNIFICATION FOR ALLEGED INTELLECTUAL PROPERTY RIGHTS INFRINGEMENTS**

The Seller shall indemnify and hold the Buyer 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 supply of the Product or the use or maintenance thereof.

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

In Clause 36 of the NL 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.

**20 ASSIGNMENT OF THE CONTRACT**

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

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

**22 SIGNATURES OF THE CONTRACT**

This contract has been drawn up in duplicate, one copy for each contracting Party.

**UAB Kauno kogeneracinė jėgainė**

**Oy Konwell Ab**

Place and date: *Vilnius, 31.10.2018*


Place and date: *Espoo, 30.10.2018*

General Director 

Chief Executive Officer

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(Signature) 

Chief Finance Officer

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(Signature) 

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(Signature) 