Engineering, Procurement, Construction & Commissioning Contract

Between

**AB ORLEN LIETUVA**

And

[●]

SRU K-1, K-2 and 10K-1 waste heat utilization for steam production using mechanical vapor recompression (MVR) technology OL/2/000554/25

PART I - Particular CONDITIONS

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| Rev. | 0 | 1 | 2 |
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**TABLE OF CONTENTS**

PARTICULAR CONDITIONS 3

1. CONTRACT DOCUMENTS 3

2. TIME FOR COMPLETION 4

3. PRECEDENCE 5

4. CONTRACT PRICE 6

5. LIQUIDATED DAMAGES FOR DELAY CONTRACT PRICE 7

6. LIMITATION OF LIABILITY …. 8

7. DAMAGES TO THE OWNER’S EQUIPMENT OR PROCESS UNITS 9

8. DEFECT LIABILITY PERIOD 9

9. PARTIES’ REPRESENTATIVES 10

10. MISCELLANEOUS 10

11. ARBITRATION 13

12. GENERAL PROVISIONS 14

PARTICULAR CONDITIONS

This CONTRACT is entered into as of \_\_\_\_\_\_\_\_\_\_\_ by and between:

**Public Company ORLEN Lietuva**, a company incorporated under the laws of Lithuania, with its registered office in Mazeikiu St. 75, Juodeikiai Village LT-89467 Mazeikiai District Lithuania(hereinafter referred to as “**Owner**”), represented by:

Mr. Zbigniew Paszkowicz – General Director

Mr. **Artur Krzysztof Sladowski** – Member of the Board of Directors

and

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a company incorporated under the laws of …, with its registered office in …, entered into [the following register] ….. under number ……, tax identification number …., BDO number …, bank account no…. (hereinafter referred to as “**CONTRACTOR**”), represented by:

Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_– \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_– \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Hereinafter, both the OWNER and the CONTRACTOR are referred to individually as “**PARTY**” or collectively as “**PARTIES**”.

Whereas the CONTRACTOR:

1. has provided the lump-sum price for the execution of the WORKS based on terms and conditions of this CONTRACT acceptable to the OWNER,

2. has full knowledge of engineering, construction and operating of WORKS and is highly qualified and experienced in this area,

3. holds necessary qualifications to perform the WORKS and shall enable the OWNER to exercise all the rights required for its proper operation,

4. upon execution of the CONTRACT, shall only employ and cooperate with reputable Lithuanian or foreign enterprises holding relevant experience and necessary knowledge with respect to the relevant part of the delegated WORKS to be executed for the purpose of the CONTRACT,

5. hereby declares that both the technical level and the quality of the WORKS including technologies, equipment, fittings and materials provided shall be compliant with good practice in engineering, which shall mean such level of diligence, care and prudence as would be expected from a contractor for turnkey projects with appropriate qualifications and experience,

6. undertakes and accepts the ‘turnkey’ execution of the WORKS except as otherwise stated in the Contract,

7. hereby declares that the WORKS has been designed with a design objective of 20 years of operation.

In consideration of the agreements herein contained, the PARTIES hereto agree as follows:

* 1. CONTRACT DOCUMENTS

This CONTRACT shall mean an agreement consisting of the below specified CONTRACT documents and attachments thereto, all of which by this reference are incorporated herein and made part of this CONTRACT:

1. these PARTICULAR CONDITIONS;
2. the following PC ANNEXES:

PC ANNEX 1 SCOPE OF WORK;

PC ANNEX 2 BASIC DESIGN PACKAGE (NOT APPLICABLE);

PC ANNEX 3 DETAILED ENGINEERING DESIGN REQUIREMENTS;

PC ANNEX 4 ORLEN Lietuva TECHNICAL SPECIFICATIONS;

PC ANNEX 5 TIME SCHEDULE;

PC ANNEX 6 PROCESS GUARANTEES AND LIQUIDATED DAMAGES FOR NON-PERFORMANCE S;

PC ANNEX 7 PROJECT EXECUTION PLAN AND ORGANIZATION CHART;

PC ANNEX 8 DETAILED BREAKDOWN OF CONTRACT PRICE;

PC ANNEX 9 PAYMENT SCHEDULE AND LIABILITIES;

PC ANNEX 10 UNIT RATES & TIME RATES;

1. GENERAL CONDITIONS;
2. the following GC ANNEXES:

GC ANNEX 1 COMPANY REGISTRATION CERTIFICATE;

GC ANNEX 2 CHANGE ORDER PROCEDURE;

GC ANNEX 3 VENDORS LIST;

GC ANNEX 4 MECHANICAL COMPLETION, PRE-COMMISSIONING; COMMISSIONING, START-UP; PROVISIONAL ACCEPTANCE;

GC ANNEX 5 INVENTORY & ASSET MANAGEMENT;

GC ANNEX 6 PROFORMA PERFORMANCE BOND;

GC ANNEX 7 LOCAL GENERAL REQUIREMENT AB ORLEN Lietuva;

GC ANNEX 8 SAMPLE FORM OF WORK HANDOWER AND ACCEPTANCE STATEMENT;

GC ANNEX 9 PROFORMA OF SECURITY OF WARRANTY PERIOD;

GC ANNEX 10 REPORT ON ALIENS WORKING IN LITHUANIA;

GC ANNEX 11 SUBCONTRACTOR'S LIST;

GC ANNEX 12 INFORMATION NOTE REGARDING PUBLIC COMPANY ORLEN LIETUVA INFORMATION DISCLOSURE REQUIREMENTS;

GC ANNEX 13 KEY PERSONNEL LIST;

GC ANNEX 14 SUBCONTRACTOR’S OCCUPATIONAL SAFETY AND HEALTH QUESTIONAIRE.

This CONTRACT sets out the entire agreement between the PARTIES with respect to the subject matter thereof and supersedes all prior negotiations, representations and agreements related thereto, whether written or verbal prior to the date of execution of this CONTRACT. The PARTIES hereto agree that any other conditions, including the CONTRACTOR'S own general terms and conditions are explicitly rejected and shall not form part of the CONTRACT, nor apply to the performance of the WORKS. Trade custom and trade usage are superseded by this CONTRACT and shall not be applicable in the interpretation or performance of this CONTRACT. The changes or modifications to the CONTRACT shall be effective only if evidenced in writing and signed by the PARTIES hereto.

* 1. PRECEDENCE
     1. For the purposes of the CONTRACT interpretation, the priority of the documents forming part thereof shall be in accordance with the following sequence:

1. These PARTICULAR CONDITIONS;
2. GENERAL CONDITIONS;
3. PC ANNEX 6 (Process Guarantees and Liquidated Damages for Non-Performance);
4. PC ANNEX 1 (Scope of Work);
5. GC ANNEX 4 (Mechanical Completion, Commissioning, Start-up, Provisional Acceptance);
6. PC ANNEX 5 Time Schedule;
7. GC ANNEX 6 Proforma Performance Bond;
8. GC ANNEX 2 (Change Order Procedure);
9. PC ANNEX 9 Payment schedule and liabilities
10. any other document forming a part of the CONTRACT.
    * 1. In the event of an express conflict between the documents listed above, or between any otherdocuments which constitute a part of this CONTRACT, the CONTRACTOR shall follow the order of precedence as specified above unless a different precedence is specifically determined by the OWNER and agreed by the PARTIES in writing. In the event of an express conflict within the same ANNEX/document, the PARTIES shall agree in good faith the way of relevant WORKS performance. In case the PARTIES fail to agree within reasonable time, the CONTRACTOR shall follow the order of precedence determined by the OWNER. Such OWNER’s determination shall not constitute grounds for initiating the CHANGE procedure in accordance with Article 17 (*Changes*) of the GENERAL CONDITIONS, nor shall it entitle the CONTRACTOR to any additional payment and/or EOT under Article 18 (*Claims*) of the GENERAL CONDITIONS.
    1. TIME FOR COMPLETION

The CONTRACTOR shall complete the WORKS: not later than XXX calendar days from EFFECTIVE DATE.

(TIME FOR COMPLETION as per Article 1 of the General Conditions).

3.1. Schedule of performance and completion of all the WORKS shall be as set in PC ANNEX 5 *(Time Schedule)*. Anything in the TIME SCHEDULE shall not change or modify the TIME FOR COMPLETION.

3.2. The CONTRACTOR shall commence performance of the WORKS at the EFFECTIVE DATE and shall complete the WORKS strictly in accordance with milestones (hereinafter referred to as Milestones) specified in PC ANNEX 5 *(Time Schedule).*

3.3. In case CONTRACTOR fails to achieve all or any of determined milestones as specified in PC ANNEX 5 *(Time Schedule)* within indicated terms and conditions, the OWNER shall be entitled to apply liquidated damages as stated in Article No. 21 of CONTRACT GENERAL CONDITIONS and Article 5 of CONTRACT PARTICULAR CONDITIONS.

* 1. CONTRACT PRICE
     1. The CONTRACT PRICE for the execution of the PLANT (i.e. full, complete and proper performance by the CONTRACTOR of all the WORKS and compliance with all terms and conditions of this CONTRACT) is: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[[1]](#footnote-1) (in words: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_), exclusive of VAT.
     2. Except as otherwise stated in the CONTRACT, the CONTRACTOR confirms that:
        1. it has carefully examined all of the terms and conditions of the Contract as well as all the Contract’S documents, including all ANNEXES, attachments, specifications and the like concerning the Works, and has fully acquainted itself with the SITE and all local conditions relevant to the Works and their surroundings;
        2. it has satisfied itself as to the correctness and sufficiency of the CONTRACT PRICE;
        3. the CONTRACT PRICE covers all the CONTRACTOR’S obligations under the CONTRACT and all things necessary for the proper design, execution and completion of the WORKS and the remedying of any DEFECTS therein; and
        4. by signing the CONTRACT, it has accepted total responsibility for having foreseen all difficulties and cost of successfully completing the WORKS within the TIME FOR COMPLETION and that the CONTRACT PRICE shall not be adjusted to take account of any unforeseen difficulties or costs.
     3. The PARTIES agree that the CONTRACT PRICE shall not be increased in any case, including inter alia extension of the CONTRACT, fluctuation in the rate of exchange of any currency to the Euro, etc. If the amount of actually performed WORKS is less than specified in PC ANNEX 1 (Scope of WORKS), the CONTRACT PRICE shall be recalculated to be proportionate to the actually completed scope of WORKS.
     4. The currency of the CONTRACT shall be Euro (€).
  2. LIQUIDATED DAMAGES FOR DELAY
     1. Unless the OWNER notifies otherwise, the CONTRACTOR shall implement every determined MILESTONE of PC ANNEX 5 *(Time Schedule)* within indicated terms and conditions.
     2. The CONTRACTOR shall pay to the OWNER the following liquidated damages for delay in achieving KEY MILESTONES as provided in PC ANNEX 9 *(Payment Schedule and Liabilities)*.
     3. The liquidated damages for delay in achieving KEY MILESTONES except for the liquidated damages for Technical Design preparation and State Construction Permit issue as specified in PC ANNEX 9 *(Payment Schedule and Liabilities)* will not be due in 100% (in words: one hundred percent) if the MECHANICAL COMPLETION is timely achieved within the TIME FOR COMPLETION thereof.
     4. Liquidated damages for delay in completion of KEY MILESTONES may be charged by the OWNER at any time after the occurrence of the delay entitling the OWNER to charge such liquidated damages.

In the case referred to in Clause 5.4, the OWNER shall:

* + - 1. withdraw from charging such liquidated damages if such have not yet been charged and collected; or
      2. return such liquidated damages to the CONTRACTOR if such have been already charged and collected.

The return of the liquidated damages will be due within thirty (30) days from the date of the execution of the PROVISIONAL ACCEPTANCE CERTIFICATE.

The PARTIES acknowledge that at the time when such liquidated damages for delay are charged, they are due to the OWNER; therefore, the CONTRACTOR is not entitled to any interest on charged and collected liquidated damages which are returned later under this Clause 5.5.2.

* + 1. In the event of a delay in the timely remedy of LIMITING DEFECTS under the WARRANTY obligations indicated in Article 20.4 of the GENERAL CONDITIONS, the CONTRACTOR will pay to the OWNER liquidated damages in the amount of 0.1% (in words: one tenths of a per cent) of the total CONTRACT PRICE for each full week of delay.
    2. In the event of a delay in the timely remedy of DEFECTS (which are not LIMITING DEFECTS) under the WARRANTY obligations indicated in Article 20.4 of the GENERAL CONDITIONS, the CONTRACTOR will pay to the OWNER liquidated damages in the amount of 10 000 EUR for each full week of delay until the day of remedying the DEFECT.
    3. The CONTRACTOR agrees that all sums payable by the CONTRACTOR to the OWNER as liquidated damages pursuant in PARTICULAR CONDITIONS may be deducted by the OWNER from the price to be paid to the CONTRACTOR hereunder provided that the CONTRACTOR has refused to pay such liquidated damages within thirty (30) calendar days from the date of notification by the OWNER.
  1. LIMITATION OF LIABILITY
     1. The CONTRACTOR’S maximum aggregate liability towards the OWNER for any claims arising out of the CONTRACT is limited to 50% (in words: fifty percent) of the total CONTRACT PRICE. The said limit of the CONTRACTOR’S maximum aggregate liability does not include:
        1. costs and liability of the CONTRACTOR resulting from the performance of its obligations under the WARRANTY;
        2. liability of the CONTRACTOR resulting from Article 25 (*Intellectual Property Rights*) of the GENERAL CONDITIONS;
        3. liability of the CONTRACTOR resulting from Article 23 (*Indemnities*) of the GENERAL CONDITIONS;
        4. compensation of the OWNER from the insurance procured by the CONTRACTOR under the CONTRACT;
        5. liability for loss and damage caused by gross negligence or wilful misconduct of the CONTRACTOR/SUBCONTRACTOR or the CONTRACTOR’S/SUBCONTRACTOR’S PERSONNEL;
        6. liability of the CONTRACTOR for achieving the MINIMUM PROCESS GUARANTEES; and
        7. any other exclusions specified in the GENERAL CONDITIONS.

For the avoidance of doubt, the establishing of the above indicated maximum aggregate liability limit does not mean that the CONTRACTOR is liable only for correct performance of 50% (in words: fifty per cent) of the CONTRACT scope, and in particular the CONTRACTOR is obliged to perform the CONTRACT in a correct manner, as provided in the CONTRACT.

* + 1. The aggregate amount of the liquidated damages for delay in achieving KEY MILESTONES resulting from Clause 6 hereof payable by the CONTRACTOR is limited to 40% (in words: forty percent) of the total CONTRACT PRICE.
    2. The aggregate amount of the liquidated damages for a failure to achieve the PROCESS GUARANTEES specified in PC ANNEX 6 (*Process Guarantees and Liquidated Damages* *for Non-Performance*) payable by the CONTRACTOR is limited to 30% (in words: thirty percent) of the total CONTRACT PRICE.
    3. The aggregate amount of the liquidated damages for a failure to timely perform the WARRANTY obligations payable by the CONTRACTOR is limited to 10% (in words: ten percent) of the total CONTRACT PRICE.
  1. DAMAGES TO THE OWNER’S EQUIPMENT OR PROCESS UNITS
     1. In case of any damage made by CONTRACTOR to the property of the OWNER (equipment, materials, process units etc.), CONTRACTOR shall reimburse all actual costs and damages. In case a mutually acceptable solution is not found, the OWNER has a right without limitation to withhold payments, deduct the amount of incurred damages, etc. for compensation of occurred damages by the fault of CONTRACTOR.

**8. DEFECTS LIABILITY PERIOD**

8.1. DEFECTS LIABILITY PERIOD shall mean the periods for notifying defects in the WORKS or PLANT or a part thereof (with any extension under Article 20 and 21 of GENERAL CONDITIONS), calculated from the date of issue of the PROVISIONAL ACCEPTANCE CERTIFICATE. They are as follows:

(a) for whole WORKS, MATERIAL(S), EQUIPMENT – a period of 5 (five) years, however, in any case not shorter than the period which is set by the suppliers supplying materials and equipment for the WORKS;

(b) for apparent defects of the structures – 5 (five) years;

(c) for hidden defects (parts of the WORKS that are hidden from view) – 10 (ten) years;

(d) for intentionally concealed defects – 20 (twenty) years.

9. PARTIES’ REPRESENTATIVES

9.1. The PARTIES hereby appoint the following persons as their representatives:

OWNER’S REPRESENTATIVE

Mr. [●]

Project Manager

Tel: [●]

Mobile: [●]

Email: [●]

CONTRACTOR’S REPRESENTATIVE

Mr. [●]

Project Manager

Tel: [●]

Mobile: [●]

Email: [●]

9.2. CHANGES to the representatives of the PARTIES named in the CONTRACT shall not constitute a change of the CONTRACT and shall not require an amendment to remain valid, it is only required to notify the other PARTY in writing.

9.3. The OWNER will report DEFECTS until the end of the DEFECTS LIABILITY PERIOD to telephone number [●], or e-mail address [●]. Such notification made by phone will be immediately confirmed by a notification sent to the e-mail address.

10. MISCELLANEOUS

**10.1. LICENSOR AND LICENCE AGREEMENT (NOT APPLICABLE)**

**10.2. OWNER´S PERMITS (where applicable)**

The OWNER shall obtain on its own behalf, but on the basis of the input documentation provided to the OWNER by the CONTRACTOR, the administrative decisions (OWNER'S PERMITS) as provided in PC Annex 1 *(Scope of WORK)*

The OWNER shall not be obliged to verify input documentation for the OWNER'S PERMITS provided by the CONTRACTOR. The CONTRACTOR shall be liable for any defects in such input documentation and shall make good such defects promptly after they are identified (but not later than within 10 BUSINESS DAYS from receipt of the written notice from the OWNER). The CONTRACTOR shall provide the OWNER with full support within proceedings to obtain the OWNER'S PERMITS.

The OWNER shall not be liable for delay in obtaining the OWNER'S PERMITS caused by the COMPETENT AUTHORITIES or any third parties, unless such delay is caused by reasons attributable to the OWNER (such as an incomplete application or documentation submitted to the COMPETENT AUTHORITIES). In the case of a delay in performance of the WORKS caused by a delay in obtaining the OWNER'S PERMITS attributable to the OWNER, the CONTRACTOR shall give notice to the OWNER and shall be entitled, subject to Article 17 of the GENERAL CONDITIONS, to an extension of time (EOT) for any such delay.

For the avoidance of doubt, in the case of a delay in performance of the WORKS caused by a delay in obtaining the OWNER'S PERMITS attributable to the CONTRACTOR, the CONTRACTOR shall not be entitled to any additional payment and/or extension of time as a result of such delay in obtaining the OWNER'S PERMITS.

**10.3 PERFORMANCE BOND**

Within thirty (30) days from the EFFECTIVE DATE the CONTRACTOR (at his cost) shall deliver to the OWNER an unconditional, irrevocable PERFORMANCE BOND for proper performance of the CONTRACT for an amount equal to 10% (in words: ten percent) of the net amount of the CONTRACT PRICE, compliant with the terms and conditions as set forth in Article 13 of the GENERAL CONDITIONS.

In accordance with Article 13 of the GENERAL CONDITIONS, the CONTRACTOR shall obtain (at his cost) and deliver to the OWNER SECURITY OF WARRANTY PERIOD for proper performance of its warranty obligations under Article 20 (Warranty), in the amount equal to 5 % (five percent) of the CONTRACT PRICE.

**10.4. LICENSOR´S EQUIPMENT (IF APPLICABLE)**

The scope and delivery schedule of the LICENSOR’S EQUIPMENT to be procured by the CONTRACTOR are specified in PC ANNEX 1 (Scope of Work).

The LICENSOR’S EQUIPMENT shall be received and stored at the SITE by the CONTRACTOR. The CONTRACTOR shall carry out the WORKS using the LICENSOR’S EQUIPMENT in accordance with the CONTRACT and LICENSOR’S requirements.

**10.5. LANGUAGE OF THE OWNER’S PROVIDED INFORMATION AND ANNEXES**

10.5.1. Regardless of the provisions of the CONTRACT on the language of correspondence between the PARTIES and the language of the TECHNICAL DOCUMENTATION, the OWNER’S PROVIDED INFORMATION and any changes thereto, may be - at the OWNER’s sole discretion - provided to the CONTRACTOR in the English language except the documentation required for any regulatory approval that must be in Lithuanian language.

10.5.2. The PARTIES agree that certain ANNEXES and/or parts to it may be prepared solely in the Lithuanian language or in the bilingual: Lithuanian/English version. Whenever the ANNEX is in two languages, English version will prevail.

* 1. ARBITRATION

* + 1. **Any dispute, arising out of or relating to this CONTRACT, shall be finally settled by arbitration in the Vilnius Court of Commercial Arbitration in accordance with its Rules of Arbitration.**  
       All procedural documents shall be served via PARTIE’s e-mails indicated in Article 9.1 of PARTICUALR CONDITIONS. The number of arbitrators shall be 3. The place of arbitration shall be Vilnius. The language of arbitration shall be English. The law of Lithuania shall be applicable to the dispute.
  1. GENERAL PROVISIONS
     1. This Contract sets out the entire agreement between the parties with respect to the subject matter thereof and supersedes all prior negotiations, representations and agreements related thereto, whether written or verbal, prior to the date of execution of this Contract. The Parties hereto agree that any other conditions, including the Contractor's own general terms and conditions are explicitly rejected and shall not form part of the Contract or apply to the performance of the Works. Trade custom and trade usage are superseded by this Contract and shall not be applicable in the interpretation or performance of this Contract.
     2. Any change or modification to the CONTRACT must be made in WRITTEN FORM and signed by the PARTIES hereto in order to be valid, subject to the possibility for the OWNER of exercising the OPTION RIGHT.
     3. This Agreement may be executed in one of the following ways:

12.3.1. The PARTIES agree that the CONTRACT, its ANNEXES, amendments and other CONTRACT performance documents may be signed with qualified electronic signature. Signing can be done locally in the PARTIES' computers or in the PARTIES' systems using an electronic document format agreed by the PARTIES.

The PARTIES agree that the CONTRACT, its ANNEXES, amendments and other contract performance documents may not be signed and validity/legality of a qualified electronic signature may not be verified by uploading such to third party information systems or websites.

12.3.2. Signed with physical signatures and exchanged by the PARTIES by means of electronic communication. The PARTIES agree not to exchange the originals of the Agreement. This Agreement and its amendments or modifications are made in 1 (one) counterpart. **IN WITNESS WHEREOF**, the duly authorised representatives of the parties have executed this Contract, on the date first before written.

|  |  |  |  |
| --- | --- | --- | --- |
| **OWNER** | | **CONTRACTOR** | |
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| Name: |  | Name: |  |
| Title: |  | Title: |  |
| Date: |  | Date: |  |
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| Date: |  | Date: |  |

1. [↑](#footnote-ref-1)