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/2/000554/25OL*

PART II - GENERAL CONDITIONS

|  |  |  |  |
| --- | --- | --- | --- |
| Rev. | 0 | 1 | 2 |
| Date | 2025-05-27 |  |  |

**Table of Contents**

[1. DEFINITIONS, INTERPRETATION, NOTICES AND CORRESPONDENCE 3](#_Toc187872394)

[2. GENERAL SUBJECT OF THE CONTRACT 13](#_Toc187872395)

[3. OBLIGATIONS OF THE CONTRACTOR 16](#_Toc187872396)

[4. OBLIGATIONS AND RIGHTS OF THE OWNER 24](#_Toc187872397)

[5. TECHNICAL DOCUMENTATION 25](#_Toc187872398)

[6. EQUIPMENT, MATERIALS AND WORKMANSHIP 29](#_Toc187872399)

[7. PROJECT MANAGEMENT AND EXECUTION 35](#_Toc187872400)

[8. MILESTONE ACCEPTANCE PROCEDURES 37](#_Toc187872401)

[9. PARTIES’ REPRESENTATIVES 39](#_Toc187872402)

[10. CONTRACTOR'S PERSONNEL 41](#_Toc187872403)

[11. CONTRACT PRICE 43](#_Toc187872404)

[12. PAYMENT CONDITIONS 45](#_Toc187872405)

[13. PERFORMANCE BOND/ SECURITY OF WARRANTY PERIOD 48](#_Toc187872406)

[14. TAXES 50](#_Toc187872407)

[15. SUBCONTRACTORS 53](#_Toc187872408)

[16. CHANGES AND VARIATIONS TO THE WORKS 56](#_Toc187872409)

[17. CLAIMS 59](#_Toc187872410)

[18. MECHANICAL COMPLETION, PRE-COMMISSIONING, COMMISSIONING AND START-UP 60](#_Toc187872411)

[19. STABLE OPERATION, PERFORMANCE TESTS, PROVISIONAL ACCEPTANCE AND FINAL ACCEPTANCE 63](#_Toc187872412)

[20. WARRANTY 67](#_Toc187872413)

[21. LIABILITY, LIMITATION OF LIABILITY AND LIQUIDATED DAMAGES 71](#_Toc187872414)

[22. CONFIDENTIALITY 77](#_Toc187872415)

[23. INDEMNITIES AND INSURANCE 79](#_Toc187872416)

[24. FORCE MAJEURE 82](#_Toc187872417)

[25. INTELLECTUAL PROPERTY RIGHTS 84](#_Toc187872418)

[26. SUSPENSION 92](#_Toc187872419)

[27. TERMINATION OF THE CONTRACT 92](#_Toc187872420)

[28. GOVERNING LAW AND DISPUTE RESOLUTION 96](#_Toc187872421)

29. PERSONAL DATA PROTECTION 96

30. ANTI–CORRUPTION 96

31. IMPLEMENTATION OF INTERNATIONAL RESTRICTIVE MEASURES AND SANCTIONS 97

[32. GENERAL PROVISIONS 98](#_Toc187872422)

* 1. DEFINITIONS, INTERPRETATION, NOTICES AND CORRESPONDENCE
     1. Definitions

Unless the context otherwise requires, the capitalised terms in the CONTRACT which are not defined otherwise shall have the following meanings:

* + - 1. **ACCEPTABLE GUARANTOR** shall mean a bank in relation to which the CONTRACTOR has obtained the OWNER’S written consent.
      2. **AFFECTED PARTY** shall have the meaning specified in Article 24.1.
      3. **ANNEX** shall mean the relevant annex to the CONTRACT listed in the PARTICULAR CONDITIONS and/or GENERAL CONDITIONS, as may subsequently be amended or added by the PARTIES, forming an integral part of the CONTRACT.
      4. **BASIC DESIGN PACKAGE** shall mean the LICENSOR’S technical documentation, and other information as specified in PC ANNEX 2 (*Basic Design Package*) (if applicable).
      5. **BATTERY LIMITS** shall mean the battery limits for the PLANT as set forth in PC ANNEX 1 (*Scope of Work*).
      6. **BUILDING PERMIT** shall mean any final and valid administrative decision(s) – the building permit(s) for the PLANT, issued in accordance with the CONSTRUCTION LAW, which will be obtained by the CONTRACTOR on behalf of the OWNER, as well as any amendment of such decision(s).
      7. **BUILDING PERMIT DESIGN** shall mean each building permit design for the PLANT and/or any part thereof pursuant to the CONSTRUCTION LAW and other STATUTORY REQUIREMENTS, based on which the BUILDING PERMIT(S) for the PLANT and/or any part thereof will be issued, including all changes to such design introduced until the PROVISIONAL ACCEPTANCE CERTIFICATE issuance, or the building permit design for the PLANT and/or any part thereof, which will be the basis for obtaining any replacement BUILDING PERMIT(S) for the PLANT and/or any part thereof.
      8. **BUSINESS DAY** shall mean any calendar day other than a Saturday or Sunday, or a day which is a public holiday in Lithuania.
      9. **CAPITAL SPARE PARTS** shall mean spare parts for critical EQUIPMENT (especially non-duplicated equipment), essential to the PLANT, which, although acknowledged to have a long life or a small chance of failure, would cause a long shutdown of equipment, because it would take a long time to deliver and/or get a replacement for such parts for critical EQUIPMENT as listed in PC ANNEX 1*(Scope of Work)*
      10. **CHANGE** shall mean any variation, alteration, addition, omission or modification to the scope of the WORKS carried out in accordance with Article 16 (*Changes*).
      11. **CIVIL CODE** shall mean Civil Code of the Republic of Lithuania, of July 18, 2000, Law No. VIII-1864.
      12. **COMMISSIONING** shall mean all the works and activities as described in GC ANNEX 4 (*Mechanical Completion, Pre-Commissioning, Commissioning, Start-Up, Provisional Acceptance*).
      13. **COMPETENT AUTHORITY** shall mean each applicable governmental or local authority, or any other body exercising powers under STATUTORY REQUIREMENTS, and in particular: regulatory bodies, certification authorities, environmental protection authorities, technical inspection bodies, construction supervision authorities, sanitary inspection authorities, public road operators, operators of power, gas, water and/or sewage networks, and municipal and hazardous waste collection companies.
      14. **CONFIDENTIAL INFORMATION** shall have the meaning specified in Article 22 (*Confidentiality*).
      15. **CONSTRUCTION LAW** shall mean the Republic of Lithuania Law on Construction, of 19 March 1996, Law No. I-1240.
      16. **CONSTRUCTION WORKS** shall mean construction works in the meaning of the CONSTRUCTION LAW, covered by the scope of the WORKS.
      17. **CONTRACT** shallmean the agreement between the OWNER and the Contractor for the execution of the PLANT (i.e. full, complete and proper performance of the Works), incorporating the GENERAL CONDITIONS and ANNEXES, PARTICULAR CONDITIONS and ANNEXES, including any subsequent amendments made in accordance with the CONTRACT.
      18. **CONTRACTOR** shallmean the person(s) or legal entity named as the “CONTRACTOR” in the PARTICULAR CONDITIONS and its legal successors or permitted assigns.
      19. **CONTRACTOR'S PERMITS** shallmean all administrative decisions, permits, arrangements, consents, approvals, representations and other documents, to be final and valid, required pursuant to the STATUTORY REQUIREMENTS in connection with the engineering, procurement, construction, pre-commissioning, start-up, commissioning, operation, maintenance and/or overhauls of the PLANT or any part thereof, in connection with the MATERIALS and/or EQUIPMENT, and/or all other WORKS and/or any part thereof, excluding solely the OWNER’S PERMITS.
      20. **CONTRACTOR’S PERSONNEL** shall mean jointly all the personnel of the CONTRACTOR, in particular the KEY PERSONNEL, and of each SUBCONTRACTOR, engaged in connection with the performance of the CONTRACTOR’S obligations resulting from the CONTRACT.
      21. **CONTRACTOR'S REPRESENTATIVE** shallmean the person appointed by the CONTRACTOR to act as its representative indicated in the PARTICULAR CONDITIONS, or another person nominated by the CONTRACTOR pursuant to GC Article 9 (*Parties’ Representatives*).
      22. **CONTRACTOR’S TOOLS** shall mean all machines, equipment, tools, materials, software and all other means necessary for the proper performance of the CONTRACTOR’S obligations resulting from the CONTRACT, which do not constitute, and are not intended to constitute, part of the PLANT.
      23. **CONTRACT PRICE** shall mean the net lump sum remuneration of the CONTRACTOR for complete performance of its obligations resulting from the CONTRACT, specified in the PARTICULAR CONDITIONS, which shall not be subject to any adjustments, under the Contract.
      24. **copyright law** shall have the meaning specified in Article 26 (*Intellectual Property Rights*).
      25. **COST** shall mean all expenditure reasonably incurred (or to be incurred) by the CONTRACTOR in performing the CONTRACT, whether on or off the SITE, justified and properly documented, the calculation of which shall be based on the price estimate prepared by the CONTRACTOR in accordance with PC ANNEX 10 (*Unit and Time Rates*), unless otherwise agreed in the GENERAL CONDITIONS or PARTICULAR CONDITIONS.
      26. **CURRENT SCHEDULE** shall mean the schedule as set forth in Article 7.4 hereof.
      27. **defect** shall mean every non-compliance of the TECHNICAL DOCUMENTATION, DELIVERIES, WORKS, PLANT and/or any of their constituent parts with any requirement of the CONTRACT, including in particular physical defect or legal defect and the failure of the PLANT or any part thereof to achieve and/or maintain the technical parameters provided for by the CONTRACT, identified during performance stage of the CONTRACT and/or DEFECTS LIABILITY PERIOD.
      28. **Defects LIABILITY Period** shall mean the entire period for notifying DEFECTS under the WARRANTY, calculated from the date of issue of the PROVISIONAL ACCEPTANCE CERTIFICATE until the end of the longest of the defects liability periods specified in the PARTICULAR CONDITIONS, as may be extended in accordance with Article 20 (*Warranty*).
      29. **DELIVERIES** shall meanjointly MATERIALS and EQUIPMENT**.**
      30. **DETAILED DESIGNS** shall mean the detailed designs of the PLANT and/or any part thereof, in all disciplines, enabling the procurement of EQUIPMENT and/or MATERIALS prefabrication, construction, erection and installation of the PLANT and/or any part thereof as well as software implantation for the PLANT control and interlock systems, without the necessity to obtain any further details, in particular all documents as specified in PC ANNEX 1 *(Scope of Work)* to be provided by the CONTRACTOR to the OWNER under the CONTRACT, prepared and/or certified by person authorised to design under the STATUTORY REQUIREMENTS.
      31. **DETAILED TIME SCHEDULE** shall mean the schedule as set forth in Article 7.3 hereof.
      32. **EFFECTIVE DATE** shallmean the date on which the CONTRACT is signed on behalf of the last PARTY to put its signature on it.
      33. **EOT** or **EXTENSION OF TIME** shall mean an extension of the TIME(S) FOR COMPLETION.
      34. **EQUIPMENT** shall mean all machinery, apparatus and all other equipment and parts (excluding MATERIALS) to be provided by the CONTRACTOR under the terms of the CONTRACT and intended to form or forming part of the permanent works (including any VENDOR packages), as required for the design, execution and completion of the PLANT and the remedying of any defects therein.
      35. **EXISTING PLANT** shall mean the existing units, systems, facilities and interconnections, operated by the OWNER.
      36. **FINAL ACCEPTANCE** shall mean that the WARRANTY obligations related to DEFECTS LIABILITY PERIODS have been completed in accordance with the CONTRACT and the OWNER has issued the FINAL ACCEPTANCE CERTIFICATE pursuant to GC Article 19 (*Stable Operation, Performance Tests, Provisional Acceptance and Final Acceptance*).
      37. **FINAL ACCEPTANCE CERTIFICATE** shall mean the certificate(s) issued by the OWNER pursuant to the provisions of GC Article 19 (*Stable Operation,* *Performance Tests, Provisional Acceptance and Final Acceptance*), constituting formal acceptance by the OWNER that all the CONTRACTOR’S obligations under this CONTRACT have been fulfilled.
      38. **FORCE MAJEURE** shall have the meaning specified in Article 24 (*Force Majeure*).
      39. **GENERAL CONDITIONS** shall mean this document entitled “GENERAL CONDITIONS”.
      40. **HSE** shall mean all health, safety, welfare and environmental protection regulations, including those specified in GC ANNEX 7 (*Local General Requirements of AB ORLEN Lietuva*).
      41. **HANDOWER ACCEPTANCE STATEMENT** shall meana document signed by authorised representatives of both PARTIES confirming the full and/or partial execution of the PLANT/given WORKS, including in particular MILESTONES, as specified in this document, constituting a basis for the CONTRACTOR to issue an invoice for such PAYMENT MILESTONE, executed in the form and manner established in GC ANNEX 8 (*Sample form of work Handover and Acceptance Statement)*
      42. **INTELLECTUAL PROPERTY RIGHTS** shall have the meaning specified in GC Article 25 (*Intellectual Property Rights*).
      43. **IP WORKS** shall have the meaning specified in GC Article 25 (*Intellectual Property Rights*).
      44. **KEY MILESTONE** shall mean a MILESTONE to be completed within TIME(S) FOR COMPLETION in relation to which the OWNER in the event of a delay in its completion is entitled to charge liquidated damages in the amount specified in the PARTICULAR CONDITIONS.
      45. **KEY PERSONNEL** shall mean the members of the CONTRACTOR’S PERSONNEL listed in GC ANNEX 13 (*Key Personnel List*).
      46. **LICENCE AGREEMENT** (if applicable)shall mean the agreement concluded between the LICENSOR and the OWNER under which the OWNER is granted the right to use intellectual property rights of the LICENSOR relating to the PROCESS, including the right to use BASIC DESIGN PACKAGE.
      47. **LICENSOR** (if applicable)shall mean (company name) granting the OWNER the right to use the intellectual property rights relating to the PROCESS.
      48. **LICENSOR’S EQUIPMENT** shall mean the equipment and materials delivered by the LICENSOR (if any) specified in the PARTICULAR CONDITIONS.
      49. **LIMITING DEFECT** shall mean a DEFECT identified during performance stage of the CONTRACT and/or DEFECTS LIABILITY PERIOD which: (i) remains to be performed or corrected by the CONTRACTOR to complete the WORKS in accordance with the CONTRACT and which prevents or significantly impedes the proper commencement of the subsequent phase of the CONTRACT performance and as a result is preventing the OWNER to accept the relevant PAYMENT MILESTONEas further described in PC ANNEX 9 *(Payment Schedule and Liabilities),* and/or (ii) prevents and/or would prevent, the correct operation of the PLANT and/or any part thereof in accordance with its intended use, up to the parameters specified in the TECHNICAL DOCUMENTATION, and/or in compliance with the PROCESS GUARANTEES. In both cases it concerns DEFECTS which in particular:

affect the safety, availability or reliability of the PLANT (or any part thereof);

prevent the PLANT and/or any portion of PLANT from being pre commissioned, commissioned, started up, tested or used for the purposes as described in this CONTRACT in accordance with all STATUTORY REQUIREMENTS, OWNER’S PERMITS and/or CONTRACTOR’S PERMITS or to be legally put into commercial operation;

affect the achieving of the PERFORMANCE GUARANTEES by the PLANT, including if operation is technically feasible, but would lead to a breach of any applicable STATUTORY REQUIREMENTS and/or CONTRACTOR’S PERMITS and/or OWNER’S PERMITS.

* + - 1. **MATERIAL(S)** shallmean substances and/or materials of any type to be provided by the CONTRACTOR under the terms of the CONTRACT, intended to form or forming part of the permanent works, including the first fillings like oils and/or greases.
      2. **MECHANICAL COMPLETION** shall mean the condition achieved for the PLANT (unit, system or any part thereof) when it has been constructed in accordance with the Contract, all relevant technical documentation and STATUTORY REQUIREMENTS and when all relevant works and activities defined in PC ANNEX 1 (*Scope of Work*) and GC ANNEX 4 (*Mechanical Completion, Pre-Commissioning, Commissioning, Start-Up, Provisional Acceptance*) have been carried out by the Contractor, except for the items put on a PUNCH LIST to be performed afterwards.
      3. **MECHANICAL COMPLETION CERTIFICATE** shall mean the certificate signed by authorised representatives of both PARTIES in accordance with Article GC 18.2.4.
      4. **MILESTONE** shall mean each stage of the WORKS specified in PC ANNEX 5 (*Time Schedule*) and/or in DETAILED TIME SCHEDULE, the acceptance of which by the OWNER is required in accordance with the CONTRACT.
      5. **MINIMUM PROCESS GUARANTEES** shall mean the minimum parameters to be achieved by the PLANT that are guaranteed by the CONTRACTOR, specified in PC ANNEX *6 (Process Guarantees and Liquidated Damages for Non-Performance).*
      6. **OPERATING MANUALS** shall mean the set of instructions to be provided by the CONTRACTOR for the operation of the PLANT as specified in PC Annex 1 *(Scope of Work)*.
      7. **OWNER** shall mean the person(s) or legal entity named as the “OWNER” in the PARTICULAR CONDITIONS and its legal successors or permitted assigns.
      8. **OWNER’S PROVIDED INFORMATION** shall mean any and all documents, information, data and knowledge relating to the PLANT, or any part thereof, which is made available to the CONTRACTOR by or on behalf of the OWNER, whether before or after the EFFECTIVE DATE, and whether in relation to the CONTRACT or in relation to another agreement between the OWNER and the CONTRACTOR, and/or performance thereof.
      9. **OWNER’S REPRESENTATIVE** shall mean the person(s) appointed by the OWNER to act as its representative indicated in the PARTICULAR CONDITIONS nominated by the OWNER pursuant to Article 9 (*Parties’ Representatives*).
      10. **PARTICULAR CONDITIONS** shall mean the document entitled “PARTICULAR CONDITIONS”, forming part of the CONTRACT.
      11. **PARTY** or **PARTIES** shall mean individually or collectively the OWNER and/or the CONTRACTOR, as the context requires.
      12. **PAYMENT MILESTONE** shall mean each stage of the WORKS specified in PC ANNEX 9 (*Payment Schedule and Liabilities*), the acceptance of which by the OWNER entitles the CONTRACTOR to an appropriate part of the CONTRACT PRICE.
      13. **PAYMENT SCHEDULE** shall mean thepayment schedule specified in PC ANNEX 9 (*Payment Schedule and Liabilities*).
      14. **PERFORMANCE BOND** shall mean each of the document(s) constituting security for the proper performance of the CONTRACT by the CONTRACTOR, specified in Article 13.1. (*Performance Bond*).
      15. **SECURITY OF WARRANTY PERIOD FOR THE DEFECTS LIABILITY PERIOD** shall mean each of the document(s) constituting security for the proper performance of the CONTRACTOR’S obligations during the DEFECTS LIABILITY PERIOD , as referred to in Article 13.2.
      16. **PERFORMANCE TESTS** shall mean the tests to be carried out in accordance with GC Article 19 (*Stable Operation,* *Performance Tests, Provisional Acceptance and Final Acceptance*), the purpose of which is to confirm performance and the ability of the PLANT to achieve and maintain PROCESS GUARANTEES.
      17. **PLANT** shall mean Sulphur Recovery Unit, the facility and all other elements necessary for its correct operation to be built and located at the OWNER’S premises and to be owned and operated by the OWNER, as defined in this CONTRACT (in particular in PARTICULAR CONDITIONS, GENERAL CONDITIONS, ANNEXES).
      18. **PMC** or **PROJECT MANAGEMENT CONTRACTOR** shall mean an entity or a person (if any) acting for the OWNER and notified as such to the CONTRACTOR, providing technical and/or management advisory services to the OWNER.
      19. **PRE-COMMISSIONING** shall mean all the works and activities to be carried out by the CONTRACTOR just after the completion of construction / assembly in order to prepare for safe COMMISSIONING as described in GC ANNEX 4 (*Mechanical Completion, Pre-Commissioning, Commissioning, Start-Up, Provisional Acceptance*), in particular checking the design conformity, checking the status of electrical, mechanical and instrument installations, as well as flushing, cleaning and drying activities.
      20. **PROCESS** shall mean the process related to a PLANT. The rights to use the PROCESS are acquired directly by the OWNER on the basis of the LICENCE AGREEMENT.
      21. **PROCESS GUARANTEES** shallmean the performance parameters to be achieved by the PLANT that are guaranteed by the CONTRACTOR, specified in PC ANNEX 6 (*Process Guarantees and Liquidated Damages for Non-Performance*).
      22. **PROVISIONAL ACCEPTANCE** shall mean that the WORKS have been completed in accordance with the CONTRACT and the OWNER has issued the provisional acceptance certificate pursuant to Article 19 (*Stable Operation,* *Performance Tests, Provisional Acceptance and Final Acceptance*).
      23. **PROVISIONAL ACCEPTANCE CERTIFICATE** shall mean the certificate issued by the OWNER pursuant to Article 19 (*Stable Operation,* *Performance Tests, Provisional Acceptance and Final Acceptance*).
      24. **PUNCH LIST** shall mean a list of items that remain to be performed or corrected to complete the WORKS in accordance with the CONTRACT, which are apparent at or during activities aiming at achieving MECHANICAL COMPLETION, PRE-COMMISSIONING, COMMISSIONING, PROVISIONAL ACCEPTANCE and/or FINAL ACCEPTANCE (as applicable), other than for those obligations which are expressly set out in the CONTRACT to be performed after MECHANICAL COMPLETION, PRE-COMMISSIONING COMMISSIONING, PROVISIONAL ACCEPTANCE and/or FINAL ACCEPTANCE (as applicable), but shall not include any item, which may:

affect the safety, availability or reliability of the PLANT (or any part thereof);

materially affect the achieving of the PROCESS GUARANTEES by the PLANT (or any part thereof); and/or

prevent the PLANT from being started up, or used for the purposes as described in this CONTRACT in accordance with all STATUTORY REQUIREMENTS, OWNER’S PERMITS and CONTRACTOR’S PERMITS or legally placed into commercial operation.

* + - 1. **READY FOR COMMISSIONING** shall mean that the given part of the PLANT is ready for COMMISSIONING and the READY FOR COMMISSIONING CERTIFICATE has been signed by both PARTIES in accordance with Article 18 (*Mechanical Completion, Pre-Commissioning, Commissioning and Start-Up*).
      2. **READY FOR COMMISSIONINIG CERTIFICATE** shall mean the certificate signed by authorised representatives of both PARTIES in accordance with Article 18.3.2.
      3. **READY FOR START-UP** shall mean that the PLANT is ready for START-UP and the READY FOR START-UP CERTIFICATE has been signed by both PARTIES in accordance with GC Article 18 (*Mechanical Completion, Pre-Commissioning, Commissioning and Start-Up*).
      4. **READY FOR START-UP CERTIFICATE** shall mean the certificate signed by authorised representatives of both PARTIES in accordance with Article 18.4.3.
      5. **REPRESENTATIVE(S)** shall mean the OWNER’S REPRESENTATIVE and/or the CONTRACTOR’S REPRESENTATIVE, respectively, individually or jointly, as the context requires.
      6. **SITE** shall mean the places where the PLANT is to be constructed, the relevant temporary facilities are to be located and to which EQUIPMENT and MATERIALS are to be delivered, and any other places as may be specified in the CONTRACT as forming part of the SITE, indicated by the OWNER.
      7. **STABLE OPERATION** shall mean the period when the PLANT is operating under normal and steady operating conditions for 72 (seventy-two) consecutive hours. The works and activities to be performed during this stage are described in GC ANNEX 4 (*Mechanical Completion, Pre-Commissioning, Commissioning, Start-Up, Provisional Acceptance*).
      8. **START-UP** shall mean the activities to be performed after the completion of MECHANICAL COMPLETION, PRE-COMMISSIONING, and the first part of COMMISSIONING and ending with a start of the STABLE OPERATION of the PLANT, i.e. operation at design capacity, as specified in GC Article 18 (*Mechanical Completion, Pre-Commissioning, Commissioning and Start-Up*).
      9. **STATUTORY REQUIREMENTS** shall mean all laws and regulations applicable in Lithuania, whether national or international, as well as Lithuanian and/or European Union technical standards mandatory in Lithuania, the decisions and awards of Lithuanian and/or European Union COMPETENT AUTHORITIES, any applicable grid code(s), electric grid and/or any other infrastructure connection conditions, and/or all by-laws and guidelines of any COMPETENT AUTHORITY, which applies to the PLANT or any part thereof, and/or the performance and/or completion of the WORKS, in particular the Pressure Equipment Directive 97/23/EC (if applicable).
      10. **SUBCONTRACT** shall mean any contract between the CONTRACTOR and any SUBCONTRACTOR, or between any SUBCONTRACTOR and any other SUBCONTRACTOR, relating to the services, MATERIALS, EQUIPMENT or any other part of WORKS to be provided by such SUBCONTRACTOR in respect of the PLANT.
      11. **SUBCONTRACTOR** shall mean any direct or indirect subcontractor of CONSTRUCTION WORKS, VENDOR or any other subcontractor, engaged either by the CONTRACTOR or by any of its direct or indirect subcontractors to perform any portion of the CONTRACTOR’S obligations resulting from the CONTRACT.
      12. **TECHNICAL DOCUMENTATION** shall mean all documents, designs, data, drawings, calculations, manuals, cost estimates, certificates and other technical information, including OPERATING MANUALS, to be provided by the CONTRACTOR to the OWNER under the CONTRACT for the design, construction, operation and maintenance of the PLANT.
      13. **THIRD PARTY SOFTWARE** shall have the meaning specified in Article 25 (*Intellectual Property Rights*).
      14. **TIME(S) for Completion** shall mean the time(s) for completing the whole of the Works or a part thereof, calculated from the EFFECTIVE DATE, as further defined in the PARTICULAR CONDITIONS.
      15. **TIME SCHEDULE** shall mean the schedule included in PC ANNEX 5 (*Time Schedule*), detailing the order in which the CONTRACTOR shall execute the WORKS and in which the contractual date or dates are specified within which the WORKS or identified portions thereof must be completed.
      16. **VAT law** shall mean the The Republic of Lithuania Law on Value Added Tax, of 2002 March 5 No. IX-751.
      17. **VENDOR** shall mean any manufacturer of EQUIPMENT and/or MATERIALS, engaged either by the CONTRACTOR or by any SUBCONTRACTOR, to perform any portion of the CONTRACTOR’S obligations resulting from the CONTRACT.
      18. **WARRANTY** shall mean legal and quality warranty granted by the CONTRACTOR in relation to the PLANT and all TECHNICAL DOCUMENTATION, DELIVERIES and WORKS, referred to in Article 20 (*Warranty*).
      19. **WORKS** shall mean jointly all activities, works (whether temporary or permanent), services and supplies that are necessary for the proper performance of all the obligations of the CONTRACTOR resulting from the CONTRACT in particular as required for the design, execution and completion of the PLANT and remedying any defects therein.
      20. **WRITTEN FORM** shall mean an exchange of information in printed form, with the signature of a person authorised to make the particular representation or to provide the particular information (as defined in the CIVIL CODE at a given time).
    1. Interpretation
       1. In the Contract, except where the context requires otherwise:

words indicating one gender include all genders; and “he”, “his” and “himself” shall be read as “he/she”, “his/her” and “himself/herself” respectively;

words indicating the singular also include the plural and words indicating the plural also include the singular;

words “day”, “week”, “month” and “year” means a day, week, month and year, respectively, according to the Gregorian Calendar, unless otherwise specifically mentioned. The time limits specified in days, weeks, months and years will be counted according to the rules included in the CIVIL CODE;

provisions including the words “approval” or “approved”, “request”,” agree”, “agreed”, or “agreement” require the approval, request or agreement to be recorded in writing;

“written” or “in writing” means hand-written, type-written, printed or an electronically made document, resulting in a permanent record, and enabling identification of the person(s) producing any such document, subject to provisions of the CONTRACT requiring WRITTEN FORM or the signature of a person(s) authorised to make the particular representation;

“may” means that the PARTY or person referred to has the choice of whether to act or not in the matter referred to;

“shall” means that the PARTY or person referred to has an obligation under the CONTRACT to perform the duty referred to;

“consent” means that the OWNER or the CONTRACTOR (as the case may be) agrees to, or gives permission for, the requested matter;

“in particular”, “including”, “include” and “includes” shall be interpreted as not being limited to, or qualified by, the stated items that follow; and

words indicating persons or parties shall be interpreted as referring to natural and legal persons (including corporations and other legal entities).

* + - 1. In any list in this contract, where the second-last item of the list is followed by “and” or “or” or “and/or”, then all of the listed items going before this item shall also be read as if they are followed by “and” or “or” or “and/or” (as the case may be).
      2. The headings and titles of Articles, Clauses, sections, paragraphs or other subparts of this Contract are for convenience of reference only and shall not be deemed part thereof or be taken into consideration in the interpretation or construction of the Contract. No provision in this Contract is to be interpreted for or against any party because that party or its legal counsel drafted such provision.
      3. Unless otherwise provided in the Contract, wherever in the Contract provision is made for the giving of notice, consent or approval by any PARTY, such consent or approval shall not be unreasonably withheld. Unless otherwise specified, such notice, consent or approval shall be in writing.
    1. Notices and correspondence
       1. All notices and correspondence between the PARTIES will be in writing, in the English language identified by the OWNER’S CONTRACT number and shall be communicated as set forth below.
       2. Notices to the OWNER, if hand-written, type-written or printed, shall be sent to the OWNER’S address as set forth in the PARTICULAR CONDITIONS and marked for the attention of the OWNER’S REPRESENTATIVE. Notices to the OWNER, if electronically made, shall be sent to the e-mail address of the OWNER’S REPRESENTATIVE as set forth in the PARTICULAR CONDITIONS.
       3. Notices to the CONTRACTOR, if hand-written, type-written or printed, shall be sent to the CONTRACTOR’S address as set forth in the PARTICULAR CONDITIONS and marked for the attention of the CONTRACTOR’S REPRESENTATIVE. Notices to the CONTRACTOR, if electronically made, shall be sent to the e-mail address of the CONTRACTOR’S REPRESENTATIVE as set forth in the PARTICULAR CONDITIONS.
       4. Working correspondence exchanged by the personnel of the PARTIES concerning the day-to-day management of the performance of the CONTRACT, including in particular notifications of a detected DEFECT and the CONTRACTOR’S responses to such notifications, does not have to be made in writing, provided that it is prepared and delivered in compliance with the rules agreed separately by the PARTIES in writing.
       5. The following will constitute sufficient evidence of delivery of notices and correspondence at a given time and on a given date:
          1. in the case of personal delivery – a written confirmation that the delivery has been received by the addressee, signed by a person authorised to receive letters for the addressee;
          2. in the case of delivery by courier and/or delivery by registered mail – a confirmation of delivery to the given address issued by the courier or mailing service; and
          3. in the case of delivery by electronic mail – a non-automatic confirmation sent by the addressee, either by electronic mail or as a written notice, that the message has been received and the addressee can access its content.
       6. A notice, statement or correspondence delivered on any day other than a BUSINESS DAY, or on any day after 16:45 hours local time at the delivery address, will be considered delivered at 08:00 hours local time at the delivery address on the next BUSINESS DAY following the actual date of delivery.
       7. Each PARTY is obliged to inform the other PARTY in writing of each change of its respective REPRESENTATIVE’S mail address or e-mail address specified for the purpose of correspondence. If the PARTIES fail to provide such information, the correspondence delivered to the previous address the sender has been informed of by the other PARTY shall be deemed to have been served.
  1. GENERAL SUBJECT OF THE CONTRACT
     1. In consideration of the CONTRACT PRICE, the Contractor undertakes to execute a complete PLANT on a “turnkey” basis. In particular, the CONTRACTOR undertakes to:
        1. engineer and design the PLANT on the basis of the BASIC DESIGN PACKAGE, including providing detailed design engineering;
        2. obtain - save for the OWNER’S PERMITS only - all administrative decisions, consents, certificates, clearances, permits, approvals and opinions from the COMPETENT AUTHORITIES and other entities required under the STATUTORY REQUIREMENTS for the purpose of engineering, designing, constructing, commissioning and operating the PLANT (CONTRACTOR’S PERMITS);
        3. procure - all EQUIPMENT and MATERIALS, including providing expediting, inspection, testing, transportation and delivery to the SITE thereof;
        4. provide all technical, supervisory and construction labour;
        5. provide all TECHNICAL DOCUMENTATION, including the OPERATING MANUALS and other documents as per PC ANNEX 1 (*Scope of Work*);
        6. examine the SITE for the presence of SITE risks and, if any are detected, remove them immediately, subject to GC Article 3.6;
        7. construct the PLANT (using EQUIPMENT and MATERIALS purchased and delivered by the CONTRACTOR, including providing dismantling, installation and erection activities;
        8. commission and conduct the PERFORMANCE TESTS of the PLANT; and
        9. provide any other works and/or services necessary to engineer, design, supply, construct, erect, test during PRE-COMMISSIONING, COMMISSIONING and put the PLANT into operation on a turnkey basis, and so that the PLANT achieves and maintains the PROCESS GUARANTEES.
     2. Complex service of execution of the complete PLANT (including engineering, design, procurement and construction) on a “turnkey” basis means the performance by the CONTRACTOR of all activities, and the procurement of all MATERIALS and EQUIPMENT necessary to deliver to the OWNER, in accordance with the TIME SCHEDULE, a complete PLANT within the scope described in PC ANNEX 1 (*Scope of Work*), achieving and maintaining all the parameters specified in the CONTRACT, fully compliant with all STATUTORY REQUIREMENTS and administrative decisions issued by the COMPETENT AUTHORITIES, along with all documents, manuals and permits required for its commercial operation by the OWNER, except only as expressly excluded from the CONTRACTOR’S scope by the CONTRACT.

The above also includes all necessary activities, MATERIALS and EQUIPMENT which are not specifically mentioned in the CONTRACT, but are required for the PLANT to achieve all the parameters specified in the CONTRACT, in particular to achieve the PROCESS GUARANTEES, and/or as may otherwise prove necessary during the performance of the CONTRACT.

The scope of the WorkS described in the ANNEXES may not be complete in every detail and may not describe all items of work or supply which are contingent and indispensably necessary to achieve full performance of the contract. A failure to describe such work or supply shall not constitute grounds for requesting a CHANGE in accordance with Article 16 (*Changes* *and Variations to the Works*), nor shall it entitle the CONTRACTOR to any additional payment and/or extension of time under Article 17 (*Claims*). Any such work or supply shall be deemed to be included in the CONTRACT PRICE.

However, in the event of the OWNER requesting a material change in the parameters of the PLANT operation, if no relevant CHANGE is introduced in accordance with Article 16 (*Changes* *and Variations to the Works*) in this regard, and if the CONTRACTOR suffers documented delay and/or incurs additional COST as a result of such material change, the CONTRACTOR shall give notice to the OWNER and shall be entitled, subject to Article 17 (*Claims*), to: (i) payment of such COST, and/or (ii) EOT, however if and only to the extent that the requested change is introduced due to reasons for which the CONTRACTOR is not liable. For the avoidance of doubt, the CONTRACTOR shall not be entitled to such COST and/or EOT if a relevant CHANGE is agreed in accordance with Article 16 (Changes) in this regard.

* + 1. It is the intent of this CONTRACT that the CONTRACTOR shall carry out the WORKS described herein and, as a result, the PLANT shall be fit for the purposes for which it was intended, engineered, constructed, started-up and tested in conformance with the data, requirements, terms and conditions and within the time(S) FOR COMPLETION as set forth in this CONTRACT.
    2. Without prejudice to the Contractor's obligations to carry out and complete the Works in accordance with the requirements of the Contract in all respects, the Contractor warrants and guarantees to the Owner that the PLANT shall meet or exceed the PROCESS GUARANTEES as per the requirements of the CONTRACT.
    3. The documents forming the Contract are to be taken as mutually explanatory of one another. If any ambiguity or discrepancy is found, the precedence shall be as defined in the PARTICULAR CONDITIONS. The OWNER shall have the authority to issue any instruction which it considers necessary to resolve an ambiguity or discrepancy.
    4. The WORKS are to be performed on the SITE designated by the Owner. The CONTRACTOR shall perform the CONTRACT so as to prevent as far as possible any damage to the OWNER and/or third parties, and so as to minimise interference of the WORKS with the operation of the existing facilities and plants of the OWNER. The CONTRACTOR shall coordinate its activities with the OWNER as required to allow the normal operation, maintenance and repairs of the existing facilities and plants of the OWNER from the EFFECTIVE DATE until the date of the PROVISIONAL ACCEPTANCE CERTIFICATE.
    5. In addition to its other obligations specifically described elsewhere in the CONTRACT, from the EFFECTIVE DATE until the issuance of the PROVISIONAL ACCEPTANCE CERTIFICATE, the CONTRACTOR will consult with the OWNER and provide its view and recommendations on the matters related to the performance of the CONTRACT, as requested by the OWNER. The CONTRACTOR will also respond to all queries and/or requests for data relating to the PLANT, any element thereof and/or the performance of the CONTRACT (including data necessary for the preparation of an effective application for an amendment to the Integrated Permit and any other environmental administrative decisions obtained by OWNER), as requested by the OWNER.
    6. All WORKS, DELIVERIES and TECHNICAL DOCUMENTATION shall have the properties required by the CONTRACT, and shall be free of DEFECTS. The DELIVERIES shall be brand new (no major repairs before PROVISIONAL ACCEPTANCE allowed), shall be manufactured not earlier than eighteen (18) months prior to the EFFECTIVE DATE, shall be available in the up-to-date offer of the SUBCONTRACTORS at least until the date falling ten (10) years from the scheduled date of the PROVISIONAL ACCEPTANCE CERTIFICATE, and the access to the manufacturer’s spare parts for such DELIVERIES shall be secured, at least until the date falling ten (10) years from the scheduled date of the PROVISIONAL ACCEPTANCE CERTIFICATE. This requirement shall not apply to bulk materials other than bulk piping materials and electric cables. Any DELIVERIES which do not fulfil the requirement as to the date of manufacturing can be used subject to the OWNER’S prior written consent. The PLANT shall be equipped so as to facilitate its operation, maintenance and overhauls as commonly applied in the relevant industry on the date of issuing the PROVISIONAL ACCEPTANCE CERTIFICATE with regard to new facilities such as the PLANT.
    7. The CONTRACTOR shall identify all STATUTORY REQUIREMENTS applicable to the WORKS, including in particular all applicable safety regulations and all required safety analyses. The PLANT as a whole, and all WORKS, shall meet the requirements of all applicable STATUTORY REQUIREMENTS, including the applicable Best Available Techniques (BAT) guidelines, as specified in the reference documents developed by the European Commission (“**BREF**”), and including the applicable BREF conclusions.

The above obligations apply to all applicable STATUTORY REQUIREMENTS, BREFs and BREF conclusions which are in force on the date of the PROVISIONAL ACCEPTANCE CERTIFICATE, and also those applicable STATUTORY REQUIREMENTS, BREFs and BREF conclusions which are not yet in force on the date of the PROVISIONAL ACCEPTANCE CERTIFICATE, but which by then have already been published in the relevant official journal. This also includes the laws of the European Union and other international organisations binding in Lithuania, even if they have not been implemented into Lithuania national law by the date of the PROVISIONAL ACCEPTANCE CERTIFICATE.

Unless a relevant CHANGE is introduced in accordance with Article 16 (*Changes*), the CONTRACTOR shall be entitled, subject to Article 17 (*Claims*), to: (i) payment of any additional COST, and (ii) an extension of the time required to adjust the WORKS and/or the PLANT to the requirements of any STATUTORY REQUIREMENTS and/or BAT regulations and guidelines which become binding after the EFFECTIVE DATE and before the date of the PROVISIONAL ACCEPTANCE CERTIFICATE, provided that such changes to the STATUTORY REQUIREMENTS and/or BAT regulations and guidelines have not been published before the EFFECTIVE DATE in the relevant official journal.

* + 1. The CONTRACTOR and the SUBCONTRACTORS shall at all times comply with all the OWNER’S internal regulations applicable on the SITE and/or to the PLANT or any part thereof, and/or all OWNER’S internal regulations otherwise applicable to the performance of the CONTRACT by the CONTRACTOR, specified especially in GC ANNEXES 7 (*Local General Requirements of AB ORLEN Lietuva*) and PC Annex 1 (*Scope of Work*). The CONTRACTOR shall in particular apply all such OWNER’S regulations and procedures required to maintain the compliance of the OWNER and/or the OWNER’S business with the standards of the International Organization for Standardization, with which the OWNER is certified, in particular the following certificates: PN-EN ISO 9001, PN-EN ISO 14001 and HSE Management System ISO-45001 or OHSAS 18001 or SCC system, to the extent consistent with the scope of WORKS performed on the premises of the OWNER.

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 internal regulations and any changes thereto, as well as local authorities’ correspondence/documents, may be - at the OWNER’S sole discretion - provided to the CONTRACTOR solely in the Lithuanian language.

* + 1. The CONTRACTOR shall follow the OWNER’S written guidelines and/or instructions in relation to the WORKS, including any direction for liaison with any third party, such as the LICENSOR. The CONTRACTOR shall not act upon the directions of any party other than the OWNER, the PMC (if applicable) or a COMPETENT AUTHORITY applicable to a given matter, unless the OWNER directs the CONTRACTOR to do so in writing, and in such case the following part of this Article 2.11 applies accordingly also to the instructions and guidelines of such third party (such as the LICENSOR).

The CONTRACTOR shall at all times apply reasonable professional due diligence in reviewing all such OWNER’S or third party’s guidelines and/or instructions, and shall promptly bring to the attention of the OWNER all discovered errors and/or discrepancies, and/or other circumstances due to which such guidelines and/or instructions are considered by the CONTRACTOR undesirable, and/or endanger the proper performance of the CONTRACT and/or the PLANT or any part thereof. Each notification of the CONTRACTOR’S opinion on the instructions issued by the OWNER or by a third party will set out the CONTRACTOR’S reasons for such opinion, and the possible consequences of implementing such instructions as foreseen by the CONTRACTOR in reasonable detail.

If, following receiving such CONTRACTOR’S opinion, and following any additional consultation and/or clarification by the CONTRACTOR that the OWNER may request, the OWNER upholds its (or the applicable third party’s) instructions, the CONTRACTOR will not be liable for the consequences of such instructions that the CONTRACTOR described in its notification to the OWNER referred to above. If the CONTRACTOR’S objections relate to the directions of a COMPETENT AUTHORITY, the OWNER - if the OWNER considers such objections justified - will support the CONTRACTOR in discussions with the COMPETENT AUTHORITY.

* + 1. At all stages of the execution of the WORKS, the CONTRACTOR shall co-operate with all COMPETENT AUTHORITIES and other bodies competent in relation to any element of the performance of the CONTRACT. The CONTRACTOR, subject to first informing the OWNER about each requirement of the COMPETENT AUTHORITY, and subject to agreeing its intended response or course of action with the OWNER, shall comply with the requirements of such COMPETENT AUTHORITIES, and shall communicate with them so as to prevent any delays in the TIME SCHEDULE that could result from a failure to satisfy their requirements. Each copy of the CONTRACTOR’S communication with a COMPETENT AUTHORITY will be presented to the OWNER without undue delay.
  1. OBLIGATIONS OF THE CONTRACTOR

In accordance with the terms of this CONTRACT, the CONTRACTOR shall undertake the following:

* + 1. The CONTRACTOR shall commence the WORKS as soon as is practicable after the EFFECTIVE DATE and shall proceed with the execution of the WORKS with due expedition and without delay. The CONTRACTOR shall complete the WORKS within the TIME FOR COMPLETION.
    2. The Contractor shall, in accordance with the TIME SCHEDULE, provide the Plant, all EQUIPMENT and MATERIALS necessary for the construction and operation of the PLANT, all TECHNICAL DOCUMENTATION, including OPERATING MANUALS, and all CONTRACTOR’S PERSONNEL, goods, consumables and other things and services, whether of a temporary or permanent nature, required for the design, construction, execution and completion of the WORKS and the remedying of DEFECTS therein.
    3. The Contractor shall be responsible for the adequacy, stability and safety of all SITE operations, of all methods of construction and all of the Works. The CONTRACTOR shall co-ordinate its own and its SUBCONTRACTORS’ activities with those of the OWNER’S other contractors to the extent necessary to meet the OWNER’S requirements.
    4. CONTRACTOR'S PERMITS
       1. Except for the OWNER´S PERMITS only, the CONTRACTOR shall obtain all final and valid CONTRACTOR’S PERMITS, i.e., all administrative decisions, consents, attestations, certificates, clearances, permits and opinions of the COMPETENT AUTHORITIES as required by applicable STATUTORY REQUIREMENTS in relation to the design, execution, construction, certification and operation of the PLANT, including the remedying of any DEFECTS therein. The CONTRACTOR shall also obtain all final and valid required updated permits (OWNER’S PERMITS and CONTRACTOR’S PERMITS) of the COMPETENT AUTHORITIES if as a result of CONTRACT execution any technical or environmental changes occur that require changes to administrative decisions issued in accordance with the STATUTORY REQUIREMENTS.
       2. The CONTRACTOR shall give all notices, pay all taxes, duties and fees, as well as bear all other costs that may be necessary to obtain the CONTRACTOR'S PERMITS, and the Contractor shall indemnify and hold the OWNER harmless against and from the consequences of any failure to do so. All TECHNICAL DOCUMENTATION and information necessary to obtain the CONTRACTOR'S PERMITS shall be prepared and provided by the CONTRACTOR in accordance with the CONTRACT and applicable STATUTORY REQUIREMENTS. The CONTRACTOR shall obtain all the CONTRACTOR'S PERMITS in a timely manner in accordance with the TIME SCHEDULE and within the TIME(S) FOR COMPLETION. The CONTRACTOR will provide the OWNER with all information related to obtaining permits on an ongoing basis, forwarding to the OWNER all documentation related to applications for permits submitted to COMPETENT AUTHORITIES and copies of such documents for the OWNER'S review.
       3. The OWNER will grant to an individual or to individuals designated by the CONTRACTOR a power of attorney authorising to obtain on behalf of the OWNER the CONTRACTOR’S PERMITS, other acts of law or their changes. The OWNER may at any time revoke the above power or powers of attorney, without giving a reason. In such a case the OWNER will notify the CONTRACTOR of the intention to revoke the power of attorney at least 5 (five) BUSINESS DAYS in advance and will grant a relevant power or powers of attorney to the other person designated by the CONTRACTOR promptly after the CONTRACTOR’S representation designating such a person is delivered. The OWNER will support the CONTRACTOR in procedures aimed at obtaining the CONTRACTOR’S PERMITS, other acts of law and their changes referred to above to the extent that the personal participation by the OWNER is necessary in accordance with the STATUTORY REQUIREMENTS. The CONTRACTOR shall return all powers of attorney issued by the OWNER after completing its activities related to obtaining permits or in the event that its representative ceased to be an employee of the CONTRACTOR.
       4. The CONTRACTOR confirms that it has carefully examined the time periods customarily required for obtaining all the CONTRACTOR’S PERMITS and included such time periods in the TIME SCHEDULE. Notwithstanding the foregoing, the CONTRACTOR will not be liable for delay in the performance of the CONTRACT to the extent that such delay results from unjustified delay of the applicable COMPETENT AUTHORITY in issuing any CONTRACTOR’S PERMIT(S) exceeding 30 (thirty) days above the relevant statutory period for the issuance of the applicable CONTRACTOR’S PERMIT(S), provided that:

the CONTRACTOR evidences that it had timely submitted an application for such CONTRACTOR’S PERMIT which was complete and fully compliant with all the STATUTORY REQUIREMENTS; and

the delay of the relevant COMPETENT AUTHORITY does not include any periods which the CONTRACTOR takes to respond to the authority’s requests for clarification and/or improvement and/or additional data and/or documentation.

In the event the CONTRACTOR suffers delay as a result of such unjustified delay of the relevant COMPETENT AUTHORITY, the CONTRACTOR shall give notice to the OWNER and shall be entitled, subject to Article 17 (*Claims*), to an EXTENSION OF TIME for any such delay.

* + 1. Spare parts
       1. The CONTRACTOR shall secure within the CONTRACT PRICE any and all spare parts, first fills and consumables required for the period of construction, PRE-COMMISSIONING, COMMISSIONING and PERFORMANCE TESTS of the PLANT until the issue of the PROVISIONAL ACCEPTANCE CERTIFICATE.
       2. 6 (six) months prior to the MECHANICAL COMPLETION, the CONTRACTOR shall deliver to the OWNER, for its approval, a list of recommended spare parts, fills and consumables (together with the vendor’s name) for 2 (two) years of operation of the PLANT. Such list shall provide the unit prices for each spare part item listed. The prices of the spare parts shall be fair market prices, taking into consideration that the spare parts are purchased by the CONTRACTOR from third parties and shall be valid till the scheduled date of the PROVISIONAL ACCEPTANCE. The OWNER may purchase the spare parts directly from vendors or via the CONTRACTOR. In the latter case the spare parts shall be delivered prior to issuance of the PROVISIONAL ACCEPTANCE CERTIFICATE.
    2. SITE conditions and risks
       1. The CONTRACTOR represents that it has visually examined the SITE and it has familiarised itself with all data and other documents regarding the SITE that form part of the CONTRACT. Whenever any data regarding the SITE, furnished by the OWNER as a part of the CONTRACT, are not sufficient to allow the performance of the CONTRACT, then the CONTRACTOR shall be responsible to collect (and/or taking inventory) the missing data within the CONTRACT PRICE.
       2. The OWNER shall have no responsibility with respect to ascertaining for the CONTRACTOR facts concerning physical or other characteristics or constraints at the SITE. Borings, test excavations and other sub-surface investigations, if any, made by the OWNER prior to the start of the WORKS, the records of which may be available to the CONTRACTOR, are made available solely for informational purposes. Any such borings, test excavations and other sub-surface investigations are not warranted to show the actual sub-surface conditions and the actual conditions encountered may not conform to those indicated by said borings, test excavations and other sub-surface investigations. The OWNER shall not be liable for any misinterpretation or misunderstanding of this CONTRACT on the part of the CONTRACTOR, or for any failure by the CONTRACTOR to acquaint itself fully with all circumstances relating to the WORKS.
       3. The CONTRACTOR shall not be entitled to any additional payment and/or extension of time as a result of any SITE conditions.
       4. Within 4 (four) months from the EFFECTIVE DATE (unless another term is specified in the PARTICULAR CONDITIONS), the CONTRACTOR will conduct a SITE examination to identify all SITE risks affecting the performance of the WORKS, i.e.:

geological and hydrological risks,

hidden underground obstacles (including, without limitation, the OWNER'S existing installations and man-made objects in general),

unexploded ordnance,

heritage objects and artefacts,

soil contamination.

CONTRACTOR shall be responsible for verifying the accuracy of and interpreting all such data. OWNER shall have no responsibility for the accuracy, sufficiency or completeness of such data.

* + - 1. With respect to the SITE risks indicated in Article 3.6.4(e) (*soil contamination*), where such SITE risks are identified by the CONTRACTOR, then the CONTRACTOR shall neutralise such contaminated soil to the extent (costs and weight) specified n GC ANNEX 7 (*Local General Requirements of AB ORLEN Lietuva*).
      2. Should any SITE risks indicated in Article 3.6.4 be found at the SITE after the hand-over of the SITE by the OWNER, the CONTRACTOR will undertake all necessary activities, in particular demolish all unnecessary structures and remove all risks present at the SITE and conflicting with the performance of the PLANT. All elements and materials removed from the SITE, including debris, stone, plastic elements, unexploded ordnances, blind shells, etc. constitute waste generated by the CONTRACTOR. The CONTRACTOR will dispose of such waste in accordance with the applicable STATUTORY REQUIREMENTS and provisions of GC ANNEX 7 (*Local General Requirements of AB ORLEN Lietuva*).
    1. The CONTRACTOR shall carry out the WORKS continuously, diligently, with expected performance resulting from the TIME SCHEDULE, using qualified and competent CONTRACTOR’S PERSONNEL and in accordance with all other provisions of this CONTRACT, as well as all the STATUTORY REQUIREMENTS.
    2. The CONTRACTOR shall, throughout the execution of the WORKS, keep the SITE free from all unnecessary obstructions and hazards, and shall store or dispose of any surplus or excess materials. The Contractor shall clear away and remove from the Site any wreckage, rubbish, temporary works or facilities which are no longer required. The CONTRACTOR shall comply with all HSE and firefighting regulations, as well as waste and environmental protection regulations as presented in GC ANNEX 7 (*Local General Requirements of AB ORLEN Lietuva*).

The Contractor shall confine its operations to the Site, and to any additional areas which may be obtained by the Contractor and agreed by the OWNER as working areas. The contractor shall take all necessary precautions to keep the Contractor’s TOOLS and Contractor’s PERSONNEL within the Site and these additional areas, and to keep them off adjacent land.

* + 1. The Contractor shall, as specified in the Contract or as instructed by the OWNER to do so, allow appropriate opportunities for carrying out work to:

the OWNER’S personnel;

the PMC’S personnel;

the LICENSOR’S personnel;

any other contractors employed by the OWNER; and

the personnel of any COMPETENT AUTHORITIES,

who may be employed in the execution of any work on or near the Site.

the Contractor shall be responsible for all its activities on the Site and shall co-ordinate its own activities with those of other contractors to the extent required by the CONTRACT.

* + 1. The Contractor shall:

comply with all applicable safety regulations;

take care of the safety of all persons entitled to be on the Site;

make reasonable efforts to keep the Site and the Works clear of unnecessary obstruction, so as to avoid danger to persons using the SITE;

provide temporary fencing, lighting, lightning protection (if necessary), guarding and watching of the Works until the issue of the PROVISIONAL ACCEPTANCE CERTIFICATE;

provide any temporary works (including roadways, footways, guards and fences) which may be necessary for the execution of the WORKS, or for the use and protection of the public and owners/occupiers of adjacent land;

maintain roads and walkways within the SITE in proper condition, particularly in the event of low temperatures; and

clean access roads to the SITE if their dirtiness results from works performed by the CONTRACTOR.

* + 1. the Contractor shall institute a quality assurance system to demonstrate compliance with the requirements of the Contract. The system shall be in accordance with the requirements and details stated in the contract. The OWNER shall be entitled to audit any aspect of the system.

Details of all procedures and compliance documents shall be submitted to the OWNER for information before each design and execution stage is commenced. When any document of a technical nature is issued to the OWNER, evidence of the prior approval by the Contractor itself shall be apparent on the document itself.

Compliance with the quality assurance system shall not relieve the Contractor of any of its duties, obligations or responsibilities under the Contract.

* + 1. The CONTRACTOR represents and confirms that considering the data and information disclosed by the OWNER in the CONTRACT, it is able to perform all the WORKS, and that all necessary information and data is available to it.
    2. Subject to Article 3.14, if some of the information and/or data disclosed by the OWNER in the CONTRACT need to be changed or amended, the CONTRACTOR shall effect such changes or amendments without any cost to the OWNER or any impact on the TIME SCHEDULE and/or fulfilment of any other terms and conditions of this CONTRACT.
    3. RELY UPON INFORMATION
       1. OWNER shall not be responsible for any error, inaccuracy or omission of any kind in thANNEXES, specifications or other data provided by OWNER and shall not be deemed to have given any representation of accuracy or completeness of any data or information, except as stated below. Any data or information received by CONTRACTOR from the OWNER or otherwise, shall not relieve the CONTRACTOR from his responsibility for the design and execution of the WORKS.

However, OWNER shall be responsible for the correctness of the following portions of the ANNEXES and of the following data and information provided by (or on behalf of) the OWNER:

a) data and information which are stated in the CONTRACT as being immutable or the responsibility of the OWNER,

b) definitions of intended purposes of the WORKS or any parts thereof,

c) criteria for the testing and performance of the completeness of the WORKS, and,

d) data and information, provided by OWNER, which cannot be verified by the CONTRACTOR, except as otherwise stated in the CONTRACT.

* + 1. The CONTRACTOR shall carry out the training of the OWNER’S personnel in the operation and maintenance of the PLANT to the extent specified in PC ANNEX 1 *(Scope of Work)*. If the Contract specifies training which is to be carried out before the PROVISIONAL ACCEPTANCE, the Works shall not be considered to be completed for the purposes of PROVISIONAL ACCEPTANCE, until such training has been completed.
    2. Upon the issue of the PROVISIONAL ACCEPTANCE Certificate, the Contractor shall clear away and remove all Contractor’s TOOLS, wreckage, rubbish and temporary works and facilities. The Contractor may retain on the SITE, during the Defects Liability Period, such goods as are required for the Contractor to fulfil its obligations under the Contract, but only if the CONTRACTOR obtains the OWNER’S consent in writing.
    3. The CONTRACTOR shall provide and maintain all necessary temporary construction facilities and accommodation and welfare facilities for the Contractor’s/SUBCONTRACTOR’s PERSONNEL.
    4. The Contractor shall bear all costs and charges for special and/or temporary rights-of-way which it may require, including those for access to the Site. The Contractor shall also obtain, at its risk and cost, any additional facilities outside the Site which it may require for the purposes of the execution of the works.
    5. The contractor shall be deemed to have been satisfied as to the suitability and availability of access routes to the Site. The Contractor shall make reasonable efforts to prevent any road, bridge or underground facilities or bridge from being damaged by the Contractor’s traffic or by the Contractor’s PERSONNEL. These efforts shall include the proper use of appropriate vehicles and routes.

Except as stated otherwise in the CONTRACT:

the Contractor shall be responsible for any maintenance which may be required for its use of access routes;

the Contractor shall provide all necessary signs or directions along access routes, and shall obtain any permissions which may be required from the relevant COMPETENT AUTHORITIES for its use of access routes, signs and directions;

the OWNER shall not be responsible for any claims which may arise from the use or otherwise of any access routes;

the OWNER does not guarantee the suitability or availability of particular access routes; and

Costs due to non-suitability or non-availability of particular access routes for the use of, or required by, the Contractor shall be borne by the Contractor.

* + 1. Except as stated otherwise in the CONTRACT:

The Contractor shall give the OWNER not less than 21 (twenty-one) days’ notice of the date on which any oversized EQUIPMENT, MATERIALS and/or supplies requesting special precautions will be delivered to the Site;

The Contractor shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all EQUIPMENT, MATERIALS and/or other goods and other things required for the Works;

The Contractor shall indemnify and hold the OWNER harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from the transport of EQUIPMENT, MATERIALS or any other goods, and shall negotiate and pay all claims arising from their transport; and

The CONTRACTOR shall adhere to the OWNER´S regulations related to the transport of oversized goods within its facilities as specified in GC ANNEX 7 (*Local General Requirements of AB ORLEN Lietuva*).

* 1. The Contractor shall, acting through the OWNER’S REPRESENTATIVE, obtain all necessary consents as specified in the OWNER'S internal regulations, especially as specified in GC Annex 7 (*Local General Requirements of AB ORLEN Lietuva*) for: (i) the transport of goods exceeding the vehicle dimensions, and (ii) the transport of oversized goods.

3.22. The Contractor shall be responsible for all the Contractor’s TOOLS. When brought on to the Site, the Contractor’s TOOLS shall be deemed to be exclusively intended for the execution of the Works.3.23.The contractor shall take all reasonable steps to protect the environment (both on and off the site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of its operations.

The contractor shall ensure that emissions, surface discharges and effluent from the Contractor’s activities shall not exceed the values prescribed by applicable STATUTORY REQUIREMENTS and values defined by the OWNER (if any).

3.24. The Contractor shall, except as stated otherwise in the CONTRACT, be responsible for the provision of all power, steam, water and other service it may require for the execution of the WORKS.

The Contractor shall be entitled to use, for the purposes of construction, installation and PRE-COMMISSIONING of the PLANT, such supplies of electricity, water, gas and other services as may be available on the Site, in each case based on a relevant agreement executed with the OWNER and against payments as specified therein.

The Contractor shall, at its own risk and cost, provide any apparatus necessary for its use of these services and for measuring the quantities consumed.

3.25. Every 6 (six) months starting from the EFFECTIVE DATE until the PROVISIONAL ACCEPTANCE or on every request of the OWNER, the CONTRACTOR shall provide to the OWNER financial data authorised by persons authorised to represent the CONTRACTOR, i.e. balance sheet, a profit and loss account and cash flow statement (by separate and non-consolidated financial statements) for two full reporting years and the latest quarterly statement for the current period.

3.2.6. In the case of a CONSORTIUM:

the document must be submitted by each CONSORTIUM member.

Each CONSORTIUM member must submit separate data.

If a financial statement for the periods indicated is not available, the CONTRACTOR shall inform the OWNER thereof, and the OWNER shall send a list of financial data required to conduct a financial verification.

In the case of a loss incurred at the end of one of the reporting periods, an additional explanation as to why the loss occurred is required.

All financial documents should be provided as (i) documents in electronic form and signed by the person preparing the documents and the head of the relevant department on the side of the CONTRACTOR in accordance with the requirements of the relevant regulations or (ii) a scan of the signed financial statement in PDF format certified to be true to the original by an authorized employee of the CONTRACTOR. In the event that the CONTRACTOR fails to fulfil the obligations as referred above, the OWNER shall be entitled to withhold any payments due under the CONTRACT without being charged with default interest.

3.27. WORK SAFETY AND OHS REGULATIONS

3.27.1.The CONTRACTOR undertakes to perform the subject of the CONTRACT in accordance with the Regulations - General Requirements for Occupational Safety and Health at AB ORLEN Lietuva (along with the Guidelines and their appendices available at the link indicated in the Regulations), constituting GC ANNEX 7 *Local General Requirements of AB ORLEN Lietuva)*, and in accordance with other documents posted on the website of AB ORLEN Lietuva at: <https://www.orlenlietuva.lt/EN/ForBusiness/DocumentsForContractors/Pages/Occupational-Safety-and-Health-Documents.aspx> according to the current wording at all times of the term of the CONTRACT.

3.27.2. Failure by the CONTRACTOR or any of the CONTRACTOR'S employees to comply with the requirements set out in the Regulations and the indicated documents will constitute a serious breach of the terms of the CONTRACT.

3.27.3.If the supervision of the OWNER notices and reports that the subject of the CONTRACT is being performed in a manner that threatens human health or life, as well as forms a gross violation by the CONTRACTOR or persons working on his behalf, of generally applicable regulations and internal regulations on health and safety at work, fire protection or process safety, the OWNER will take appropriate actions specified in the Regulations - General Requirements for Occupational Safety and Health at *AB ORLEN Lietuva*

3.28. The CONTRACTOR undertakes, when preparing the design documentation of the PLANT, not to impose design solutions of a single supplier of: machines, devices, equipment, materials etc. used in the PLANT, or one contractor for construction or assembly works, or a supplier of specific services. The design solutions used in the documentation will enable the OWNER to conduct procurement procedures after the end of the WARRANTY period from as many suppliers, contractors and service providers for the PLANT as possible. If, due to the highly specialized nature of specific solutions, parts, devices, works or services, or special operating parameters, specific devices, materials, machines, equipment, works or services can be purchased from only one supplier or contractor, the CONTRACTOR shall indicate such a circumstance in the documentation with justification. Such a deviation for the acceptance of given elements of the documentation requires the prior consent of the OWNER, and the granting of such consent will be confirmed with the provision that the OWNER accepts the derogation as above for the case described above.

* 1. OBLIGATIONS AND RIGHTS OF THE OWNER
     1. The OWNER undertakes the following obligations:
        1. the OWNER is obliged to pay the CONTRACT PRICE in accordance with the CONTRACT;
        2. the OWNER is obliged to accept the WORKS and/or part thereof in accordance with the CONTRACT;
        3. the OWNER shall hand over the SITE to the CONTRACTOR for the period until the PROVISIONAL ACCEPTANCE on the date specified in the TIME SCHEDULE and in accordance with the CONTRACT;
        4. the OWNER shall ensure access and use of the SITE to the CONTRACTOR and space for the CONTRACTOR’S temporary facilities, laydown and work areas in the scope defined in PC ANNEX 1 (*Scope of Work*), subject to binding internal regulations in the OWNER’S existing plants and facilities. The right to and possession of and access to the SITE may not be exclusive to the CONTRACTOR;
        5. upon the hand-over of the SITE to the CONTRACTOR the OWNER shall indicate to the CONTRACTOR the points of utility connections for the SITE which can be made available to the CONTRACTOR and shall provide access to such utilities, provided that the CONTRACTOR bears the costs of electricity and other utilities at the rates provided by the OWNER in accordance with Article 3.24;
        6. The OWNER could provide the premises in OWNER’S site according to the separate request of the CONTRACTOR. The PARTIES shall conclude separate agreement for the lease of the premises at CONTRACTOR’S cost.
        7. the OWNER will procure and submit to the CONTRACTOR the OWNER’S PERMITS or, in case of a change in the STATUTORY REQUIREMENTS, the relevant administrative decisions or other legal acts that may supersede such OWNER'S PERMITS;
        8. the OWNER shall provide free of charge to the CONTRACTOR those feedstocks and utilities in the quantities and qualities specified in PC ANNEX 1 (*Scope of Work*) that are required for the COMMISSIONING, START-UP, STABLE OPERATION and PERFORMANCE TESTS;
        9. the OWNER shall provide, for the CONTRACTOR’S disposal, operating personnel during the COMMISSIONING, START-UP, STABLE OPERATION and PERFORMANCE TESTS. Such personnel shall be previously trained by the CONTRACTOR in compliance with the CONTRACT, and their number and category shall be agreed with the OWNER 12 (twelve) months before the scheduled start of their involvement in the project unless otherwise agreed by the PARTIES;
        10. the OWNER shall (only where it is in a position to do so), at the request of the CONTRACTOR, provide reasonable assistance to the CONTRACTOR with respect to the CONTRACTOR’S applications for any permits, approvals required by the laws of Lithuania which the CONTRACTOR is required to obtain to comply with the CONTRACT or the law; and
        11. with respect to the review of the TECHNICAL DOCUMENTATION submitted by the CONTRACTOR, the OWNER shall act in accordance with Article 5 (*Technical Documentation*).
     2. The OWNER has only these obligations that are expressly stipulated in the CONTRACT and in the STATUTORY REQUIREMENTS, save as the CONTRACT specifies otherwise.
     3. The OWNER will retain all income, if any, obtained from the sale of products which the PLANT generates before the date of the PROVISIONAL ACCEPTANCE CERTIFICATE. For the avoidance of doubt, such income will not increase the CONTRACT PRICE.
  2. TECHNICAL DOCUMENTATION
     1. The Contractor shall prepare and deliver to the OWNER for its review, in accordance with this Article 5, all technical documentation, including the OPERATING MANUALS, specified in PC ANNEX 1 *(Scope of Work)*, as well as any other documents that may be required to satisfy all applicable STATUTORY REQUIREMENTS and requirements of the COMPETENT AUTHORITIES. The CONTRACTOR shall also prepare any other documents necessary to instruct the CONTRACTOR’S PERSONNEL.
     2. The technical documentation expressly listed as such in PC ANNEX 1 *(Scope of Work)*, the technical documentation required to be prepared in the Lithuanian language by the STATUTORY REQUIREMENTS (including specifically the OPERATING MANUALS) and/or the technical documentation that is to be provided to any Lithuanian COMPETENT AUTHORITY based on STATUTORY REQUIREMENTS, shall be prepared and provided for the OWNER’S review in the Lithuanian language version. The remaining technical documentation may be prepared in English only.

Review of any OWNER’S or third-party documentation submitted to the CONTRACTOR in the Lithuanian language shall be carried out by the CONTRACTOR in Lithuanian. Whenever the technical documentation is in two languages, the Lithuanian version will prevail.

* + - 1. The TECHNICAL DOCUMENTATION shall be submitted in accordance with the approved DETAILED TIME SCHEDULE.
      2. The content of the TECHNICAL DOCUMENTATION shall be as stipulated in the ANNEXES.

The TECHNICAL DOCUMENTATION shall use a unified system of symbols, numbers and indications, in accordance with PC ANNEX 1 (*Scope of Work*)*.*

Unless it is otherwise explicitly specified in the CONTRACT, the CONTRACTOR’S designs shall be prepared in accordance with international standards and practices currently in use in the industry relevant for the PLANT.

* + 1. The CONTRACTOR shall provide the OPERATING MANUALS for the PLANT in sufficient detail for the OWNER to operate, maintain, dismantle, reassemble, reactivate, adjust and repair the plant. The CONTRACTOR shall prepare the OPERATING MANUALS in accordance with the TIME SCHEDULE and in accordance with the operating instructions, data and other documentation specified in the CONTRACT and/or provided by the LICENSOR. The OPERATING MANUALS shall also incorporate the detailed operating & maintenance manuals provided by VENDORS, as well as any supplementary information arising out of the CONTRACTOR’S detailed engineering phase.
    2. If according to the CONTRACT, in particular PC ANNEX 1 *(Scope of Work)*, the TECHNICAL DOCUMENTATION is to be submitted to the OWNER for review, it shall be submitted accordingly, together with a notice as described below.

In the following provisions of this GC Article 5:

“review period” means the period required by the OWNER for review; and

“TECHNICAL documentation” excludes any documents which are not specified as being required to be submitted for review.

Unless otherwise stated, each review period shall not exceed 10 (ten) BUSINESS DAYS, calculated from the date on which the OWNER receives the TECHNICAL DOCUMENTATION and the Contractor’s notice. This notice mentioned in the sentence above shall state that the Technical Documentation is considered ready, both for review in accordance with this Article 5 and for use. The notice shall also state that the Technical Documentation complies with the Contract, or the extent to which it does not comply. In case of a failure by the OWNER to provide its comments to the TECHNICAL DOCUMENTATION within the period of time indicated above, the CONTRACTOR shall notify the OWNER in writing that no comments have been received, urging the OWNER to provide them within additional period of 5 (five) BUSINESS DAYS. If the OWNER fails to provide its comments to the TECHNICAL DOCUMENTATION within the additional period of time indicated above, the submitted portion of the TECHNICAL DOCUMENTATION shall be deemed reviewed (as the case may be).

* + 1. The OWNER may, give notice at any time (even after the expiry of the review period) to the Contractor that the Technical Documentation fails (to the extent stated) to comply with the Contract, applicable STATUTORY REQUIREMENTS, European standards and/or best practices currently in use in the industry relevant for the PLANT. If the Technical Documentation so fails to comply, it shall be rectified, resubmitted and reviewed in accordance with this GC Article 5, at the Contractor’s own cost and the CONTRACTOR shall not be entitled to EOT.
    2. For each part of the Works, and except to the extent that the parties otherwise agree:

execution of such part of the Works shall not commence prior to the expiry of the review periods for all the Technical Documentation which is relevant to its design and execution;

execution of such part of the works shall be in accordance with the Technical Documentation, as submitted for review; and

if the Contractor wishes to modify any design or document which was previously submitted for review, the Contractor shall immediately give notice to the OWNER. Thereafter, the Contractor shall submit revised documents to the OWNER in accordance with the procedure set forth in this GC Article 5.

Any such agreement (under the preceding paragraph) or any review (under this GC Article 5 or otherwise) shall not relieve the Contractor from any obligation or responsibility under the CONTRACT.

* + 1. The TECHNICAL DOCUMENTATION, including the OPERATING MANUALS, provided by the CONTRACTOR shall be complete and suitable for the proper execution of the WORKS and for START-UP, operation and maintenance, overhaul, dismantling, reassembling, adjustment and repair of the PLANT in accordance with the CONTRACT, as well as the LICENSOR’S requirements under PC ANNEX 2 (*Basic Design Package* ) and shall conform to the standards of care and diligence normally practiced by recognised engineering firms in performing services of a similar nature in existence at the time of performance of the WORKS. Any deviation from the above requirements and standards shall be agreed upon between the OWNER and the CONTRACTOR in writing.
    2. The TECHNICAL DOCUMENTATION shall be prepared in such a manner that the compliance by the OWNER with the TECHNICAL DOCUMENTATION shall not lead to the violation of the STATUTORY REQUIREMENTS, occurrence of a DEFECT or DEFECTS, or a failure to achieve or maintain the PROCESS GUARANTEES by the PLANT.
    3. The PLANT and all EQUIPMENT shall be designed so as to allow the OWNER to procure maintenance and repair services, overhaul, operational materials, and spare parts from multiple providers and/or suppliers located in the European Union. Each solution imposing a single service provider and/or supplier shall require the OWNER’S prior written consent.
    4. Notwithstanding the provisions of Article 2.9, the design, the TECHNICAL DOCUMENTATION, including the OPERATING MANUALS, the execution of and the completed WORKS shall comply with all applicable European, Lithuanian and OWNER’S technical standards and any other standards where specified or applicable to the Works other than STATUTORY REQUIREMENTS.

In case of conflicts in applicable standards, the following priority order shall apply[[1]](#footnote-2):

standards resulting from the STATUTORY REQUIREMENTS (unless the CONTRACT, the OWNER’S standards or the CONTRACTOR’S standards provide for stricter requirements),

standards set forth in the CONTRACT and the OWNER’S standards,

the CONTRACTOR’S standards.

If the CONTRACTOR’S standards are used, these standards must be handed to the OWNER in the Lithuanian or English language. Use of these standards must be approved by the OWNER in advance.

If changed or new applicable standards other than the STATUTORY REQUIREMENTS are introduced after the EFFECTIVE DATE, the Contractor shall give notice to the OWNER and (if appropriate) submit proposals for compliance. If:

the OWNER determines that compliance is required; and

the proposals for compliance constitute a CHANGE,

then the OWNER, at its discretion, may initiate a CHANGE in accordance with Article 16 (*Changes and Variations to the Works*).

* + 1. The Contractor shall prepare, and keep up-to-date, a complete set of “as-built” records of the execution of the Works, showing the exact as-built locations, sizes and details of the works as executed. These records shall be kept on the Site. 2 (two) copies shall be provided to the OWNER prior to the commencement of the PERFORMANCE TEST.

In accordance with applicable STATUTORY REQUIREMENTS, the Contractor shall provide to the OWNER “as-built” drawings of the Works, showing all works as executed, and submit them to the OWNER for review in accordance with this GC Article 5. The Contractor shall obtain the consent of the OWNER as to their size, the referencing system, and other relevant details.

Prior to the issue of the READY FOR START-UP CERTIFICATE, the Contractor shall provide to the OWNER the specified numbers and types of copies of the relevant “as-built” drawings in accordance with PC ANNEX 1 *(Scope of Work)*. The works shall not be considered to be completed for the purposes of PROVISIONAL ACCEPTANCE until the OWNER has received these documents.

* + 1. The CONTRACTOR shall carry out any additions or modifications to the TECHNICAL DOCUMENTATION to remedy any DEFECTS or mistakes in any part of the TECHNICAL documentation in a timely manner in order not to delay the START-UP of the PLANT.

If errors, omissions, ambiguities, inconsistencies, inadequacies or other DEFECTS are found in the TECHNICAL DOCUMENTATION, they and the WORKS shall be corrected at the Contractor’s cost, notwithstanding any consent or approval under this GC Article 5.

* + 1. No later than 3 (three) months prior to commencement of the COMMISSIONING, the contractor shall provide to the OWNER the OPERATING MANUALS in sufficient detail for the OWNER to operate, maintain (including overhauls procedures), dismantle, reassemble, adjust and repair the plant.

The works shall not be considered to be completed for the purposes of PROVISIONAL ACCEPTANCE until the OWNER has received the final operating manualS in such detail as specified above.

15.14 The CONTRACTOR shall deliver the TECHNICAL DOCUMENTATION to the OWNER on DDP basis at the following address:

Public Company ORLEN Lietuva, Mažeikių St. 75, Juodeikiai village, LT-89453, Mažeikiai District Municipality, Lithuania. For the attention of The Project Manager Mr………………….

The TECHNICAL DOCUMENTATION may also be personally handed over to the OWNER REPRESENTATIVE against OWNER'S confirmation of receipt or hand-over delivery note.

The date of delivery of the TECHNICAL DOCUMENTATION shall be the date of the OWNER’S confirmation of receipt or, in the case of hand delivery, the date of the receipt of hand-over delivery note countersigned by the OWNER. Each lot or portion of the TECHNICAL DOCUMENTATION shall be accompanied by a Transmittal Letter.

Each postal package shall, additionally, be marked with the relevant contract number.

At the same time a separate letter shall be mailed by the CONTRACTOR to the above address enclosing a copy of the list of the TECHNICAL DOCUMENTATION so mailed.

5.15 Subject to Article 3.14.1, the OWNER shall not be responsible for any error, inaccuracy or omission of any kind in the ANNEXES, specifications or other data provided by the OWNER and shall not be deemed to have given any representation of accuracy or completeness of any data or information. Any data or information received by the Contractor from the OWNER or otherwise shall not relieve the Contractor from its responsibility for the proper design and execution of the Works.

5.16 Before issue of the READY FOR START-UP CERTIFICATE, the CONTRACTOR will issue andattach to the TECHNICAL DOCUMENTATION a representation in writing that the PLANT has been designed in accordance with the Best Available Technique as per BREF reference documents applicable to the PLANT and has been designed in accordance with STATUTORY REQUIREMENTS (including safety rules), LICENCSOR’S requirements and provisions of the CONTRACT.

5.17 The CONTRACTOR will carry out and complete all relevant safety studies or reviews for the PLANT, including but not limited to a Quantitative Risk Assessment (QRA), hazard identification (HAZID), safety integrity level (SIL) and hazard and operability (HAZOP). Any changes regarding the WORKS found to be necessary as a result of such studies and reviews shall be in the scope of the WORKS and within the CONTRACT PRICE. For the avoidance of doubt, the CONTRACTOR shall not be entitled to any additional payment and/or EOT for such changes.

* 1. EQUIPMENT, MATERIALS AND WORKMANSHIP
     1. The EQUIPMENT, MATERIALS and TECHNICAL DOCUMENTATION to be provided by the CONTRACTOR under the CONTRACT shall be delivered to the SITE by the CONTRACTOR at its own risk and expense on DDP (ORLEN Lietuva Refinery, Mažeikiai distr., Lithuania) INCOTERMS 2010 basis.

In this CONTRACT, for the avoidance of doubt, DDP shall also include the following obligations of the CONTRACTOR:

* + - 1. the CONTRACTOR shall be responsible, inter alia, for arranging all shipments of the EQUIPMENT and MATERIALS to the SITE and shall consign such shipments to the CONTRACTOR as consignee at the project shipping address, freight fully paid;
      2. the CONTRACTOR shall be responsible for making demurrage agreements and settlements with carriers for its shipments;
      3. the CONTRACTOR shall be responsible for the unloading and storage of DELIVERIES on the SITE, or any storage places on the SITE or near the SITE made available to the CONTRACTOR or leased by the CONTRACTOR;
      4. the CONTRACTOR shall be responsible for the disposal of all non-returnable packaging of DELIVERIES, as well as returning of the returnable packaging to the sender; and
      5. the CONTRACTOR shall bear all costs connected with manufacture and transport of the EQUIPMENT, MATERIALS and TECHNICAL DOCUMENTATION to the SITE, including in particular the following costs:

of transport to a destination place, including transport from a storage place to the SITE;

of loading and unloading, storage of the EQUIPMENT, MATERIALS and TECHNICAL DOCUMENTATION, as well as reloading in storage fields;

of customs clearance, customs receivables, import taxes and VAT, as well as other taxes and fees due in view of the EQUIPMENT, MATERIALS and TECHNICAL DOCUMENTATION imported to Lithuania; and

all penalties, fines and other costs arising from a failure to clear the EQUIPMENT, MATERIALS and TECHNICAL DOCUMENTATION, from improper tariffing, from a delay in reporting the EQUIPMENT, MATERIALS and TECHNICAL DOCUMENTATION for customs clearance, from a delay in customs clearance, from a delay in paying import fees, as well as costs of supplementary deliveries executed as a result of quantitative shortage identified in a dispatch specification of an executed EQUIPMENT, MATERIALS and TECHNICAL DOCUMENTATION.

* + 1. The EQUIPMENT and MATERIALS to be supplied by the CONTRACTOR shall have all required certificates and authorisations (certificates should be available on the SITE at the latest before installation of related EQUIPMENT and MATERIALS) and shall be manufactured in accordance with the CONTRACT, good engineering practice used in the industry relevant for the PLANT and in conformity with modern proven technology valid at the EFFECTIVE DATE.
    2. Transportation, unloading and storage at the SITE of the DELIVERIES and the CONTRACTOR’S TOOLS shall be carried out in accordance with all applicable OWNER’S internal regulations. For the avoidance of doubt, the CONTRACTOR shall organise and cover the costs of transport of the LICENSOR’S EQUIPMENT, if any, as well as to load and unload such deliveries. The same rule shall apply to deliveries of other equipment and materials being in the OWNER’S scope of supply, if any.
    3. The CONTRACTOR shall procure that, during the transportation to the SITE and within the SITE, and during storage at the SITE, the DELIVERIES are packed and stored in accordance with manufacturer’s recommendations, safety and firefighting standards in a manner ensuring their protection against damage, dirt, corrosion, or any other loss of properties during loading, transportation, unloading at the SITE and storage during the construction and erection of the PLANT.
    4. Every element of each DELIVERY (box, bundle, element, etc.) shall be marked with the following information: the sender, dimensions, net/gross weight, and box number. In addition, every element of each DELIVERY shall be marked to specify the manner of handling, i.e. unloading place, load centre of gravity, “up-down”, manner of storage, etc. Every DELIVERY must be provided together with a list of all the content of such DELIVERY.
    5. DELIVERIES requiring special storage conditions shall be marked to indicate such conditions, as follows:
       1. “A” STORE IN A CLOSED AND HEATED WAREHOUSE
       2. “B” STORE IN A CLOSED WAREHOUSE
       3. “C” STORE IN A COVERED PLACE
       4. “D” STORE IN OPEN SPACE.
    6. If a shipment of a DELIVERY consists of several boxes, bundles, or the like, then each of them shall be marked with a fraction, the denominator of which shall define the total number of boxes in the shipment, and the numerator which shall define the respective number of a total number of boxes constituting the whole DELIVERY.
    7. EQUIPMENT and MATERIALS imported by the CONTRACTOR and/or SUBCONTRACTORS from outside of the European Union shall be delivered with European Union standards compliance certificates, in particular, where applicable, the CE marking and equipped with the Declaration of Conformity.
    8. Within 6 (six) months from the EFFECTIVE DATE, the CONTRACTOR will prepare and present to the OWNER, for approval, an initial schedule of DELIVERIES that will permit to perform the CONTRACT in accordance with the TIME SCHEDULE. The initial schedule of DELIVERIES will contain a brief description of each DELIVERY, indicate whether a given DELIVERY contains any oversized loads and specify the anticipated time of making the DELIVERY to the SITE. Provided that it is possible during the preparation of the initial schedule of DELIVERIES, such description will also indicate the name of the VENDOR responsible for a given DELIVERY, as well as the anticipated date and place of the dispatch. The CONTRACTOR will update the initial schedule of DELIVERIES immediately after the completion of the order placing process relating to each DELIVERY, or after any other change as anticipated in connection with the DELIVERY, and will subsequently present its updated version to the OWNER. The initial schedule of DELIVERIES and each update thereof will require the OWNER’S approval.
    9. Ownership and risk of damage or loss

Good and clear title of ownership to all EQUIPMENT, MATERIALS and TECHNICAL DOCUMENTATION provided by the Contractor for the WorkS under this Contract shall, except as expressly provided otherwise in this Contract, pass to the Owner as soon as the EQUIPMENT, MATERIALS and TECHNICAL DOCUMENTATION are received at the SITE and a relevant portion of the CONTRACT PRICE is paid by the OWNER.

The Contractor shall ensure that vendors and/or other subcontractors from whom the Contractor obtains the EQUIPMENT and MATERIALS do not retain, encumber or reserve title to such items. The Contractor shall defend, indemnify and hold the Owner harmless from any such claims by its VENDORS and/or other subcontractors.

Notwithstanding the foregoing, the care, custody and control, as well as risk of loss of or damage of the Works (including all EQUIPMENT, MATERIALS and LICENSOR’S EQUIPMENT and deliveries of other equipment and materials being in the OWNER’S scope of supply after their handover to the CONTRACTOR), shall remain with the Contractor until the PROVISIONAL ACCEPTANCE CERTIFICATE has been issued by the Owner. Thereafter, the care, custody and control, as well as risk of loss of or damage of the Works shall pass to the Owner.

Until the above risk passes to the OWNER, irrespective of the principles of its liability for the performance of its obligations resulting from the CONTRACT, the CONTRACTOR is liable for the loss and damage of the WORKS. The CONTRACTOR shall remedy all such loss or damage of the WORKS, and all consequences thereof, so that the WORKS are reinstated to a condition complying with the CONTRACT.

* + 1. The OWNER may, at any time, inspect the proper performance of the CONTRACTOR’S obligations hereunder. The OWNER’S inspections on the SITE do not require any advance notice to the CONTRACTOR.
    2. The OWNER’S personnel, the PMC and other parties nominated by the OWNER in writing to the extent necessary for the OWNER to monitor the performance of the CONTRACT by the CONTRACTOR and to exercise other OWNER’S rights and perform the OWNER’S obligations hereunder shall, at all reasonable times:

have full, uninterrupted and continued access to all parts of the Site and to all places where the EQUIPMENT and Materials are stored within the OWNER’S facilities; and

during the production, manufacture and construction (at the Site and other location within the OWNER’S facilities), be entitled to examine, inspect, measure and test the EQUIPMENT, materials and workmanship, and to check the progress of manufacture of the plant and production and manufacture of the EQUIPMENT and Materials.

The PARTIES agree that notwithstanding Articles 6.11 and 6.12, the OWNER and CONTRACTOR shall make their best efforts to coordinate their respective personnel in advance so that the above referred inspections and visits are conducted with the minimal disruptions, and/or interferences and/or hindrance of the performance of the WORKS by the CONTRACTOR and/ or its SUBCONTRACTORS, and to avoid an impact to critical activities (with the exception of safety reasons), to the extent possible and feasible.

The ContRactor shall give the OWNER’S personnel full opportunity to carry out these activities, including providing access, facilities and permissions. No such activity shall relieve the Contractor of any obligation or responsibility.

The permanent covering of any WORKS on the SITE always requires prior acceptance by the OWNER, and in the case of CONSTRUCTION WORKS – also the prior acceptance by the OWNER’S supervision inspector under the CONSTRUCTION LAW.

In respect of the works which the OWNER’S personnel are entitled to examine, inspect, measure and/or test, the Contractor shall give notice to the OWNER whenever any such work is ready and before it is covered up, put out of sight, or packed for storage or transport. The OWNER shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Contractor that the OWNER does not require to do so. If the Contractor fails to give the notice, it shall, if and when required by the OWNER, uncover the work and thereafter reinstate and make good, all at the contractor’s own cost. For acceptance of permanent covering WORKS, the OWNER requires the submission of current TECHNICAL DOCUMENTATION, material certificates and as-built inventory documentation, unless the PARTIES agree otherwise.

* + 1. The OWNER may also inspect the performance of the CONTRACT in the offices and plants of the CONTRACTOR, VENDORS and/or other SUBCONTRACTORS, and/or in any other place where the CONTRACTOR, VENDORS and/or other SUBCONTRACTORS are performing any part of the CONTRACTOR’S obligations hereunder. The CONTRACTOR shall make available to the OWNER all documentation, technical equipment and premises necessary for the OWNER to effectively carry out its inspections outside of the SITE and shall procure that all VENDORS and/or other SUBCONTRACTORS will do the same. The CONTRACTOR shall specify the place and time of testing in the offices and/or production plants of the CONTRACTOR, VENDORS and/or other SUBCONTRACTORS not later than 21 (twenty one) BUSINESS DAYS (for locations outside Lithuania) or 7 (seven) BUSINESS DAYS (for locations within Lithuania) prior the relevant inspection and testing. The OWNER will carry out its inspections so as not to materially affect the operation of the CONTRACTOR’S, VENDORS’ and/or other SUBCONTRACTORS’ plants and offices.
    2. The OWNER may assign at any time its nominated representative(s) to be present at each of the CONTRACTOR’S, VENDORS’ and other SUBCONTRACTORS’ offices in which TECHNICAL DOCUMENTATION is prepared during the whole period of WORKS concerning the TECHNICAL DOCUMENTATION. The number of OWNER’S representatives shall not be higher than 8 (eight) at one location. The cost of the presence of such OWNER’S representatives in the CONTRACTOR’S, VENDORS’ and other SUBCONTRACTORS’ offices, such as travel, accommodation and daily allowance, will be borne by the OWNER. Other costs, if any, shall be borne by the CONTRACTOR. The CONTRACTOR shall provide such representatives with suitable offices within the CONTRACTOR’S, VENDORS’ or SUBCONTRACTORS’ office(s) (as the case may be) where the applicable TECHNICAL DOCUMENTATION will be prepared, with phone, fax and internet connections, and printing and scanning capabilities. The CONTRACTOR shall procure that each applicable VENDOR and/or SUBCONTRACTOR shall allow to such OWNER’S representatives access to the TECHNICAL DOCUMENTATION at all stages of its preparation, provide all applicable information and otherwise co-operate with them so as to enable them to supervise the preparation and the monitoring of the contents of the TECHNICAL DOCUMENTATION.
    3. This Article 6.15 shall apply to all tests specified in the Contract, other than the PERFORMANCE TESTS.

The Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials and suitably qualified and experienced staff, as are necessary to carry out the specified test efficiently. The contractor shall agree, with the OWNER, the time and place for the specified testing of the EQUIPMENT or Materials and any other parts of the Works.

The OWNER may instruct the CONTRACTOR to vary the location or details of specified tests or instruct the Contractor to carry out additional tests. If these additional tests show that the tested equipment, Materials or workmanship are not in accordance with the Contract, the cost of carrying out these additional tests shall be borne by the Contractor.

The OWNER shall give the Contractor not less than 24 hours’ notice of the OWNER’S intention to attend the tests. If the OWNER does not attend at the time and place agreed, the Contractor may proceed with the tests, unless otherwise instructed by the OWNER, and the tests shall then be deemed to have been made in the OWNER’S presence.

The Contractor shall promptly forward to the OWNER duly certified reports of all tests. When the specified tests have been passed, the OWNER shall endorse the CONTRACTOR’S test certificate, or issue a certificate to it, to that effect. If the OWNER has not attended the tests, it shall be deemed to have accepted the readings as accurate.

* + 1. The CONTRACTOR'S inspectors, together with, as the case may be, the OWNER'S personnel, the PMC and the relevant Owner’s supervision inspector, and/or third-party inspectors, will perform the final inspection and testing, including Factory Acceptance Testing (FAT) of the EQUIPMENT and MATERIALS at the VENDORS’ and other SUBCONTRACTORS’ premises. The CONTRACTOR’S PERSONNEL qualifications and authorisations shall be in accordance with the CONTRACTOR'S inspection standards and the OWNER'S requirements under the CONTRACT.
    2. If, as a result of any examination, inspection, measurement or test, any Equipment or Materials, design or workmanship are found to be defective or otherwise not in accordance with the Contract, the OWNER may reject the Equipment, Materials, design or workmanship by giving notice to the contractor, with reasons. The contractor shall then promptly make good the DEFECT or DEFECTS and ensure that the rejected item complies with the Contract.

If the OWNER requires this Equipment, Materials, design or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If the rejection and retesting cause the OWNER to incur additional costs, the Contractor shall reimburse the OWNER for such costs. The costs of such retesting shall be borne by the OWNER in case repeated tests reveal that tested part of WORK is in accordance with the CONTRACT.

* + 1. Notwithstanding any previous test or certification, the OWNER may instruct the Contractor to:

remove from the Site and replace any EQUIPMENT or MATERIALS which are not in accordance with the Contract;

remove and re-execute any other work which is not in accordance with the Contract; and

execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.

If the Contractor fails to comply with any such instruction in due time, the OWNER shall be entitled to employ and pay other persons to carry out the work. The Contractor shall reimburse the OWNER for all costs arising from this failure.

* + 1. All CONTRACTOR’S, VENDORS’ and other SUBCONTRACTORS’ costs associated with any inspection and testing by third party inspectors shall be borne by the CONTRACTOR. Costs of the OWNER’S personnel participating in any inspection and testing at the SITE, as well as at the CONTRACTOR’S, VENDORS’ and other SUBCONTRACTORS’ offices and workshops, will be borne by the OWNER. However, if additional inspections and/or testing are necessary due to the CONTRACTOR’S VENDORS’ and/or other SUBCONTRACTORS’ fault, the CONTRACTOR shall bear all the costs of the OWNER’S personnel participating in such additional inspections and/or testing. The same applies if the tests are cancelled for the reasons attributable to the CONTRACTOR.
    2. The number of the OWNER’S personnel participating in the final inspection and testing of the EQUIPMENT and MATERIALS will be specified by the OWNER for each type of EQUIPMENT and MATERIALS, not later than 5 (five) days before the planned inspection and testing.
    3. The CONTRACTOR shall arrange for adequate warehousing and storage for the MATERIALS and EQUIPMENT delivered to the SITE.
    4. the Contractor shall at all times preserve and protect all MATERIALS and EQUIPMENT for use by the Contractor in the execution of the Works from damage or loss due to weather, fire, theft, unexplained disappearance or other similar causes.
    5. The Contractor shall at all times protect from damage caused by the Contractor’s operations, all equipment and materials (whether stored or installed), paving, structures and any and all other items on the site belonging to the Owner, or other contractors.
    6. The Contractor shall execute all civil works in dry conditions and shall install and operate any temporary dams, dewatering systems, water courses, well pointing equipment and other works and shall supply and install sufficient pumping systems as may be necessary for this purpose.
    7. After the issuance of the PROVISIONAL ACCEPTANCE CERTIFICATE, all DELIVERIES and EQUIPMENT or unbuilt and unused MATERIALS and spare parts for the EQUIPMENT or other parts and components related to the performance of the CONTRACT shall be removed from the SITE outside the EXISTING PLANT at the CONTRACTOR's expense and sole risk, as part of the CONTRACT PRICE. It is assumed that unbuilt MATERIALS and unused consumables or other parts and elements for the performance of the CONTRACT are the property of the CONTRACTOR.
  1. PROJECT MANAGEMENT AND EXECUTION
     + 1. All the CONTRACTOR’S obligations should be performed no later than:

on the dates indicated in the CONTRACT, in particular the TIME FOR COMPLETION specified in the PARTICULAR CONDITIONS;

in relation to the obligations in respect of which no performance dates are stipulated in the GENERAL CONDITIONS or PARTICULAR CONDITIONS, on the dates indicated in the TIME SCHEDULE and in the DETAILED TIME SCHEDULE; or

in relation to the obligations in respect of which neither the GENERAL CONDITIONS, PARTICULAR CONDITIONS nor the TIME SCHEDULE nor the DETAILED TIME SCHEDULE provide for their performance dates – without undue delay, within such time limit so that the date of performing the obligations does not hinder the possibility of performance of the CONTRACT obligations by any of the PARTIES on the dates arising from the CONTRACT, taking into account the necessity of performing specific obligations in an appropriate sequence due to the technological requirements or the reasonable time management rules pertaining to the CONTRACTOR’S PERSONNEL, the CONTRACTOR’S TOOLS or EQUIPMENT, and considering the impact of weather conditions on the possibility and order of performing particular obligations, save that the obligations arising from administrative decisions should be performed no later than on the dates specified therein.

The dates for performing the CONTRACTOR’S obligations as indicated in the CONTRACT and in the TIME SCHEDULE or the DETAILED TIME SCHEDULE are ultimate deadlines.

* + 1. Within 10 (ten) days after the EFFECTIVE DATE, the CONTRACTOR’S REPRESENTATIVE and key members of the CONTRACTOR’S PERSONNEL, including discipline specialists as required, shall attend a Kick-Off Meeting with the OWNER’S project personnel at the OWNER’S premises. The purpose of the Kick-Off Meeting is to establish the directive procedures for the effective execution and administration of the CONTRACT.
    2. Within 45 (forty-five) days after the EFFECTIVE DATE, the Contractor shall submit to the OWNER, for its approval, the DETAILED TIME SCHEDULE which shall, as a minimum, show the following:

the order in which the Contractor proposes to carry out and execute the Works (including design, purchase orders for long lead items, manufacture, delivery to the Site of the EQUIPMENT and MATERIALS, construction, erection, PRE-COMMISSIONING, COMMISSIONING, START-UP, STABLE OPERATION and PERFORMANCE TESTS);

the times for submission and approval of the TECHNiCAL DOCUMENTATION;

the total and activity free float for main activities, and the critical path of the WORKS;

the relationship between all the various CONTRACTOR’S activities, and the impact of each such activity on the critical path of the WORKS;

all CONTRACTOR’S activities that are linked logically in the period from the EFFECTIVE DATE to the PROVISIONAL ACCEPTANCE CERTIFICATE in a manner allowing to track the impact of delay and acceleration of each activity upon the remaining CONTRACTOR’S activities under the CONTRACT; and

the scheduled date of start and completion for each CONTRACTOR’S activity.

The DETAILED TIME SCHEDULE shall be in the form of a critical path network and shall conform to the requirements set forth in PC ANNEX 1 (*Scope of Work*). The DETAILED TIME SCHEDULE shall constitute a basis for manpower and/or manning histograms and s-diagrams of the CONTRACTOR’S PERSONNEL in the performance of the WORKS (overall and per discipline). The CONTRACTOR shall provide together with the DETAILED TIME SCHEDULE: manpower and/or manning histograms and s-diagrams of the CONTRACTOR’S PERSONNEL, to be updated on a monthly basis.

The DETAILED TIME SCHEDULE may not amend:

the dates specified in the TIME SCHEDULE contained in PC ANNEX 5 (*Time Schedule*);

the TIMES FOR COMPLETION specified in Clause 3 of the PARTICULAR CONDITIONS; or

the dates of PAYMENT MILESTONES specified in PC ANNEX 9 (*Payment Schedule and Liabilities*).

Once approved by the OWNER, the DETAILED TIME SCHEDULE shall be incorporated into PC ANNEX 5 (*Time Schedule*), for this action an amendment to the CONTRACT shall not be required unless the TIME FOR COMPLETION as per Clause 3 of the PARTICULAR CONDITIONS and/or deadlines for completion of any of the OWNER´S obligations set forth in the CONTRACT are affected. The approved DETAILED TIME SCHEDULE shall constitute the basis for execution, monitoring and reporting progress for the PLANT.

The approval by the OWNER of the DETAILED TIME SCHEDULE shall not relieve the Contractor of any obligation under the Contract.

* + 1. The Contractor shall submit a revised DETAILED TIME SCHEDULE whenever the previous schedule is inconsistent with actual progress or with the Contractor’s obligations (CURRENT SCHEDULE). Unless otherwise stated in the Contract, each CURRENT SCHEDULE shall include:

the order in which the Contractor intends to carry out the Works, including the anticipated timing of each major stage of the Works;

the periods for reviews under GC Article 5 (*Technical Documentation*);

the sequence and timing of inspections and tests specified in the Contract; and

a supporting report which shall include:

a general description of the methods which the Contractor intends to adopt for the execution of each major stage of the Works; and

the approximate number of each class of Contractor’s PERSONNEL required for the execution of the WORKS and of each type of EQUIPMENT for each major stage of the Works.

The CURRENT SCHEDULE is provided only for information purposes and in no event is the CONTRACTOR released from achieving the TIMES FOR COMPLETION. The OWNER’S personnel shall be entitled to rely upon the CURRENT SCHEDULE when planning their activities.

* + 1. The Contractor shall promptly give notice to the OWNER of specific probable future events or circumstances which may adversely affect or delay the execution of the Works. In this event, or if the OWNER gives notice to the Contractor that the DETAILED TIME SCHEDULE fails (to the extent stated) to comply with the Contract or to be consistent with actual progress and the Contractor’s stated intentions, the Contractor shall submit a CURRENT SCHEDULE to the OWNER in accordance with this GC Article 7.
    2. If, at any time, actual progress is too slow to complete within the TimeS for Completion, and/or progress has fallen (or will fall) behind the current DETAILED TIME SCHEDULE, then the OWNER may instruct the Contractor to submit a CURRENT SCHEDULE and supporting report describing the revised methods which the contractor proposes to adopt in order to expedite progress and complete the whole of the WORKS within the TimeS for Completion.

Unless the OWNER notifies otherwise, the contractor shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of the Contractor’s PERSONNEL, at the risk and cost of the Contractor. If these revised methods cause the OWNER to incur additional costs, the CONTRACTOR shall pay these costs to the OWNER, in addition to liquidated damages for delay.

* + 1. The CONTRACTOR shall provide the schedules and reports set forth above and, in addition, those schedules and reports that are requested by the OWNER as set forth in PC ANNEX 1 (*Scope of Work*).
  1. MILESTONE ACCEPTANCE PROCEDURES
     1. Each MILESTONE is subject to the acceptance by the OWNER in accordance with this GC Article 8 and in accordance with the detailed procedures provided by the OWNER.

Each acceptance shall be certified with a relevant WORK HANDOWER AND ACCEPTANCE STATEMENT and in the case of the PAYMENT MILESTONES concerning MECHANICAL COMPLETION, READY FOR START-UP and PROVISIONAL ACCEPTANCE executed by the PARTIES in accordance with GC Articles 18 (*Mechanical Completion, Pre-Commissioning, Commissioning and Start-Up*) and 19 (*Stable Operation,* *Performance Tests, Provisional Acceptance and Final Acceptance*). For the avoidance of doubt WORK HANDOWER AND ACCEPTANCE STATEMENT shall be signed by both PARTIES.

* + 1. The mutually signed WORK HANDOWER AND ACCEPTANCE STATEMENT constituting the basis for the issuing of an invoice by the CONTRACTOR in accordance with Article 12 (*Payment Conditions*). Unless otherwise specified in the CONTRACT (especially in GC Article 18 and/or GC ANNEX 4 *(Mechanical Completion, Pre-Commissioning; Commissioning, Start-up; Provisional Acceptance))* in relation to any specific acceptance, the OWNER will approve and sign the WORK HANDOWER AND ACCEPTANCE STATEMENT and/or acceptance certificate (if applicable) within five (5) BUSINESS DAYS from when the OWNER receives the CONTRACTOR’S notice of readiness of the given MILESTONE for acceptance, along with the documentation supporting such representation, and along with the proposed draft of an WORK HANDOWER AND ACCEPTANCE STATEMENT and/or draft of an acceptance certificate (if applicable) already signed on behalf of the CONTRACTOR.

If the OWNER fails to sign and return the WORK HANDOWER AND ACCEPTANCE STATEMENT and/or acceptance certificate (if applicable) to the CONTRACTOR, or to expressly refuse acceptance, giving the reasons for such refusal, within the above period, the CONTRACTOR will issue a written remainder of the pending WORK HANDOWER AND ACCEPTANCE STATEMENT and/or acceptance certificate (if applicable) to the OWNER.

* + - 1. Deemed acceptance procedure

If the OWNER fails to sign and return the WORK HANDOWER AND ACCEPTANCE STATEMENT and/or acceptance certificate (if applicable) to the CONTRACTOR, or to expressly refuse acceptance, giving the reasons for such refusal, within 5 (five) BUSINESS DAYS from when the OWNER receives the CONTRACTOR’S reminder, the acceptance certificate (if applicable) and/or acceptance certificate (if applicable) will be deemed to have been approved and signed by the OWNER upon the end of first period of 5 (five) BUSINESS DAYS after receipt of the draft of acceptance certificate (if applicable) and/or draft of acceptance certificate (if applicable) (or the end of another applicable period as may be specified in the CONTRACT in relation to the acceptance of the given MILESTONE).

If within the time period specified above the OWNER refuses to approve and sign an HANDOWER ACCEPTANCE STATEMENT and/or acceptance certificate (if applicable), the CONTRACTOR is obliged to respond to the OWNER’S comments and address the OWNER’S objections. Once the grounds for the refusal of acceptance are removed, the MILESTONE will be re-submitted for the OWNER’S acceptance.

* + 1. The acceptance by the OWNER of any MILESTONE does not release the CONTRACTOR from any liability for undue performance or non-performance of any of the CONTRACTOR’S obligations hereunder.
    2. The acceptance of each PAYMENT MILESTONE by the OWNER is conditioned upon the previous acceptance by the OWNER of all the PAYMENT MILESTONES preceding such PAYMENT MILESTONE in the PAYMENT SCHEDULE (i.e., PAYMENT MILESTONES which should be executed earlier according to PAYMENT SCHEDULE), with the reservation that the OWNER, at its own discretion, may not apply that rule in relation to a given PAYMENT MILESTONE. However, the OWNER does not have the right to refuse to accept the PAYMENT MILESTONE in accordance with the above rule if only the PAYMENT MILESTONE directly preceding the PAYMENT MILESTONE presented for the acceptance has not been accepted by the OWNER but all the other PAYMENT MILESTONES preceding such PAYMENT MILESTONE in the PAYMENT SCHEDULE have already been accepted.
    3. The review by the OWNER, in accordance with GC Article 5 (*Technical Documentation*), of the relevant portion(s) of the TECHNICAL DOCUMENTATION constitutes a condition for the OWNER’S acceptance of the MILESTONE comprising any part of such TECHNICAL DOCUMENTATION.
    4. Submission by the CONTRACTOR of evidence of obtaining all approvals, marking, certifications, authorisations and other documents required for the use of a given DELIVERY in the PLANT, as well as of all TECHNICAL DOCUMENTATION required by GC Article 5 (*Technical Documentation*) relating to the given MILESTONE, constitutes a condition for the OWNER’S acceptance of each such MILESTONE.
  1. PARTIES’ REPRESENTATIVES
     1. The OWNER’S REPRESENTATIVE (Project Manager) and the CONTRACTOR’S REPRESENTATIVE are indicated in the PARTICULAR CONDITIONS.
     2. Notices, representations and remaining correspondence related to the performance of the CONTRACT will be addressed to the REPRESENTATIVE of the addressee PARTY. At least one of the REPRESENTATIVES of each PARTY will be available by phone during business hours (8:00 – 16:45 local time) on each BUSINESS DAYS for the other PARTY in the period from the EFFECTIVE DATE to the end of the DEFECTS LIABILITY PERIOD.
     3. Each PARTY may, at any time, replace its REPRESENTATIVE or appoint an additional REPRESENTATIVE for matters relating to a specific scope of the performance of the CONTRACT, by way of a notice in writing delivered to the other PARTY. However, the Contractor shall not, without the prior consent of the OWNER, revoke the appointment of the Contractor’s Representative or appoint a replacement. The change of the PARTY’S REPRESENTATIVE or appointment of an additional REPRESENTATIVE will be effective vis-à-vis the other PARTY following 3 (three) BUSINESS DAYS from the delivery of the notice to the other PARTY. No change or amendment to the CONTRACT will be required.
     4. Each of the PARTIES’ REPRESENTATIVES is authorised to exercise the respective PARTY’S rights, and perform the respective PARTY’S obligations, in accordance with the CONTRACT. Notwithstanding Article 16.6, the PARTIES’ REPRESENTATIVES shall not be authorised to agree to any modification of the CONTRACT. For the avoidance of doubt, the OWNER’S Project Manager is also authorised to exercise the respective powers of the said additional OWNER’S REPRESENTATIVES.
     5. The OWNER’S REPRESENTATIVE may, from time to time, assign duties and delegate authority to assistants, and may also revoke such assignment or delegation. These assistants may include a resident engineer and/or independent inspectors appointed to inspect and/or test items of the EQUIPMENT and/or MATERIALS. The assignment, delegation or revocation shall not take effect until a copy of it has been received by the CONTRACTOR.

Assistants shall be suitably qualified persons, who are competent to carry out these duties and exercise this authority, and who are at an adequate level in the language for communications defined in the CONTRACT.

All these persons, including the OWNER’S REPRESENTATIVE and assistants, to whom duties have been assigned or authority has been delegated, shall only be authorised to issue instructions to the CONTRACTOR to the extent defined by the delegation. Any approval check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by a delegated person, in accordance with the delegation, shall have the same effect as the act of the OWNER. However:

unless otherwise stated in the delegated person’s communication relating to such an act, it shall not relieve the CONTRACTOR from any responsibility it has under the CONTRACT, including responsibility for errors, omissions, discrepancies and non-compliances;

any failure to disapprove any WORK, EQUIPMENT or MATERIALS shall not constitute approval, and shall therefore not prejudice the right of the OWNER to reject the WORK, EQUIPMENT or MATERIALS; and

if the CONTRACTOR questions any determination or instruction of a delegated person, the CONTRACTOR may refer the matter to the OWNER, who shall promptly confirm, reverse or vary the determination or instruction.

* + 1. The CONTRACTOR’S REPRESENTATIVE may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the OWNER has received prior notice signed by the CONTRACTOR’S REPRESENTATIVE, naming the person and specifying the powers, functions and authority being delegated or revoked.
    2. The CONTRACTOR’S REPRESENTATIVE and all other delegated persons shall be fluent in the languages for communications defined in the CONTRACT.
    3. The CONTRACTOR’S REPRESENTATIVE shall manage and direct all the CONTRACTOR’S PERSONNEL and supervise the performance of the WORKS. The CONTRACTOR’S REPRESENTATIVE shall be authorised to receive, on behalf of the CONTRACTOR, all notices, guidelines, consents, certificates and other representations made by the OWNER, in accordance with the CONTRACT. In case of temporary unavailability of the CONTRACTOR’S REPRESENTATIVE for any reason, the CONTRACTOR shall appoint a deputy representative, whose name and contact details shall be notified to the OWNER reasonably in advance.
    4. The CONTRACTOR’S REPRESENTATIVE shall co-operate with the OWNER’S REPRESENTATIVE and/or PMC in order to solve, on an on-going basis, the technical and organisational problems occurring in relation to the WORKS, and coordinate all interfaces between the CONTRACTOR, the OWNER and the OWNER’S third-party contractors. The instructions of the OWNER’S REPRESENTATIVE or the PMC issued to the CONTRACTOR constitute the OWNER’S instructions within the meaning of Article 2.11.
    5. Irrespective of the appointment of the CONTRACTOR’S REPRESENTATIVE, the CONTRACTOR shall:

nominate the construction manager(s), being an individual properly licensed for this function as required by the applicable STATUTORY REQUIREMENTS; and

nominate the licensed design engineers performing the WORKS as required by the applicable STATUTORY REQUIREMENTS.

* + 1. For the avoidance of doubt, the OWNER may appoint the PMC or other entities to exercise, on behalf of the OWNER all or part of the following activities: the quality inspections and control, environment, health and safety inspections, TECHNICAL DOCUMENTATION reviews and approvals, WORKS actual status confirmation and any other inspection, supervision and approval rights which the OWNER has under this CONTRACT.
  1. CONTRACTOR'S PERSONNEL
     1. The CONTRACTOR shall provide the entire personnel required for the proper and timely performance of the CONTRACTOR’S obligations resulting from the CONTRACT, in particular the KEY PERSONNEL.

The CONTRACTOR shall provide for all the needs, and bear all cost and expense of the CONTRACTOR’S PERSONNEL, and in particular: remuneration, daily allowance, insurance, health care, protective clothing and equipment, transportation services, accommodation, meals, premises and office equipment, telecommunications services and utilities, transport to and from the SITE.

The CONTRACTOR shall obtain the relevant permits to work in Lithuania required for the CONTRACTOR’S PERSONNEL, and shall bear all social and statutory health insurance premiums, taxes and all other public levies related to the CONTRACTOR’S PERSONNEL.

The CONTRACTOR shall comply with all the relevant local labour laws applicable to the CONTRACTOR’S PERSONNEL, including the STATUTORY REQUIREMENTS relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.

The CONTRACTOR shall not permit any of the CONTRACTOR’S PERSONNEL to maintain any temporary or permanent living quarters within the structures forming part of the temporary facilities or the permanent WORKS.

* + 1. The CONTRACTOR shall be responsible for the actions and omissions of the CONTRACTOR’S PERSONNEL as for its own actions and omissions. The CONTRACTOR shall in particular procure that the CONTRACTOR’S PERSONNEL comply with the STATUTORY REQUIREMENTS, the CONTRACT and the applicable internal regulations of the OWNER, including those concerning safety at work.
    2. The WORKS shall be carried out solely by the CONTRACTOR’S PERSONNEL holding the required qualifications, licences, certifications, medical certificates, and having the necessary knowledge and experience, and in particular the applicable qualifications required by the CONSTRUCTION LAW or any other STATUTORY REQUIREMENTS, and/or the licences of any COMPETENT AUTHORITY.
    3. The CONTRACTOR shall prepare and submit to the OWNER the Works Organisation Plan for the WORKS on the SITE in the Lithuanian language. Notwithstanding the above, the CONTRACTOR shall prepare the Safety and Health Protection Plan documentation or Safe Works Performance Instruction as required under the provisions of law and CONTRACT. The CONTRACTOR shall include in the Safe Works Performance Instruction provisions regarding the transport of oversize goods and goods exceeding the vehicle dimensions as specified in GC ANNEX 7 (*Local General Requirements of AB ORLEN Lietuva*). The CONTRACTOR undertakes to follow the HSE regulations as specified in GC ANNEX 7 (*Local General Requirements of AB ORLEN Lietuva*).
    4. The CONTRACTOR shall retain full and complete responsibility and liability for all injuries and damage to any of the CONTRACTOR’S PERSONNEL, arising out of or allegedly attributable in any way thereto. Nothing herein contained shall be construed as imposing any duty upon the OWNER to provide facilities necessary to furnish emergency medical treatment or related services to the CONTRACTOR’S PERSONNEL or to make such facilities and/or services available to the CONTRACTOR’S PERSONNEL.
    5. Each of the OWNER, the PMC or other entity nominated by the OWNER may at any time inspect the SITE, and request from the CONTRACTOR the current documents and/or certificates, to verify that all the CONTRACTOR’S PERSONNEL employed in the performance of the CONTRACT at a given time is adequately qualified, and in particular that such CONTRACTOR’S PERSONNEL holds all qualifications and medical certificates required by the applicable STATUTORY REQUIREMENTS.
    6. The CONTRACTOR will facilitate such inspections and promptly deliver all requested documents and certificates. The OWNER may request that a member of the CONTRACTOR’S PERSONNEL found to lack appropriate qualifications or found to be in breach of any regulation or environmental, occupational health and safety regulation, is promptly and permanently removed by the CONTRACTOR from the SITE and that such person is replaced with an adequately qualified person. The removal and/or replacement of a member of the CONTRACTOR’S PERSONNEL shall not entitle the CONTRACTOR to any additional payment and/or extension of time.
    7. At the OWNER’S request, the CONTRACTOR shall at all times forthwith provide to the OWNER information in written form, or copies of documents concerning the CONTRACTOR’S PERSONNEL employed in connection with this CONTRACT, to the extent that in accordance with the STATUTORY REQUIREMENTS the OWNER is required to provide such information or documents to any public authorities and/or other third parties.
    8. At the OWNER’S justified request, the CONTRACTOR shall promptly change the composition of the CONTRACTOR’S PERSONNEL and replace the persons indicated by the OWNER with other suitably qualified and experienced CONTRACTOR’S PERSONNEL. The OWNER’S request to replace a member of the CONTRACTOR’S PERSONNEL shall be considered justified in particular if a given person is found to have violated any STATUTORY REQUIREMENTS, the CONTRACT (including environmental and health and safety regulations), and/or any applicable internal regulations of the OWNER.
    9. CONTRACTOR’S KEY PERSONNEL
       1. Subject only to this Article 10.10, the KEY PERSONNEL is to remain unchanged and shall all be directly and personally engaged in the performance of the WORKS up to the issuance of the PROVISIONAL ACCEPTANCE CERTIFICATE.
       2. A member of the KEY PERSONNEL may be absent due to holidays and/or periodic stay in his country of origin and may be removed from the performance of the WORKS and/or replaced with another person only due to one or more of the following reasons: (i) sick leave, (ii) death, (iii) becoming incapacitated, (iv) retirement and/or (v) termination of the employment (in whatever legal form) with the CONTRACTOR by such person.
       3. Where a member of the KEY PERSONNEL becomes absent, unavailable, removed and/or replaced in the circumstances listed in Article 10.10.2 above, the CONTRACTOR shall promptly appoint, at no additional cost to the OWNER, a replacement person having equivalent experience and qualifications, which shall be subject to the OWNER’S prior written approval.
       4. The replacement shall be provided in adequate time, so as to avoid any negative impact on the WORKS. The OWNER shall issue its approval or denial within 5 (five) BUSINESS DAYS from the date it is notified about the candidate for replacement, provided that together with that notification the OWNER receives the candidate’s CV. Provided that the above conditions are met, if the OWNER does not give its approval or denial regarding the replacement in the KEY PERSONNEL, the replacement with the proposed candidate shall be deemed approved.
       5. The OWNER shall have the right to review the performance, experience and/or the qualifications of each member of the KEY PERSONNEL. The OWNER may reasonably request the CONTRACTOR to remove and/or replace any or all members of the KEY PERSONNEL. Upon receiving such OWNER’S request, the CONTRACTOR shall promptly effect the removal and/or replacement, and Articles 10.10.3 and 10.10.4 above shall apply.
       6. The CONTRACTOR may replace any member of the KEY PERSONNEL only subject to compliance with Articles 10.10.3 and 10.10.4 above.
    10. Prohibition of soliciting the OWNER’S employees
        1. Until the PROVISIONAL ACCEPTANCE, the CONTRACTOR shall not - on its own account or any other person, company, business entity or other type of organisation or on their behalf, either directly or indirectly – employ, or attempt to employ, or otherwise engage, or use the services of any person who is an employee of the OWNER or is bound with them by other legal relationship, or convince, persuade, encourage or induce any such person to terminate the relevant agreements with an intention to obtain benefits for themselves or any third parties, and in particular by employing such person or becoming bound with the person based on any other legal relationship.
  1. CONTRACT PRICE
     1. The OWNER shall pay, as full compensation to the CONTRACTOR for the execution of the PLANT (i.e. complete and proper performance of the WORKS) in accordance with this CONTRACT, the CONTRACT PRICE as stated in the PARTICULAR CONDITIONS.
     2. The CONTRACT PRICE covers the performance of all obligations of the CONTRACTOR in accordance with the CONTRACT, and all costs, expenses and disbursements of the CONTRACTOR related to it. For the avoidance of doubt, the CONTRACTOR is not entitled to any additional remuneration, compensation and/or cost reimbursement for the performance of any of its obligations specified in the CONTRACT unless otherwise expressly provided in relation to the specific obligation.
     3. The CONTRACT PRICE, as well as unit prices and time rates specified in PC ANNEX 10 (*Unit & Time Rates*), are lump sums within the meaning of the Civil Code, and are all-in, fixed and firm for the duration of the CONTRACT and are not subject to escalation.

The CONTRACT PRICE and the above-mentioned unit rates and time rates include all the CONTRACTOR’S costs, expenses, overheads and profit for the full, complete and proper performance of the WORKS, as well as variations in schedule, workload and/or execution sequence.

Variation in quantities or complexity of the WORKS shall not cause a change to any of the CONTRACT PRICE or the above-mentioned unit rates and time rates used to price the WORKS.

An increase in expenses on the MATERIALS, EQUIPMENT, remuneration and/or other similar costs shall have no impact on the CONTRACT PRICE. The CONTRACTOR shall assume the risk of increase in contingent costs related to the WORKS.

* + 1. The PARTIES hereby agree that any and all changes to the CONTRACT PRICE that are allowed by the PARTIES are exclusively specified in the CONTRACT, and that the application of CIVIL CODE is excluded.

The OWNER shall pay to the CONTRACTOR any Lithuanian VAT included in the CONTRACTOR’S invoices in accordance with the applicable Lithuanian tax regulations.

* + 1. The CONTRACTOR shall, not later than 60 (sixty) days prior to MECHANICAL COMPLETION, provide a detailed list of fixed assets in the format as specified in GC ANNEX 5 (*Inventory & Asset Management*) for OWNER’s approval. After its approval by the OWNER, the CONTRACTOR shall, not later than 30 (thirty) days prior to READY FOR COMMISSIONING, provide an itemised breakdown of the CONTRACT PRICE in the format shown in GC ANNEX 5 (*Inventory & Asset Management*). This itemised breakdown is for the OWNER’S inventory and asset management system only. In case of failure to provide the above indicted list of fixed assets and/or itemised breakdown of the CONTRACT PRICE, the OWNER has the right to withhold payment for the READY FOR COMMISSIONING, until the above mentioned documents shall be provided to the OWNER.
    2. The payment of any portion of the CONTRACT PRICE by the OWNER does not release the CONTRACTOR from any liability for the improper performance or non-performance of the CONTRACTOR’S obligations arising from the CONTRACT.

For the avoidance of doubt, unless specified otherwise, the amounts of liquidated damages, the limitations of liability and all other amounts given in the CONTRACT as a percentage of the CONTRACT PRICE are a percentage of the CONTRACT PRICE net of any VAT.

11.7 Contractor confirms to have carefully examined all of the Contract documents including all ANNEXES, Attachments, Specifications and the like for the Works and has fully acquainted himself with the SITE and all local conditions relevant to the Works and their surroundings. Contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the FIXED Contract Price and assumes the risk of such conditions and will, regardless of such conditions, the expense, the complexity of executing the Works, or negligence, if any, of Owner, fully complete the Works for the stated Contract Price and within the TIME FOR COMPLETION without further recourse to Owner.

11.8. Contractor confirms that the FIXED contract price covers all the contractor’s obligations under the contract (including those under provisional sums or optional works, if any) and all things necessary for the proper design, execution and completion of the works and the remedying of any defects therein.

Except as otherwise stated in the Contract:

1. Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the works;
2. by signing the Contract, the contractor accepts total responsibility for having foreseen all difficulties and cost of successfully completing the works within the TIME FOR COMPLETION and the Contract Price shall not be adjusted to take account of any unforeseen difficulties or costs.
   1. PAYMENT CONDITIONS
      1. Unless specified otherwise, the payment of the CONTRACT PRICE and other payments resulting from the CONTRACT shall be made in the currency as defined in the PARTICULAR CONDITIONS. However, the amount of Lithuanian VAT shall be payable in Euro currency (EUR) and calculated according to the Lithuanian tax law. Contractor must have registered and valid VAT code in Lithuania.
      2. Except to the extent expressly stated otherwise, the Contract Price will be paid in instalments for partial execution of the PLANT, i.e. for the PAYMENT MILESTONES fully completed and accepted by the OWNER, in accordance with PC ANNEX 9 (*Payment Schedule and Liabilities*) within 90 (ninety) days from the date of the PARTIES approve the WORK HANDOVER AND ACCEPTANCE STATEMENT and receipt by OWNER of a valid and correct invoice and full supporting documentation. WORK HANDOVER AND ACCEPTANCE STATEMENT must be provided and approved by OWNER’S REPRESENTATIVE set in Particular Conditions 8.1. The final approval is made by OWNER’S REPRESENTATIVE.
      3. All VAT invoices shall be prepared on the basis of a WORK HANDOVER AND ACCEPTANCE STATEMENT approved and signed by the OWNER. All VAT invoices shall be transferred to the OWNER for payment as soon as possible, however not later than 3 (three) working days from the date of approval of the respective WORK HANDOVER AND ACCEPTANCE STATEMENT and always before the 1st working day of the next month. Where the VAT invoice is presented to the OWNER before the approval of the WORK HANDOVER AND ACCEPTANCE STATEMENT by the PARTIES, the term of payment under such VAT invoice shall start on the date of approval of the WORK HANDOVER AND ACCEPTANCE STATEMENT.
      4. Each CONTRACTOR’S invoice will comply with all applicable STATUTORY REQUIREMENTS and in addition shall contain the following:

The CONTRACT number;

Invoice issue date, series and number;

Description and number of the relevant PAYMENT MILESTONE achieved;

Work Order (Purchase Order No.) number (if applicable);

The Owner’s project number;

OWNER’S company code (166451720);

OWNER’S VAT code (LT 664517219);

OWNER’S title and registered office address (Public Company „ORLEN Lietuva”, Mažeikių St. 75 Juodeikiai village, LT-89453 Mazeikiai District Municipality, Lithuania);

CONTRACTOR’S Lithuanian VAT payer’s code and company code (after it is registered in Lithuania);

CONTRACTOR’S title and registered office address;

CONTRACTOR’S Bank details;

Invoice issuance date, series and number;

Work Handover-Acceptance Statement approved by PARTIES;

Value Added Tax rate (in percentages);

Total net invoice amount excluding VAT;

VAT amount;

When WORKS are exempt from taxation or they are taxable at 0 (zero) percent VAT rate or when the OWNER is liable to calculate and to pay VAT, - a reference to the appropriate provision of the Law on VAT or European Council Directive 2006/112/EC or any other reference shall be indicated in the Invoice. Any invoice submitted, which fails to comply with the terms of this Contract, including the requirements of form and documentation, may be returned to CONTRACTOR. Any costs associated with the resubmission of a proper invoice shall be to CONTRACTOR’S account.

* + 1. Contractor's final invoice for payment of the balance of the Contract Price shall be submitted for payment after Owner has issued Contractor the PROVISIONAL Acceptance Certificate and appropriate final WORK HANDOVER AND ACCEPTANCE STATEMENT has been approved by PARTIES for the purpose of final payment and that Contractor has complied with all terms of this Contract and has delivered to Owner a Certification and Release of Lien certificate stating the total Final Contract Price and that this represents Contractor’s total compensation for performance of the Works. This Final Invoice shall contain a complete itemised listing of progress and additional work invoices by number, date, gross amount and the total amount of sums paid and due. Final payment shall not be sooner than payment period set forth in Article 12.2 after the PARTIES approve the WORK HANDOVER AND ACCEPTANCE STATEMENT and receipt of a valid and correct invoice and supporting documentation satisfactory to Owner. Final payment shall not relieve Contractor of any its obligations and liabilities under this Contract.

Final payment shall not be conclusive:

1. to the extent that fraud or dishonesty relates to or affects any matter dealt with in the final payment, or
2. if any arbitration or court proceedings under the Contract have been commenced by either PARTY after the issue of the PROVISIONAL Acceptance Certificate.
   * 1. Where CONTRACTOR’S invoice includes compensation for work performed on unit prices or time rates, CONTRACTOR shall submit its determination of the units of work performed, determined in accordance with the provisions of this CONTRACT, and substantiated by documents satisfactory in form and content to OWNER. Upon verification by OWNER of such documents, OWNER will advise CONTRACTOR in writing of either acceptance of CONTRACTOR’S determination of units or of OWNER’S determination of such units. Such payment shall not be sooner than payment period set forth in Article 12.2. after the PARTIES approve the WORK HANDOVER AND ACCEPTANCE STATEMENT and receipt of a valid and correct invoice and supporting documentation satisfactory to OWNER.
     2. Where CONTRACTOR’S invoice includes compensation for work performed on a reimbursable basis, all costs, expenses and other amounts so invoiced shall be substantiated and supported by equipment time sheets, paid invoices, labour time sheets, receipts and other documents provided to OWNER, which shall be satisfactory to and verified by OWNER as specified in PC ANNEX 10 *(Unit Rates & Time Rates)*. Such payment shall not be sooner than payment period set forth in Article 9.3 after the PARTIES approve the WORK HANDOVER AND ACCEPTANCE STATEMENT and receipt of a valid and correct invoice and supporting documentation satisfactory to OWNER.
     3. CONTRACTOR shall maintain for a period of 3 (three) years after final payment under this CONTRACT, all records and accounts pertaining to WORKS performed by CONTRACTOR under this CONTRACT, at unit rate prices, time rates, or other reimbursable pricing, authorized in writing by OWNER. OWNER shall have the right to audit, copy and inspect said records and accounts at all reasonable times during the course of the WORKS and during the above 3 (three) years period for the purpose of verifying units furnished and/or costs incurred, as applicable.
     4. The PARTIES hereby agree and do not object that all invoices according to this CONTRACT shall be issued electronically and sent to XXXXXXX@orlenlietuva.lt and that such invoices shall be treated as originals. Hard copy (printed) invoices shall not be sent, unless either of the PARTIES gives the other PARTY a written request to do so. In case of a change in the invoice delivery address, the PARTY whose address has changed shall inform the other PARTY thereon in writing within 5 (five) calendar days. The PARTIES shall continue handling invoices in a due manner as prescribed by relevant laws, and shall ensure the authenticity, integrity and legibility of the content of electronic invoice.
     5. The CONTRACTOR will attach to each invoice issued based on the CONTRACT:
        1. a copy of the WORK HANDOWER ACCEPTANCE STATEMENT approved and signed by the OWNER concerning the invoiced PAYMENT MILESTONE;
        2. a copy of insurance certificates as required to be maintained by the CONTRACTOR according to Article 23.5 of the GENERAL CONDITIONS. The CONTRACTOR shall present such obligatory certificates together with the first invoice and in case the validity of insurance expires. In case any of the required certificates expires and CONTRACTOR does not provide the OWNER will be entitled to withhold payments to the CONTRACTOR until the required certificate(s) are submitted. For the avoidance of doubt, no interest will be due to the CONTRACTOR in relation to such withheld amounts.
     6. The amounts invoiced by the CONTRACTOR shall be payable within 90 (ninety) days from the receipt by the Owner of a valid and correct invoice in electronic along with its full supporting documentation as specified in this Article 12, to the bank account(s) given in the invoice. Should the CONTRACTOR deliver the invoice without the documents referred to in this Article 12, the OWNER shall withhold the payment of the invoice, and the payment shall be made within 90 (ninety) days from the date of delivery of the invoice together with the required documents to the OWNER and without having to pay statutory interest for late payment. The OWNER is not liable for any incorrect indication of the bank account number by the CONTRACTOR in its invoice, and for any delays in payment related thereto. If the CONTRACTOR indicates in its invoice a bank account number that is not registered in the OWNER'S system or indicated in the PARTICULAR CONDITIONS, the CONTRACTOR shall confirm that the account number is correct by an official letter signed by the persons indicated in the Commercial Register or other document as authorised to represent the CONTRACTOR.
     7. Late payments maturity date

The date of payment of the interest note shall be 14 (fourteen) days from the date of its issuance.

* + 1. If a due date of payment falls on a day that is not a BUSINESS DAY, the payment shall be due on the next BUSINESS DAY following such day. Interest on overdue amounts payable to either of the PARTIES hereunder will be charged at the applicable rate specified in the PARTICULAR CONDITIONS.
    2. Invoices issued by either PARTY shall be deemed paid on the date on which the bank account of the PARTY being the receipient of the invoice is debited by the bank.
    3. Each PARTY bears the costs charged by its own bank in relation to the payments in accordance with the CONTRACT.
    4. The CONTRACTOR may not, without the prior written consent of the OWNER, assign to a third party any of its receivables resulting from the CONTRACT. A reference to such prohibition of assignment shall be placed on each invoice and accounting note issued by the CONTRACTOR hereunder.
    5. To the fullest extent permitted by applicable STATUTORY REQUIREMENTS, the Contractor hereby waives any and all pledges, lien and similar rights securing the payment for services, labour, equipment, or materials furnished by the Contractor in performance of the Works and granted by law to persons supplying materials, equipment, services and other things of value to improve or modify land or structures hereon, which the Contractor may have against the Owner’s premises or property belonging to the Owner.
    6. The Contractor shall at all times promptly pay for all services, MATERIALS, EQUIPMENT and labour used or furnished by the Contractor in the performance of the Works under this Contract and shall, to the fullest extent allowed by law, keep the Owner’s premises, property and belongings of the Owner, free and clear of any and all of the above mentioned pledges, lien and similar rights arising out of services, labour, equipment or materials furnished by the Contractor or the Contractor’s personnel in the performance of the Works. If the Contractor fails to release and discharge any pledges, lien or threatened lien against the Owner’s premises or the property of the Owner, within 5 (five) BUSINESS DAYS after receipt of written notice from the Owner to remove such claim of pledges or lien, the Owner may, at its option, discharge or release the claim of pledges, lien or otherwise deal with the lien claimant, and the Contractor shall pay the Owner, as applicable, any and all costs and expenses of the Owner in so doing, including without limitation attorneys’ fees and expenses incurred by the Owner.
  1. PERFORMANCE BOND/ SECURITY OF WARRANTY PERIOD

13.1 CONTRACTOR shall obtain (at his cost) an unconditional, irrevocable PERFORMANCE BOND for proper performance of the CONTRACT by the CONTRACTOR in the amount equal to 10 % (twenty percent) of the FIXED CONTRACT PRICE, payable in euros. The amount of the PERFORMANCE BOND shall be adjusted accordingly in case the CONTRACT PRICE is increased by 2 % (two percent).

CONTRACTOR shall deliver the performance BOND to the OWNER within 30 (thirty) days from the EFFECTIVE DATE.

The performance BOND shall be issued as a guarantee payable on first demand by a bank, and from a country, approved by the OWNER, having at least a BBB rating assigned by Standard & Poor’s or equivalent rating assigned by another agency approved by Owner, and shall be in the form shown in GC ANNEX 6 (*Proforma Performance Bond*) or in another form approved by the OWNER, in the English or Lithuanian language.

Before submitting the PERFORMANCE BOND to the OWNER, the CONTRACTOR may request the OWNER to confirm that the latter agrees to accept the PERFORMANCE BOND offered by the CONTRACTOR. In such case the OWNER must reply to the CONTRACTOR no later than within 3 (three) business days from the date of receipt of such request.

The OWNER shall be entitled to not accept the PERFORMANCE BOND and/or consider it to be ineffective and/or address the CONTRACTOR for submitting a new PERFORMANCE BOND to the OWNER, and the CONTRACTOR shall submit such PERFORMANCE BOND within the shortest possible period in case the PERFORMANCE BOND does not comply or correspond to the requirements set by the CONTRACT, or the OWNER is unable to draw down any amount under the PERFORMANCE BOND in accordance with its terms, or the OWNER possesses information relating to the suspension or potential suspension of operations of the bank that issued the PERFORMANCE BOND (including insolvency, liquidation or legal protection procedures), or relating to failure to perform the obligations.

The CONTRACTOR shall ensure that the Performance Bond remains valid and enforceable from the EFFECTIVE DATE until 30 (thirty) days after the OWNER has issued the PROVISIONAL ACCEPTANCE CERTIFICATE.

If the terms of the performance BOND specify its expiry date, and the Contractor has not become entitled to receive the PROVISIONAL ACCEPTANCE certificate by the date 30 (thirty) calendar days prior to the expiry date, the Contractor shall extend the validity of the performance BOND until 30 (thirty) calendar days after the OWNER will have issued the PROVISIONAL ACCEPTANCE CERTIFICATE.

The proceeds of the PERFORMANCE BOND shall be payable to the OWNER in compensation for any financial claim resulting from the CONTRACTOR’s failure to fulfil its obligations in the scope specified under the CONTRACT.

The CONTRACTOR shall not become entitled to receive any payment under the CONTRACT until the CONTRACTOR submits a proper PERFORMANCE BOND to the OWNER. In the event the Contractor fails to provide the Performance Bond within the time established, it may seek extension of this time for a period not exceeding 20 (twenty) calendar days. In case CONTRACTOR fails to provide a PERFORMANCE BOND within 50 (fifty) calendar days from the EFFECTIVE DATE, OWNER shall have a right to terminate the Contract and the CONTRACTOR shall reimburse all losses incurred by the OWNER as a result of CONTRACT termination, including *inter alia* a higher price charged for the WORKS by another contractor hired by the OWNER.

PERFORMANCE BOND shall cover any default or alleged default on the part of the CONTRACTOR in the performance of its obligations under the CONTRACT.

13.2 The CONTRACTOR shall obtain (at his cost) a SECURITY OF WARRANTY PERIOD for proper performance of its warranty obligations under Article 20 (*Warranty)*, in the amount equal to 5 % (fivepercent) of the FIXED CONTRACT PRICE.

The CONTRACTOR shall deliver a SECURITY OF WARRANTY PERIOD to the OWNER 7 (seven) calendar days prior to the scheduled date of issuance of the PROVISIONAL ACCEPTANCE CERTIFICATE.

A SECURITY OF WARRANTY PERIOD shall be issued by a bank, and from a country, approved by the OWNER, having at least a BBB rating assigned by Standard & Poor’s or equivalent rating assigned by another agency approved by OWNER, and shall be in the form shown in GC ANNEX 9 (*Proforma Security of Warranty Period*) or in another form approved by the OWNER. The SECURITY OF WARRANTY PERIOD shall be submitted in the form of a first-demand irrevocable and unconditional undertaking of the issuing bank, in the English or Lithuanian language.

The SECURITY OF WARRANTY PERIOD shall provide the following: (a) that the security ensures proper performance of the CONTRACTOR’S warranty obligations; (b) that in case of the CONTRACTOR’S insolvency or bankruptcy, the security ensures compensation of the costs to the OWNER in relation to elimination of any defects arising due to the fault of the CONTRACTOR or its SUBCONTRACTORS that were identified within the DEFECTS LIABILITY PERIOD , (c) the validity term of the security is not less than 5 (five) years and 60 (sixty) calendar days of the DEFECTS LIABILITY PERIOD.

The amount of the SECURITY OF WARRANTY PERIOD shall be payable in euros. The proceeds of the SECURITY OF WARRANTY PERIOD shall be payable to the OWNER in compensation for any financial claim resulting from the CONTRACTOR’S failure to fulfil its obligations in the scope specified under the CONTRACT.

The CONTRACTOR shall ensure that the SECURITY OF WARRANTY PERIOD is valid and enforceable as from the date of issue of the PROVISIONAL ACCEPTANCE CERTIFICATE and for all DEFECTS LIABILITY PERIOD up to FINAL ACCEPTANCE CERTIFICATE issued by the CONTRACTOR and approved by the OWNER. If the terms of the SECURITY OF WARRANTY PERIOD specify its expiry date, and the Contractor has not become entitled to receive the FINAL ACCEPTANCE CERTIFICATE by the date 30 (thirty) calendar days prior to the expiry date, the Contractor shall extend the validity of the SECURITY OF WARRANTY PERIOD until the WORKS under the CONTRACT have been fully completed. Failure by the CONTRACTOR to extend the validity of the SECURITY OF WARRANTY PERIOD as described in this paragraph shall entitle the OWNER to claim the full amount of the SECURITY OF WARRANTY PERIOD and keep it as security for performance of the CONTRACTOR’S warranty obligations and use it in order to satisfy its demands.

* 1. TAXES
     1. The CONTRACT PRICE covers all taxes, fees, custom duties and other expenses imposed outside Lithuania on production, manufacturing, procurement, shifting and transport of the EQUIPMENT and/or MATERIAL(S) and on the performance of any services and activities under this CONTRACT, as well as on the CONTRACTOR’S income.
     2. The CONTRACT PRICE covers all taxes and fees connected with the performance of the WORKS levied under the laws and regulations in Lithuania (subject to GC Article 14.13). It also includes all customs duties and charges levied in Lithuania on imports (including VAT on imports) and personal income tax imposed on wages and salaries of the CONTRACTOR’S PERSONNEL.
     3. Subject to the following Articles, should the OWNER be lawfully obliged to deduct any tax from any payments to be made to the CONTRACTOR under the CONTRACT, the OWNER shall deduct such tax using the respective tax rate indicated in respective Double Tax Treaty (“DTT”) and pay it to the Lithuanian tax authority.
     4. The CONTRACTOR hereby confirms that its country of tax residence, in the meaning of DTT, is …………… . During the term of the CONTRACT, the CONTRACTOR is obliged to provide the OWNER with a tax residency certificate for tax purposes. The first of such certificate shall be delivered to the OWNER with the first invoice or the first pro forma invoice issued by the CONTRACTOR or not later than 7 (seven) days before the first payment is due under this CONTRACT, whichever occurs first, for purposes of the application of tax exemption or lower tax rate stipulated in DTT. In addition, the CONTRACTOR shall ensure that the OWNER has been provided in advance of each next payment with the CONTRACTOR’S current tax residency certificate.
     5. The CONTRACTOR’S failure to provide the OWNER with its current tax residency certificate shall entitle the OWNER to deduct the withholding tax at the rate indicated in Lithuanian tax law and pay it to the appropriate Lithuanian tax authority.
     6. For the purposes of this Article 14, the term ‘current tax residency certificate’ shall be understood as the tax residency certificate issued for the CONTRACTOR by the appropriate tax authority of its country:

(a) not earlier than 12 (twelve) months before respective payment date, if the certificate does not contain the term of its validity; or

(b) which contains the term of its validity covering the respective payment date.

* + 1. The CONTRACTOR shall immediately inform the OWNER about any change of its data contained in its tax residency certificate possessed by the OWNER (e.g. CONTRACTOR’S name or address). In case of such change, the provisions indicated above in Article 14.5 shall apply respectively.
    2. The CONTRACTOR declares that:

it does not benefit from the exemption from income tax on the entirety of its income, regardless of where it is earned;

it is a beneficial owner (in the meaning of DDT) of the income received from the OWNER under the CONTRACT, which means that:

it receives such payments for its own benefit, decides independently about their allocation and bears the economic risk connected with the loss of all or part of them;

it is neither agent, representative, trustee nor other entity obliged to transfer all or part of such payments to another entity; and

it conducts a real economic activity in the country of its tax residency and the receivables received are generated in connection with this business activity.

In case of any change of circumstances connected herewith CONTRACTOR will notify OWNER of these changes by issuing an appropriate statement without a delay.

* + 1. The CONTRACTOR will cooperate with the OWNER in order to help the OWNER to fulfil the Lithuanian tax law requirements determining the right to use DTT decreased tax rates, in particular by providing promptly respective statements and documents requested by the Lithuanian tax authorities (including the circumstances concerning CONTRACTOR's representations listed in Article 14.8 above).
    2. The OWNER will provide the CONTRACTOR with annual information concerning deducted and withheld Lithuanian taxes paid by the OWNER on behalf of the CONTRACTOR, according to the local Lithuanian tax regulations.
    3. Any personal income taxes associated with CONTRACTOR’s personnel will be borne by the CONTRACTOR.
    4. In the event that any amounts referred to in this Article 14 are paid/payable by the OWNER but are to be borne by the CONTRACTOR, the OWNER shall be entitled forthwith to recover the said amounts from the CONTRACTOR.
    5. Except where expressly stipulated otherwise herein, any and all sums payable by the OWNER to the CONTRACTOR under this CONTRACT shall be exclusive of VAT. The CONTRACTOR will add to these amounts an applicable Lithuanian VAT in accordance with the respective Lithuanian tax law.
    6. The PARTIES represent to each other that they are registered Lithuanian VAT payers and have the following tax identification numbers assigned to them:

CONTRACTOR - ………..

OWNER –….

In the case the CONTRACTOR is not registered for VAT purposes in Lithuania the place of provision of the services specified in the CONTRACT for VAT is deemed to be the territory of Lithuania. Therefore, the CONTRACTOR in respect of such services shall be issuing invoices without any VAT with an annotation: "The reverse charge procedure".

* + 1. The PARTIES shall notify each other of any change of the status or VAT identification number, immediately after such a change occurred.
    2. In the case of invoices issued in accordance with Lithuanian regulations, the CONTRACTOR is obliged to maintain the status of active VAT payer at least to the date of issue of the last invoice for the OWNER. If the CONTRACTOR is removed from the VAT register for reasons specified in the VAT Act, the CONTRACTOR shall promptly notify the OWNER of such removal. If the CONTRACTOR fails to notify the OWNER of this, the provisions of Article 14.17 below shall apply as appropriate, except when the CONTRACTOR, within 30 (thirty) days of becoming aware of aforementioned removal, provides the OWNER with documents confirming that it has been again registered as a VAT payer.
    3. In case of any negative fiscal consequences for the OWNER or its representatives resulting from incorrect applicability of VAT regulations by the CONTRACTOR related with the performance of the CONTRACT (for example, incorrect documentation or invoicing, wrong VAT number, incorrect qualification of place of supply for VAT purposes, applicability of incorrect VAT rate, etc.), the CONTRACTOR will immediately: (a) take all necessary measures to correct identified invalid settlements, and (b) reimburse the OWNER for any costs incurred by the OWNER or its representatives for Lithuanian or other tax authorities as a consequence of invalid actions of the CONTRACTOR.

14.18 If, under the applicable rules, the Contractor's activities (performance of works) at the Owner's facilities are deemed to constitute activities through a permanent establishment for tax purposes, the Contractor shall bear full responsibility for fulfilling all associated obligations (including registration in the tax register, submission of certificates or declarations, etc.) as well as any liabilities arising from such activities (such as taxes, fines, penalties, etc.).

* 1. SUBCONTRACTORS
     1. CONTRACTOR shall be responsible for the acts or defaults of any SUBCONTRACTOR or VENDOR, his agents or employees, as if they were the acts or defaults of the CONTRACTOR. CONTRACTOR shall give OWNER not less than 28 (twenty eight) calendar days’ notice of:

a) the intended appointment of the SUBCONTRACTOR, with detailed particulars of the scope of work to be subcontracted including his relevant experience;

b) the intended commencement date of the SUBCONTRACTOR’S work;

c) the intended commencement of the SUBCONTRACTOR’S work on the site.

* + 1. The CONTRACTOR shall ensure that its SUBCONTRACTORS do not sub-subcontract any works, except where they do not have sufficient capacity to perform their subcontract by themselves and subject to the OWNER’S prior consent.
    2. All VENDORS that the CONTRACTOR intends to use for the WORKS shall be selected from VENDOR list approved by the OWNER. Lists of VENDORS which have been already accepted by the OWNER is included in GC ANNEX 3 *(Vendors List)*. In the event that additional VENDORS are necessary for the further execution of the CONTRACT, CONTRACTOR shall, in writing, request OWNER’S approval to use new VENDORS.
    3. In the event that additional SUBCONTRACTORS are necessary for the further execution of the CONTRACT, CONTRACTOR shall, in writing at least 15 (fifteen) business days prior commencement of WORKS, request OWNER’S approval to extend the list of SUBCONTRACTORS provided in GC ANNEX 11 *(Subcontractor’s List)* by submitting to OWNER the SUBCONTRACTOR‘S information (company name, address, legal entity code, VAT number, description of works and percentage in the total scope of works under the contract) including SUBCONTRACTOR‘S qualification certificates, Occupational Safety and Health Questionnaire filled in by each SUBCONTRACTOR and provided in GC ANNEX 14.
    4. OWNER shall respond within 10 (ten) business days to CONTRACTOR’S request, stating whether or not OWNER objects to such VENDOR or SUBCONTRACTOR. The OWNER can refuse approving some proposed SUBCONTRACTOR or VENDOR in case the OWNER has concerns about the proposed SUBCONTRACTOR’S qualification, resources, work quality, ability to manage its works in a timely manner, and/or financial strength, or about the VENDOR’S quality of materials or plant, and/or ability to supply such materials or plant for the WORKS in time according to the current programme, or there are other valid reasons why the OWNER may not want particular SUBCONTRACTOR or VENDOR. The CONTRACTOR shall submit all required information and documents to the OWNER, for him to be able to evaluate whether to approve a proposed SUBCONTRACTOR or VENDOR. The OWNER’S consent shall not limit the CONTRACTOR’S overall responsibility for any of its SUBCONTRACTORS or suppliers or entitle the CONTRACTOR to additional payment and/or extension of the TIME FOR COMPLETION.
    5. Each subcontract (including any further sub-subcontract) shall include the following provisions:

a) provisions which would require the SUBCONTRACTOR to maintain sufficient competence, qualification certificates, permits, resources and financial strength throughout the validity of the subcontract;

b) provisions which would prohibit the SUBCONTRACTOR from assigning or subcontracting any part or all of the SUBCONTRACTOR’S obligations to any third person without the OWNER’S advance consent;

c) provisions which would entitle any owner of the PLANT, after the taking-over of the WORKS, with the same right of claim towards the SUBCONTRACTOR (including any sub-subcontractor) for the quality of the WORKS and remedying defects as in respect of the CONTRACTOR (agreement in favour of a third party).

d) a provision that such SUBCONTRACTOR shall comply with the provisions of this CONTRACT insofar as they apply to the WORKS to be performed by such SUBCONTRACTOR;

e) a provision that such SUBCONTRACTOR shall comply with all applicable STATUTORY REQUIREMENTS, and all the OWNER’S internal regulations applicable to such SUBCONTRACTOR’S activities at the SITE, in particular the internal regulations as specified in GC ANNEX 7 (*Local General Requirements of AB ORLEN Lietuva*);

f) a provision that such SUBCONTRACTOR undertakes to join at the OWNER’S request, a dispute between the OWNER and the CONTRACTOR relating to such SUBCONTRACTOR’S scope;

g) a provision that such SUBCONTRACTOR shall have no rights against the OWNER and shall not file and/or establish any liens, pledges or other third-party rights over any items or rights that are to constitute a part of the WORKS;

h) a provision that each such SUBCONTRACT may, upon the OWNER’S request, be assigned by the CONTRACTOR to the OWNER, its lenders, or its nominee, or any of their respective successors, assignees or transferees without the consent of such SUBCONTRACTOR;

i) a provision that each such SUBCONTRACT may not be assigned by such SUBCONTRACTOR without the prior written consent of the OWNER;

* + 1. The CONTRACTOR shall provide copies of subcontracts with its SUBCONTRACTORS to the ONWER within 7 (seven) days after their conclusion or amendment.
    2. The OWNER shall be entitled to verify suitability of payments by the CONTRACTOR to the SUBCONTRACTORS. Not later than within 7 (seven) days from the day of the respective request from the OWNER the CONTRACTOR shall submit to the OWNER detailed information and documents proving that such payments are performed properly and in due time. The OWNER shall be entitled at its own discretion to directly contact the SUBCONTRACTORS and receive any information from them. Should the CONTRACTOR be unreasonably late or otherwise in failure to properly pay to the SUBCONTRACTORS for their work performed properly and in timely manner and should this reasonably constitute the risk that the WORKS would not be completed properly and/or in due time, the OWNER shall be entitled to:

(a) unilaterally take over the subcontract agreement from the CONTRACTOR (with the consent of the SUBCONTRACTOR); or

(b) perform payment to the SUBCONTRACTOR on behalf and at the expense of the CONTRACTOR and respectively reduce any payment to the CONTRACTOR under the CONTRACT.

If a SUBCONTRACTOR’S obligations extend beyond the expiry date of the relevant DEFECTS LIABILITY PERIOD, the CONTRACTOR shall assign the benefit of such obligations to the OWNER and any owner of the PLANT.

* + 1. Neither CONTRACTOR nor his SUBCONTRACTORS shall recruit, or attempt to recruit, staff and labour from amongst the OWNER’S personnel.
    2. CONTRACTOR and his SUBCONTRACTORS shall comply with all the relevant local labour laws applicable to the CONTRACTOR’S personnel, including laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.

CONTRACTOR and his SUBCONTRACTORS shall require all employees to obey mandatory laws of Lithuania, including those concerning safety at work.

* + 1. All personnel employed by CONTRACTOR and his SUBCONTRACTORS for the WORKS shall be suitably qualified and experienced to perform the WORKS. Any employee of CONTRACTOR or his SUBCONTRACTORS deemed by OWNER to be objectionable or unsuitable, shall be removed from the SITE immediately upon OWNER’S request and shall be promptly replaced by CONTRACTOR at no additional cost or expense to OWNER. CONTRACTOR shall nevertheless retain all authority and control over its employees and its SUBCONTRACTOR’S employees.
    2. CONTRACTOR shall provide and maintain all necessary accommodation and welfare facilities for the CONTRACTOR’S and SUBCONTRACTOR’S personnel. CONTRACTOR shall at all times take all reasonable precautions to maintain the health and safety of the CONTRACTOR’S and SUBCONTRACTOR’S personnel. In collaboration with local health authorities, the CONTRACTOR shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the SITE and at any accommodation for CONTRACTOR’S, SUBCONTRACTOR’S personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.
    3. CONTRACTOR shall appoint a full time accident prevention officer at the SITE, responsible for maintaining safety and protection against accidents. The person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the execution of the WORKS, the CONTRACTOR shall provide whatever is required by this person to exercise this responsibility and authority.

CONTRACTOR shall send, to the OWNER details of any accident as soon as practicable after its occurrence. The CONTRACTOR shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the OWNER may reasonably require.

* + 1. In the event of illness or injury occurring at the SITE, OWNER may furnish emergency medical treatment or related services to CONTRACTOR’S, SUBCONTRACTOR’S or VENDOR’S personnel. In the event that such services are available, all such treatment or services shall be furnished on a “Good Samaritan” basis and not as a contractual obligation.

Notwithstanding the provision of such services by OWNER, CONTRACTOR shall retain the full and complete responsibility and liability for all injuries and damages to any of its personnel or SUBCONTRACTORS or VENDORS personnel, arising out of or allegedly attributable in any way thereto. Nothing herein contained shall be construed as imposing any duty upon OWNER to provide facilities necessary to furnish emergency medical treatment or related services to CONTRACTOR’S personnel or to make such facilities and/or services available to CONTRACTOR’S personnel.

* + 1. Nothing contained in this CONTRACT or any subcontract awarded by CONTRACTOR shall create any contractual relationship between any SUBCONTRACTOR and OWNER. CONTRACTOR agrees that CONTRACTOR is an independent CONTRACTOR and an employer subject to all applicable unemployment compensation, occupational safety and health, or similar statutes so as to relieve OWNER of any responsibility or liability for treating CONTRACTOR’S employees as employees of OWNER, including without limitation, for the purpose of their safety or of keeping records, making reports or paying of any payroll taxes or contributions.
    2. SUBCONTRACTOR’S list is provided in GC ANNEX 11 (SUBCONTRACTORS list).
    3. The CONTRACTOR undertakes to outsource or change SUBCONTRACTORS only upon prior written consent from the OWNER. The list of SUBCONTRACTOR‘S provided in GC ANNEX 11 *(Subcontractor’s list)* must be supplemented only by signing an Contract Modification to this CONTRACT.
    4. The CONTRACTOR shall make its best efforts to ensure that each SUBCONTRACT is executed in writing and shall preserve and protect the rights of the OWNER under this CONTRACT with respect to the WORKS to be performed by such SUBCONTRACTOR so that the subcontracting thereof shall not prejudice such rights.
    5. The CONTRACTOR, at the OWNER’S request, shall provide to the OWNER copies of each SUBCONTRACT for WORKS to allow the OWNER to satisfy itself that the relevant provisions of this CONTRACT have been fulfilled.
  1. CHANGES AND VARIATIONS TO THE WORKS
     + 1. OWNER may, at any time prior to issuing the PROVISIONAL ACCEPTANCE CERTIFICATE, order variations, alterations, additions, omissions or modifications (hereinafter referred to as “CHANGE”) to any part of the WORKS.

A CHANGE may be initiated by an instruction from the OWNER or by a request from the OWNER for the CONTRACTOR to submit a proposal.

Contractor shall execute and be bound by each CHANGE, unless the Contractor promptly gives notice to the OWNER stating (with supporting particulars) that (i) it will reduce the safety or suitability of the works, or (ii) it will have an adverse impact on the achievement of the PROCESS Guarantees. Upon receiving this notice, OWNER shall cancel, confirm or vary the instruction.

* + - 1. The Contractor may, at any time, submit to the OWNER a written proposal which (in the Contractor’s opinion) will, if adopted (i) accelerate completion of the WORKS (ii) reduce the costs to the OWNER of executing, maintaining or operating the works, (iii) improve the efficiency or value to the OWNER of the completed Works, or (iv) otherwise be of benefit to the OWNER. This proposal shall be prepared at the cost of the Contractor and shall include the items listed in Article 16.3.
      2. When a CHANGE is contemplated, but prior to instructing a CHANGE, the OWNER shall advise the CONTRACTOR in written form and CONTRACTOR shall respond in writing as soon as practicable, by submitting:

1. a description of the proposed design and/or work to be performed and a programme for its execution,
2. Contractor’s proposal for any necessary modifications to the TIME SCHEDULE and
3. Contractor’s proposal for any adjustment to the Contract Price.

OWNER shall, as soon as practicable after receiving such proposal, respond with approval, disapproval or comments. Contractor shall not delay any work whilst awaiting a response.

Each instruction to execute a CHANGE, with any requirements for the recording of costs, shall be issued by the OWNER to the Contractor, who shall acknowledge receipt of each instruction.

Upon instructing or approving a CHANGE, the OWNER shall proceed to agree with CONTRACTOR or to determine adjustments to the Contract Price and the schedule of payments. These adjustments shall take account of the Contractor’s submissions under Article 16.2 if applicable.

16.4. If Contractor and OWNER are unable to agree on an adjustment of the Contract Price, the adjustment shall be determined in accordance with the rates specified in PC ANNEX 10 (*Unit Rates & Time Rates*).

If the rates contained in PC ANNEX 10 (*Unit Rates & Time Rates*) are not directly applicable to the specific work in question, suitable rates shall be established by the OWNER reflecting the level of pricing shown in the Pricing Tables.

Where rates are not contained in GC ANNEX 7 (*Unit Rates & Time Rates*), the OWNER shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances and the amount shall be such as is in all circumstances reasonable.

16.5. For work of a minor or incidental nature, OWNER may instruct that a CHANGE shall be executed on a “time and material” basis. The work shall then be valued in accordance with the Time Rates shown in the Pricing Schedules and the following procedure shall apply. If the Time Rate schedule is not included in the Contract, this Article shall not apply.

Before ordering any goods for the works, the Contractor shall submit quotations to the OWNER for review and comment. When applying for payment, the Contractor shall submit invoices, vouchers and accounts or receipts for any goods.

Except for any items for which the Time Rate schedule specifies that payment is not due, the Contractor shall deliver each day to the OWNER accurate statements (in duplicate) which shall include the following details of the resources used in executing the previous day’s work:

1. The names, occupations and expended time of Contractor’s personnel,
2. The identification, type and time of Contractor’s equipment and temporary works, and;
3. The quantities and types of machinery, plant and materials used.

One copy of each statement will, if correct, or when agreed, be signed by the OWNER and returned to the Contractor. Contractor shall than submit priced statements of these resources to the OWNER, prior to their inclusion in the next application for payment.

* + - 1. Any CHANGE shall only be valid if agreed in writing between the PARTIES in accordance with the Change Order Procedure detailed in GC ANNEX 2 (*Change Order Procedure*). The CHANGE ORDER is signed by the CONTRACTOR’S REPRESENTATIVE and the OWNER’S REPRESENTATIVE indicated in the PARTICULAR CONDITIONS.
      2. On receipt of a CHANGE, Contractor shall forthwith proceed to carry out the CHANGE and be bound to these General Conditions in so doing, as if such CHANGE was stated in the CONTRACT.
      3. The WORKS shall not be delayed pending the granting of an extension of time or any adjustment to the Contract Price.
      4. A Backcharge is a cost sustained by OWNER and chargeable to CONTRACTOR for OWNER’S performance of WORKS, which is the responsibility of CONTRACTOR. Without limitation and by way of example only, backcharges may result from:

(a) Services performed by OWNER, at CONTRACTOR’S request, for work which is within CONTRACTOR’S Scope of Work under the CONTRACT, or

(b) Costs sustained by OWNER as a result of CONTRACTOR’S non-compliance with the provisions of the CONTRACT or CONTRACTOR’S act of omission or negligence.

Upon identification by OWNER of an actual or anticipated backcharge, OWNER will issue the Backcharge Agreement to CONTRACTOR. The Backcharge Agreement shall describe the backcharge work to be performed, the schedule period for performance, the cost to be charged by OWNER to CONTRACTOR for the backcharge and any other terms. The backcharge cost shall consist of:

(a) Labour: at actual cost (meaning base salary) plus 100 % (one hundred percent) to cover all payroll burdens;

(b) Material at actual supplier and freight invoice cost delivered to SITE;

(c) Construction equipment: at actual third party rental cost or at OWNER’S equipment rental rates, whichever may be applicable;

(d) All taxes, levies, duties and assessments attributable to the backcharge work;

(e) 20 % (twenty percent) shall be added to paragraphs (a), (b), (c) and (d) above for OWNER’S indirect costs, overhead, supervision and administration.

Within 24 (twenty four) hours after receipt of the Backcharge Agreement, CONTRACTOR shall send back to OWNER a signed copy of the Backcharge Agreement indicating either acceptance of the Backcharge Agreement or CONTRACTOR’S agreement to perform the described backcharge work within the indicated schedule period for performance utilizing CONTRACTOR-supplied labour, material and equipment, as applicable.

CONTRACTOR will be required to sign the Backcharge Agreement before commencement of the backcharge work by OWNER or others that OWNER may have contracted with for such works. In the event CONTRACTOR refuses to sign or does not provide any answer within 3 (three) working days, OWNER shall at its sole opinion proceed with the Backcharge works and charge the Backcharge cost to CONTRACTOR’S account. 30 (thirty) calendar days after commencement of the Backcharge works or on completion of the Backcharge works, whichever occurs sooner, OWNER will invoice CONTRACTOR for the incurred Backcharge cost. OWNER shall be entitled to deduct the Backcharge cost from any payments due to the CONTRACTOR, or from PERFORMANCE BOND, or from Security for Warranty Period, or withhold performance of any other obligation towards the CONTRACTOR.

* 1. CLAIMS
     1. Procedure

In the event there are circumstances which the CONTRACTOR considers entitle him to claim additional payment or an extension of time under this CONTRACT, CONTRACTOR shall:

a) if he intends to make any claim for additional payment, provide to the OWNER notice of his intention to make such claim within 10 (ten) calendar days after the circumstances or events became known to the CONTRACTOR stating the reasons for his claim;

b)in the event that a delay occurs or is anticipated and if CONTRACTOR intends to make any claim for extension of time, CONTRACTOR shall, within 10 (ten) calendar days, notify the OWNER in writing of such delay or expected delay, advising both the cause and estimated duration of such delay. The CONTRACTOR shall, at no cost to the OWNER, exercise due diligence to minimise the delay and mitigate the effects of the delay on the WORKS. CONTRACTOR shall keep the OWNER advised as to the continuance of the delay and steps being taken to shorten or terminate the delay.

c)as soon as reasonably practical after the date of such notice submit to the OWNER full and detailed particulars of his claim but not later than 30 calendar days after such notice unless otherwise agreed by the OWNER. In any event, such particulars shall be submitted no later than CONTRACTOR’S notice of application for the FINAL ACCEPTANCE CERTIFICATE. CONTRACTOR shall thereafter promptly submit such further particulars as OWNER may reasonably require in order to assess the validity of the claim.

If CONTACTOR fails to give notice of a claim within a period of 10 (ten) calendar days, the CONTRACT PRICE shall not be adjusted, the TIME FOR COMPLETION shall not be extended and OWNER shall be discharged from all liability in connection with the claim.

* + 1. CONTRACTOR shall be entitled to an extension of the TIME FOR COMPLETION if and to the extent that FINAL ACCEPTANCE is or will be delayed by any of the following causes:

a) a CHANGE (unless an adjustment to the TIME SCHEDULE and/or TIME FOR COMPLETION has already been agreed under GC Article 16);

b) a cause of delay giving an entitlement to extension of time under an Article of these General Conditions, or

c) any delay, impediment or prevention caused by attributable solely to the OWNER or the OWNER’S personnel on SITE.

* + 1. If the CONTRACTOR considers himself to be entitled to an extension of the TIME FOR COMPLETION, the CONTRACTOR shall give notice to the OWNER in accordance with Article 17.1, describing the event or circumstances giving rise to the claim. The notice shall be given as soon as practicable and not later than 10 (ten) calendar days after the CONTRACTOR became aware, or should have become aware, of the event or circumstance.

Within 30 (thirty) calendar days after the CONTRACTOR became aware (or should have become aware) of the event or circumstances giving rise to the claim, CONTRACTOR shall submit any other notices which are required by the CONTRACT, as well as all supporting particulars for the claim, as relevant to such event or circumstance.

* + 1. CONTRACTOR shall keep such contemporary record as may be necessary to substantiate any claim, either on the SITE or at another location acceptable to the OWNER. Without admitting liability, OWNER may, after receiving any notice under this Article, monitor the record-keeping and/or instruct the CONTRACTOR to keep further contemporary records. CONTRACTOR shall permit OWNER to inspect all these records, and shall (if instructed) submit copies to the OWNER.
    2. When determining each extension of time, the OWNER shall review previous determinations and may increase or decrease the TIME FOR COMPLETION as applicable.
    3. Assessment

When OWNER has received full and detailed particulars of CONTRACTOR'S claim in accordance with Articles 17.1, 17.2 and 17.3 and such further particulars as he may reasonably have required, OWNER shall proceed to agree or determine (i) the extension (if any) to the TIME FOR COMPLETION and/or (ii) the additional payment (if any) to which the CONTRACTOR may be entitled under the CONTRACT and shall notify CONTRACTOR accordingly.

The requirements of this Article are in addition to those of any other Article which may apply to a claim. If CONTRACTOR fails to comply with this or any other Article in relation to any claim, any extension of time and/or additional payment, OWNER shall take account of the extent (if any) to which the failure prevented or prejudiced proper investigation of the claim.

* + 1. No Delays

The WORKS shall not be delayed pending the granting of an extension of the TIME FOR COMPLETION or any adjustment to the CONTRACT PRICE.

* + 1. Exclusion of Claims

Notwithstanding anything contained in the foregoing provisions of this Article 14 (Claims) or elsewhere in the CONTRACT, any claim (other than a claim pursuant to a CHANGE) shall only be valid if:

a) it concerns a matter which, in the opinion of the OWNER, could not have been reasonably foreseen by an experienced CONTRACTOR prior to the EFFECTIVE DATE of the CONTRACT; and

b) such matter is outside those WORKS which are to be carried out by the CONTRACTOR without additional cost to the OWNER; and

c) such claim is otherwise fully substantiated under the terms, conditions and provisions of the CONTRACT to the satisfaction of the OWNER; and

d) in any event, such substantiated claim (when taken together only with any other such substantiated claim which, in the opinion of the OWNER, is clearly related to and evolves out of the same cause) is not less than 10’000 (ten thousand) euros.

* 1. MECHANICAL COMPLETION, PRE-COMMISSIONING, COMMISSIONING AND START-UP
     1. MECHANICAL COMPLETION, PRE-COMMISSIONING, COMMISSIONING and START-UP shall be conducted in accordance with GC Annex 4 (*Mechanical Completion, Pre-Commissioning, Commissioning, Start-Up, Provisional Acceptance*) and this Article 18.
     2. MECHANICAL COMPLETION
        1. MECHANICAL COMPLETION of the PLANT is described in PC Annex 1 *(Scope of Work)* and GC ANNEX 4 (*Mechanical Completion, Pre-Commissioning, Commissioning, Start-Up, Provisional Acceptance*).
        2. MECHANICAL COMPLETION is regarded as having been achieved when:

- the erection, construction of all individual parts, items or systems of the PLANT have been completed and all permanent EQUIPMENT and MATERIALS have been installed in the PLANT and the PLANT is capable of being safely pre-commissioned. Further details are provided in GC ANNEX 4 (*Mechanical Completion, Pre-Commissioning, Commissioning, Start-Up, Provisional Acceptance*).

The CONTRACTOR is allowed to start PRE-COMMISSIONING activities of the systems, units, part of the PLANT that are already mechanically completed and ready for the PRE-COMMISSIONING, prior achieving MECHANICAL COMPLETION of the whole PLANT.

* + - 1. The CONTRACTOR shall give the OWNER at least 30 (thirty) days’ prior written notice of the estimated date of MECHANICAL COMPLETION.
      2. The CONTRACTOR shall, when the CONTRACTOR considers that the PLANT has achieved MECHANICAL COMPLETION, issue a MECHANICAL COMPLETION CERTIFICATE signed by the CONTRACTOR.

The OWNER will approve and sign the MECHANICAL COMPLETION CERTIFICATE, issued by the CONTRACTOR, as soon as possible, however not later than 10 (ten) BUSINESS DAYS from the submission of the MECHANICAL COMPLETION CERTIFICATE accompanied by the relevant documents to the OWNER, or will expressly refuse the acceptance thereof, giving the reasons for such refusal, within the above period.

* + 1. PRE-COMMISSIONING
       1. PRE-COMMISSIONING shall be carried out by the CONTRACTOR, with the OWNER'S personnel present as observers. The OWNER'S participation in PRE-COMMISSIONING, including the CONTRACTOR acting in agreement with the OWNER or in accordance with the OWNER'S instructions, does not release the CONTRACTOR from any liability for the improper performance or non-performance of the CONTRACT, and does not entitle the CONTRACTOR to any additional payment and/ or EOT, unless the CONTRACTOR has informed the OWNER that the instruction given by the OWNER is wrong and/or may have a negative impact on the PLANT.
       2. The CONTRACTOR shall, when the CONTRACTOR considers that the PRE-COMMISSIONING is completed, issue a READY FOR COMMISSIONING CERTIFICATE signed by the CONTRACTOR.

The OWNER will approve and sign the READY FOR COMMISSIONING CERTIFICATE, as soon as possible, however not later than 21 (twenty-one) days from the submission of the READY FOR COMMISSIONING CERTIFICATE accompanied by the relevant documents, to the OWNER, or will expressly refuse the acceptance thereof, giving the reasons for such refusal, within the above period.

* + 1. Commissioning
       1. COMMISSIONING begins after execution of the READY FOR COMMISSIONING CERTIFICATE and consists of: (1) the activities and processes associated with the operation of equipment or systems in preparation for start-up (e.g. beginning with individual component testing, progressing through sub-system and system testing, integrated plant operation and ending with preparation for START-UP), (2) START-UP which is introduction of feed stocks to the facility, (3) reaching STABLE OPERATION and ends with readiness to start PERFORMANCE TESTS according to GC Article 19.7.
       2. The CONTRACTOR shall, when the CONTRACTOR considers that the COMMISSIONING is completed, issue a READY FOR START-UP CERTIFICATE for the PLANT signed by the CONTRACTOR.

The OWNER will approve and sign the READY FOR START-UP CERTIFICATE, or will expressly refuse the acceptance thereof, giving the reasons for such refusal.

* + - 1. Start-up commences after MECHANICAL COMPLETION, PRE-COMMISSIONING and COMMISSIONING activities necessary to be taken in order to introduce feed stocks and bring the plant to operation are completed and MECHANICAL COMPLETION CERTIFICATE, READY FOR COMMISSIONING CERTIFICATE and READY FOR START-UP CERTIFICATE are signed by the OWNER.
    1. As soon as is reasonably practicable after PRE-COMMISSIONING, the OWNER shall provide or otherwise make available the raw materials, utilities, chemicals, facilities, services and other matters in the scope defined by the CONTRACT necessary to commence COMMISSIONING, START-UP, STABLE OPERATION and PERFORMANCE TESTS of the PLANT or part(s) thereof.
    2. The CONTRACTOR shall provide the OWNER with the detailed procedures for PRE-COMMISSIONING and COMMISSIONING at least 2 (two) months prior to the date of MECHANICAL COMPLETION. These procedures shall consider the requirements of the CONTRACT, such as the minimum time requirements, main activities required, utility consumption, as well as waste quantity and off-spec product quantity for the PRE-COMMISSIONING and for COMMISSIONING of all EQUIPMENT and MATERIALS.
    3. The CONTRACTOR shall instruct the OWNER’S personnel and provide all information necessary for the safe operation and maintenance of the PLANT in accordance with the requirements of the CONTRACT, good industry practice and STATUTORY REQUIREMENTS.
    4. The CONTRACTOR shall be fully responsible for PRE-COMMISSIONING, COMMISSIONING, START-UP, STABLE OPERATION and PERFORMANCE TESTS, including the timely organisation of the VENDORS’ representatives. The schedule of PRE-COMMISSIONING and COMMISSIONING tests shall be agreed with the OWNER at least 2 (two) months prior to MECHANICAL COMPLETION.
    5. START-UP, STABLE OPERATION and PERFORMANCE TESTS shall be carried out by the CONTRACTOR pursuant to the TECHNICAL DOCUMENTATION, PC ANNEX 1 *(Scope of Work)* and GC ANNEX 4 (*Mechanical Completion, Pre-Commissioning, Commissioning, Start-Up, Provisional Acceptance*) and at risk of the CONTRACTOR.
    6. During the COMMISSIONING, START-UP, STABLE OPERATION and PERFORMANCE TESTS, the OWNER shall provide its operating personnel trained in advance by the CONTRACTOR pursuant to Article 3.15. The CONTRACTOR shall be liable for actions and omissions of the OWNER'S personnel - if and to the extent they are compliant with the CONTRACTOR'S instructions - as for the CONTRACTOR'S actions and omissions.

The CONTRACTOR shall specify a request for operating personnel and minimum qualifications for the OWNER'S operating personnel participating in the COMMISSIONING, START-UP, STABLE OPERATION and PERFORMANCE TESTS and the OWNER shall provide the operating personnel according to the request, however only to the extent to which the request does not exceed the number and category of the personnel trained by the CONTRACTOR pursuant to Article 3.15.

* 1. STABLE OPERATION, PERFORMANCE TESTS, PROVISIONAL ACCEPTANCE AND FINAL ACCEPTANCE
     1. The STABLE OPERATION, PERFORMANCE TESTS, PROVISIONAL ACCEPTANCE and FINAL ACCEPTANCE shall be conducted in accordance with GC Annex 4 (*Mechanical Completion, Pre-Commissioning, Commissioning, Start-Up, Provisional Acceptance*) and this Article 19.
     2. As soon as is reasonably practicable before MECHANICAL COMPLETION but no later than on READY FOR START-UP, detailed methods to be used in the PERFORMANCE TESTS shall be agreed upon in writing between the OWNER and the CONTRACTOR, unless and to the extent it is defined in BASIC DESIGN PACKAGE.

These methods shall be in accordance with good industry practice and will include methods for measuring various process streams and utilities consumption by calibrated measuring devices, methods for calibrating such measuring devices, methods for sampling and analysing process streams, as well as methods for evaluating the results of the measurements and analyses. Furthermore, acceptable tolerances for all results shall be specified.

* + 1. The purpose of the PERFORMANCE TESTS is to verify the capabilities of the PLANT to achieve the PROCESS GUARANTEES required by the CONTRACT.
    2. The PERFORMANCE TESTS shall be performed by the CONTRACTOR with cooperation of the OWNER’S personnel and licensor Worley as provided in Article 18.10 and in GC Annex 4 (

*Mechanical Completion, Pre-Commissioning, Commissioning, Start-Up, Provisional Acceptance*).

* + 1. The PERFORMANCE TESTS shall commence after successful completion of the STABLE OPERATION and the PERFORMANCE TESTS shall be conducted for a period of 72 (seventy-two) consecutive hours unless the OWNER decides that PERFORMANCE TESTS may last for a shorter period.
    2. Prior to and during the PERFORMANCE TESTS, the PLANT shall operate in accordance with instructions given by the CONTRACTOR under stable conditions.
    3. The CONTRACTOR shall notify the OWNER in writing, indicating that the PLANT is ready for the CONTRACTOR to perform the Performance TestS. The Performance TestS shall be conducted at a mutually agreed time after the CONTRACTOR’S notice is received by the OWNER.
    4. If the Performance TestS are interrupted the condition causing the interruption shall be corrected and, after restoring steady test operating conditions, the Performance TestS shall be started again.
    5. The result of the relevant PERFORMANCE TEST (whether successful or not) shall be recorded in a PERFORMANCE TEST report signed by both the OWNER and the CONTRACTOR within 7 (seven) days from its submission to the OWNER. Such report shall be prepared by the CONTRACTOR.
    6. If the operation of the PLANT is interrupted during any of the Performance TestS, or if a test conducted as a part of the Performance TestS evidences that any of the PROCESS GUARANTEES is not met or maintained, the CONTRACTOR will promptly prepare a written analysis of the reasons for such a failure to complete the test, and/or achieve or maintain the PROCESS GUARANTEES. The CONTRACTOR will enable the OWNER and the LICENSOR to participate in the above analysis and to present their respective positions in the matter. The OWNER’S review of such analysis shall be completed with the OWNER’S written notice to the CONTRACTOR, stating whether the OWNER accepts, or does not accept, the conclusions of the CONTRACTOR’S analysis.
    7. If the analysis conducted in accordance with GC Article 19.10 determines that the failure to meet or maintain the PROCESS GUARANTEES is due to reasons attributable to the contractor, then the CONTRACTOR shall, as soon as possible, inform the OWNER of whatever modifications are deemed necessary to enable the PLANT to perform as guaranteed.

The CONTRACTOR shall in consultation with the OWNER promptly implement such modifications and bear all actual direct and indirect costs and expenses (including but not limited to, the cost of additional and/or replacement EQUIPMENT and MATERIALS, customs taxes and duties, design, engineering and construction costs and all CONTRACTOR’S PERSONNEL costs) resulting from any modifications to the PLANT that are deemed necessary in order to enable the PLANT to perform as guaranteed.

If any PERFORMANCE TEST conducted after the modification of the PLANT made by the CONTRACTOR in accordance with this Article GC 19.11 evidences that the PLANT still fails to perform as guaranteed, then the OWNER shall have the right to request and have made further modifications by the CONTRACTOR, followed by a further PERFORMANCE TEST. The CONTRACTOR shall bear all cost (including but not limited to, the cost of analysis, support, assistance and on-site services of the Licensor, other personnel and COMPETENT AUTHORITIES and materials required for the proper performance of the PERFORMANCE TESTS) related to such repeated PERFORMANCE TESTS related to the failure in meeting or maintaining the PROCESS GUARANTEES due to reasons attributable to the CONTRACTOR.

* + 1. If the analysis conducted in accordance with GC Article 19.10 determines that the failure to meet or maintain the PROCESS GUARANTEES is due to a reason attributable to the LICENSOR and/or the OWNER, then the OWNER shall, as soon as possible, in cooperation with the LICENSOR, inform the CONTRACTOR of whatever modifications are deemed necessary to enable the PLANT to perform as guaranteed.

In the event the OWNER instructs the CONTRACTOR to make changes to the PLANT that are deemed necessary in order to enable the PLANT to perform as guaranteed, the CONTRACTOR shall make necessary changes subject to a CHANGE as per GC Article 16 (*Changes and Variations to the Works*).

* + 1. If the PARTIES disagree as to whose fault caused the failure to meet or maintain the PROCESS GUARANTEES, in particular if the OWNER notifies the CONTRACTOR that it does not accept the conclusions of the CONTRACTOR’S analysis prepared under GC Article 19.10, each PARTY may commence the dispute resolution procedure in accordance with GC Article 28 (*Governing Law and Dispute Resolution*).
    2. Irrespective of any dispute between the PARTIES concerning the reasons for the failure to meet or maintain the PROCESS GUARANTEES during the PERFORMANCE TESTS, the CONTRACTOR will remain on the SITE and shall undertake all further activities necessary to remove the reasons for the failure of the test(s) carried out as a part of the PERFORMANCE TESTS, and shall conduct repeated tests, until the dispute is resolved or until the OWNER releases the CONTRACTOR from the above obligation.
    3. In the event the third Performance Test is unsuccessful, or no third PERFORMANCE TEST has taken place within 180 (one hundred eighty) days following the receipt by the OWNER of the CONTRACTOR’S notification under GC Article 19.7, whichever occurs first, and the PROCESS GUARANTEES have not been met, but the MINIMUM PROCESS GUARANTEES have been achieved and maintained, then, except for a situation in which the CONTRACTOR is not liable for the failure to achieve or maintain the PROCESS GUARANTEES, the OWNER shall have the right to: (i) charge the CONTRACTOR liquidated damages in relation to the non-achieved PROCESS GUARANTEES in the respective amount(s) specified in PC ANNEX 6 (*Process Guarantees and Liquidated Damages for Non-performance*), and thereupon the CONTRACTOR’S obligations to meet the PROCESS GUARANTEES shall be deemed to have been fully discharged and/or (ii) request the CONTRACTOR to make further modifications to the PLANT.
    4. In the event the third Performance Test is unsuccessful, or no third PERFORMANCE TEST has taken place within 180 (one hundred eighty) days following the receipt by the OWNER of the CONTRACTOR’S notification under GC Article 19.7, whichever occurs first, and the MINIMUM PROCESS GUARANTEES have not been met, then, except for a situation in which the CONTRACTOR is not liable for the failure to achieve or maintain the MINIMUM PROCESS GUARANTEES, the OWNER shall have the right to elect, at its option, and without prejudice to other rights of the OWNER as set forth in the CONTRACT, either to:

request the CONTRACTOR to make further modifications to the PLANT within period of additional 180 (one hundred eighty) days (unless other period is agreed by the PARTIES), and after expiry of such additional period the OWNER shall have the right to terminate the CONTRACT in compliance with GC Article 27.2 if the MINIMUM PROCESS GUARANTEES still have not been met; or

terminate the CONTRACT in compliance with the Article 27.2.

* + 1. PROVISIONAL ACCEPTANCE
       1. In the event that the relevant PERFORMANCE TEST is successful and the PLANT meets the PROCESS GUARANTEES, the OWNER shall issue the PROVISIONAL ACCEPTANCE CERTIFICATE by unilaterally signing thereof and submitting it to the CONTRACTOR as soon as possible but not later than within 14 (fourteen) days from approving the report with positive results of the PERFORMANCE TEST by the OWNER, subject to GC Article 19.17.2.

However, if during the above-indicated period of time the OWNER does not issue the PROVISIONAL ACCEPTANCE CERTIFICATE and does not provide a reasoned refusal to do so, it shall be deemed that the PROVISIONAL ACCEPTANCE CERTIFICATE was properly issued by the OWNER.

* + - 1. The issuance of the PROVISIONAL ACCEPTANCE CERTIFICATE by the OWNER shall be conditioned upon the OWNER approving the report with positive results of the PERFORMANCE TESTS, agreeing the PUNCH LIST items in accordance with GC Article 19.17.5, and upon the prior due completion of all the CONTRACTOR’S obligations resulting from the CONTRACT, excluding only the obligations expressly indicated in the CONTRACT, as those subject to performance following the PROVISIONAL ACCEPTANCE.
      2. The OWNER will be entitled, at its own discretion, to issue the PROVISIONAL ACCEPTANCE CERTIFICATE in the situation specified in GC Article 19.15. In such a case the CONTRACTOR, after obtaining the prior written consent of the OWNER as to cease further actions aiming to achieve the PROCESS GUARANTEES, shall be obliged to pay liquidated damages, and thereupon the CONTRACTOR’S obligations to meet the PROCESS GUARANTEES shall be deemed to have been fully discharged. At the same time, the OWNER shall be entitled to pursue further actions by itself and/or using third parties in order to achieve the PROCESS GUARANTEES.
      3. The CONTRACTOR shall procure that the PLANT is inspected by all COMPETENT AUTHORITIES, as per the STATUTORY REQUIREMENTS (including in particular the Notified Bodies for acceptance installed vessels, piping, acceptance of design experts ( where applicable), as required to operate the PLANT in accordance with the STATUTORY REQUIREMENTS.
      4. DEFECTS of the PLANT which are not LIMITING DEFECTS will not prevent the issuance of the PROVISIONAL ACCEPTANCE CERTIFICATE by the OWNER. Such DEFECTS, not being LIMITING DEFECTS and/or being other items indicated on the PUNCH LIST, shall be remedied by the CONTRACTOR within the time limits specified in the PUNCH LIST. Such DEFECTS indicated in the PUNCH LIST drawn up by the PARTIES in relation to the PROVISIONAL ACCEPTANCE and constituting an appendix to the PROVISIONAL ACCEPTANCE CERTIFICATE shall be remedied under the WARRANTY during the DEFECTS LIABILITY PERIOD. In addition to the other remedies that the OWNER may have in such a case in accordance with the CONTRACT, the OWNER may withhold payment of an amount equal to the value of such DEFECTS invoiced by the CONTRACTOR for the PAYMENT MILESTONE concerning the PROVISIONAL ACCEPTANCE until all such DEFECTS are properly removed and remedied. The withheld amount shall be payable to the CONTRACTOR within 30 (thirty) days from the date of the successful removal of such DEFECTS confirmed by the OWNER in writing in a relevant protocol.

If the PERFORMANCE TESTS demonstrate that the PLANT fails to achieve and/or maintain any of the MINIMUM PROCESS GUARANTEES, the OWNER is not obliged to issue the PROVISIONAL ACCEPTANCE CERTIFICATE and shall be entitled to reduce (and receive reimbursement from the CONTRACTOR) the CONTRACT PRICE in the part corresponding to the decreased value and/or usefulness of the PLANT for the OWNER.

* + 1. FINAL ACCEPTANCE
       1. Following the completion of all the obligations resulting from the CONTRACT by the CONTRACTOR by the end of the DEFECTS LIABILITY PERIOD FOR THE PLANT, the OWNER, at the CONTRACTOR’S request, within 28 (twenty eight) days of receipt of the CONTRACTOR’S notice, will issue the FINAL ACCEPTANCE CERTIFICATE confirming the above circumstances by unilaterally signing thereof and submitting it to the CONTRACTOR.
       2. If the OWNER fails to issue the FINAL ACCEPTANCE CERTIFICATE and does not provide a reasoned refusal to do so within the above-specified period of time, the FINAL ACCEPTANCE CERTIFICATE shall be deemed to have been issued on the date 28 (twenty eight) days after the date on which it should have been issued, as required by this Article 19.18.1.
       3. The FINAL ACCEPTANCE CERTIFICATE shall be conclusive evidence of the CONTRACTOR’S full performance of all its obligations under the CONTRACT.
  1. WARRANTY
     1. The CONTRACTOR warrants that any and all WORKS, EQUIPMENT, DELIVERIES, TECHNICAL DOCUMENTATION, and/or any part thereof, as well as the PLANT as a functional whole:
        1. will be fully compliant with the CONTRACT, including all ANNEXES, specifications, drawings, standards and instructions referred to in this Contract, and all applicable STATUTORY REQUIREMENTS, OWNER'S PERMITS and CONTRACTOR’S PERMITS;
        2. will be fit for the intended purpose;
        3. will be designed, manufactured and constructed in strict conformity with the BASIC DESIGN PACKAGE and DETAILED DESIGN in such a way that the PLANT shall meet the PROCESS GUARANTEES;
        4. will be new, unused, merchantable, of the most suitable grade and of such quality as to enable the PLANT to be operated in accordance with the TECHNICAL DOCUMENTATION and OPERATING MANUALS; and
        5. will be free from any DEFECTS, including:

all physical defects, including defects in design, materials and workmanship;

all legal defects,and in particular, third-party rights and any encumbrances except for the IP WORKS and THIRD PARTY SOFTWARE which the OWNER will have the right to use within the limits of the licence and other intellectual property rights granted to the OWNER under GC Article 25 (*Intellectual Property Rights*) without infringing any rights of third parties.

* + 1. CONTRACTOR’S obligations under the WARRANTY
       1. Under the WARRANTY, without limitation to any other rights or remedies of the Owner, if any DEFECT in the WorkS, in particular in violation of the warranties specified in GC Article 20.1, arises within the DEFECTS LIABILITY PERIOD, the Contractor shall, upon receipt of the OWNER'S written notice, remove every such DEFECT and cause the WorkS to comply fully with the CONTRACT.

The DEFECT removal procedure is set out in GC Article 20.4. The CONTRACTOR will remedy all damages caused to the PLANT by each DEFECT covered by the WARRANTY.

* + - 1. A DEFECT shall not be covered by the WARRANTY to the extent that it results from reasons for which the CONTRACTOR shall prove it is not liable hereunder. Such reasons include in particular: (i) the operation of the PLANT by the OWNER in breach of the OPERATING MANUALS supplied by the CONTRACTOR, (ii) the carrying out by the OWNER or by third parties of modification or changes of the TECHNICAL DOCUMENTATION, DELIVERIES and/or WORKS prior to the end of the DEFECTS LIABILITY PERIOD, except as expressly permitted by the CONTRACT or approved by CONTRACTOR otherwise, (iii) DEFECTS resulting from errors, omissions and/or discrepancies of the information.
      2. The CONTRACTOR shall be obliged to remedy any and all DEFECTS under the CONTRACT in compliance with provisions of this GC Article 20, irrespective of the cause, at its own risk and cost, save the following sentences of this GC Article 20.2.3.

For the needs of the CONTRACT, it is presumed that if a DEFECT has been caused by a factor attributable to the WORKS, the burden of proving a contrary circumstance shall be on the CONTRACTOR.

If the CONTRACTOR proves that the DEFECT is not attributable to the CONTRACTOR, the CONTRACTOR shall be reimbursed by the OWNER for the reasonable documented costs of removal of the DEFECT. In such a case the CONTRACTOR shall be entitled, subject to Article 17 (*Claims*), to payment of any such additional COST.

* + - 1. All the TECHNICAL DOCUMENTATION, DELIVERIES and WORKS needed to remove a DEFECT will be performed by the CONTRACTOR in compliance with the requirements of the CONTRACT applicable to the given type of TECHNICAL DOCUMENTATION, DELIVERIES and/or WORKS. For the avoidance of doubt, the CONTRACTOR’S obligation to remove DEFECTS includes all activities required to effect such removal, including engineering, design, procurement, construction, erection, transportation, loading, unloading and storage.
      2. Unless differently instructed by the OWNER, in the event that the same or analogous DEFECT of the DELIVERIES and/or WORKS or of any specific component thereof occurs at least twice during the DEFECTS LIABILITY PERIOD, the CONTRACTOR will modify the DELIVERIES and WORKS in such a way that another occurrence of such DEFECT is prevented and will reflect such modifications in the TECHNICAL DOCUMENTATION. In the event that the same or analogous DEFECT of the DELIVERIES and/or WORKS occurs once again, the CONTRACTOR shall replace the defective part with a new one.
      3. In the event that the removal of the DEFECT is not feasible, or in the case that such removal would require a disproportionately high cost, the OWNER will be entitled to the reimbursement by the CONTRACTOR of a part of the CONTRACT PRICE corresponding to the reduction in the value of the PLANT as a result of the DEFECT.
      4. The costs of the performance by the CONTRACTOR of its WARRANTY obligations under this GC Article 20 are not accounted towards the overall limitation of liability stated in the CONTRACT.
    1. DEFECTS LIABILITY PERIOD
       1. The DEFECTS LIABILITY PERIOD is specified in the PARTICULAR CONDITIONS.
       2. The DEFECTS LIABILITY PERIOD will be extended by the duration of each interruption in the operation of the PLANT resulting from a DEFECT, except if the DEFECT is not covered by the WARRANTY. In relation to any element of TECHNICAL DOCUMENTATION, DELIVERIES and/or WORKS replaced or substantially repaired in the performance of the CONTRACTOR’S WARRANTY obligations, the relevant DEFECTS LIABILITY PERIOD for such replaced or substantially repaired element will re-commence from the date of the acceptance protocol signed by the OWNER confirming the successful completion of replacement or substantial repair of such element. In any case, the extended DEFECT LIABILITY PERIOD shall end at the latest 18 (eighteen) months from the scheduled expiry of respective DEFECT LIABILITY PERIOD.
       3. Expiry of the DEFECTS LIABILITY PERIOD shall not relieve the CONTRACTOR from any continuing obligations or liabilities under the provisions of this CONTRACT or at law.
    2. DEFECTS removal procedure
       1. The OWNER will notify the CONTRACTOR in writing of every detected DEFECT promptly after it is detected. For the purposes of reporting the DEFECTS, during the entire DEFECTS LIABILITY PERIOD the CONTRACTOR will maintain a telephone line and e-mail address supported 24 hours a day, 7 days a week, including public holidays. The telephone number and e-mail address will be provided to the OWNER in writing prior to the issuance of the PROVISIONAL ACCEPTANCE CERTIFICATE. Telephone reports of the DEFECTS, as well as information, guidelines and instructions communicated by the CONTRACTOR to the OWNER by telephone, will be confirmed promptly by electronic mail (for confirmations addressed to the CONTRACTOR – to the address referred to in this Article, for confirmations addressed to the OWNER – to the address provided to that end in writing by the OWNER).
       2. The OWNER’S report will contain a technical description of the symptoms of the DEFECT, to the extent that the OWNER will be able to provide such a description. The CONTRACTOR will respond to the report within 8 (eight) hours from receiving it in the case of reporting a LIMITING DEFECT and within 24 (twenty-four) hours in the case of reporting other DEFECTS. The response will contain a confirmation of having received the report, and the CONTRACTOR’S opinion on the reported DEFECT and its recommendations on any urgent actions that should be undertaken by the OWNER, to the extent that such may be formed based on the description and data provided to the CONTRACTOR. In response, the CONTRACTOR will state the time on which the CONTRACTOR’S PERSONNEL will arrive at the area of the PLANT to carry out its inspection in order to better determine the reasons for, and the manner of elimination of the DEFECT. Unless the OWNER agrees to the inspection or repair at a later time or it results from technical or technological conditions, the inspection, repair or establishing the time schedule for the elimination of the LIMITING DEFECT will be completed within 72 (seventy two) hours from the submission of the OWNER’S report on detecting the LIMITING DEFECT to the CONTRACTOR. If the PARTIES fail to agree the time schedule for the elimination of the LIMITING DEFECT, the OWNER may exercise its rights indicated in GC Article 20.4.4. In the event of reporting DEFECTS other than LIMITING DEFECTS, unless the OWNER agrees to the inspection or repair at a later time or it results from technical or technological conditions, the inspection and establishing the time schedule for the elimination of the DEFECT will be completed not later than 72 (seventy two) hours from the submission of the OWNER’S report on detecting the DEFECT to the CONTRACTOR. Subsequently, within the time limit mutually agreed upon by the PARTIES, however not longer than 7 (seven) days after the submission of the OWNER’S report on detecting a DEFECT other than a LIMITING DEFECT to the CONTRACTOR, such DEFECT shall be eliminated, unless the PARTIES agree on a later time or it is not possible to meet the above indicated deadline from technical or technological conditions. If it is determined that the LICENSOR’S involvement will be necessary, the manner and time schedule for the removal of the LIMITING DEFECT or other DEFECT will be provided by the OWNER, following consultation with the LICENSOR to the extent deemed necessary by the OWNER.
       3. The CONTRACTOR may, if the OWNER agrees to it in writing, instruct the OWNER to remove the DEFECT without the CONTRACTOR’S participation. The OWNER will implement such instructions, using its own resources, and/or a third party, at the CONTRACTOR’S cost and risk. In such a case, the CONTRACTOR will reimburse the OWNER for the documented costs incurred in the removal of the DEFECT, increased by twenty percent (20%) to cover the general administration costs of the OWNER. The OWNER is entitled to propose to the CONTRACTOR to remove the DEFECT in accordance with this Article and the CONTRACTOR shall respond to the proposal within 48 (forty-eight) hours from the moment of obtaining the proposal. A lack of response within the above-mentioned time limit is considered to be acceptance for performing the warranty obligations by the OWNER. The above indicated proposal does not affect the deadlines for DEFECT removal described above.
       4. If the CONTRACTOR fails to remove a DEFECT within the time limit determined in accordance with the preceding Articles, the OWNER shall inform the CONTRACTOR with the 24 (twenty-four) hour advance before taking the actions indicated below about failing to timely remove the DEFECT and then the OWNER may remove the DEFECT in accordance with the TECHNICAL DOCUMENTATION, using its own resources, and/or a third party, in each case at the CONTRACTOR’S cost and risk, and/or claim a commensurate decrease of the CONTRACT PRICE to reflect the diminished value and/or suitability of the TECHNICAL DOCUMENTATION, DELIVERIES and/or WORKS for the OWNER. If the OWNER removes the DEFECT using its resources and/or a third party, the CONTRACTOR will reimburse the OWNER for the documented costs incurred in the removal of the DEFECT, increased by 20% (twenty) to cover the general administration cost of the OWNER. Where the DEFECTS are removed by the OWNER or by a third party under this Article, the CONTRACTOR’S WARRANTY obligations shall remain valid.
       5. In the circumstances described in the preceding Article the CONTRACTOR will not hinder, delay or otherwise obstruct the carrying out of the removal of the DEFECT by the OWNER and/or any third parties used by the OWNER for the substitute performance of the CONTRACTOR’S obligations.
       6. The OWNER may, but is not obliged to, allow the CONTRACTOR to use the OWNER’S materials or equipment to remove DEFECTS. In such a case, the CONTRACTOR will promptly, but not later than within 14 (fourteen) days of the use of a given material or equipment (or other feasible agreed period taking into consideration technical and technological conditions), return to the OWNER the relevant amount of the used materials of the same make and quality, and will return the equipment used to the OWNER in an un-deteriorated condition.
       7. As a rule the removal of any DEFECT shall be completed by the CONTRACTOR at the SITE. However, if a DEFECT cannot be remedied expeditiously on the SITE and the OWNER gives its consent, the CONTRACTOR may remove the defective part of the WORKS from the SITE in order to remedy such DEFECT off the SITE. The risk of loss or damage of any part of the WORKS during the removal of a DEFECT shall be borne by the CONTRACTOR until a relevant protocol confirming the successful removal is executed.
       8. The successful removal of each DEFECT will be confirmed by the OWNER in writing in a relevant protocol. As a condition for the acceptance by the OWNER of the removal of the DEFECT, the CONTRACTOR will clear the CONTRACTOR’S TOOLS and the CONTRACTOR’S PERSONNEL from all areas within the area of PLANT occupied by the CONTRACTOR in relation to the removal of the DEFECT, and will restore such areas to the condition in which they were made available to the CONTRACTOR.
  1. LIABILITY, LIMITATION OF LIABILITY AND LIQUIDATED DAMAGES
     1. Each PARTY is liable for damage incurred by the other PARTY as a result of a non-performance and/or improper performance of the first PARTY’S obligations arising from the CONTRACT, except only to the extent that such non-performance and/or improper performance is due to FORCE MAJEURE. Each PARTY is liable for the actions and omissions of the persons and parties used by it to perform its obligations resulting from the CONTRACT as for its own actions and omissions. If a PARTY does not perform or improperly performs its obligation arising from the CONTRACT due to its wilful misconduct or gross negligence, such PARTY shall be solely liable for the results of such actions and omissions, even if the other PARTY in any way contributed to the damages arisen (apart from wilful misconduct or gross negligence). The liability limits specified hereunder (including in the PARTICULAR CONDITIONS and Article 21.2 below) shall not apply in the case of damages caused by actions and omissions related to fraudulent actions, wilful misconduct or gross negligence.
     2. Neither party shall be liable to the other party for loss of profit or consequential loss (except where loss of profit or consequential loss may be included in liquidated damages hereunder, including in the PARTICULAR CONDITIONS, or may be suffered by the OWNER under Article 23 (*Indemnities*). Consequential loss is: loss of income, loss of production, loss of contract, loss of goodwill, business interruption or loss of business opportunity (in each case, whether direct or indirect), as well as financial costs, such as interest, bank fees, and depreciation.
     3. In all cases, the party claiming a breach of the Contract or a right to be indemnified in accordance with the Contract shall be obliged to take all reasonable measures to mitigate the loss or damage which has occurred or may occur.
     4. If the Contractor constitutes a joint venture, consortium or other incorporated grouping of two or more legal entities, then these entities shall be deemed to be jointly and severally liable to the Owner for the full performance of the Contract. These entities shall notify the Owner of their leader who shall have authority to bind the Contractor and each of these entities. The Contractor shall not alter its composition or legal status without the prior written consent of the Owner (made in WRITTEN FORM, otherwise being null and void). The OWNER, as a debtor, may make the whole payment or any part thereof to one of the entities forming the CONTRACTOR, and by satisfying any of them (creditors) the debt expires with respect to all of them (joint and several entitlement of creditors).
     5. Any delay shall be considered to be a delay through the fault of the CONTRACTOR, if not otherwise proven by the CONTRACTOR.
     6. Substitute performance

If the CONTRACTOR fails to comply with any of its obligations resulting from the CONTRACT, except to the extent that the CONTRACTOR evidences that it is not liable for any such non-performance or improper performance of the CONTRACT, the OWNER will be entitled, provided that the OWNER previously provides to the CONTRACTOR a written notice requesting to remedy such non-performance or improper performance of the CONTRACT within a reasonable period of time, to complete the applicable activities necessary to remedy the CONTRACTOR’S non-performance or improper performance of the CONTRACT using the OWNER’S personnel and/or a third party, at the CONTRACTOR’S cost and risk.

If circumstances arise which would entitle the OWNER to give effect to this Article 22.6, the CONTRACTOR hereby agrees to co-operate fully with any such steps implemented by the OWNER, and not to hinder, delay or obstruct the carrying out of the duties and obligations hereunder by the OWNER’S personnel or any third parties who may be involved in the substitute performance of the CONTRACTOR’S obligations as aforesaid.

* + 1. Liquidated damages
       1. In the event of a delay in the completion of any of the KEY MILESTONES, except to the extent that the CONTRACTOR evidences that it is not liable for the delay in accordance with the CONTRACT, the CONTRACTOR will pay to the OWNER liquidated damages in the amounts specified in the PARTICULAR CONDITIONS and PC Annex 9 *(Payment Schedule and Liabilities)*. These liquidated damages for delay shall not relieve the CONTRACTOR from the obligation to perform the WORKS.
       2. If the PERFORMANCE TESTS conducted in accordance with GC Article 19 (*Stable Operation, Performance Tests, Provisional Acceptance and Final Acceptance*) demonstrate that PROCESS GUARANTEES are not met and the OWNER decides to exercise its right under GC Article 19.16 (a), the CONTRACTOR will pay to the OWNER liquidated damages in the respective amount(s) specified in PC ANNEX 6 (*Process Guarantees and Liquidated Damages for Non-performance*).
       3. In the event of a delay in the timely remedy of the LIMITING DEFECTS under the WARRANTY obligation indicated in Article 20.4, except to the extent that the CONTRACTOR evidences that it is not liable for the delay in accordance with the CONTRACT, the CONTRACTOR will pay to the OWNER liquidated damages in the amount specified in the PARTICULAR CONDITIONS.
       4. In the event that the OWNER terminates the CONTRACT based on GC Article 27.2, the CONTRACTOR will pay to the OWNER liquidated damages in the amount of 10% (ten per cent) of the CONTRACT PRICE.
       5. Should any of the following events constituting events of default by the CONTRACTOR/SUBCONTRACTOR occur, the OWNER shall be entitled to the liquidated damages specified below:
       6. On demand of the OWNER and in view of the potential consequences, the CONTRACTOR shall pay liquidated damages in the below amount for each violation of the occupational health and safety (OHS) requirements committed by an employee of the CONTRACTOR/SUBCONTRACTOR:

| No. | Description of violation | Liquidated Damages, EUR |
| --- | --- | --- |
| 1 | Commencement of works by the Contractor in the territory of the Owner without having the Statement of Preparedness by Contractor to Start Contractual Works in Public Company ORLEN Lietuva signed in accordance with Occupational Health and Safety Procedure for Contractors BDS-40. | 400 EUR |
| 2 | Performance of hazardous works by the Contractor in the territory of the Owner without a relevant work permit/instruction issued by the Owner in accordance with the effective procedure. | 500 EUR |
| 3 | Failure by the Contractor to provide the Owner with information on subcontractors engaged. | 100 EUR (per every Subcontractor) |
| 4 | Permission by the Contractor to perform works in the territory of the Owner given to an employee who has no valid health examination certificate. | 60 EUR  (per every employee) |
| 5 | Execution by the Contractor of hazardous works in the Owner's territory in violation of requirements prescribed by work permit / instruction (e.g. absence of operational gas analyzer at the workplace; no fire watch personnel or confined space attendant appointed; work executors not instructed (have not signed on the work permit / instructions); depressurization works carried out without appropriate tag out of depressurization points; hot works carried out without appropriate marking of tie-in points; no primary fire extinguishing equipment in the workplace, when the use thereof is mandatory, or usage of inadequate and/or not checked equipment, execution of hazardous work without formalization or with inadequate formalization of the Risk Identification Card (RI Card), failure to familiarize employees with potential hazards as well as protective equipment and measures, failure to conduct Last Minute Risk Analysis (no signature of employee(s) on RI Card, etc.). | 100 EUR (per each violation) |
| 6 | Failure by the Contractor' OHS specialists and other responsible persons to exercise control over the work performed by the Contractor' employees in the territory of the Owner. | 100 EUR |
| 7 | In the event of works performed in the Owner's territory under the work permit issued failure by the Contractor' Work Manager to exercise continuous control over hazardous works when such is required under the work permit / instruction. | 200 EUR |
| 8 | In the event of works performed in the Owner's power installations and Power House heating installations under the relevant instruction issued: the Contractor' Supervisor leaving the workplace without suspension of hazardous work and without getting the workers out of the workplace. | 200 EUR |
| 9 | Usage by the Contractor in the Owner's territory of non-verified work equipment (mechanisms and/or instruments) not marked in accordance with the Owner's requirements, with no possibility to identify its owner and determine the date of its next technical inspection. | 60 EUR  (per every work equipment) |
| 10 | Usage by the Contractor in the Owner's territory of work equipment (mechanisms and/or instruments) in poor technical condition, or usage of self-made work equipment, or usage of work equipment for the purposes other than intended. Penalty of 200 (two hundred) euros (per every work equipment). | 200 EUR  (per every work equipment) |
| 11 | In territory of the Owner, where personal protective equipment is prescribed or must be worn due to specifics of work, Contractor’s employees do not wear it, in particular safety clothing, safety footwear, safety helmets with chin strap fastened, safety goggles, hearing protection, safety face shields (in case of risk of face injury due to exposure to flying metal particles, liquid splashes). Welders do not wear welding shields with helmet during welding. The Contractor' personnel has no respiratory protection equipment or escape gas masks when such are mandatory. Personal protective equipment has no CE marking, does not comply with the applicable requirements, e.g. work clothing is not fire retardant and anti-static; equipment used has not been subject to periodically inspections, is not marked or is not fit for use. | 60 EUR  (per every employee) |
| 12 | Failure by drivers of the Contractor' vehicles to observe in the Owner's territory the road signs and signals as well as established traffic routes, overspeeding above 40 km/h, driving with dipped-beam headlights off, parking in non-designated places or parking in other than reverse (with vehicle facing the exit) direction as well as other road traffic offenses. | 40 EUR |
| 13 | Contractor working in the territory of the Owner does not maintain the work site in proper order (does not remove waste, irrelevant objects, tools, does not store materials in proper order, etc.). Penalty of 60 (sixty) euros. | 60 EUR |
| 14 | Contractor working in the territory of the Owner violates requirements applicable to the usage of lifting equipment (loads are lifted without lifting plan prepared, loads are lifted with people present under it, guiding ropes are not used, slings are damaged, lifting or sling hook does not have a protective snap, etc.). | 200 EUR |
| 15 | Contractor’s employees present in the areas of explosion hazard do not have/use portable gas analyzers designated for personal protection against possible chemical contamination of the working environment. | 60 EUR |
| 16 | Contractor's employees violate requirements applicable in the Owner's territory for the use of protective equipment against fall for elevated works and/or for accessing workplaces at height (e.g. do not use personal protection against fall when such is mandatory, do not protect work places at different heights within a confined space against fall of objects from higher levels). | 200 EUR |
| 17 | Contractor's employees violate requirements applicable in the Owner's territory for work at height (use electrical tools on non-grounded scaffolding, put additional loads on scaffolding, remove structural elements of scaffolds, do not keep work decks in proper order (cluster with irrelevant objects which may fall down and injure people), etc.). | 100 EUR |
| 18 | Absence of the clearly visible scaffold inspection card attached to the scaffolds erected by the Contractor, usage of scaffolds that have not been subject to periodical inspection, scaffolds not registered in accordance with the established procedure. Penalty of 60 (sixty) euros. | 60 EUR |
| 19 | The Contractor violates requirements applicable in the Owner's territory for erection of scaffolding (scaffolding works are carried out by personnel without adequate qualification, the scaffolding is not prevented from falling or displacement, solid toe boards, lateral guard rails, access ladders, access hatches or gates are missing, etc.). | 200 EUR (per each violation) |
| 20 | Rooms and premises used by the Contractor for its needs within the Owner’s territory do not meet requirements prescribed by the Owner (are not maintained in proper order and clean; equipment, tools and instruments used in such premises are in poor technical condition, unsafe, unusable, and do not meet fire safety requirements; materials, equipment, tools, spare parts and other objects are stored in improper order; maximum allowable load of shelving and/or each shelf is not specified, etc.). | 60 EUR |
| 21 | Inadequate installation and laying of power supply cables, rubber hoses of the Contractor, failure to protect them against mechanical damage. | 40 EUR |
| 22 | Contractor’s employees in the Owner's territory use open flame in non-designated areas. Penalty | 1500 EUR |
| 23 | Violation by the Contractor of the requirements applicable in the Owner's territory to warning and protection by using barriers of employees against potential dangers (e.g. places where the employees are under the risk of injury have not been fenced or are inadequately fenced with warning barrier tapes or rigid safety barriers; barriers have no clearly visible identification tag with the Contractor' name or logo, etc.). | 60 EUR |
| 24 | Failure by the Contractor to observe the applicable requirements during performance of excavation works in the territory of the Owner (e.g. failure to manually dig test pits for identification of underground utilities; no reinforcement of excavations with the depth over 4 m where employees need to get into the excavation; no sketch of the excavation available; no inspection of excavations, adjacent areas and protection systems made; no geodetic survey of the newly laid underground utilities and other underground engineering structures prepared by the Contractor upon completion of excavation works, etc.). | 100 EUR |
| 25 | Failure by the Contractor to adequately notify the Owner of any accident, fire, release of hazardous substances, damaged equipment of the Owner, and near misses. | 200 EUR |
| 26 | Contractor violates occupational health and safety regulations and this violation results in accident at work. | 1000 EUR |
| 27 | Breach by the Contractor of the fire safety legislation of the Republic of Lithuania that led to fire, explosion. Penalty of 1000 (one thousand) euros. | 1000 EUR |
| 28 | Breach by the Contractor of the legislation of the Republic of Lithuania regulating the installation, operation and safety of power installations (el. power, heat, natural gas or liquefied petroleum gas, crude oil or petroleum products). | 100 EUR |
| 29 | Failure by the Contractor to ensure that the Contractor's or Subcontractor's (if any) name is indicated on safety helmets and work clothes worn by the employees working in the Owner's territory. | 30 EUR |

* + - 1. If the OWNER or any other regulatory authority determines that during performance of Works the CONTRACTOR or its SUBCONTRACTOR does not hold an effective SEI/NERC certificate authorizing to perform such works, the CONTRACTOR shall pay the OWNER a one-off fine in the amount of 5000 (five thousand) euros for each case of such violation.
      2. Should in the OWNER’s territory the CONTRACTOR's or SUBCONTRACTOR's employees be found intoxicated or misappropriating the OWNER’s or any other persons’ property located in the OWNER’s territory, the employees at fault shall be ordered to leave the territory, banned from entry and deprived of any passes and ID badges. Upon request by the OWNER, the CONTRACTOR shall pay the OWNER a penalty of 1'500 (one thousand five hundred) euros for each case of such violation. Furthermore, the CONTRACTOR shall indemnify the OWNER for all and any damage caused to the OWNER by such actions.
      3. If CONTRACTOR’s or SUBCONTRACTOR’s employee enters the OWNER’s protected territory or facilities using another person’s pass and/or electronic ID badge, the CONTRACOR upon request by the OWNER shall pay a penalty of 600 (six hundred) euros for each case of violation.
      4. Upon request by the OWNER, the CONTRACTOR shall pay a penalty of 600 (six hundred) euros for each violation of Public Company ORLEN Pass System Regulations.
      5. If an employee of the CONTRACTOR or SUBCONTRACTO lost or damaged ID badge, irrespective of the duration of its use, Upon request by the OWNER, the CONTRACTOR shall pay a fine of EUR 20 (twenty) euro for each ID badge.
      6. Once demanded by the OWNER, the CONTRACTOR shall be under obligation to pay the OWNER a penalty of 300 (three hundred) euros for each case of violation of environmental, waste management and hygiene regulations as well as for gambling by the CONTRACTOR’s or SUBCONTRACTOR’s employees.
      7. If the actual damage incurred by the OWNER is higher than the liquidated damages specified in GC ANNEX 7 (*Local General Requirements of.* *AB ORLEN Lietuva*), the OWNER may seek compensation in excess of such liquidated damages in accordance with general rules.
      8. All liquidated damages due to the OWNER shall be payable by the CONTRACTOR to OWNER’S account within 15 (fifteen) days from the receipt of respective demand.
      9. For the avoidance of doubt, the OWNER may set off all and any amounts of liquidated damages due from the CONTRACTOR against the amounts payable to the CONTRACTOR by the OWNER in accordance with the CONTRACT, and/or draw the applicable amounts from PERFORMANCE BOND or SECURITY OF WARRANTY PERIOD, provided that CONTRACTOR has refused to pay such agreed amounts within 30 (thirty) days from the OWNER’S claim.
      10. The OWNER’S claims for the payment of liquidated damages due from the CONTRACTOR in accordance with the CONTRACT in relation to events occurring prior to termination of the CONTRACT remain in force despite any termination of the CONTRACT.
      11. The OWNER may claim the payment of each kind of liquidated damages specified in the CONTRACT in addition to all the other kinds of liquidated damages payable in the given circumstances in accordance with the CONTRACT (in particular in addition to the liquidated damages charged in the case of CONTRACT termination, referred to in Article 21.7.4, the OWNER may claim the payment of the liquidated damages payable in the event of a delay and/or any other circumstances provided for in the CONTRACT, even if such circumstances also constitute the reason for CONTRACT termination). For the avoidance of doubt, unless specified otherwise, the PARTIES confirm that the possibility of charging liquidated damages cumulatively has been included and reflected in their amount.
      12. Liquidated damages may be charged at any time after the occurrence of the events entitling a given PARTY to charge such liquidated damages.
      13. In no event shall payment of liquidated damages under the CONTRACT release the CONTRACTOR from the proper performance of its respective obligations hereunder, subject to Article 19.16 (a).
      14. The PARTIES agree that all the amounts of liquidated damages set forth hereunder, including in the PARTICULAR CONDITIONS, are a reasonable and fair estimate of the damage and loss which the OWNER would suffer for each of the CONTRACTOR’S default that is subject to such liquidated damages. It is further agreed that this Article 21.7 shall not constitute a waiver of any other remedies of the OWNER under this CONTRACT, under law or otherwise for CONTRACTOR’S improper performance or non-performance of any other aspect of this CONTRACT.
  1. CONFIDENTIALITY

22.1 The Owner will provide the Contractor with any information (either verbal, written or expressed in any other form if made available visually or by means of technical devices) which is necessary for proper performance of obligations hereunder (hereinafter – the Confidential Information). The Confidential Information includes any written and/or verbal information that is related, whether directly or indirectly, to the Owner, ORLEN S.A., other ORLEN Group companies or their contractual Parties and which is submitted by the Owner directly or indirectly to the Contractor or received by the Contractor in any other way in connection with the Contract. Such Confidential Information shall be intended for and may be used solely in the interests of the Owner. The Contractor acknowledges that Confidential Information made available to it under the Contract is confidential, unless expressly provided otherwise in the Contract.

22.2 Nondisclosure obligations shall not apply to the Contractor provided that:

22.2.1. Such Confidential Information is or was in the public domain other than through unauthorized disclosure or breach of this Contract;

22.2.2. Confidential Information was obtained from a third party without any breach of nondisclosure commitments;

22.2.3. The Owner has informed the Contractor in writing that the particular information is not deemed confidential.

22.2.4. Such Confidential Information has been independently developed by the Contractor without the use of Confidential Information acquired from the Owner.

In case of any doubts as to whether the particular information is confidential or not, the Contractor shall consider and treat such information as confidential until the Owner notifies otherwise.

22.3 To the extent concerning any Confidential Information disclosed hereunder, the Contractor, including all its employees (also staff of its group companies), shall:

22.3.1. Keep (store and use) the Confidential Information undertaking such safety measures that are reasonably appropriate and sufficient to ensure confidentiality, including compliant with this Contract and the provisions of law, also prevent any unauthorized use, transfer, disclosure or access to such Confidential Information. The Contractor shall not copy or fix and store any Confidential Information in its systems if such is not reasonably required for performance hereunder. The Contractor must immediately notify the Owner of any violation of information security regulations or unauthorized disclosure or use of the Confidential Information;

22.3.2. Disclose Confidential Information or part thereof only to the Contractor's staff and other persons including, in particular, its group companies, subsidiaries, auditors, consultants and subcontractors, directly related to the purpose for which Confidential Information was disclosed to the Contractor and shall impose on the above mentioned persons an obligation to protect Confidential Information and keep its confidentiality under at least the same terms and conditions as stipulated herein throughout the term of the Contract as well as for the period of protection after termination, expiry or cancellation of the Contract or impairment of its legal effects. The Contractor shall be liable for any acts or omissions of persons who have been provided with access to the Confidential Information, including financial liability.

22.4 The Owner may at any time restrict access to the Confidential Information by the Contractor. Confidential Information remains the property of the Owner and whenever requested by the Owner the Contractor must return all Confidential Information held by it on any material media, including electronic information storage media, to the Owner, or destroy all information if so instructed by the Owner.

22.5 In case of loss or disclosure of the Confidential Information by the Contractor in the manner other than established in this Contract, the Contractor shall immediately notify the Owner thereof and make all reasonable efforts to regain the lost or unlawfully, unreasonably disclosed Confidential Information.

22.6 After the expiry of Contract, the Contractor shall, to the maximum practicable extent, return to the Owner or destroy all Confidential Information held by it, including all documents, articles, drawings, descriptions, diagrams or any other material expressed and stored in any other form, as well as copies of the same, unless provided for otherwise herein.

22.7 The Contractor undertakes to maintain the confidentiality of the Confidential Information throughout the term of the Contract as well as for 10 (ten) years after its termination, expiry or cancellation or impairment of its legal effects or completion of services, unless the Parties hereto agree in writing otherwise.

22.8 Where for the purpose of due performance of the Contract it is necessary to disclose a commercial secret or any other confidential information of the Owner or confidential information of any other ORLEN Group company, a separate nondisclosure agreement may be concluded between the Parties.

22.9 Should it be necessary, in connection with performance of this Contract, to provide one Party with access to, or to transfer to this Party personal data within the meaning of Law of the Republic of Lithuania on Legal Protection of Personal Data, before processing such data the Parties shall be obliged to conclude an appropriate, separate agreement laying down principles and conditions for the protection and processing of such data.

22.10 The Contractor consents to the disclosure by the Owner of the contents of the Contract, its annexes and Contract execution documents as well as data relating to the performance hereunder to ORLEN Group companies under the terms and conditions laid down above.

* 1. INDEMNITIES AND INSURANCE
     1. Indemnities
        1. The Contractor shall defend, indemnify and hold harmless the Owner, and all their respective directors, officers, employees, agents, and representatives, from and against all third party claims, demands, causes of action, damages, losses, expenses (including attorneys’ fees, and expenses, cost of court and investigation), and liabilities arising from or relating to:

actual or asserted failure of the CONTRACTOR or CONTRACTOR’S PERSONNEL to comply with the law, ordinance, regulation, rule or order (including the site rules and regulations), in particular fines or penalties imposed by the COMPETENT AUTHORITIES and claims arising from the Contractor’s or CONTRACTOR’S PERSONNEL failure to pay taxes;

penalties, fines or other sanctions being imposed by any authorities under the Republic of Lithuania Law on Environmental Protection of 21 January 1992, Law No. I-2223, or any other STATUTORY REQUIREMENTS related to environmental law due to the OWNER exceeding permitted emission levels set out in the OWNER’S PERMITS until the date of PROVISIONAL ACCEPTANCE CERTIFICATE (or imposed after the PROVISIONAL ACCEPTANCE CERTIFICATE due to the events before the PROVISIONAL ACCEPTANCE CERTIFICATE);

actual or asserted violation or infringement of rights in any patent, copyright, proprietary information, trade secret or other intellectual property right caused or alleged to be caused by the use or sale of goods, materials, equipment, methods, processes, designs or information, including construction methods, construction equipment and temporary construction facilities, furnished by the Contractor or its subcontractors in performance of the Works;

injury to or death of persons (including without limitation the employees of the Owner, Contractor and subcontractors) or damage to or loss of property (including without limitation the property of the Owner) arising directly or indirectly out of this Contract or out of any acts or omissions of the Contractor or its subcontractors, unless entirely attributable to a wilful act of the OWNER. The Contractor’s defence and indemnity obligations hereunder include claims and damages arising from non-delegable duties of the Owner or arising from use by the Contractor of construction equipment, tools, scaffolding or facilities furnished to the Contractor by the Owner; and

actual or alleged contamination, pollution, or public or private nuisance, arising directly or indirectly out of this Contract or out of any acts or omissions of the Contractor or its subcontractors, unless entirely attributable to a wilful act of the OWNER.

* + 1. The Contractor’s indemnity obligations under this GC Article 23 shall apply regardless of whether the party to be indemnified was concurrently negligent, whether actively or passively. The Contractor’s liability, defence and indemnity obligations shall include the duty to reimburse any attorneys’ fees and expenses incurred by the Owner for legal action to enforce the Contractor’s obligations under this GC Article 23.
    2. With respect to claims by employees of the Contractor and its subcontractors, the defence and indemnity obligations created under this GC Article 23 shall not be limited by the fact of, amount, or type of benefits or compensation payable by or for the Contractor and its subcontractors under any worker’s compensation, disability benefits, or other employee benefits acts or regulations.
    3. In the event that any of the provisions of this Article 23 are contrary to the law governing this CONTRACT, then the intent of such provisions shall be construed to apply to the fullest extent allowed by the governing law.
    4. Insurance
       1. The CONTRACTOR shall, at its own cost, take out, maintain and cause uninterrupted insurance coverage for the following insurance (dedicated exclusively to CONTRACT), valid and paid for the entire duration of the CONTRACT (but not later than from EFFECTIVE DATE) until the expiry of the DEFECTS LIABILITY PERIOD:

a general (including tort) and contractual third party liability insurance, covering the CONTRACTOR and all its direct and indirect SUBCONTRACTORS, producers of all DELIVERIES and the OWNER for the sum insured 10% contract value but not less than 2.000.000 USD per each and all events in aggregate embracing property damages (a damage being the consequence of loss, destruction of or damage to property), bodily injuries (a loss event being the consequence of death, injury or health detriment). The above insurance will in particular, but shall not be limited to cover the following categories of damage - up to the sum insured:

1. Cross liability;
2. Representative Clause covering the gross negligence of the CONTRACTOR, SUBCONTRACTORS, producers of all DELIVERIES and the OWNER;
3. Resulting from all activities performed by the CONTRACTOR and/or any person for whom the CONTRACTOR is responsible;
4. Caused to any property adjacent to the SITE (it means, not being the PLANT), including that of the OWNER or its representatives;
5. Caused to all facilities, installations and/or equipment on or near the SITE, including underground facilities, installations and equipment;
6. Product liability insurance - damage caused by the product, including costs incurred for the location, removal, dismantling or uncovering of the faulty products, as well as for the assembly, fitting and placement of a fault-free product;
7. Caused to the environment or in connection with environmental pollution (sudden and accidental pollution) - if there is a risk of damage to the environment;
8. Arising due to acts or omissions attributable to the CONTRACTOR, SUBCONTRACTORS, producers of all DELIVERIES and the OWNER, after the completion of the PLANT, i.e. after execution of the PROVISIONAL ACCEPTANCE CERTIFICATE of the PLANT or after completion of the WORKS (Completed Operations);
9. Damage to property in custody and under control, insofar as such property exists;
10. Damage to entrusted property which was the object of processing, repair, cleaning or other services of similar nature, insofar as such property exists;
11. Tenant’s Liability, insofar as such property exists;
12. Loss of damage to third-party movables property in the care, custody or under control of the Insured;
13. Caused by vibrations, subsidence, landslides, cracking or cave-ins;
14. Employer’s Liability Insurance - permitted sub-limit;
15. “pure financial losses clause” (pure financial losses mean a detriment of assets that is neither bodily injury nor property damage) - permitted sub-limit;
16. Caused by any vehicles and/or machinery used for the execution of the WORKS, which are not subject to compulsory insurance.

professional indemnity insurance (Errors & Omissions) embracing the CONTRACTOR, all its direct and indirect SUBCONTRACTORS, OWNER in respect of all professional activities being the subject-matter of this CONTRACT, for the sum insured of 10% contract value but not less than 2.000.000 USD per one and all events in aggregate, embracing property damages (a damage being the consequence of loss, destruction of or damage to property), bodily injuries (a loss event being the consequence of death, injury or health detriment) and pure financial losses (a detriment of assets that is neither bodily injury nor property damage) and extended (up to the sum insured) to include the following, among others, but not limited to:

1. gross negligence;
2. cross liability;
3. redesigning costs;
4. damages to WORKS;
5. damages caused to WORKS due to subsidence, land-slide, cracking, cave-ins etc. resulting from an error in design;
6. the costs of rebuilding or reconstruction, even if there was no damage to property, in case of an error in WORKS design;
7. Sudden and accidental damages caused to natural environment resulting from professional activities (if there is a risk of damage to the environment) –permitted sub-limit.

Insurance should be provided on act committed or claims made trigger basis, subject to extended reporting period not shorter than 36 (thirty-six) months commencing after the DEFECTS LIABILITY PERIOD.

The insurance policies maintained by the CONTRACTOR in relation to the CONTRACT, in accordance with this Article, will exclude the insurer’s recourse against the OWNER.

The policy may be issued in a currency other than indicated above (basic currency), but the amount needs to be equivalent to the basic currency amount.

23.5.2. CONTRACTOR shall, at its sole cost and in the amount not less than the CONTRACT PRICE, obtain and maintain in force for the duration of the CONTRACT (including the DEFECTS LIABILITY PERIOD) provide and maintain, at its expense, the construction all risks insurance according to the insurance requirements of Building construction, reconstruction, repair, renovation (modernization), demolition or maintenance of cultural heritage building compulsory construction works and civil liability insurance wording approved by the Bank of Lithuania, Resolution Number 03-207 on 22nd December 2016 including any amendments or restatements of the Resolution as may be passed from time to time. Civil liability of construction work designer, construction work design (part of design) expertise contractor, technical supervisor of construction of construction works shall be in the amount not less than the FIXED CONTRACT PRICE. CONTRACTOR shall present all insurance policies (their copies) to the OWNER within 10 (ten) business days after the date of signature of this CONTRACT. Prior to cancellation, termination of insurance or any substantial modifications of insurance policies, the OWNER shall be notified thereof in writing in advance.

* + - 1. The CONTRACTOR shall additionally take out the CARGO insurance from any damage to EQUIPMENT, MATERIALS or any other goods caused during transport, including damage caused during loading and unloading, including loading and unloading from and to the SITE, with a guaranteed sum for the full value of each DELIVERY.
      2. The CONTRACTOR shall effect and maintain all other insurances which it is required to have by any applicable law.
      3. The CONTRACTOR shall additionally provide the mandatory third party liability insurance in respect of the use of vehicles by the CONTRACTOR;
      4. The CONTRACTOR is oblige to provide the OWNER with a copy of all polices in accordance with this Article not later than 14 (fourteen) days before EFFECTIVE DATE. Copies of polices shall be an Appendix to the CONTRACT.
  1. FORCE MAJEURE
     1. In this CONTRACT, FORCE MAJEURE means any event: (i) beyond the control of the PARTY affected by it (the “**AFFECTED PARTY**”), (ii) materially and adversely affecting the performance of the AFFECTED PARTY’S obligations hereunder, (iii) being an event external to the AFFECTED PARTY, and (iv) which the AFFECTED PARTY, acting with professional due diligence, neither could have foreseen at the EFFECTIVE DATE nor could have prevented or overcome. Subject to the satisfaction of the above requirements, FORCE MAJEURE includes in particular:

war and other hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilisation, requisition or embargo;

ionising radiation or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosives, or other hazardous properties of any explosive nuclear assembly;

rebellion, revolution, insurrection, military or usurped power, civil war and/or acts of terrorism;

riot, commotion or disorder, except where solely restricted to employees of the Contractor; and

epidemic, endemic, pandemic, flood, wildfire, earthquake, hurricane, typhoon, volcanic eruption or other natural disaster.

* + 1. The CONTRACTOR may claim as FORCE MAJEURE an event affecting a SUBCONTRACTOR only, if the given event were to also constitute FORCE MAJEURE if the CONTRACTOR has itself been performing the applicable activities entrusted to the SUBCONTRACTOR. For the avoidance of doubt, if any SUBCONTRACTOR is entitled under any SUBCONTRACT to relief from force majeure on terms additional to or broader than those specified in this Article 24, such additional or broader force majeure events or circumstances shall not excuse the CONTRACTOR’S non-performance or entitle it to relief under this Article 24.
    2. The PARTIES agree that for the purposes of the CONTRACT FORCE MAJEURE does not include (regardless of whether the given event satisfies the requirements of Article 24.1, or not):
       1. the lack of, or a delay in obtaining any of CONTRACTORS PERMIT(S) and/or OWNER’S PERMIT(S), in particular the lack of legal and/or regulatory approvals, authorisations, licenses, entry or residence permits, or approvals of any kind which are necessary for the performance of the CONTRACT;
       2. a non-performance, and/or improper performance of its obligations by a third party used by a given PARTY to perform its obligations resulting from the CONTRACT, and/or a person for whom such third party is liable (unless such non-performance and/or improper performance is a result of a FORCE MAJEURE itself), and/or any tort committed by such third party or person for whom such third party is liable;
       3. a change in market conditions, a change in foreign exchange rates, a change in prices of raw materials, and/or a change in the PARTY’S staffing, and/or financial condition;
       4. any events that were caused or provoked by the AFFECTED PARTY (or the CONTRACTOR’S PERSONNEL in the case that the CONTRACTOR is the AFFECTED PARTY); and
       5. with respect to the SITE - such events or circumstances that result from weather conditions that are generally experienced in the local area.
    3. If an AFFECTED PARTY is rendered wholly or partially unable to perform its obligations under the CONTRACT as a result of FORCE MAJEURE, the AFFECTED PARTY shall be excused from whatever performance is affected by such FORCE MAJEURE to the extent so affected, provided that:
       1. the AFFECTED PARTY immediately notifies the other PARTY of its inability to perform as a result of such FORCE MAJEURE, which notice shall be confirmed in writing in detail as soon as possible but in any event within 7 (seven) days from the occurrence of such FORCE MAJEURE and which notice shall contain reasonable proof of the nature, anticipated duration and expected impact on compliance with the CONTRACT and initial mitigation actions plan (if applicable) due to such FORCE MAJEURE. If no such notice is submitted within the time period specified above, the given event will not be considered as FORCE MAJEURE, regardless of whether it satisfied the requirements of Article 24.1, or not;
       2. the excusal from performance shall be of no greater scope and of no longer duration than that caused by such FORCE MAJEURE; and
       3. no obligation of the AFFECTED PARTY that arose prior to such FORCE MAJEURE shall be excused as a result of such FORCE MAJEURE.
    4. The AFFECTED PARTY shall, at its own expense, make its best efforts to mitigate and minimise the effects of the impact and consequences of any FORCE MAJEURE and to resume the performance of its obligations under the CONTRACT affected by such FORCE MAJEURE promptly upon the cessation thereof. The AFFECTED PARTY shall also continue to perform its obligations under the CONTRACT so far as reasonably practicable. Upon the AFFECTED PARTY’S failure to take all necessary and appropriate steps to remove the cause(s) and/or mitigate the effects of a FORCE MAJEURE, the other PARTY, at its sole discretion and upon written notice to the AFFECTED PARTY, at the AFFECTED PARTY’S expense, may initiate any measures in order to remove the cause(s) or mitigate the effects of any FORCE MAJEURE, in particular engage a third party to take the actions that the other PARTY deems appropriate or necessary.
    5. The AFFECTED PARTY shall notify the other PARTY of the steps it proposes to take, including any reasonable alternative means for performance which is not prevented by FORCE MAJEURE. The AFFECTED PARTY shall promptly inform the other PARTY of any changes to the status of FORCE MAJEURE, in particular of the cessation thereof.
    6. If the AFFECTED PARTY suffers a delay by reason of FORCE MAJEURE, of which notice has been successfully given under Article 24.4, it shall be entitled: (i) in the case of the OWNER, to an extension of time for such delay: and (ii) in the case of the CONTRACTOR – to EOT. The extension of time (or EOT in the case of the CONTRACTOR) shall be the PARTIES’ sole remedy in the event of FORCE MAJEURE. Each PARTY will bear the costs and expenses resulting from FORCE MAJEURE affecting such PARTY.
    7. If a single event of FORCE MAJEURE, except the event indicated in Article 24.1 (f), preventing the performance of a substantial portion of the CONTRACT lasts for more than 180 (one hundred and eighty) days, or if events of FORCE MAJEURE during the term of the CONTRACT, except the event indicated in Article 24.1 (f), prevent the proper performance of the CONTRACT for an aggregate of at least 360 (three hundred and sixty) days, each of the partIES may terminate the CONTRACT with immediate effect, by serving a written notice of termination to the other PARTY. Article 27.4 applies to such termination accordingly.
    8. If circumstances of FORCE MAJEURE occur and, in consequence thereof, under the law governing the Contract, the parties are released from further performance of the Contract, the sum payable by the Owner to the Contractor shall be the same as that which would have been payable under Article 24.8.
  1. INTELLECTUAL PROPERTY RIGHTS
     1. The OWNER holds the rights to use all the OWNER’S PROVIDED INFORMATION. The OWNER authorises the CONTRACTOR and its SUBCONTRACTORS to use the OWNER’S PROVIDED INFORMATION solely for the purpose of performing the CONTRACT, including the preparation of the TECHNICAL DOCUMENTATION and obtaining the CONTRACTOR’S PERMITS, in each case – solely to the necessary extent. For the above purpose, the CONTRACTOR and its SUBCONTRACTORS are authorised to:
        1. record the OWNER’S PROVIDED INFORMATION on all data carriers known as of the EFFECTIVE DATE and by means of any technique known as of the EFFECTIVE DATE;
        2. multiply the OWNER’S PROVIDED INFORMATION by means of any technique known as of the EFFECTIVE DATE on all data carriers known as of the EFFECTIVE DATE;
        3. enter the OWNER’S PROVIDED INFORMATION to the computer memory and computer networks, including the intranet of the CONTRACTOR and its SUBCONTRACTORS, and disclose it to the COMPETENT AUTHORITIES; and
        4. compile (modify, adapt and/or translate, including changes in layout) the OWNER’S PROVIDED INFORMATION and use these compilations.

The OWNER’S PROVIDED INFORMATION except for BASIC DESIGN PACKAGE and other deliverables identified by the OWNER as proprietary to third parties, as recorded and multiplied in the above manner, shall include a note on the rights of the OWNER: “ALL RIGHTS RESERVED BY AB ORLEN Lietuva”. If the OWNER’S PROVIDED INFORMATION is recorded and/or multiplied by the CONTRACTOR or its SUBCONTRACTOR(S) in digital form or placed on a computer network, access to it shall be password protected.

The OWNER shall indemnify and hold harmless the CONTRACTOR from any claim or damage resulting from any breach of intellectual property deriving from the CONTRACTOR’S use – in accordance with the CONTRACT, of the OWNER’S PROVIDED INFORMATION, provided to the CONTRACTOR by or on behalf of the OWNER.

* + 1. The CONTRACTOR undertakes to procure that, with respect to all intellectual property rights to: (i) all TECHNICAL DOCUMENTATION, (ii) – to the extent applicable – to all DELIVERIES, (iii) to all other objects of intellectual property rights used, applied, created, made or developed as a result of, or in connection with, the performance of the CONTRACTOR’S obligations resulting from the CONTRACT, including copyrightable works (all hereinafter collectively referred to as the “**IP WORKS**”), when transferring thereof to the OWNER or granting to the OWNER the licences to use the IP WORKS as provided further in this Article 25, the CONTRACTOR will have all the intellectual property rights required for such transfer or for grant of the license and such right, as well as licences to be valid and effective. Such intellectual property rights (jointly, “**INTELLECTUAL PROPERTY RIGHTS**”) include, in particular: economic copyrights
    2. within the meaning of the Republic of Lithuania Law on Copyright and Related Rights dated 18 May 1999, Law No. VIII-1185; hereinafter the “**COPYRIGHT LAW**”) and industrial property rights (such as patents, utility models, industrial designs, as well as rights to obtain: (i) patents for inventions, (ii) protection rights to utility models and (iii) registration rights for industrial designs, as well as trademarks, databases and *know-how*) and priority right to obtain thereof. For the sake of clarity IP WORKS do not cover OWNER’S PROVIDED INFORMATION including any LICENSORS’ technical data and information.
    3. The CONTRACTOR undertakes to procure that neither the performance of the CONTRACT, nor the use by the OWNER, or a third party authorised by the OWNER of the IP WORKS as permitted by this Article 25 shall at any time infringe any STATUTORY REQUIREMENTS or any rights or interests of any third parties (including any rights of authors and co-authors).
    4. In consideration of the CONTRACT PRICE indicated in the PARTICULAR CONDITIONS, the CONTRACTOR hereby transfers to the OWNER the economic copyrights to the following IP WORKS created by the CONTRACTOR during the performance of the CONTRACT:
       1. DETAILED DESIGNS; and
       2. As-built documentation.

The economic copyrights to the above-mentioned IP WORKS are transferred to the OWNER with effect from the delivery to the OWNER of each such IP WORK, however in any case not later than on the date of first use of each such IP WORK by the OWNER or a third party acting upon the OWNER’S consent without any limitations in time and territory (within the whole world). The OWNER hereby acquires all such economic copyrights and all other applicable INTELLECTUAL PROPERTY RIGHTS.

* + 1. In consideration of the CONTRACT PRICE indicated in the PARTICULAR CONDITIONS, the CONTRACTOR grants to the OWNER a non-exclusive full licence, with the right to grant further sub-licences to third parties (in particular for the purpose of substitute performance of the CONTRACT in accordance with its terms), to use all IP WORKS other than those indicated in Article 25.4 and other objects of INTELLECTUAL PROPERTY RIGHTS used, applied, created, made and/or developed as a result of, or in connection with, the performance of the CONTRACTOR’S obligations resulting from the CONTRACT, within the whole world. The licence is granted with effect from the delivery to the OWNER of each IP WORK, in particular each piece of TECHNICAL DOCUMENTATION and each DELIVERY, however, in any case not later than on the date of first use of each such IP WORK by the OWNER or a third party acting upon the OWNER’S consent. The OWNER hereby accepts such licence.
    2. The scope of the economic copyrights transfer under Article 25.4 and the licence granted in Article 25.5 includes:
       1. the use of all IP WORKS for the purposes of the performance of the CONTRACT (including substitute performance of the CONTRACT), and/or otherwise for the purposes of the designing, assembly, construction, commissioning, testing, operation, maintenance, repairs, overhauls, extensions, upgrade, modification and/or demolishing of the PLANT and/or any element thereof, also by third parties, and also using parts and elements delivered by third parties;
       2. the training of the personnel of the OWNER and/or of a third party or third parties for the purpose of commissioning, testing, operation, maintenance, repairs, overhauls, extensions, upgrade, modification and/or demolishing of the PLANT and/or any element thereof;
       3. the obtaining of all the OWNER’S PERMITS, and all other administrative decisions, consents, approvals and similar instruments from the COMPETENT AUTHORITIES and/or other parties if required in connection with the designing, assembly, construction, commissioning, testing, operation, maintenance, repairs, overhauls, extensions, upgrade, modification and/or demolishing of the PLANT and/or any element thereof; and
       4. the combining and/or matching of the IP WORK(S) (or any element thereof) with any other works, in particular in connection with the performance of the CONTRACT, and/or otherwise in connection with the designing, assembly, construction, commissioning, testing, operation, maintenance, repairs, overhauls, extensions, upgrade, modification and/or demolishing of the PLANT and/or any element thereof, also by third parties. For the avoidance of doubt, this includes: (i) consulting with any other contractor performing engineering and/or advisory services in relation to the PLANT for the OWNER based on a separate contract, and/or (ii) disclosing to a third party, and incorporating by such third party of specific elements of the IP WORKS, and/or specific solutions included in the IP WORKS, into the design of the PLANT and/or any element thereof performed by a party other than the CONTRACTOR; and
       5. the sublicense to the LICENSOR of all IP WORKS being improvements to the BASIC DESING PACKAGE and required to be disclosed to the LICENSOR according to the LICENCE AGREEMENT.

The PARTIES hereby agree that, to the broadest extent permitted by mandatory STATUTORY REQUIREMENTS, with the effect from the delivery to the OWNER of each IP WORK, in particular each piece of TECHNICAL DOCUMENTATION and each DELIVERY, the OWNER shall be entitled to use each such IP WORK (including each element thereof or any piece of information pertaining to or connected with such IP WORK) within the full scope set out in this Article 26, even if such IP WORK, element or piece of information includes or constitutes technical, technological or organisational information, or other commercially valuable information, which has not been disclosed to the public, and with regard to which the CONTRACTOR took the necessary steps to keep it confidential.

* + 1. To the extent that the INTELLECTUAL PROPERTY RIGHTS concern IP WORKS being copyrightable works, the economic copyrights transferred under Article 25.4 and the licence granted in Article 26.5 cover all the fields of exploitation referred to in the COPYRIGHT LAW, including specifically the following fields of exploitation:
       1. fixing and duplication of the IP WORK(S) – producing copies of the works using all technique (including printing, reprographic, magnetic recording, digital technique and in spatial form, i.e. the actual implementation), including introduction into computer memory and recording on any carriers and in any number of copies for the purposes specified in Articles 25.5 and 25.6;
       2. introducing to trade (including sale of the original and/or copies on which an IP WORK is recorded) as well otherwise making available, including leasing, renting, lending for use the original or copies;
       3. without prejudice to any OWNER’S confidentiality obligations, disseminating the IP WORKS otherwise than described in Articles 25.6 and 25.7.2 above, by public performance, exhibiting, displaying, broadcasting and re-broadcasting, as well as making IP WORKS publicly available in such a way that anyone can have access to them in a place and at a time of their own choosing, for the purposes specified in Articles 25.5 and 25.6;
       4. using each copyrightable IP WORK in accordance with its designation and purpose, in particular for the purpose of designing, assembly, construction, commissioning, testing, operation, maintenance, repairs, overhauls, extensions, upgrade, modification and/or demolishing of the PLANT and/or any element thereof; and
       5. to the extent a copyrightable IP WORK constitutes a computer programme owned or co-owned by the CONTRACTOR, the licence also includes all the fields of exploitation referred to in the COPYRIGHT LAW, including: (i) permanent or temporary duplication of a computer programme, in whole or in part, using any means and in any form (duplication for the purpose of introduction, displaying, application, transfer or storage of a computer programme does not require an additional consent of the right holder), (ii) translation, adaptation, change of the layout or other changes to a computer programme, in particular to application software, including control logics and operator graphics source codes, (iii) dissemination of a computer program, including lending for use and renting a computer programme or a copy thereof. For the sake of clarity, this Article shall not apply to software used by the CONTRACTOR for the purposes of the development of the IP WORKS, unless the software itself is part of the IP WORKS.
    2. Within the fields of exploitation set out in Article 25.7 above, the CONTRACTOR, in consideration of the CONTRACT PRICE:
       1. in relation to each of the IP WORKS referred to in Article 25.4 above – transfers to the OWNER and the OWNER acquires, the exclusive right to permit others to exercise derivative copyrights (i.e. to dispose and use of derivative works understood in particular as translations, transformations or adaptations, within the scope set out in Article 25.6), and
       2. in relation to any other IP WORKS referred to in this Article 25 – grants to the OWNER within the whole world, a non-exclusive, full licence, with the right to grant sublicences with respect to the exclusive right to permit others to exercise derivative copyrights (i.e. to dispose and use derivative works understood in particular as translations, transformations or adaptations, within the scope set out in Articles 25.5 and the OWNER accepts such a license).

The CONTRACTOR hereby authorises the OWNER, as well as undertakes to procure that the OWNER (and any third party acting upon the OWNER’S consent) shall at all times, including following a termination, expiration or rescission of this CONTRACT, be authorised to prepare, use and dispose of each derivative work of each IP WORK being a copyrightable work, within the whole world, including within the scope covering also combining or matching each such copyrightable IP WORK (and each derivative work) with any other works, including any third party copyrightable works. The CONTRACTOR hereby undertakes to procure that all authors and co-authors of each IP WORK (including each copyrightable IP WORK) shall consent, and shall not object at any time against the OWNER’S (and third parties’ acting upon the OWNER’S consent) actions referred to in this Article 25.8.

* + 1. The CONTRACTOR shall provide to the OWNER, together with the software included in the IP WORKS, the application software, in particular control logics and operator graphics source codes to each such software being licensed or transferred to the OWNER. The OWNER shall be entitled to make these source codes available to third parties for the purposes of designing, assembly, construction, commissioning, testing, operating, maintenance, repairing, overhauling, extending, upgrading, modifying and/or demolishing of the PLANT and/or any element thereof.
    2. Subject to Article 25.14, the CONTRACTOR also undertakes to procure that all the authors and co-authors of each IP WORK shall permit the OWNER and third parties authorised by the OWNER, with effect from the transfer of economic copyrights and the granting of each licence, referred to in this Article 25, and within the broadest extent legally allowed, to exercise personal author’s rights to all IP WORKS, and that they will not withdraw such permission in the future. The CONTRACTOR undertakes to procure that the authors and co-authors of each IP WORK shall never enforce vis-à-vis the OWNER or any third party acting upon the OWNER’S consent, including following the termination, expiration or rescission of this CONTRACT, any of their personal author’s rights or any of their other rights to the IP WORKS.
    3. In relation to proprietary software supplied by a third party included in the IP WORKS, in relation to which the CONTRACTOR holds a licence and not the economic copyrights (“**THIRD PARTY SOFTWARE**”), the CONTRACTOR, subject to Article 25.14 and in consideration of the CONTRACT PRICE indicated in the PARTICULAR CONDITIONS, grants to the OWNER, a non-exclusive, royalty free, transferable sub-licence, with the right to grant further sublicences to third parties (in particular for the purpose of substitute performance of the CONTRACT in accordance with its terms), to use such software for the purposes listed in Article 25.6. The sub-licence is granted to the OWNER in each case upon the completion of the installation of the applicable software in the PLANT and/or any element thereof. The sub-licence in each case authorises the OWNER to use the THIRD PARTY SOFTWARE within the whole world, in the fields of exploitation referred to in the COPYRIGHT LAW, including specifically in the following fields of exploitation:
       1. permanent or temporary duplication of the THIRD PARTY SOFTWARE, in whole or in part, using any means and in any form (duplication for the purpose of introduction, displaying, application, transfer or storage of the THIRD PARTY SOFTWARE does not require an additional consent of the original licensor);
       2. translation, adaptation, change of the layout or other changes to a computer program; and
       3. in any case the OWNER is entitled to use the THIRD PARTY SOFTWARE for the purposes of performing the CONTRACT, and/or otherwise for the purposes of designing, assembly, construction, commissioning, testing, operating, maintenance, repairing, overhauling, extension, upgrading, modification and/or demolishing of the PLANT and/or any element thereof, also by third parties, and also using parts and elements delivered by third parties.

The OWNER acknowledges that, for the development of the WORKS, the CONTRACTOR shall make use of software licensed by third parties and that the TECHNICAL DOCUMENTATION or part thereof will be provided by the CONTRACTOR in the form of electronic files. Such software as required for developing, reading, using, modifying such files is not part of the DELIVERIES and/or WORK and shall not fall in the definition of THIRD PARTY SOFTWARE, nor be subject to this Article 26 irrespective of the release/version used by the CONTRACTOR for the TECHNICAL DOCUMENTATION and the OWNER shall procure for its use the mentioned software at its cost and expense. The THIRD PARTY SOFTWARE cannot be the software which is foreseen to be withdrawn from the sell and/or production.

* + 1. The CONTRACTOR shall procure the functionality of all software and THIRD PARTY SOFTWARE included in the DELIVERIES and/or WORKS as required by the CONTRACT. The CONTRACTOR shall install in the PLANT and/or any element thereof all updates of such software that may become available during the DEFECTS LIABILITY PERIOD. The THIRD PARTY SOFTWARE sub-licence referred to in this Article 25 shall include also all such updates.
    2. For the avoidance of doubt, in relation to the control system (“**DCS/SIS**”) application software installed in all parts of the PLANT, owned or licensed by CONTRACTOR, the licences, or the sub-licences, as the case may be, granted to the OWNER in this Article 25 includes also the OWNER’S right to adapt, alter and otherwise modify such DCS/SIS application software (e.g. control algorithms, mimics, reports), and the right to use such adaptations, alterations and modifications for the purposes indicated in Article 25.6.
    3. To the extent that the CONTRACTOR is unable to grant to the OWNER the rights to use IP WORKS, including THIRD PARTY SOFTWARE, due to contractual or statutory limitations, including in particular the prohibition on sublicensing – without prejudice to any other rights of the OWNER under the CONTRACT – the CONTRACTOR undertakes to immediately procure for the OWNER a direct licence from the holder of the applicable rights, compliant with the terms of the licence as specified in this Article 25, without any additional remuneration from the OWNER due to the CONTRACTOR or to any third party.
    4. For the avoidance of doubt, the PARTIES hereby confirm that the licence granted under Article 25.5 also covers these IP WORKS that constitute or include an invention, utility model, industrial design, trademark (if necessary), know-how, database or any other element protected by INTELLECTUAL PROPERTY RIGHTS.
    5. The ownership of the carriers on which each IP WORK is fixed or recorded passes to the OWNER for no additional remuneration upon the delivery of each such carrier to the OWNER.
    6. Notwithstanding Article 25.14, the CONTRACTOR undertakes to perform all additional actions required to give full effect to the licences and the THIRD PARTY SOFTWARE sub-licence granted in this Article 25 forthwith at the OWNER’S request, at no additional remuneration.
    7. For the avoidance of doubt, the PARTIES hereby confirm that the CONTRACTOR’S remuneration for transferring the economic copyrights, granting the licences and the THIRD PARTY SOFTWARE sub-licences under this Article 26, allowing the OWNER to use all IP WORKS (including all copyrightable and derivative works within all fields of exploitation referred to in Articles 25.7 and 25.11), all INTELLECTUAL PROPERTY RIGHTS and the performance of all other obligations resulting from this Article 25, is included in the CONTRACT PRICE. The CONTRACTOR shall not be entitled on the above account to any additional remuneration, and hereby waives, and undertakes not to raise any such claims againstthe OWNER or any third party acting upon the OWNER’S consent. The CONTRACTOR shall be solely responsible to make all necessary payments to all authors and co-authors of each IP WORK, and all parties holding the licensed rights.
    8. The licences and the THIRD PARTY SOFTWARE sublicence specified in this Article 25 are granted for the term of life of the PLANT and/or any element thereof, or, if earlier, until the end of the statutory protection period of the relevant INTELLECTUAL PROPERTY RIGHTS in accordance with the applicable STATUTORY REQUIREMENTS. Due to the nature of the legal relationship arising out of this CONTRACT and, in particular, due to the purpose of the licences or sublicences granted in this Article 25, the CONTRACTOR undertakes not to take any actions aimed at the termination of these licences and sublicences granted, whether in whole or in part, and shall comply with all its obligations arising from this Article 25 despite any termination of the CONTRACT. In the case of a breach of the above obligations, the CONTRACTOR shall compensate the OWNER for the damage sustained due to such breach. In the case that a licence or sublicence is terminated by the CONTRACTOR in breach of the CONTRACTOR’S obligations hereunder, the termination notice period shall be at least 20 (twenty) years.
    9. The OWNER may assign the licences and all other rights granted under this Article 25, in whole or in part, to a third party who will acquire the PLANT and/or any element thereof from the OWNER. The CONTRACTOR hereby grants its irrevocable consent to such an assignment. In the event of CONTRACT termination, the above consent covers all IP WORKS for which the remuneration have already been paid or settlements in accordance with Article 27 will be made.
    10. The CONTRACTOR undertakes to redress all damage sustained by the OWNER and all third parties acting upon the OWNER’S consent as a result of any claims of third parties alleging an infringement of any rights of such parties or committing of an act of unfair competition in connection with the use of any IP WORK, combination of IP WORKS or individual elements thereof, as well as combination of IP WORKS with the BASIC DESIGN PACKAGES and other LICENSORS’ technical information covered by the LICENCE AGREEMENTS, by the OWNER or a third party acting on behalf of the OWNER. The CONTRACTOR shall in particular reimburse the OWNER for all amounts awarded to any such party by a final and unappealable court judgment, or due to them on the basis of an amicable dispute settlement agreed with the CONTRACTOR, and for all the documented and reasonable costs of legal assistance incurred by the OWNER in connection with any such claims. If a claim is brought, or proceedings are instituted against the OWNER based on an infringement (or alleged infringement) of any rights of third parties or based on an actual or alleged act of unfair competition consisting in the use of any IP WORK or THIRD PARTY SOFTWARE, or individual elements thereof (including derivative works) by the OWNER, the OWNER shall notify this to the CONTRACTOR hereof. The CONTRACTOR undertakes to take all steps in order to immediately join, at the CONTRACTOR’S own cost, the proceedings instituted against the OWNER, specifically by filing a third-party intervention notice, and to take all possible steps to enter the proceedings in lieu of the OWNER. Notwithstanding the above, the CONTRACTOR undertakes to release the OWNER from all obligations towards the persons referred to in this Article 25.21. This Article 25.21 survives any termination, expiration or rescission of this CONTRACT*.*
    11. If a third party successfully exercises its INTELLECTUAL PROPERTY RIGHTS against the OWNER so as to prevent the OWNER from the use of any IP WORKS, including any THIRD PARTY SOFTWARE, or any INTELLECTUAL PROPERTY RIGHTS granted by this Article 25, the CONTRACTOR undertakes to promptly procure for the OWNER the appropriate rights from such parties, and/or to provide replacement results of the IP WORKS which shall not infringe any INTELLECTUAL PROPERTY RIGHTS of any third parties, and will comply in all respects with the CONTRACT, so that the OWNER’S rights to use all IP WORKS fully as permitted by this Article 25 are reinstated.
    12. To the extent that, notwithstanding the CONTRACTOR’S obligation set out in   
        Article 25.2 to duly acquire all INTELLECTUAL PROPERTY RIGHTS required to perform the CONTRACTOR’S obligations resulting from this Article 25, the proper performance of the CONTRACT or the use by the OWNER (or by a third party at the OWNER’S consent) of any IP WORK or individual elements thereof as permitted by this Article 25 shall at any point in time require a licence from any third party – without prejudice to any other rights of the OWNER under the CONTRACT, the CONTRACTOR undertakes to immediately procure, at its own expense and cost, such a licence for the OWNER, on the terms and in the scope specified in this Article 25.
    13. Throughout the term of the licences specified in this Article 26 the CONTRACTOR shall not sell or otherwise dispose of any of its intellectual property rights to any IP WORK in such a way that would result in preventing the OWNER from using the subject of the licences granted under this Article 25. In particular, the CONTRACTOR shall warrant that where a licensed right is sold or otherwise disposed, the provisions of the CONTRACT referring to the licence shall be binding on the successor in title. The CONTRACTOR shall compensate the OWNER for the full amount of damage sustained due to a breach of the above obligation by the CONTRACTOR.
    14. In the event of any conflict between the OWNER’S rights and the CONTRACTOR’S obligations resulting from this Article 25 and those specified in Article 22 (*Confidentiality*), Article 25 (*Intellectual Property Rights*) shall prevail. For the avoidance of doubt, the CONTRACTOR’S obligations resulting from this Article 25 are not limited to DEFECTS LIABILITY PERIOD.
  1. SUSPENSION
     1. The Owner may at any time, by written notice to the Contractor, suspend further performance of all or any portion of the Works (a “**Notice of Suspension**”). Such Notice of Suspension shall specify the date of suspension and the estimated duration of the suspension. Upon receiving the Notice of Suspension, the Contractor shall promptly suspend further performance of the Works to the extent specified, and during the period of such suspension shall properly care for and protect all Works in progress and any EQUIPMENT, materials, supplies, and other goods the Contractor has on hand for performance of the Works. The Contractor shall make its best efforts to utilise its material, labour and construction equipment in such a manner as to mitigate costs associated with suspension.
     2. The Owner may, at any time, withdraw the suspension of performance of the Works as to all or part of the suspended Works by written notice to the Contractor specifying the effective date and scope of withdrawal of the suspension, and the Contractor shall resume diligent performance of the Works for which the suspension is withdrawn on the specified effective date of withdrawal.
     3. If the CONTRACTOR suffers delay and/or incurs additional COST as a result of a suspension of the WORKS by the OWNER and/or resuming the WORKS, the CONTRACTOR shall give notice to the OWNER and shall be entitled, subject to Article 17 (*Claims*) and provided that the suspension is not due to reasons attributable to the CONTRACTOR, to: (i) payment of any such additional COST of the suspension and the performance of the CONTRACTOR’S obligations related to such suspension, as well as the reasonable and documented COST of resuming the performance of the CONTRACT, and (ii) an EOT for any such delay.
     4. In the event that the OWNER fails to make any undisputed payment within 45 (forty-five) days from the due date of payment, despite an additional 30 (thirty) days written notice thereafter from the CONTRACTOR, the CONTRACTOR shall have the right to suspend the WORKS, in which case the provisions of Article 26.3 shall apply accordingly.
  2. TERMINATION OF THE CONTRACT
     1. The Owner may, at its convenience, terminate further performance of all or part of the CONTRACT by giving written notice (made in WRITTEN FORM otherwise being null and void) to the Contractor specifying the date of termination.
     2. In addition to its other rights to terminate the CONTRACT specified hereunder, the OWNER shall be entitled to terminate the Contract with immediate effect by written notice (made in WRITTEN FORM otherwise being null and void) to the CONTRACTOR if:
        1. the OWNER becomes entitled to termination in accordance with Article 19.16;
        2. the total amount of liquidated damages for delay due to the OWNER reaches the limit stated in the PARTICULAR CONDITIONS;
        3. the delay in the acceptance of any PAYMENT MILESTONE exceeds 120 (one hundred and twenty) days, in each case compared to the applicable scheduled date specified in the TIME SCHEDULE, and in each case except only to the extent that the CONTRACTOR is not liable for the delay;
        4. the CONTRACTOR fails to perform, or improperly performs a material obligation or material obligations arising out of this CONTRACT, or persistently fails to perform, or persistently improperly performs any other kind of obligation or obligations arising out of this CONTRACT, provided that the CONTRACTOR also fails to comply with the OWNER’S written notice served upon the CONTRACTOR, requesting it to cease the given non-performance or improper performance of obligations and to remedy its consequences within a specific time limit, which cannot be less than 1 (one) month. A breach of the CONTRACTOR’S material obligations hereunder includes, in particular: a failure to provide and/or maintain PERFORMANCE BOND/ SECURITY OF WARRANTY PERIOD in accordance with the CONTRACT, a material or persistent violation of any STATUTORY REQUIREMENT and/or OWNER’S internal regulation(s) concerning occupational health and safety, fire prevention or environmental protection, in particular resulting in an accident on the SITE, carrying out any WORKS in a manner materially or persistently contrary to the CONTRACT;
        5. the CONTRACTOR abandons the Works or otherwise plainly demonstrates the intention not to continue performance of its obligations under the Contract;
        6. the CONTRACTOR subcontracts the whole of the Works or assigns the Contract, either wholly or in part, without the required consent of the OWNER;
        7. the CONTRACTOR becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of its creditors, or if any act is done or event occurs which (under laws applicable to the CONTRACTOR) has a similar effect to any of these acts or events, and/or ceases to pay its debts; and/or
        8. the CONTRACTOR materially breaches the confidentiality undertakings.
     3. In the case of a termination under this Article 27, each PARTY shall retain all goods, works, services and moneys obtained from the other PARTY hereunder, against settlement to be made on the terms set out in this Article 27 below.
     4. If the CONTRACT is terminated for the OWNER’S convenience in accordance with Article 27.1, the OWNER:
        1. will pay to the CONTRACTOR the part of the CONTRACT PRICE corresponding to the TECHNICAL DOCUMENTATION, DELIVERIES and all other WORKS delivered to, and accepted by the OWNER (including all TECHNICAL DOCUMENTATION, DELIVERIES and all other WORKS properly performed before the termination that have not yet been accepted by the OWNER and are to be accepted following the termination as well as all those TECHNICAL DOCUMENTATION, DELIVERIES and all other WORKS delivered and accepted following the termination in accordance with Article 27.8);
        2. will reimburse the CONTRACTOR for the documented and justified purchase costs of the EQUIPMENT and MATERIALS ordered, but not yet delivered to the SITE, to the extent the CONTRACTOR cannot cancel the delivery at no cost;
        3. will reimburse the CONTRACTOR for all reasonable and evidenced costs incurred or committed by the CONTRACTOR in connection with such termination, including: the costs of performance of the obligations resulting from Article 28.8, the SUBCONTRACTORS’ costs and expenses which the CONTRACTOR is obliged to cover in such case in accordance with the contracts with these SUBCONTRACTORS and the market costs of termination of the hedging arrangements to the extent necessitated by such termination; and

In no event shall the total payment to the CONTRACTOR made by the OWNER under this Article 27.4 exceed the Contract Price, less such sums as the CONTRACTOR has already received on account of the WORKS.

If the CONTRACT is terminated through the CONTRACTOR’S default in accordance with Article 27.2, the OWNER will pay to the CONTRACTOR the portion of the CONTRACT PRICE corresponding to the TECHNICAL DOCUMENTATION, DELIVERIES and all other WORKS properly performed and accepted by the OWNER (including all TECHNICAL DOCUMENTATION, DELIVERIES and all other WORKS delivered and accepted following the termination, in accordance with Article 27.8),

* + 1. Following a termination, the OWNER may complete by itself, and/or engage a third party to complete, the TECHNICAL DOCUMENTATION, DELIVERIES and/or all other WORKS that the CONTRACTOR would have been obliged to perform hereunder if not for the termination. Such activities include, in particular, all activities required for the achievement and maintaining by the PLANT of all PROCESS GUARANTEES and/or for the removal of DEFECT(S) for which the CONTRACTOR was liable in accordance with the CONTRACT. If the termination is based on Article 27.2 and:
       1. the actual costs so incurred by the OWNER exceed the part of the CONTRACT PRICE that would have been payable to the CONTRACTOR in this respect (that is, exceed any difference retained by the OWNER between: (i) the total amount of the CONTRACT PRICE set out in the CONTRACT, and (ii) the amounts paid to the CONTRACTOR by the OWNER resulting from the CONTRACT up until, and in relation to, the termination); or
       2. the OWNER, within 8 (eight) months from the termination of the CONTRACT, delivers to the CONTRACTOR an expert valuation according to which such costs will exceed the part of the CONTRACT PRICE that would have been payable to the CONTRACTOR in this respect (calculated as above),

the CONTRACTOR will reimburse the OWNER for such excess costs, irrespective of the obligation to pay liquidated damages specified in Article 21.7.4.

* + 1. In the case of a termination by either PARTY:
       1. the OWNER shall, as soon as practicable after the notice of termination, proceed to determine the value of the WORKS due to the CONTRACTOR for the WORKS executed in accordance with the CONTRACT. In the event of termination based on Article 27.2, the CONTRACTOR shall reimburse the OWNER any additional costs incurred by the OWNER in connection with determining the value of the WORKS due to the CONTRACTOR. In each case, however, not longer than up to 8 (eight) months from the termination, the OWNER may withhold further payments to the CONTRACTOR until the costs of design, execution, completion and remedying of any defects, damages for delay in completion and all other costs incurred by the OWNER to complete the WORKS have been established;
       2. the OWNER shall retain the WARRANTY in respect of the TECHNICAL DOCUMENTATION, DELIVERIES and all other WORKS completed by the CONTRACTOR and accepted by the OWNER, and the DEFECTS LIABILITY PERIOD shall be calculated from the date of the expiry of the CONTRACT due to termination, or, if so requested by the OWNER, the CONTRACTOR shall assign to the OWNER its rights under the warranties for DELIVERIES granted by the SUBCONTRACTORS; and
       3. the CONTRACTOR will provide to the OWNER the SECURITY OF WARANTEE PERIOD, in accordance with GC Article 9 (*Proforma of Security Warrantee Period)*, but for the amount referring to the value of the WORKS performed by the CONTRACTOR and accepted by the OWNER before the termination, save that the validity term of the SECURITY OF WARANTEE PERIOD shall start upon the termination.
    2. Not later than within 1 (one) month from the date of delivery to a PARTY of the other PARTY’S termination notice, or if the CONTRACT is terminated by the OWNER not later than on the date of termination stated in the OWNER’S notice of termination, if any, the CONTRACTOR shall:
       1. cease, and procure that the SUBCONTRACTORS will cease, the performance of all the CONTRACTOR’S obligations resulting from the CONTRACT, except as required by this Article 27.8;
       2. secure the DELIVERIES and results of the WORKS that are already at the SITE so as to protect them from deterioration, clear away and tidy up the SITE, and then remove from the SITE the CONTRACTOR’S PERSONNEL and CONTRACTOR’S TOOLS;
       3. advise the OWNER of all outstanding TECHNICAL DOCUMENTATION, DELIVERIES and all other WORKS that have not yet been delivered to and/or accepted by the OWNER, and then, upon the OWNER’S request, deliver them to the OWNER for its acceptance in accordance with the CONTRACT in the condition that any such TECHNICAL DOCUMENTATION, DELIVERIES and WORKS are on the date of a termination, unless the OWNER decides otherwise; and
       4. advise the OWNER of all outstanding SUBCONTRACTS pertaining to performance of the terminated WORKS and, upon request, furnish the OWNER with complete copies of these SUBCONTRACTS. The CONTRACTOR shall place no further SUBCONTRACTS except as may be necessary for completion of such portion of the WORKS as is not terminated and/or securing the completed WORKS upon the termination. The CONTRACTOR shall promptly make every reasonable effort to procure termination of all SUBCONTRACTS to the extent they relate to the performance of WORKS that have been terminated; or, upon the OWNER’S request, submitted within 30 (thirty) days from the date of delivery of the termination notice, promptly assign to the OWNER and/or, if so indicated by the OWNER, to its nominee the specific SUBCONTRACTS, as specified in such OWNER’S request, or shall take such other action relative to such SUBCONTRACTS as may be directed by the OWNER.
    3. The CONTRACTOR may terminate the CONTRACT with immediate effect by written notice (made in WRITTEN FORM otherwise being null and void) delivered to the OWNER, if:
       1. the OWNER is late with the payment of any undisputed amounts due to the CONTRACTOR in accordance with the CONTRACT for at least 75 (seventy five) days, and fails to make such payment within an additional time limit of not less than 30 (thirty) days set by a CONTRACTOR’S written notice, issued after the aforementioned 75 (seventy five) days period, delivered to the OWNER;
       2. the OWNER’S governing body passes a resolution to commence liquidation of the OWNER; and/or
       3. the OWNER becomes totally insolvent, and/or actually ceases to pay its debts.

In the case of termination of the CONTRACT by the CONTRACTOR based on this Article 27.9, the OWNER shall pay to the CONTRACTOR the amounts specified in Article 27.4.

* + 1. The OWNER may exercise its rights to terminate the CONTRACT by 30 (thirty) days from the end of the DEFECTS LIABILITY PERIOD. The CONTRACTOR may exercise its rights to terminate the CONTRACT by 30 (thirty) days from the PROVISIONAL ACCEPTANCE.
    2. The provisions of this CONTRACT which, by their nature, are intended to survive the termination, cancellation, completion or expiration of this CONTRACT shall continue as valid and enforceable obligations of the PARTIES, notwithstanding any such termination, cancellation, completion or expiration.
  1. GOVERNING LAW AND DISPUTE RESOLUTION
     1. Governing law

This Contract and any non-contractual obligations arising in connection with it shall be governed by, construed and interpreted in accordance with the laws of Lithuania.

* + 1. Settlement of disputes
       1. Any dispute arising between the PARTIES out of or in connection with the CONTRACT will be in the first instance settled amicably by direct informal negotiation. A PARTY requesting to commence negotiations shall specify the subject matter of the dispute in writing (a “**Dispute Notice**”) and shall deliver a copy thereof to the other PARTY.
       2. If the PARTIES do not reach a written agreement on a given dispute within 30 (thirty) days from the date of the delivery of the Dispute Notice to the other PARTY, the dispute may be submitted for resolution via arbitration by either PARTY in accordance with Clause 10 of the PARTICULAR CONDITIONS.
       3. The PARTIES to this CONTRACT expressly undertake to comply with the award rendered by the arbitrators and to settle without delay any liability arising therefrom. The award of the arbitrators shall be final and binding upon the PARTIES.
       4. Any reference to arbitration shall not relieve the Contractor of its obligations to proceed with the Works in accordance with the OWNER’S decision or instruction, and in accordance with the terms of the CONTRACT.
       5. Performance of the Contract shall continue during arbitration proceedings unless the OWNER shall order suspension. No payments due or payable by the OWNER shall be withheld on account of pending reference to arbitration.

**29. PERSONAL DATA PROTECTION**

29.1 The PARTIES hereby represent and warrant to each other that in performance of the present CONTRACT and discharge of their obligations assumed hereunder they are in strict compliance with all requirements of the applicable legislation of the European Union and the Republic of Lithuania regulating personal data protection.

29.2 The PARTIES hereby represent that in performance of the present CONTRACT none of them as the controller shall transfer the data to the other PARTY as a processor or joint data controller, whereas in case of any need to process or jointly control any personal data controlled by the other PARTY, the PARTIES shall conclude a separate agreement on personal data processing or joint control.

29.3 Business contacts, contacts of CONTRACTOR, their full names, email addresses and phone numbers exchanged between the PARTIES for the performance of this CONTRACT shall be processed by each PARTY exclusively for the purposes of the performance/administration of the CONTRACT observing the requirements set forth in the General Data Protection Regulation (EU) 2016/679 (GDPR) and Law of the Republic of Lithuania on Legal Protection of Personal Data.

**30. ANTI–CORRUPTION**

30.1 Each of the PARTIES, including their affiliates and representative offices, confirms that in performance of the present CONTRACT it shall exercise due diligence and shall comply with all legal provisions of the European Union and the Republic of Lithuania binding on the PARTIES within the scope of preventing corruption.

30.2 Each PARTY declares that it has implemented procedures for corruption prevention and conflict of interest management.

30.3 Each of the PARTIES certifies that acting in connection with performance hereof, whether directly or through any business entity controlled by or affiliated with the PARTIES, it shall comply with all requirements and internal regulations applicable to the PARTIES as regards standards of ethical conduct, prevention of corruption, settlement of transactions, costs and expenses in compliance with the law, conflict of interests, giving and accepting gifts, anonymous reporting, and clarification of irregularities.

30.4 The PARTIES ensure that in conclusion and performance of the present CONTRACT none of them or their owners, shareholders, stockholders, members of the management board, directors and other staff members, subcontractors or other persons acting on their behalf have/has not made, proposed, promised, authorized to make and shall not make, propose, promise, or authorize to make any payment or another transfer constituting a financial or any other benefit directly or indirectly to any of the following:

(i) any member of the management board, director or other staff member or agent of a given PARTY or of any business entity controlled by or affiliated with the PARTIES,

(ii) a public official understood as a natural person performing a public function within the meaning given to this term in the legal system of a country in which the present CONTRACT is performed or in which the registered offices of the PARTIES or any business entity controlled by or affiliated with the PARTIES are located;

(iii) any political party, member of a political party or a candidate for a post in a state office;

(iv) any agent or intermediary in exchange for payment to anyone of the persons mentioned in (i)-(iii) above;

(v) any other natural person or legal entity, whether directly or through any business entity controlled by or affiliated with the PARTIES, in order to obtain their decision or actions which may result in any privilege inconsistent with the law or for any other improper purpose, if such action breaches or would be in breach of the legislative of the European Union and the Republic of Lithuania within the scope of prevention of corruption.

30.5 The PARTIES undertake to immediately inform each other in writing about the cases of breaching provisions of the Anti-Corruption Clause. At the written request of any PARTY, the other PARTY undertakes to provide information and answers to reasonable questions of the other PARTY related to the performance of the CONTRACT within the scope of the Anti-Corruption Clause.

30.6 Each of the PARTIES confirm that in performance of this CONTRACT it shall enable each person acting in good faith to report breaches on an anonymous basis by e-mail anonim@orlenlietuva.lt or by phone +370-800-90008.

30.7 In case of suspicions of corrupt actions made in connection with the present CONTRACT or its performance by any representatives of the PARTIES, the PARTIES shall cooperate in good faith for examining the circumstances of such cases.

30.8 The PARTY confirms that it has read and will abide by the Rules of Gift Giving and Acceptance of the Public Company ORLEN Lietuva, which are available on the website: <https://www.orlenlietuva.lt/EN/ForBusiness/DocumentsForContractors/Pages/default.aspx>

**31. IMPLEMENTATION OF INTERNATIONAL RESTRICTIVE MEASURES AND SANCTIONS**

31.1 The PARTIES hereby represent that the CONTRACT will be performed without prejudice to the regulations of the United Nations, the United States of America, the European Union and the Republic of Lithuania governing the implementation of international restrictive measures and sanctions.

31.2 Failure to comply with the provision set forth in Par. 31.1 above shall be deemed to be the material breach of the CONTRACT.

32. GENERAL PROVISIONS

32.1 By signing this CONTRACT, the CONTRACTOR undertakes to provide the OWNER with the relevant power(s) of attorney whereby the right is granted to the authorized persons to sign the CONTRACT on behalf of the CONTRACTOR. If the person(s) signing the CONTRACT represent(s) the company on the basis of its incorporation documents (Articles of Association, Regulations or other documents), the CONTRACTOR shall present such documents proving the right/authority of the signing person(s) to sign the CONTRACT.

32.2 Signing this CONTRACT, the PARTIES hereby declare and confirm that neither CONTRACT nor any individual conditions of the same give any of them unreasonable advantage over the other PARTY. The PARTIES confirm that they undertook all required measures to understand the essence of the CONTRACT and rights and obligations arising from it as well as that at the time of signature of the CONTRACT there's no any single circumstance (lack of information, lack of experience, carelessness, etc.), including the ones provided in Article 6.228 of the Civil Code of the Republic of Lithuania, that could result in essential inequality of PARTIES. The PARTIES confirm that the terms and conditions of the CONTRACT are clear, comprehensible and acceptable to the PARTIES and that the CONTRACT or individual provisions thereof do not infringe the balance between the rights and obligations of the PARTIES as well as the rights and lawful interests of the PARTIES.

32.3 CONTRACTOR shall not assign this CONTRACT either wholly or in part, without the written consent of OWNER.

OWNER reserves the right to assign this CONTRACT to OWNER’S affiliates or OWNER’S designated agent, as well as to OWNER’S lenders or their agents or trustees, or to create for their benefit a security interest in its rights and interests under or pursuant to this CONTRACT.

The OWNER shall be entitled to transfer or assign its rights under the CONTRACT to the OWNER of t he PLANT. The CONTRACTOR hereby grants its advance consent to any such assignment or transfer, and this consent is the essential condition of the CONTRACT. The CONTRACTOR cannot disagree with, or oppose to, such assignment, or suspend, abandon or terminate the CONTACT due to any such assignment and shall accept it unconditionally.

In case the CONTRACTOR is the partners of joint activities (partnership) operating under an agreement on joint activities and any of the partners goes bankrupt, or is restructured, or liquidated, or ceases otherwise without a universal assignment of rights, then the remaining partner(s) of the joint activities shall be entitled to employ a new partner of joint activities, with the OWNER’S prior written consent.

The person who will be taking over the CONTRACTOR’S rights and obligations or a new partner of joint activities shall comply with the qualification requirements set forth in the CONTRACT which applied to the CONTRACTOR who assigned the rights or the partner of a joint-venture who withdrew from the CONTRACT, and shall also have sufficient experience and capability necessary for the performance of the CONTRACT.

Subject to the foregoing, the provisions of this CONTRACT shall extend to the benefit of and be binding upon the successors and assigns of the PARTIES hereto.

32.4 All communications pursuant to or in connection with this CONTRACT shall be in the Lithuanian or English language, identified by OWNER’S CONTRACT Number and shall be communicated as set forth in Particular Conditions.

32.5 The partial or complete invalidity of any one or more provisions of this CONTRACT shall not affect the validity or continuing force and effect of any other provision. In the event a provision is determined to be partially or completely invalid, PARTIES agree to negotiate in good faith to reach equitable agreement which shall accomplish the original intent of the PARTIES as set forth in this CONTRACT.

32.6 The provisions of this CONTRACT which, by their nature are intended to survive the termination, cancellation, completion or expiration of this CONTRACT shall continue as valid and enforceable obligations of the PARTIES notwithstanding any such termination, cancellation, completion or expiration.

32.7 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. PARTIES hereto agree that any other conditions, including 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.

32.8 Not applicable.

32.9 Due to Lithuanian legal regulations (Article 4 of the Description of the Procedure for Submission of Information on Foreigners Working in Lithuania (No. V-401/EV-281/V-395), CONTRACTOR has a duty to fill data in the Notification for each foreign employee who is sent to work temporarily in the Republic of Lithuania (GC ANNEX 10 *(Report on aliens working in Lithuania)* and present the form to contact person on behalf of the OWNER at least 3 (three) days prior arriving to Lithuania for works in Public Company ORLEN Lietuva. The CONTRACTOR must also guarantee that such posted employees do not earn less than the current minimum wage in Lithuania and to confirm that all statutory requirements will be complied with in respect of such employees on the time of secondment in Lithuania.

Obligation indicated in this point shall be assumed by the CONTRACTOR with respect to the employees of its subcontractors seconded to Public Company ORLEN Lietuva.

If CONTRACTOR fails to present requested information in time and as a result Public Company ORLEN Lietuva is charged with penalty for failure to satisfy this obligation, the penalty imposed on Public Company ORLEN Lietuva shall be settled by the CONTRACTOR.

32.10 The CONTRACTOR shall make sure each employee of its own or its subcontractor performing construction works on site has a valid Transparent Worker Identification Code (hereinafter – ID Code), and all the persons on the construction site have been duly identified by the CONTRACTOR’S responsible person, as in Article 221 of the Law on Construction of the Republic of Lithuania, as well as make sure only the CONTRACTOR or its subcontractor’s construction workers with valid ID codes are present on the construction site, and the CONTRACTOR assumes any liability for itself and its subcontractors rising from failure to observe or improper observance of the above requirement.

32.11 The CONTRACTOR may not use the name, trademarks, logo of Public Company ORLEN Lietuva in its website, lists of business partners, brochures, advertisements or in any other marketing or advertising materials without prior written consent of the OWNER. If the CONTRACTOR wants to use the OWNER'S information referred to herein, the CONTRACTOR together with request for permission must present draft material where such information would be used.

32.12 Without separate written consent of the OWNER, the CONTRACTOR is also not entitled to communicate and disclose any information related to the execution of the CONTRACTOR to mass media (press, radio, television, internet media). If the CONTRACTOR wants to communicate and disclose information referred to herein, the CONTRACTOR together with request for permission must present draft public release where such information would be used.

32.13 The CONTRACTOR agrees with information note regarding Public Company ORLEN Lietuva information disclosure requirements stated in GC ANNEX 12.

1. In case of need specific reference to standards set forth by LICENSOR to be added to the priority lists. [↑](#footnote-ref-2)