

GENERAL CONDITIONS

Engineering, Procurement & Construction Contract

Public Company ORLEN Lietuva LPG flare system renovation

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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 €1.500 (in words, one thousand five hundred Euro).	
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<u>TECHNICAL ANNEXES</u>	
ANNEX 1	N/A
ANNEX 2	LOCAL GENERAL REQUIREMENTS OF PUBLIC COMPANY ORLEN LIETUVA (Requirements for Contractors Performing Maintenance-Installation of Process Units at Public Company ORLEN Lietuva. The attachment provided on the website http://www.orlenlietuva.lt/EN/ForBusiness/DocumentsForContractors/Pages/default.aspx)
ANNEX 3	SCOPE OF WORK
ANNEX 4	VENDORS LIST
ANNEX 5	CHANGE ORDER PROCEDURE
ANNEX 6	UNIT RATES & TIME RATES FOR CHANGES
ANNEX 7	PAYMENT SCHEDULE
ANNEX 8	PROJECT EXECUTION PLAN
ANNEX 9	TIME SCHEDULE & PROJECT ORGANISATION
ANNEX 10	SAMPLE FORM OF WORK HANDOVER AND ACCEPTANCE STATEMENT
ANNEX 11	MECHANICAL COMPLETION, COMMISSIONING, START-UP, TURNOVER
ANNEX 12	PROFORMA PERFORMANCE BOND
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ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Unless the context otherwise requires, the following expressions shall have the following meanings:

ANNEX shall mean the Technical ANNEXES listed above. These ANNEXES, specifying the purpose, scope, design and other criteria for the WORKS, form an integral part of the CONTRACT.

BATTERY LIMITS shall mean the battery limits for the PLANT as set forth in ANNEX 3 (*Scope of Work*).

CHANGE shall mean any significant alteration to the scope of WORKS carried out in accordance with Article 13 (*Changes and Variations to the Works*) of this CONTRACT.

CONTRACT shall mean the agreement between OWNER and CONTRACTOR for the execution of the WORKS incorporating the General Conditions, Particular Conditions, Technical ANNEXES, specifications, drawings, completed pricing tables, payment and guarantee schedules and all such further documents as may be expressly incorporated in the ANNEXES listed above, including any subsequent modifications mutually agreed in writing between the PARTIES.

CONTRACTOR shall mean the person(s) or legal entity named in the Particular Conditions and its legal successors or permitted assigns.

CONTRACTOR'S REPRESENTATIVE shall mean the person appointed by the CONTRACTOR to act as his representative for the purposes of the CONTRACT.

CONTRACT EFFECTIVE DATE shall mean the date so specified in the Particular Conditions.

CONTRACT PRICE shall mean the amounts stated in Particular Conditions as being the sum(s) payable by the OWNER to the CONTRACTOR for the design, execution and completion of all of the WORKS including the remedying of any defects and for the full and proper performance of the CONTRACT, adjusted to give effect to any such additions or deductions or CHANGES as are provided for in the CONTRACT.

COMMISSIONING shall mean the work and activities as described in ANNEX 11 (*Mechanical Completion, Commissioning, Start-Up, Turnover*).

DEFECTS LIABILITY PERIOD shall mean the period for notifying defects in the WORKS or PLANT or a part thereof, as stated in the Particular Conditions. The DEFECTS LIABILITY PERIOD is calculated from the date of issue of the PROVISIONAL ACCEPTANCE CERTIFICATE after the PERFORMANCE TEST.

DETAILED DESIGN shall mean all documents as specified in ANNEX 3 (*Scope of Work*) to be provided by the CONTRACTOR to the OWNER under the CONTRACT.

EQUIPMENT shall mean all equipment, machinery, apparatus and all other things (excluding MATERIAL) 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.

FINAL ACCEPTANCE CERTIFICATE shall mean the certificate issued pursuant to the provisions of Article 16 (*Performance Test and Final Acceptance*), constituting formal

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acceptance by the OWNER that all CONTRACTOR'S obligations under this CONTRACT have been fulfilled.

HSE shall mean all health, safety, welfare and environmental protection regulations.

MATERIAL(S) shall mean things of all kinds (other than EQUIPMENT) to be provided by CONTRACTOR under the terms of the CONTRACT, intended to form or forming part of the permanent WORKS.

MECHANICAL COMPLETION shall mean the PLANT (unit, system or any part thereof) has been constructed in accordance with the CONTRACT and the applicable drawings, specifications, applicable codes and regulations, including tests and checks necessary for commencement of initial testing and operations by OWNER in a safe manner. Construction debris must have been removed and the construction area cleaned up. The PLANT has been completed mechanically and structurally, put in a tight, new and clean condition; all deficiencies have been corrected to the extent that said deficiencies can be corrected prior to the introduction of fuel stock to the facility. All relevant WORKS as defined in ANNEX 3(*Scope of Work*) and those items noted as "CONTRACTOR Responsibility" in the Appendix 1 to the ANNEX 11 (*Mechanical Completion, Commissioning, Start-up, Turnover*) must have been completed by CONTRACTOR, except the items specifically agreed to as "Punch List" items defined in Appendix 7 to the ANNEX 11 (*Mechanical Completion, Commissioning, Start-up, Turnover*).

OWNER shall mean Public company ORLEN Lietuva, with its registered office at Mažeikiai str. 75, Juodeikiai, LT-89467, Mažeikiai Region, Lithuania, or its legal successors or permitted assigns.

OWNER'S REPRESENTATIVE shall mean the person named by the OWNER in the CONTRACT or appointed by the OWNER from time to time to represent the OWNER throughout the execution of the CONTRACT. OWNER'S REPRESENTATIVE shall have the right and power to make any decision on behalf of the OWNER but without the power to make alterations or modifications to the CONTRACT.

OPERATING MANUAL shall mean the set of instructions to be provided by CONTRACTOR for the operation of the PLANT as specified in ANNEX 3 (*Scope of Work*).

PARTY OR PARTIES shall mean individually or collectively the OWNER or the CONTRACTOR, as the context requires.

PED shall mean the Pressurised Equipment Directive, last version.

PERFORMANCE BOND shall mean the document(s) specified in Article 3 (*Obligations of the Contractor*).

PERFORMANCE TESTS shall mean the tests to be carried out in accordance with Article 16 (*Performance Test and Final Acceptance*), the purpose of which is to confirm performance and the ability of the PLANT to achieve PROCESS GUARANTEES.

PLANT shall mean LPG Tanks Farms No.1 and No.2 located at OWNER'S premises and to be owned and operated by the OWNER, as defined in the Particular Conditions, CONTRACT and the ANNEXES thereto.

PRE-COMMISSIONING shall mean all the activities to be performed to be ready for COMMISSIONING. PRE-COMMISSIONING activities include: checking for design conformity, checking the status of electrical, mechanical and instrument installations, flushing and cleaning activities, drying etc.

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PROCESS GUARANTEES shall mean those performance parameters as defined in the Particular Conditions Article 7 (*Damages for Non-Performance*).

PROVISIONAL ACCEPTANCE shall mean that the WORKS have been completed in accordance with the CONTRACT and OWNER has issued the PROVISIONAL ACCEPTANCE CERTIFICATE pursuant to Article 16 (*Performance Test and Final Acceptance*).

PROVISIONAL ACCEPTANCE CERTIFICATE shall mean the certificate issued by OWNER, pursuant to Article 16 (*Performance Test and Final Acceptance*).

PROVISIONAL SUM shall mean a sum, included in the CONTRACT PRICE, so designated to do work or to provided EQUIPMENT, MATERIALS, goods or services and which may be expended in whole or in part or not at all entirely at the discretion of the OWNER.

SITE shall mean the land indicated by the OWNER within which the PLANT is to be erected and constructed and the relevant temporary facilities are to be located and EQUIPMENT and MATERIALS to be delivered.

START-UP shall mean the activities to be performed after the completion of COMMISSIONING and ending with stable operation of the PLANT at design capacity, as specified in Article 15 (*Mechanical Completion, Commissioning and Start-Up*).

SUB-CONTRACTOR shall mean any company or person named in the CONTRACT as a SUB-CONTRACTOR, manufacturer, or supplier of a part of the WORKS or any person to whom a part of the WORKS has been subcontracted and the legal successors of such company or person, but not any assignee.

“SUPERVISORY SERVICES” shall mean the technical services to be provided by the CONTRACTOR to the OWNER on SITE (1) since the start of Construction to the PRE-COMMISSIONING and Performance Test at Lump Sum Price and (2) for COMMISSIONING and START-UP at daily rates

TECHNICAL DOCUMENTATION shall mean all documents, designs, data, drawings, calculations, manuals and other technical information to be provided by the CONTRACTOR to the OWNER under the CONTRACT for the design, construction, operation and maintenance of the PLANT.

TIME FOR COMPLETION shall mean the time for completing the whole of the WORKS or a part thereof, calculated from the CONTRACT EFFECTIVE DATE, as further defined in the Particular Conditions.

TIME SCHEDULE shall mean the schedule included in ANNEX 9 (*Time Schedule & Project Organisation*), detailing the order in which 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.

VENDOR shall mean any company or person, having a contract with CONTRACTOR for the supply or manufacture of a part of the WORKS or of EQUIPMENT and/or MATERIALS necessary for the construction of the PLANT and the legal successors of such company or person, but not any assignee.

WORKS shall mean all works (whether temporary or permanent), services and supplies that are necessary to design, fabricate, erect, commission and put the PLANT into operation including the making good of any defects therein.

WORK HANDOVER AND ACCEPTANCE STATEMENT shall mean a CONTRACT execution document (issued in the form and manner established in

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ANNEX10 (*Sample Form Of Handover-Acceptance Statement*) signed by the PARTIES, confirming the fact of full or partial completion of the WORKS as well as transfer thereof to the OWNER.

“**day**”, “**week**”, “**month**” and “**year**” means calendar day, week, month and year respectively according to the Gregorian Calendar, unless otherwise specifically mentioned.

- 1.2 In the CONTRACT, except where the context requires otherwise:
- (a) words indicating one gender include all genders;
 - (b) words indicating the singular also include the plural and words indicating the plural also include the singular;
 - (c) provisions including the words “approval” or “approved”, “request”, “agree”, “agreed”, or “agreement” require the approval, request or agreement to be recorded in writing and
 - (d) “written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record.
- 1.3 The headings and titles and contents of indices in these General Conditions or elsewhere in the CONTRACT shall not be deemed part thereof or be taken into consideration in the interpretation or construction of the CONTRACT.
- 1.4 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 and the word “notify” shall be construed accordingly.

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ARTICLE 2 GENERAL

2.1 CONTRACTOR shall provide all design, engineering, procurement, technical and supervisory labour, construction labour, EQUIPMENT, MATERIAL, TECHNICAL DOCUMENTATION, OPERATING MANUALS, services, including SUPERVISORY SERVICES and as well as each and every item of expense necessary to engineer, design, supply, construct, erect, test, commission and put the PLANT into service, hereinafter referred to as WORKS.

CONTRACTOR'S scope of work shall include, *inter alia*:

- Detailed design engineering;
- Procurement of all necessary EQUIPMENT and MATERIALS;
- Provision of all TECHNICAL DOCUMENTATION;
- Expediting, inspection, testing, transportation and delivery to SITE of all EQUIPMENT and MATERIALS;
- All dismantling, construction and erection activities including construction supervision;
- PRE-COMMISSIONING, COMMISSIONING of the PLANT and SUPERVISORY SERVICES.

Said WORKS being more particularly described in the ANNEXES listed in this CONTRACT. The WORKS are to be performed on the SITE designated by OWNER at or in the vicinity of the ORLEN Lietuva Refinery, Mažeikiai str. 75, Juodeikiai, LT-89467, Mažeikiai Region, Lithuania.

2.2 It is the intent of this CONTRACT that 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 FOR COMPLETION as set forth in this CONTRACT.

2.3 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 operational performance of the PLANT shall meet or exceed PROCESS GUARANTEES

2.4 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 be grounds for CHANGE in accordance with Article 14 (*Claims*) but are deemed to be included in the CONTRACT PRICE.

2.5 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. OWNER shall have the authority to issue any instruction which he considers necessary to resolve an ambiguity or discrepancy.

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ARTICLE 3 OBLIGATIONS OF THE CONTRACTOR

In accordance with the terms of this CONTRACT the CONTRACTOR shall, at its own expense, undertake the following:

3.1 CONTRACTOR shall obtain all planning, building, construction or other permits, licenses or approvals as required by applicable law in relation to the design, execution, construction, certification and operation of the PLANT, including the remedying of any defects therein. CONTRACTOR shall give all notices, pay all taxes, duties and fees that may be necessary to obtain such permits, licenses and approvals and CONTRACTOR shall indemnify and hold OWNER harmless against and from the consequences of any failure to do so. The TECHNICAL DOCUMENTATION and information necessary to obtain these permits shall be prepared and provided by CONTRACTOR in accordance with the CONTRACT, applicable laws and regulations. CONTRACTOR shall obtain all necessary permits and approvals in a timely manner in accordance with the TIME SCHEDULE and the TIME FOR COMPLETION.

3.2 CONTRACTOR shall commence the WORKS as soon as practicable after the CONTRACT EFFECTIVE DATE and shall proceed with the execution of the WORKS with due expedition and without delay. CONTRACTOR shall complete the whole of the WORKS within the TIME FOR COMPLETION. The TIME FOR COMPLETION shall be calculated from the CONTRACT EFFECTIVE DATE as further defined in the Particular Conditions.

3.3 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 and OPERATING MANUAL all as specified in this CONTRACT and it's ANNEXES, and all CONTRACTOR'S personnel, goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for the design, construction, execution and completion of the WORKS and the remedying of defects therein.

The WORKS shall include any work which is necessary to satisfy the OWNER'S local requirements, or is implied by the CONTRACT and/or applicable laws, and all other goods and services which, although not specifically mentioned in the CONTRACT, are necessary for the stability or for the completion or for the safe and proper operation of the PLANT.

CONTRACTOR shall be responsible for the adequacy, stability and safety of all SITE operations, of all methods of construction and all of the WORKS. CONTRACTOR shall co-ordinate his own activities with those of OWNER'S other contractors to the extent necessary to meet OWNER'S requirements.

3.4 CONTRACTOR shall submit to the OWNER for his approval the detailed TIME SCHEDULE which shall, as a minimum, contain the following:

- (a) the order in which the CONTRACTOR proposes to carry out and execute the WORKS (including design, manufacture, delivery to SITE of EQUIPMENT and MATERIALS, construction, erection, PRE-COMMISSIONING, COMMISSIONING, START-UP and PERFORMANCE TESTS),
- (b) the times for submission and approval of the CONTRACTOR'S TECHNICAL DOCUMENTATION,
- (c) the times by which the CONTRACTOR requires the OWNER:
 - to furnish any OWNER'S drawings or documents,
 - to provide access to the SITE, and

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- to have obtained any import licenses, consents, wayleaves and approvals necessary for the purpose of the WORKS.

CONTRACTOR shall submit the detailed TIME SCHEDULE within 28 days after the CONTRACT EFFECTIVE DATE and it shall be in the form of a Critical Path Network and shall conform to the requirements of ANNEX 3 (*Scope of Work*). Detailed TIME SCHEDULE shall be in line with frame TIME SCHEDULE, provided in ANNEX 9 (*Time Schedule & Project Organisation*). Once approved by the OWNER, detailed TIME SCHEDULE shall be incorporated to ANNEX 9 (*Time Schedule & Project Organisation*) to the CONTRACT, for this action amendment to the CONTRACT shall not be required.

CONTRACTOR shall, at the same time, provide to the OWNER for his information a detailed cash flow estimate, in quarterly periods, of all payments to which CONTRACTOR will be entitled under the CONTRACT and CONTRACTOR shall subsequently supply a revised cash flow estimate at quarterly intervals, if required to do so by the OWNER.

The approval by the OWNER of the TIME SCHEDULE or cash flow estimates shall not relieve the CONTRACTOR from any obligation under the CONTRACT.

- 3.5 CONTRACTOR shall grant to the OWNER the right to use, without restriction and without the infringement of third parties' rights, the TECHNICAL DOCUMENTATION (including but not limited to all technical data, drawings, calculations, bills of material, flow diagrams, layout details and specifications) for the construction, operation and maintenance of the PLANT.
- 3.6 CONTRACTOR shall provide an unconditional, irrevocable PERFORMANCE BOND for proper performance, in the amount and currencies stated in Article 9 of Particular Conditions (*Miscellaneous*).

CONTRACTOR shall deliver the PERFORMANCE BOND to the OWNER within 28 days of the CONTRACT EFFECTIVE DATE. The PERFORMANCE BOND shall be issued by a first class bank approved by the OWNER, and shall be in the form shown in ANNEX 12 (*Proforma Performance Bond*) or in another form approved by the OWNER.

CONTRACTOR shall ensure that the PERFORMANCE BOND is valid and enforceable until the CONTRACTOR has executed and completed the WORKS and remedied any defects. If the terms of the PERFORMANCE BOND specify its expiry date, and the CONTRACTOR has not become entitled to receive the FINAL ACCEPTANCE CERTIFICATE by the date 60 days prior to the expiry date, CONTRACTOR shall extend the validity of the PERFORMANCE BOND until the WORKS have been completed and any defects have been remedied.

- 3.7 CONTRACTOR shall appoint a CONTRACTOR'S REPRESENTATIVE and shall give him the authority necessary to act on CONTRACTOR'S behalf under the CONTRACT.

Unless the CONTRACTOR'S REPRESENTATIVE is named in the CONTRACT, the CONTRACTOR shall, within 28 days of the CONTRACT EFFECTIVE DATE, submit to the OWNER for approval and consent, the name and particulars of the person the CONTRACTOR proposes as CONTRACTOR'S REPRESENTATIVE. If consent is withheld or subsequently revoked, CONTRACTOR shall similarly submit the name and particulars of another suitable person for such appointment.

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CONTRACTOR shall not, without the prior consent of OWNER, revoke the appointment of the CONTRACTOR'S REPRESENTATIVE or appoint a replacement.

CONTRACTOR'S REPRESENTATIVE shall, on behalf of the CONTRACTOR receive instructions issued by OWNER.

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 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.

CONTRACTOR'S REPRESENTATIVE and all other delegated persons shall be fluent in the languages for communications defined in the CONTRACT.

CONTRACTOR'S REPRESENTATIVE shall have the right and power to take any decision on behalf of CONTRACTOR but without the power to make alterations or modifications to the CONTRACT.

- 3.8 CONTRACTOR shall provide all construction and erection services including construction machinery and equipment, consumables, miscellaneous materials, tools, etc. necessary for the construction of the PLANT.
- 3.9 CONTRACTOR shall provide the OPERATING MANUAL for the PLANT in sufficient detail for the OWNER to operate, maintain, dismantle, reassemble, adjust and repair the PLANT. CONTRACTOR shall prepare the OPERATING MANUAL in accordance with the TIME SCHEDULE and in accordance with the operating instructions, data and other documentation specified in the CONTRACT. The OPERATING MANUAL shall also incorporate the detailed operating & maintenance manuals provided by VENDORS as well as any supplementary information arising out of CONTRACTOR'S detailed engineering phase.
- 3.10 CONTRACTOR shall provide spare parts for the construction and COMMISSIONING of the PLANT.
- 3.11 CONTRACTOR shall grant to the OWNER, or cause to be granted to the OWNER, by any SUBCONTRACTOR or VENDOR, a non exclusive, irrevocable and perpetual right and licence to use any patents and copyright embraced by the scope of the WORKS for the design, construction and operation of the PLANT and to use or sell the products from the PLANT.
- 3.12 CONTRACTOR shall, at OWNER'S request, provide SUPERVISORY SERVICES at the Time Rates listed in ANNEX 6 (*Unit Rates and Time Rates for Changes*) during START-UP and PERFORMANCE TEST(S) of the PLANT.
- 3.13 CONTRACTOR shall carry out the WORKS continuously and diligently using qualified and competent personnel and complete the whole of the WORKS within the TIME FOR COMPLETION and in accordance with all other provisions of this CONTRACT as well as all national and applicable international laws and regulations.
- 3.14 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. CONTRACTOR shall clear away and remove from the SITE any wreckage, rubbish, temporary works or facilities which are no longer required. CONTRACTOR shall comply with all HSE and fire fighting regulations as well as waste and environmental protection regulations.

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CONTRACTOR shall confine his operations to the SITE, and to any additional areas which may be obtained by the CONTRACTOR and agreed by the OWNER as working areas. CONTRACTOR shall take all necessary precautions to keep CONTRACTOR'S equipment, machinery and CONTRACTOR'S personnel within the SITE and these additional areas, and to keep them off adjacent land.

3.15 CONTRACTOR shall, as specified in the CONTRACT or as instructed by the OWNER to do so, allow appropriate opportunities for carrying out work to:

- (a) OWNER'S personnel
- (b) any other contractors employed by OWNER, and
- (c) the personnel of any legally constituted public authorities,

who may be employed in the execution on or near the SITE on any work not included in the CONTRACT.

CONTRACTOR shall be responsible for his construction activities on the SITE and shall co-ordinate his own activities with those of other contractors to the extent required by the CONTRACT.

If, under the CONTRACT, OWNER is required to give to the CONTRACTOR possession of any foundation, structure, plant or means of access in accordance with the CONTRACT documents, CONTRACTOR shall submit such request for possession to the OWNER in the time and manner stated in the CONTRACT documents.

3.16 CONTRACTOR shall:

- (a) comply with all applicable safety regulations,
- (b) take care for the safety of all persons entitled to be on the SITE,
- (c) use reasonable efforts to keep the SITE and WORKS clear of unnecessary obstruction, so as to avoid danger to persons using the SITE,
- (d) provide fencing, lighting, guarding and watching of the WORKS until the issue of the PROVISIONAL ACCEPTANCE CERTIFICATE,
- (e) provide any temporary works (including roadways, footways, guards and fences) which may be necessary, because for the execution of the WORKS, or for the use and protection of the public and owner/occupiers of adjacent land.

3.17 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. 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 himself shall be apparent on the document itself.

Compliance with the quality assurance system shall not relieve the CONTRACTOR of any of his duties, obligations or responsibilities under the CONTRACT.

3.18 OWNER shall have made available to the CONTRACTOR for his information, all relevant data in the OWNER'S possession on sub-surface and hydrological conditions at the SITE, including environmental aspects.

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.

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- 3.19 Upon the issue of the PROVISIONAL ACCEPTANCE CERTIFICATE, the CONTRACTOR shall clear away and remove all CONTRACTOR'S construction equipment and machinery, surplus material, wreckage, rubbish and temporary works and facilities. The CONTRACTOR may retain on SITE, during the DEFECTS LIABILITY PERIOD, such goods as are required for the CONTRACTOR to fulfil his obligations under the CONTRACT.
- 3.20 CONTRACTOR shall provide and maintain all necessary temporary construction facilities and accommodation and welfare facilities for CONTRACTOR'S personnel. CONTRACTOR shall also provide any temporary office facilities for OWNER'S personnel if required.
- 3.21 CONTRACTOR shall adhere to the approved list of VENDORS and SUBCONTRACTORS, as specified in ANNEX 4 (*Vendors List*). In the event that additional VENDORS and/or SUBCONTRACTORS are necessary for the further execution of the CONTRACT, CONTRACTOR shall, in writing request OWNER'S approval to extend the list of VENDORS AND SUB-CONTRACTORS. OWNER shall respond within 10 (ten) days to CONTRACTOR'S request, stating whether or not OWNER objects to such VENDOR or SUBCONTRACTOR.
- 3.22 CONTRACTOR shall bear all costs and charges for special and/or temporary rights-of-way which he may require, including those for access to the SITE. CONTRACTOR shall also obtain, at his risk and cost, any additional facilities outside the SITE which he may require for the purposes of the execution of the WORKS.
- 3.23 CONTRACTOR shall be deemed to have been satisfied as to the suitability and availability of access routes to the SITE. CONTRACTOR shall use reasonable efforts to prevent any road 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:

- (a) CONTRACTOR shall be responsible for any maintenance which may be required for his use access routes;
 - (b) CONTRACTOR shall provide all necessary signs or directions along access routes, and shall obtain any permission which may be required from the relevant authorities for his use of routes, signs and directions;
 - (c) OWNER shall not be responsible for any claims which may arise from the use or otherwise of any access route;
 - (d) OWNER does not guarantee the suitability or availability of particular access routes;
 - (e) Costs due to non-suitability or non-availability of particular access routes for the use of, or required by CONTRACTOR, shall be borne by the CONTRACTOR.
- 3.24 Except as stated otherwise in the CONTRACT:
- (a) CONTRACTOR shall give OWNER not less than 21 (twenty one) days' notice of the date on which any EQUIPMENT, MATERIALS and/or major items of other goods will be delivered to the SITE;
 - (b) 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; and
 - (c) CONTRACTOR shall indemnify and hold OWNER harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting

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from the transport of EQUIPMENT, MATERIALS or any other goods, and shall negotiate and pay all claims arising from their transport.

3.25 CONTRACTOR shall be responsible for all CONTRACTOR'S equipment and machinery. When brought on to the SITE, CONTRACTOR'S equipment and machinery shall be deemed to be exclusively intended for the execution of the WORKS.

3.26 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 his operations.

CONTRACTOR shall ensure that emissions, surface discharges and effluent from the CONTRACTOR'S activities shall not exceed the values defined by OWNER and shall not exceed the values prescribed by applicable laws.

3.27 CONTRACTOR shall, except as stated otherwise in the CONTRACT, be responsible for the provision of all power, water and other service he may require for the execution of the WORKS.

CONTRACTOR shall be entitled to use, for the purposes of the WORKS, such supplies of electricity, water, gas and other services as may be available on the SITE and of which details are given in ANNEX 2 (*Local Requirements of Public company ORLEN Lietuva*). CONTRACTOR shall, at his own risk and cost, provide any apparatus necessary for his use of these services and for measuring the quantities consumed.

3.28 CONTRACTOR shall provide monthly progress reports with the content and in the format described in ANNEX 3 (*Scope of Work*). Reports shall be prepared by CONTRACTOR and submitted to OWNER in six copies. The first report shall cover the period up to the end of the first calendar month following the CONTRACT EFFECTIVE DATE. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the period to which it relates.

Reporting shall continue until CONTRACTOR has completed all WORKS which are known to be outstanding at the date of issue of the PROVISIONAL ACCEPTANCE CERTIFICATE.

Each report shall include, as a minimum:

- (a) charts and detailed descriptions of progress, including each stage of design, procurement, manufacture, delivery to SITE, construction, erection, testing, PRE-COMMISSIONING, COMMISSIONING and START-UP;
- (b) photographs showing the status of manufacture and of progress on the SITE;
- (c) for the manufacture of each main item of EQUIPMENT and MATERIALS, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:
 - i. Commencement of manufacture
 - ii. CONTRACTOR'S inspections
 - iii. Factory Acceptance Tests,
 - iv. Shipment and arrival at SITE.
- (d) the details described in ANNEX 3 (*Scope of Work*);
- (e) copies of quality assurance documents, test results and certificates of MATERIALS;
- (f) list of CHANGES and notices of CHANGES as described in ANNEX 5 (*Change Order Procedure*),
- (g) safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations; and

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- (h) comparisons of actual and planned progress, with details of any events or circumstances which may jeopardize the completion in accordance with the CONTRACT TIME SCHEDULE or TIME FOR COMPLETION, and the measures being (or to be) adopted to overcome delays.
- 3.29 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 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.
- 3.30 CONTRACTOR confirms that the 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:

- (a) CONTRACTOR shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the works;
- (b) 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.

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ARTICLE 4 OBLIGATIONS OF THE OWNER

The OWNER undertakes to execute properly, timely and at its own expense the following duties:

4.1 OWNER shall, (at the request of the CONTRACTOR and where he is in a position to do so) provide reasonable assistance to the CONTRACTOR:

- (a) to obtain copies of the laws of Lithuania which are relevant to the CONTRACT but are not readily available, and
- (b) for the CONTRACTOR'S applications for any permits, licenses or approvals required by the laws of the country which the CONTRACTOR is required to obtain to comply with the CONTRACT or the law,

4.2 OWNER shall review and approve the TECHNICAL DOCUMENTATION submitted by CONTRACTOR. Unless otherwise stated, each review period shall not exceed 10 working days, calculated from the date on which the OWNER receives a CONTRACTOR'S TECHNICAL DOCUMENT and notice. The notice shall state that the CONTRACTOR'S TECHNICAL DOCUMENT is considered ready, both for review in accordance with this sub-Article and for use. The notice shall also state that the CONTRACTOR'S TECHNICAL DOCUMENT complies with the CONTRACT, or the extent to which it does not comply.

4.3 OWNER may appoint an OWNER'S REPRESENTATIVE to act on his behalf under the CONTRACT. In this event, he shall give notice to the CONTRACTOR of the name, address, duties and authority of the OWNER'S REPRESENTATIVE. The OWNER'S REPRESENTATIVE shall manage and supervise the execution of the WORKS. Except as otherwise stated in the CONTRACT, the OWNER'S REPRESENTATIVE shall receive (on behalf of the OWNER) all notices, instructions, consents, approvals, certificates, determinations and other communications under the CONTRACT. Whenever the OWNER'S REPRESENTATIVE is absent from the SITE, a suitable person shall be appointed, and the OWNER'S REPRESENTATIVE shall be notified accordingly.

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 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 fluent 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 authorized 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 though the act of the OWNER. However:

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

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- (b) 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
 - (c) 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.
- 4.4 OWNER may issue to the CONTRACTOR, instructions which may be necessary for the CONTRACTOR to perform his obligations under the CONTRACT. Each instruction shall be given in writing and shall state the obligations to which it relates and the Article (or other term of the CONTRACT) in which the obligations are specified.
- CONTRACTOR shall take instructions from the OWNER, or from the OWNER'S REPRESENTATIVE or an assistant to whom the appropriate authority has been delegated under this Article.
- 4.5 OWNER shall provide those feedstocks, and utilities in the quantities and qualities specified in ANNEX 3 (*Scope of Work*) that are required for PRE-COMMISSIONING, COMMISSIONING, START-UP and PERFORMANCE TESTS, and shall remove and dispose of off-specification products and product wastes resulting from START-UP.
- 4.6 OWNER shall provide qualified operating and maintenance personnel, required during PRE-COMMISSIONING, COMMISSIONING, START-UP and PERFORMANCE TESTS.
- 4.7 OWNER shall provide the CONTRACTOR with access to and possession of all parts of the SITE in a timely manner as necessary for the execution of the WORKS. The right and possession may not be exclusive to the CONTRACTOR.
- 4.8 OWNER shall carry out START-UP and PERFORMANCE TEST(S) of the PLANT with support of the CONTRACTOR'S SUPERVISORY SERVICES.
- 4.9 OWNER shall provide or cause to be provided, at no additional cost to CONTRACTOR, the following facilities for and in connection with the performance of the WORKS.
- (a) Space for CONTRACTOR'S temporary facilities, warehousing and laydown areas. Any upgrading/paving required for CONTRACTOR'S temporary facilities and working areas, shall be for CONTRACTOR'S own account.
 - (b) Supply of central connection points for, potable water, electrical power, and sanitary sewer for temporary facility needs within approximately 200 meters of CONTRACTOR'S temporary facility area.
 - (c) Central connection point for telephone/fax for temporary facility needs within approximately 200 meters of CONTRACTOR'S temporary facility area.
 - (d) Construction and untreated hydrostatic test water, plant air and nitrogen from sources located within approximately 200 metres of the BATTERY LIMITS of the PLANT. (Connections and disconnections to and from the water sources and all distribution piping and equipment including removal thereof shall be carried out by CONTRACTOR at his own risk and expense).
 - (e) Temporary storage area for EQUIPMENT and MATERIALS;
 - (f) Employee identification (I.D.) badges, site access control and vehicle passes. Vehicle passes will be limited to those required for construction activities.
 - (g) First aid facilities for treatment of minor injuries;
 - (h) Off-SITE parking facilities;

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- 4.10 OWNER shall bear the costs of the OWNER'S representatives participating in inspections at the CONTRACTOR'S and VENDOR'S offices and workshops. If additional inspections are necessary due to CONTRACTOR'S and/or VENDOR'S fault, the CONTRACTOR shall bear all the costs of the OWNER'S representatives participating in additional inspections.
- 4.11 Whenever these General Conditions provide that the OWNER shall proceed in accordance with this Article to agree or to determine any matter, OWNER shall consult with the CONTRACTOR in an endeavour to reach agreement. If agreement is not achieved, the OWNER shall make a fair determination in accordance with the CONTRACT, taking due regard of all relevant circumstances.
- OWNER shall give notice to the CONTRACTOR of each agreement or determination, with supporting particulars. Each PARTY shall give effect to each agreement or determination, unless the CONTRACTOR gives notice to the OWNER of his dissatisfaction with a determination within 14 days of receiving it. Either PARTY may then refer the dispute to arbitration in accordance with Article 26 (*Governing Law and Arbitration*).
- 4.12 OWNER shall provide CONTRACTOR with OWNER'S internal regulations binding on the SITE in the Lithuanian language. These internal regulations shall be obeyed by CONTRACTOR and its SUBCONTRACTORS at all times.
- 4.13 OWNER shall provide Construction All Risk (hereinafter – CAR) insurance in accordance with the provisions set forth in Article 20 (*Indemnities and Insurance*). If the PERFORMANCE TEST will be postpone from the reasons attributable to CONTRACTOR, the additional amount which will be necessary to be paid with connection to extend the validation of CAR insurance will be born by CONTRACTOR.

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ARTICLE 5 TECHNICAL DOCUMENTATION

- 5.1 CONTRACTOR'S documents shall comprise the TECHNICAL DOCUMENTATION, and OPERATING MANUAL specified in ANNEX 3 (*Scope of Work*), and ANNEX 2 (*Local General Requirements of Public company ORLEN Lietuva*) as well as any other documents that may be required to satisfy all regulatory approvals. Unless otherwise stated in the CONTRACT, all CONTRACTOR'S TECHNICAL DOCUMENTATION shall be written in the English language except the documentation required for any regulatory approval that must be in Lithuanian language. The TECHNICAL DOCUMENTATION shall use a unified system of symbols, numbers and indications, in accordance with ANNEX 3 (*Scope of Work*).
- 5.2 CONTRACTOR'S TECHNICAL DOCUMENTATION shall be submitted in accordance with the approved TIME SCHEDULE.
- 5.3 CONTRACTOR shall prepare the TECHNICAL DOCUMENTATION and OPERATING MANUAL specified in ANNEX 3 (*Scope of Work*) and ANNEX 2 (*Local General Requirements of Public company ORLEN Lietuva*) and shall also prepare any other documents necessary to instruct the CONTRACTOR'S personnel. CONTRACTOR'S designs shall be prepared in accordance with international standards and practices currently in use in the industry.
- 5.4 If the OWNER'S requirements define the TECHNICAL DOCUMENTATION and OPERATING MANUAL as specified in ANNEX 3 (*Scope of Work*) and, ANNEX 2 (*Local General Requirements of Public company ORLEN Lietuva*) which are to be submitted to OWNER for review, they shall be submitted accordingly, together with a notice as described below. In the following provisions of this Article, (i) "review period" means the period required by the OWNER for review, and (ii) "TECHNICAL DOCUMENTATION and OPERATING MANUAL" exclude any documents which are not specified as being required to be submitted for review.
- Unless otherwise stated, each review period shall not exceed 21 days, calculated from the date on which OWNER receives TECHNICAL DOCUMENTATION and the CONTRACTOR'S notice. This notice shall state that the CONTRACTOR'S TECHNICAL DOCUMENTATION is considered ready, both for review in accordance with this sub-Article and for use. The notice shall also state that the CONTRACTOR'S TECHNICAL DOCUMENTATION complies with the CONTRACT, or the extent to which it does not comply.
- 5.5 OWNER may, within the review period, give notice to the CONTRACTOR that CONTRACTOR'S TECHNICAL DOCUMENTATION fails (to the extent stated) to comply with the CONTRACT, applicable law, international standards and best practices currently in use in refining industry. If CONTRACTOR'S TECHNICAL DOCUMENTATION so fails to so comply, it shall be rectified, resubmitted and reviewed in accordance with this Article, at the CONTRACTOR'S own cost.
- 5.6 For each part of the WORKS, and except to the extent that the PARTIES otherwise agree:
- (a) execution of such part of the WORKS shall not commence prior to the expiry of the review periods for all the CONTRACTOR'S TECHNICAL DOCUMENTATION which are relevant to its design and execution;
 - (b) execution of such part of the WORKS shall be in accordance with these CONTRACTOR'S TECHNICAL DOCUMENTATION, as submitted for review; and

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- (c) if the CONTRACTOR wishes to modify any design or document which has previously been submitted for review, CONTRACTOR shall immediately give notice to the OWNER. Thereafter, CONTRACTOR shall submit revised documents to the OWNER in accordance with the above procedure.

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

- 5.7 The content of the TECHNICAL DOCUMENTATION shall be as stipulated in the ANNEXES to this CONTRACT. Review of the TECHNICAL DOCUMENTATION as specified in ANNEX 3 (*Scope of Work*) shall be made by the OWNER.

- 5.8 The TECHNICAL DOCUMENTATION and OPERATING MANUAL provided by CONTRACTOR shall be complete and suitable for the proper execution of the WORKS and for START-UP, operation and maintenance dismantling, reassembling, adjustment and repair of the PLANT in accordance with the CONTRACT

and shall conform to the standards of care and diligence normally practiced by recognized 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, codes and standards shall be agreed upon between the OWNER and the CONTRACTOR in writing.

- 5.9 The design, TECHNICAL DOCUMENTATION and OPERATING MANUAL, the execution and the completed PLANT shall comply with Lithuanian technical standards, building, construction and environmental laws, laws applicable to the product being produced from the PLANT, European Union regulations and other standards where specified or applicable to the WORKS, or defined by applicable laws.

All these laws shall, in respect of the WORKS and each section of the WORKS, be those prevailing when the WORKS (or a section thereof) are taken over by the OWNER at PROVISIONAL ACCEPTANCE of the PLANT. References in the CONTRACT to published standards shall be understood to be references to the edition applicable on the CONTRACT EFFECTIVE DATE, unless stated otherwise.

If changed or new applicable standards come into force in Lithuania after the CONTRACT EFFECTIVE DATE, the CONTRACTOR shall give notice to the OWNER and (if appropriate) submit proposals for compliance. In the event that:

- (a) the OWNER determines that compliance is required, and
(b) the proposals for compliance constitute a variation,

then OWNER shall initiate a CHANGE in accordance with Article 13 (*Changes and Variations to the Works*).

- 5.10 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 law, 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 Article 5 (*Technical Documentation*). CONTRACTOR shall obtain the consent of the OWNER as to their size, the referencing system, and other relevant details.

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Prior to the issue of the PROVISIONAL ACCEPTANCE CERTIFICATE, the CONTRACTOR shall provide to the OWNER, the specified numbers and types of copies of the relevant “as-built” drawings in accordance with ANNEX 3 (*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.

- 5.11 CONTRACTOR shall carry out any additions or modifications to the TECHNICAL DOCUMENTATION to remedy any defects or mistakes in any part of TECHNICAL DOCUMENTATION in a timely manner in order not to delay START-UP of the PLANT.

If errors, omissions, ambiguities, inconsistencies, inadequacies or other defects are found in the TECHNICAL DOCUMENTATION, they shall be corrected at CONTRACTOR’S cost, notwithstanding any consent or approval under this CONTRACT.

- 5.12 Prior to commencement of the PERFORMANCE TEST, the CONTRACTOR shall provide to the OWNER the OPERATING MANUAL in sufficient detail for the OWNER to operate, maintain, dismantle, reassemble, adjust and repair the PLANT.

The WORKS shall not to be considered to be completed for the purposes of PROVISIONAL ACCEPTANCE until the OWNER has received the final OPERATING MANUAL in such detail and any other manuals specified in the OWNER’S requirements of these purposes.

- 5.13 The CONTRACTOR shall deliver the TECHNICAL DOCUMENTATION to the OWNER at the following address:

Public company ORLEN Lietuva
Mažeikiai str. 75,
Juodeikiai, LT-89467,
Mažeikiai Region,
Lithuania

For the attention of the Project Manager as specified in the Particular Conditions.

The TECHNICAL DOCUMENTATION may also be personally handed over to the OWNER’S 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.

- 5.14 OWNER shall not be responsible for any error, inaccuracy or omission of any kind in the ANNEXES, 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:

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- (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.
- 5.15 Title to all TECHNICAL DOCUMENTATION including, but not limited to, specifications, drawings, bills of material, flow diagrams, layout details, reports and the contents thereof provided to the OWNER by the CONTRACTOR, which was the property of the CONTRACTOR, shall pass to OWNER without any limitation.
- Similarly, title to all TECHNICAL DOCUMENTATION including, but not limited to, specifications, drawings, bills of material, flow diagrams, layout details, reports and the contents thereof provided to the CONTRACTOR by the OWNER, which was the property of the OWNER, shall remain with the OWNER.
- 5.16 OWNER shall hold in confidence and not disclose to any third party any part of CONTRACTOR'S TECHNICAL DOCUMENTATION supplied to OWNER, directly or indirectly, in writing or otherwise, other than for the purposes pertaining to this CONTRACT as it specified in Article 19 (*Confidentiality*) of this CONTRACT.
- Similarly, CONTRACTOR shall hold in confidence and not disclose to any third party any part of OWNER'S technical data or information supplied to CONTRACTOR, directly or indirectly, in writing or otherwise, other than for the purposes pertaining to this CONTRACT as specified in Article 19 (*Confidentiality*).
- 5.17 To the extent necessary for placing subsequent contracts and/or orders for engineering services, procurement of goods and materials, construction and/or modifications of the PLANT, OWNER may disclose portions of CONTRACTOR'S TECHNICAL DOCUMENTATION to suppliers of such services or to vendors of such goods, materials or equipment.
- 5.18 CONTRACTOR shall carry out the training of OWNER'S personnel in the operation and maintenance of the PLANT to the extent specified in ANNEX 3 (*Scope of Work*). If the CONTRACT specifies training which is to be carried out before PROVISIONAL ACCEPTANCE, the WORKS shall not be considered to be completed for the purposes of PROVISIONAL ACCEPTANCE, until this training has been completed.

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ARTICLE 6 EQUIPMENT, MATERIALS AND WORKMANSHIP

6.1 EQUIPMENT, MATERIALS and TECHNICAL DOCUMENTATION to be provided by CONTRACTOR under the CONTRACT shall be delivered DDP - SITE (INCOTERMS 2010). CONTRACTOR shall be responsible for, *inter alia*, arranging all shipments of EQUIPMENT AND MATERIALS for the WORKS to the SITE and shall consign such shipments to CONTRACTOR as consignee at the project shipping address, freight fully paid. CONTRACTOR shall be responsible for making demurrage agreements and settlement with carriers for its shipments.

The EQUIPMENT and MATERIALS to be supplied by the CONTRACTOR shall be manufactured in accordance with the CONTRACT, good engineering practice used in the manufacturer's country and in conformity with modern proven technology valid at the time CONTRACT becomes effective.

The CONTRACTOR shall be free to select any VENDOR from the Vendors List included in ANNEX 4 (*Vendors List*).

6.2 Good and clear title of ownership to all EQUIPMENT, MATERIALS and TECHNICAL DOCUMENTATION provided by CONTRACTOR for the WORKS under this CONTRACT shall, except as expressly provided otherwise in this CONTRACT, pass to OWNER as soon as the EQUIPMENT, MATERIALS and TECHNICAL DOCUMENTATION are received at SITE. CONTRACTOR shall ensure that VENDORS and/or SUBCONTRACTORS from whom CONTRACTOR obtains EQUIPMENT and MATERIALS do not retain, encumber or reserve title to such items. CONTRACTOR shall defend, indemnify and hold OWNER harmless from any such claims by its VENDORS and/or SUBCONTRACTORS.

Notwithstanding the foregoing, the care, custody and control of the WORKS, including all EQUIPMENT and MATERIALS as well as risk of loss of or damage of all EQUIPMENT and MATERIALS therein, shall remain with CONTRACTOR until the 1st PROVISIONAL ACCEPTANCE CERTIFICATE has been issued by OWNER. Thereafter, the care, custody and control of the WORKS shall pass to OWNER.

6.3 OWNER'S personnel shall, at all reasonable times:

- (a) have full access to all parts of the SITE and to all places from which EQUIPMENT and MATERIALS are being obtained, and;
- (b) during the production, manufacture and construction (at the SITE and, to the extent specified elsewhere in the CONTRACT), be entitled to examine, inspect measure and test the EQUIPMENT, MATERIALS and workmanship, and to check the progress of manufacture of PLANT and production and manufacture of EQUIPMENT and MATERIALS.

CONTRACTOR shall give the OWNER'S personnel full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment. No such activity shall relieve the CONTRACTOR from any obligation or responsibility.

In respect of the WORKS which 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, out of sight, or packed for storage or transport. 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, he shall, if and when required by the OWNER, uncover the work and thereafter reinstate and make good, all at the CONTRACTOR'S own cost.

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- 6.4 This Article shall apply to all tests specified in the CONTRACT, other than the PERFORMANCE TEST.

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 any PLANT, EQUIPMENT or MATERIALS and other parts of the WORKS.

OWNER may 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 PLANT, EQUIPMENT, MATERIALS or workmanship is not in accordance with the CONTRACT, the cost of carrying out these additional tests shall be borne by the CONTRACTOR.

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

- 6.5 The CONTRACTOR'S inspectors, together with the OWNER'S personnel and/or third party inspectors will perform the final inspection and testing, including Factory Acceptance Testing, of EQUIPMENT and MATERIALS at the manufacturer's premises. CONTRACTOR'S employees qualifications and authorisations shall be in accordance with CONTRACTOR'S inspection standards and OWNER'S requirements under the CONTRACT.

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

- 6.7 If, as result of any examination, inspection, measurement or test, any PLANT, EQUIPMENT or MATERIALS design or workmanship is found to be defective or otherwise not in accordance with the CONTRACT, the OWNER may reject the PLANT, EQUIPMENT, MATERIALS, design or workmanship by giving notice to the CONTRACTOR, with reasons. The CONTRACTOR shall then promptly make good the defect and ensure that the rejected item complies with the CONTRACT.

If OWNER requires this PLANT, 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 OWNER to incur additional costs, the CONTRACTOR shall pay these costs to the OWNER.

- 6.8 Notwithstanding any previous test or certification, OWNER may instruct the CONTRACTOR to:

- (a) remove from the SITE and replace any EQUIPMENT or MATERIAL which is not in accordance with the CONTRACT,
- (b) remove and re-execute any other work which is not in accordance with the CONTRACT, and
- (c) execute any work which is urgently required for the safety of the WORKS, whether because of an accident, unforeseeable event or otherwise.

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If the CONTRACTOR fails to comply with any such instruction, the OWNER shall be entitled to employ and pay other persons to carry out the work. CONTRACTOR shall pay to the OWNER all costs arising from this failure.

- 6.9 All CONTRACTOR'S, VENDOR'S and SUBCONTRACTOR'S 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 inspection and testing will be born by the OWNER.
- 6.10 The number of the OWNER'S personnel participating in final inspection and testing of 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.
- 6.11 CONTRACTOR shall specify the place and time for the inspection and testing of any EQUIPMENT and MATERIALS not later than 21 days (for manufacturers outside Lithuania) or 7 days prior the relevant inspection for manufacturers within Lithuania).
- 6.12 CONTRACTOR shall arrange for adequate warehousing and storage for the MATERIALS and EQUIPMENT delivered to the SITE.
- 6.13 CONTRACTOR shall at all times preserve and protect MATERIALS and EQUIPMENT for use by CONTRACTOR in the execution of the WORKS from damage or loss due to weather, fire, theft, unexplained disappearance or other similar causes.
- 6.14 CONTRACTOR shall at all times protect from damage caused by CONTRACTOR'S operations, EQUIPMENT and MATERIALS (whether stored or installed), paving, structures and any and all other items on the SITE belonging to OWNER, or other contractors.
- 6.15 CONTRACTOR shall execute all civil WORKS in dry conditions and shall install and operate to the satisfaction of the OWNER 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.

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ARTICLE 7 PROJECT MANAGEMENT AND EXECUTION

- 7.1 CONTRACTOR shall commence the design and the execution of the WORKS as soon as is reasonably practicable after the CONTRACT EFFECTIVE DATE, and shall then proceed with the WORKS with due expedition and without delay.
- 7.2 Within 14 days of the CONTRACT EFFECTIVE DATE of the CONTRACT, the CONTRACTOR'S REPRESENTATIVE and key members of the CONTRACTOR'S project team, including discipline specialists as required, shall attend a Kick-Off Meeting with OWNER'S project personnel at 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.
- 7.3 Within 28 days of the CONTRACT EFFECTIVE DATE of the CONTRACT, CONTRACTOR shall submit the detailed TIME SCHEDULE to the OWNER for review and approval. CONTRACTOR shall also submit a revised TIME SCHEDULE whenever the previous schedule is inconsistent with actual progress or with the CONTRACTOR'S obligations. Unless otherwise stated in the CONTRACT, each TIME SCHEDULE shall include:
- (a) The order in which the CONTRACTOR intends to carry out the WORKS, including the anticipated timing of each major stage of the WORKS
 - (b) The periods for reviews under Article 5 (*Technical Documentation*);
 - (c) The sequence and timing of inspections and tests specified in the CONTRACT, and,
 - (d) A supporting report which included:
 - 1. a general description of the methods which the CONTRACTOR intends to adopt for the execution of each major stage of the WORKS;
 - 2. the approximate number of each class of CONTRACTOR'S personnel required for the execution of the WORKS and of each type of CONTRACTOR's Equipment for each major stage.

Unless the OWNER, within 21 days after receiving the TIME SCHEDULE, gives notice to the CONTRACTOR stating the extent to which it does not comply with the CONTRACT, the CONTRACTOR shall proceed in accordance with the TIME SCHEDULE, subject to his other obligations under the CONTRACT. OWNER'S personnel shall be entitled to rely upon the TIME SCHEDULE when planning their activities.

- 7.4 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 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 revised TIME SCHEDULE to the OWNER in accordance with this Article.
- 7.5 If, at any time, actual progress is too slow to complete within the TIME FOR COMPLETION, and/or progress has fallen (or will fall) behind the current TIME SCHEDULE, then OWNER may instruct the CONTRACTOR to submit a revised TIME 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 TIME FOR COMPLETION.

Unless OWNER notifies otherwise, CONTRACTOR shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of

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CONTRACTOR'S personnel, at the risk and cost of the CONTRACTOR. If these revised methods cause OWNER to incur additional costs, CONTRACTOR shall pay these costs to the OWNER, in addition to delay damages.

- 7.6 CONTRACTOR shall provide the schedules and reports set forth below and, in addition, those schedules and reports that are requested by OWNER as set forth in ANNEX 3 (*Scope of Work*).

CONTRACTOR shall, as a minimum, use the following hierarchical basis for planning and scheduling. This shall apply to both CONTRACTORS's Home Office and Field planning efforts.

- (a) Level 1 -Contract Master Schedule for all of the WORKS;
- (b) Level 2 -Summary Schedule (and initial 90 Day Kick-Off Schedule);
- (c) Level 3 -Detailed Schedules;
- (d) Level 4 -Control Schedule.

- 7.7 CONTRACTOR shall provide all Project Management functions required for the execution of the WORKS including, but not limited to the following:

- (a) Overall management, detailed engineering, procurement, construction, PRE-COMMISSIONING, COMMISSIONING, START-UP and PERFORMANCE TESTS of the WORKS and the management and supervision of all SUB-CONTRACTORS and of all permanent and temporary works that are necessary for the expeditious completion of the WORKS in accordance with the CONTRACT;
- (b) Preparation and submission of organization charts;
- (c) Provision of a Project Management Team acceptable to OWNER, to manage the implementation of the WORKS;
- (d) Preparation of plans and co-ordination and management procedures for the WORKS for agreement with OWNER;
- (e) Co-ordination and control of major project functions, e.g. engineering, procurement, project control, construction, PRE-COMMISSIONING, COMMISSIONING, START-UP and PERFORMANCE TESTING, to ensure that the WORKS are completed on within the TIME SCHEDULE and according to the specifications and CONTRACT;
- (f) Preparation and presentation to OWNER of progress reports defined in the ANNEXES to the CONTRACT;
- (g) Continuous implementation of a quality assurance program that meets or exceeds the requirements of ISO 9001 throughout the execution of the WORKS and submission of periodic reports to OWNER;
- (h) Provision and implementation of procedures for exercising discipline and control over the WORKS, utilizing all other disciplines and implementing whatever controls are required to perform the WORKS;
- (i) Preparation of an archiving procedure for all documentation required to respond to queries and problems that may arise during operation and maintenance of the facilities;

Progress review meetings shall be held at regular intervals.

Weekly progress meetings shall address overall progress and any important engineering design topic. Action lists shall be issued.

Monthly progress meetings shall address all progress aspects in detail. A detailed monthly progress report shall be provided by CONTRACTOR. CONTRACTOR'S

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progress reports shall be reviewed in detail at these meetings and shall conform to the TIME SCHEDULE.

Monthly management review meetings shall, depending on the stage of the project and prevailing circumstances, be held either in CONTRACTOR'S Home Office or at OWNER'S office. CONTRACTOR'S senior personnel shall be in attendance.

CONTRACTOR shall attend any meetings, regular or otherwise, that OWNER requires, and furnish specific personnel as directed by OWNER.

OWNER shall record minutes of all meetings between OWNER and CONTRACTOR. Such minutes shall contain agreed actions, the party responsible for each action, and the dates by which actions shall be taken.

CONTRACTOR shall allow OWNER access as an observer to any meetings with SUBCONTRACTORS or VENDORS excluding commercial meetings.

- 7.8 Each PARTY shall bear its own costs connected with its participation in such meetings.
- 7.9 Throughout the design, execution and construction of the WORKS, and as long thereafter as is necessary to fulfil all CONTRACTOR'S obligations, the CONTRACTOR shall provide all necessary superintendence to plan arrange direct manage inspect and test the WORKS.

Superintendence shall be given by a sufficient number of CONTRACTOR's specialists having adequate knowledge of the languages for communications and of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the WORKS.

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ARTICLE 8 CONTRACT PRICE

- 8.1 OWNER shall pay, as full compensation to CONTRACTOR for complete performance of the WORKS, in accordance with this CONTRACT, the CONTRACT PRICE as stated in the Particular Conditions.
- 8.2 In the event that the CONTRACT PRICE is divided between a Local Portion (i.e. that part of the WORKS executed by CONTRACTOR'S registered office inside the Republic of Lithuania) and a Non-Local Portion (i.e. that part of the WORKS executed by CONTRACTOR'S registered office outside the Republic of Lithuania), OWNER shall pay to CONTRACTOR any Lithuanian VAT charged on the Local Portion and included in CONTRACTOR'S invoices in accordance with the applicable Lithuanian tax regulations.
- 8.3 CONTRACTOR shall, not later than 90 (ninety) days prior to MECHANICAL COMPLETION, provide an itemised breakdown of the CONTRACT PRICE in the format shown in ANNEX 1 (*Inventory & Asset Management*) to the Particular Conditions. This itemised breakdown is for OWNER'S inventory and asset management system only.
- 8.4 Where applicable, full compensation to CONTRACTOR for the Unit Priced Portion of the WORKS shall be determined in accordance with the Unit Rate Tables in ANNEX 6 (*Unit Rates and Time Rates for Changes*), multiplied by the quantities of units performed.
- 8.5 Where applicable, full compensation to CONTRACTOR for the SUPERVISORY SERVICES for START-UP as set forth in ANNEX 3 (*Scope of Work*) shall be determined in accordance with the Time Rates set forth in in Particular Conditions, multiplied by the time expended as approved by OWNER.
- 8.6 All Lump Sums, Unit Prices and Time Rates in this CONTRACT are all-in, fixed and firm for the duration of the CONTRACT and are not subject to escalation. The Lumps Sums, Unit Rates and Time Rates include all CONTRACTOR'S costs, expenses, overhead and profit for complete performance of the WORKS, as well as variations in schedule, workload and/or execution sequence.
- Variation in quantities or complexity of WORKS shall not cause to change any of the CONTRACT Rates/Prices used to price the WORKS.
- 8.7 For the Unit Priced Portion of the WORK the following shall apply:
- The Unit Prices apply to, and remain valid for any and all quantities, locations and/or elevations within the SITE boundaries and variations in complexity of the WORKS that they form a part of.
- The estimated quantities given in Pricing Tables (where applicable) are approximate and their accuracy shall not affect the validity of CONTRACTOR'S Prices. Actual quantities shall be derived from TECHNICAL DOCUMENTATION issued "As Built" unless otherwise agreed upon. No allowances shall be made in final measurement for waste, handling of surplus and the like.
- The total estimated quantities, multiplied by the applicable Unit Prices represents the "Provisional CONTRACT PRICE for the Unit Priced Portion" for this CONTRACT.
- The total agreed actual quantities multiplied by the applicable Unit Prices shall represent CONTRACTOR'S compensation as the "Firm Price for the Unit Priced Portion" for this CONTRACT and will be reflected in a CONTRACT modification.

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- 8.8 Increase in expenses on MATERIALS, EQUIPMENT, remuneration and 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. The CONTRACT PRICE may be decreased in the following cases: the WORKS does not meet the established quality requirements, the quality of used MATERIALS and/or EQUIPMENT is worse than agreed; the CONTRACTOR deviated from the scope of WORKS as it specified in ANNEX 3 (*Scope of Work*) and/or violated any other requirements under the Contract conditions.

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ARTICLE 9 PAYMENT CONDITIONS

9.1 All payments to the CONTRACTOR shall be made in Euro for the net amounts as specified in the Particular Conditions, increased by Lithuanian VAT (where applicable). All VAT invoices shall be prepared on the basis of approved WORK HANDOVER AND ACCEPTANCE STATEMENT and 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.

The OWNER shall approve the WORK HANDOVER AND ACCEPTANCE STATEMENT as well as related documents as soon as possible, however, not later than 7 (seven) working days from the submission of the above-mentioned documents to the OWNER, or shall return the documents back to the CONTRACTOR by providing a reasoned refusal to approve such. However, if during the indicated period of time the OWNER does not approve the WORK HANDOVER AND ACCEPTANCE STATEMENT and does not provide a reasoned refusal to approve such, it shall be deemed that the WORK HANDOVER AND ACCEPTANCE STATEMENT was properly approved by the OWNER.

9.2 In addition to information required by general invoicing procedures, all CONTRACTOR'S invoices for payments shall contain the following:

- (a) This CONTRACT Number;
- (b) Invoice issue date, series and number
- (c) Number of the WORK HANDOVER AND ACCEPTANCE STATEMENT approved by the PARTIES ;
- (d) Description of performed WORKS or Milestones achieved;
- (e) Total net invoiced amount without VAT;
- (f) OWNER'S company code (166451720);
- (g) OWNER'S VAT code (LT 664517219);
- (h) OWNER'S Company Address;
- (i) CONTRACTOR'S VAT payers code number and company code;
- (j) CONTRACTOR'S company address;
- (k) CONTRACTOR'S Bank details;
- (l) Value Added Tax tariff (in percentages).
- (m) When purchasing services (works) from EU companies which are not subject to VAT or subject to 0 % VAT rate, or where the OWNER is liable for the calculation (withholding) and payment of VAT, the invoice shall refer to the respective provisions of the European Council Directive 2006/112/EEC or to any other grounds for not applying VAT or applying 0 % VAT rate.

9.3 Except to the extent expressly stated otherwise elsewhere in this CONTRACT, the CONTRACT PRICE shall be payable as milestone payments as shown in ANNEX 7 (*Payment Schedule*) within 60 (sixty) 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. Cut-off date for CONTRACTOR'S invoices shall be consistent from month to month. Payment shall not be construed to be an acceptance of the WORKS.

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Where payment falls on a rest day or official holiday, it shall be made on the business day immediately following the rest day or holiday. Payment shall be considered made after the amount is debited from the OWNER's bank account. The above payment terms shall apply to all payments made in connection with this CONTRACT. Each PARTY shall pay its own bank charges.

- 9.4 CONTRACTOR'S final invoice for payment of the balance of the CONTRACT PRICE shall be submitted for payment after successful completion of the 2nd **PERFORMANCE TEST with natural gas** and appropriate WORK HANDOVER AND ACCEPTANCE STATEMENT has been approved by PARTIES for the purpose of final payment. 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 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. Final payment shall not relieve CONTRACTOR of any its obligations and liabilities under this CONTRACT.

Final payment shall not be conclusive:

- (a) to the extent that fraud or dishonesty relates to or affects any matter dealt with in the final payment,
 - (b) .
- 9.5 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 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.
- 9.6 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 ANNEX 6 (*Unit Rates and Time Rates For Changes*). 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
- 9.7 CONTRACTOR shall maintain for a period of 2 (two) 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 2 (two) year period for the purpose of verifying units furnished and/or costs incurred, as applicable.
- 9.8 To the full extent permitted by applicable law, CONTRACTOR hereby waives any and

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all rights of mechanic's lien and similar rights for payment for services, labour, equipment, or materials furnished by 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 CONTRACTOR may have against OWNER'S premises or property belonging to OWNER.

- 9.9 CONTRACTOR shall at all times promptly pay for all services, MATERIALS, EQUIPMENT and labour used or furnished by CONTRACTOR in the performance of the WORKS under this CONTRACT and shall, to the fullest extent allowed by law, keep OWNER'S premises, property and belongings of OWNER, free and clear of any and all of the above mentioned liens and rights of lien arising out of services, labour, EQUIPMENT OR MATERIALS furnished by CONTRACTOR or its employees, or SUBCONTRACTORS in the performance of the WORKS. If CONTRACTOR fails to release and discharge any lien or threatened lien against OWNER'S premises or the property of OWNER, within 5 (five) working days after receipt of written notice from OWNER to remove such claim of lien, OWNER may, at his option, discharge or release the claim of lien or otherwise deal with the lien claimant, and CONTRACTOR shall pay OWNER, as applicable, any and all costs and expenses of OWNER in so doing, including without limitation attorneys' fees and expenses incurred by OWNER.
- 9.10 CONTRACTOR shall provide a PERFORMANCE BOND, confirmed by a first class bank in the amount and form shown in ANNEX 12 (*Proforma Performance Bond*). This bond will remain in force from the CONTRACT EFFECTIVE DATE until 60 (sixty) days after the OWNER has issued the FINAL ACCEPTANCE CERTIFICATE.

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ARTICLE 10 TAXES

- 10.1 CONTRACTOR shall pay and bear all taxes, fees, dues, imposts, duties, levies, assessments and charges (hereinafter “Taxes”), and any interest and penalties related to such Taxes, imposed by any other governmental authority in connection with the execution or performance of this CONTRACT or payments pursuant to this CONTRACT. OWNER shall not bear any Taxes imposed by any governmental authority on CONTRACTOR pursuant to this CONTRACT. CONTRACTOR shall, together with or before the first invoice and at the beginning of each calendar year, deliver to OWNER a Residence Certificate (i.e. a certificate confirming the CONTRACTOR’S registered office for the purposes of Taxes, issued by a relevant body of tax administration). In the event CONTRACTOR fails to deliver to OWNER such Residence Certificate, OWNER shall have the right to deduct from the payable amounts taxes payable in Lithuania according to the applicable regulations. OWNER shall provide CONTRACTOR with official receipts for any taxes withheld or otherwise paid with respect to such payments.
- 10.2 CONTRACTOR shall pay all duties, taxes, fees and dues in connection with the CONTRACT which may arise out of the “avoidance of double taxation agreement” (AADT) existing between the Republic of Lithuania and the country where CONTRACTOR maintains its registered office.
- 10.3 CONTRACTOR shall pay all personal income taxes which may become due on salaries, wages or similar regulations (including remuneration due in relation to contracts of mandate, contracts of task and similar civil forms of rendering services) incurred by any natural persons employed by CONTRACTOR, arising out of, or in connection with the WORKS, which may be levied by the Lithuanian tax authorities in accordance with the AADT.
- 10.4 All supplies of EQUIPMENT and MATERIALS, as well as supplies of goods or services of any nature, shall be properly documented on VAT invoices. CONTRACTOR shall pay all VAT shown on CONTRACTOR’S invoices directly to the Lithuanian tax authorities.

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ARTICLE 11 SUBCONTRACTORS

11.1 CONTRACTOR shall not subcontract the whole of the WORKS. 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 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, and
- (c) the intended commencement of the SUBCONTRACTOR'S work on the SITE.

11.2 Neither CONTRACTOR nor his SUBCONTRACTORS shall not recruit, or attempt to recruit, staff and labour from amongst the OWNER'S personnel.

11.3 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 all applicable laws, including those concerning safety at work.

11.4 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.

11.5 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 and OWNER'S personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

11.6 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.

11.7 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

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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.

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ARTICLE 12 TEMPORARY CONSTRUCTION FACILITIES

12.1 OWNER shall provide access to the SITE and suitable space for CONTRACTOR'S temporary facilities, laydown and work areas.

12.2 CONTRACTOR shall provide, install and maintain all construction temporary facilities, warehousing and storage, laydown areas, work areas, utilities, construction equipment and tools, temporary construction materials, consumables, expendables, supplies, fuels, lubricants and any other item(s), necessary for the complete performance of the WORKS.

The type of facilities, move-in and move-out dates and locations on the SITE shall be subject to, and in accordance with the review and approval of OWNER. Further they shall be in a good condition, safe and suitable for their intended purpose and in compliance with OWNER'S requirements and the applicable rules and regulations for the SITE.

OWNER shall have the right to inspect, test and reject any or all temporary facilities and utilities. Rejected temporary facilities and/or utilities shall promptly be removed by CONTRACTOR and replaced with temporary facilities and utilities acceptable to OWNER at CONTRACTOR'S cost, and at no cost to OWNER, and without causing delay to the WORK.

12.3 OWNER shall provide access to all necessary utilities for the CONTRACTOR'S facilities. CONTRACTOR shall bear the costs of electricity and other utilities at the rates provided by the OWNER.

12.4 CONTRACTOR shall provide and maintain all necessary accommodation and welfare facilities for the CONTRACTOR'S and SUBCONTRACTOR'S personnel. CONTRACTOR shall also provide facilities for the OWNER'S personnel where required.

CONTRACTOR shall not permit any of the CONTRACTOR'S or SUBCONTRACTOR'S personnel to maintain any temporary or permanent living quarters within the structures forming part of the temporary facilities or the permanent WORKS.

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ARTICLE 13 CHANGES AND VARIATIONS TO THE WORKS

- 13.1 OWNER may, at any time prior to issuing the FINAL 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.

- 13.2 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 13.3

- 13.3 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:

- (a) a description of the proposed design and/or work to be performed and a programme for its execution,
- (b) CONTRACTOR'S proposal for any necessary modifications to the TIME SCHEDULE and
- (c) 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 13.2 if applicable.

- 13.4 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 ANNEX 6 (*Unit Rates and Time Rates for Changes*).

If the rates contained in ANNEX 6 (*Unit Rates and Time Rates for Changes*) 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 ANNEX 6 (*Unit Rates and Time Rates for Changes*), 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.

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- 13.5 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:

- (a) The names, occupations and expended time of CONTRACTOR’S personnel,
- (b) The identification, type and time of CONTRACTOR’S equipment and temporary works, and;
- (c) 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 then submit priced statements of these resources to the OWNER, prior to their inclusion in the next application for payment.

- 13.6 Any CHANGE shall only be valid if agreed in writing between the PARTIES in accordance with the Change Order Procedure detailed in ANNEX 5 (*Change Order Procedure*) and incorporated into the CONTRACT by means of a CONTRACT Modification.

- 13.7 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.

- 13.8 The WORKS shall not be delayed pending the granting of an extension of time or any adjustment to the CONTRACT PRICE.

- 13.9 A Backcharge is a cost sustained by OWNER and chargeable to CONTRACTOR for OWNER’S performance of WORKS, which are 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 a Backcharge Agreement to CONTRACTOR. This 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 70% to cover all payroll burdens;
- (b) Material at actual supplier and freight invoice cost delivered to SITE;

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- (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) Ten percent (10%) shall be added to paragraphs (a), (b), (c) and (d) above for OWNER'S indirect costs, overhead, supervision and administration.

Within 24-hours after receipt of the Backcharge Agreement, CONTRACTOR shall e-mail 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.

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ARTICLE 14 CLAIMS

14.1 Procedure

In the event there are circumstances caused by the OWNER, 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) 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) 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 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 CONTRACTOR fails to give notice of a claim within a period of 10 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.

14.2 CONTRACTOR shall be entitled to an extension of the TIME FOR COMPLETION if and to the extent that PROVISIONAL 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 Article 13 (*Changes and Variations to the Works*));
- (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.

14.3 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 14.1, describing the event or circumstances giving rise to the claim. The notice shall be given as soon as practicable and not later than 10 days after the CONTRACTOR became aware, or should have become aware, of the event or circumstance.

Within 30 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.

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14.4 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.

14.5 When determining each extension of time, the OWNER shall review previous determinations and may increase or decrease the TIME FOR COMPLETION as applicable.

14.6 Assessment

When OWNER has received full and detailed particulars of CONTRACTOR'S claim in accordance with Articles 14.1, 14.2 and 14.3 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.

14.7 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.

14.8 Exclusion of Claims

Notwithstanding anything contained in the foregoing provisions of this Article 14 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 CONTRACT 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 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 €1.500 (in words, one thousand five hundred Euro).

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ARTICLE 15 MECHANICAL COMPLETION, COMMISSIONING AND START-UP

15.1 MECHANICAL COMPLETION of the PLANT is regarded as having been achieved when the erection and construction of all individual parts of the PLANT have been completed and all permanent EQUIPMENT and MATERIALS have been installed in the PLANT. It is a pre-requisite of MECHANICAL COMPLETION that all systems and sub-systems (including all associated EQUIPMENT and MATERIALS, piping, instrumentation and electrical systems) are installed, all adjustments and tests are completed, including those requiring the assistance of VENDOR representatives and the PLANT is capable of being safely commissioned.

15.2 MECHANICAL COMPLETION of the PLANT is described in ANNEX 3 (*Scope of Work*) and ANNEX 11 (*Mechanical Completion, Commissioning, Start-Up, Turnover*). MECHANICAL COMPLETION shall be achieved when the items, systems, or portions of the WORKS has reached the point where all erection, construction and testing has been completed and the CONTRACTOR'S notice of MECHANICAL COMPLETION has been accepted by OWNER. CONTRACTOR shall give OWNER at least seventy (70) days prior written notice of the estimated date of MECHANICAL COMPLETION and shall at the same time provide OWNER with all relevant TECHNICAL DOCUMENTATION.

Upon receipt of OWNER'S notice of acceptance of MECHANICAL COMPLETION, CONTRACTOR shall provide all TECHNICAL DOCUMENTATION necessary for State Commission Acceptance. The PROVISIONAL ACCEPTANCE CERTIFICATE shall only be signed by OWNER after State Commission Acceptance of the PLANT.

15.3 COMMISSIONING consists of the activities and processes associated with the operation of pieces of equipment or systems in preparation for PLANT START-UP (e.g. beginning with individual component testing, progressing through sub-system and system testing, integrated plant operation and ending with preparation for PLANT START-UP and introduction of feed stocks to the facility).

15.4 START-UP commences after MECHANICAL COMPLETION, PRE-COMMISSIONING and COMMISSIONING activities are complete and when steps are taken to introduce feed stocks and bring the PLANT to operation. It is complete when the PLANT has been operating stably for a continuous period of 72 hours at design capacity and producing to specifications, prior to the 1st PERFORMANCE TEST. START-UP activities are generally OWNER'S responsibility unless the CONTRACT specifically provides otherwise.

15.5 As soon as is reasonably practicable after MECHANICAL COMPLETION, OWNER shall provide or otherwise make available, the OWNER'S operating and maintenance personnel, the raw materials, utilities, chemicals, facilities, and services and other matters necessary to commence PRE-COMMISSIONING and COMMISSIONING of the PLANT or part(s) thereof.

15.6 CONTRACTOR shall provide the OWNER with detailed procedures for COMMISSIONING at least 3 (three) months prior to date of MECHANICAL COMPLETION. These procedures shall consider the requirements of the CONTRACT, such as the minimum time requirements for COMMISSIONING of all EQUIPMENT and MATERIALS.

15.7 CONTRACTOR shall instruct 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 Lithuanian laws and

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regulations.

15.8 CONTRACTOR shall be fully responsible for PRE-COMMISSIONING and COMMISSIONING, including the timely organization of all SUPERVISORY SERVICES and VENDOR'S representatives. The schedule of PRE-COMMISSIONING and COMMISSIONING tests shall be agreed with OWNER at least 60 days prior to MECHANICAL COMPLETION.

15.9 The PRE-COMMISSIONING and COMMISSIONING activities to be performed are further defined in ANNEX 3 (*Scope of Work*) and ANNEX 11 (*Mechanical Completion, Commissioning, Start-Up, Turnover*).

CONTRACTOR shall, after successful completion of COMMISSIONING and when CONTRACTOR considers that the PLANT is ready for START-UP, issue a Ready for START-UP Certificate signed by the CONTRACTOR. This Certificate shall be approved by OWNER, certifying that the PLANT is Ready for START-UP, as soon as possible, however, not later than 7 (seven) working days from the submission of the above-mentioned documents to the OWNER, or shall return the documents back to the CONTRACTOR by providing a reasoned refusal to approve such. However, if during the indicated period of time the OWNER does not approve the Ready for START-UP Certificate and does not provide a reasoned refusal to approve such, it shall be deemed that the Ready for START-UP Certificate was properly approved by the OWNER.

15.10 START-UP shall be performed by the OWNER'S personnel and CONTRACTOR'S SUPERVISORY SERVICES in accordance with ANNEX 3 (*Scope of Work*) and ANNEX 11 (*Mechanical Completion, Commissioning, Start-Up, Turnover*).

15.11 CONTRACTOR shall remain responsible at all times for the completeness and correctness of any CONTRACTOR'S SUPERVISORY SERVICES and for correctness and content of OPERATING MANUAL.

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ARTICLE 16 PERFORMANCE TEST AND FINAL ACCEPTANCE

- 16.1 PERFORMANCE TESTS shall be performed by OWNER and OWNER'S personnel with the assistance of the CONTRACTOR as provided hereinafter in ANNEX 11 (*Mechanical Completion, Commissioning, Start-Up, Turnover*). If CONTRACTOR is unable to assist in PERFORMANCE TESTS due to reasons solely attributable to CONTRACTOR, he shall accept the results of PERFORMANCE TESTS as carried out by OWNER.
- 16.2 Prior to the PERFORMANCE TESTS, detailed methods to be used in the PERFORMANCE TESTS shall be agreed upon in writing between OWNER and CONTRACTOR. These methods shall be in accordance with normal 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.
- 16.3 The purpose of the PERFORMANCE TESTS is to verify the capabilities of the PLANT to achieve the PROCESS GUARANTEES required by the CONTRACT.
- 16.4 The PERFORMANCE TESTS shall commence when the PLANT is operating under normal and steady operating conditions and shall be conducted for a period of 72 (seventy two) consecutive hours. Prior to and during the PERFORMANCE TESTS, PLANT shall operate in accordance with instructions given by CONTRACTOR and under stable conditions. OWNER shall notify CONTRACTOR in writing, indicating that the PLANT is ready for the OWNER to perform PERFORMANCE TESTS. The PERFORMANCE TESTS shall be conducted at the mutually agreed time after the OWNER'S notice is received by the CONTRACTOR, but in any event, not later than 1 (one) month after the ready for START-UP Certificate is issued.
- 16.5 If the PERFORMANCE TEST is interrupted due to OWNER'S failure to comply with any of the conditions of this CONTRACT or because of improper maintenance or operations solely attributable to OWNER, the condition causing the interruption shall be corrected and, after restoring steady test operating conditions to the CONTRACTOR'S satisfaction the PERFORMANCE TEST shall be started again.
- 16.6 The result of the PERFORMANCE TEST (whether successful or not) shall be recorded in a PERFORMANCE TEST protocol, to be signed by both OWNER and CONTRACTOR.

In the event that the PERFORMANCE TEST is successful and the PLANT meets or exceeds the PROCESS GUARANTEES, the OWNER shall, subject to State Commission Acceptance, issue the PROVISIONAL ACCEPTANCE CERTIFICATE of the PLANT under the relevant PERFORMANCE TEST as soon as possible but not later than within 14 calendar days. However, if during the 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.

The CONTRACTOR shall conduct two PERFORMANCE TESTS (1st PERFORMANCE TEST and 2nd PERFORMANCE TEST) according to the TIME SCHEDULE.

- 16.7 If during the PERFORMANCE TEST, the PLANT fails to perform as guaranteed and it is determined that this is due to an error in the design, manufacture, or erection of the

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PLANT by CONTRACTOR, then CONTRACTOR shall, as soon as possible but, in any event, not later than 10 days, investigate the reasons for such failure and inform OWNER of whatever modifications are deemed necessary for enabling the PLANT to perform as guaranteed.

- 16.8 In the event the PARTIES elect to make changes to the PLANT pursuant to Article 16.7 above, to remedy any failure on the part of the CONTRACTOR, the CONTRACTOR shall 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 at SITE 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 the PARTIES disagree as to whose fault caused the failure of guarantees shall be referred to arbitration pursuant to Article 26 (*Governing Law and Arbitration*).
- 16.9 If a PERFORMANCE TEST is conducted after a modification of the PLANT pursuant to Article 16.7 and the PLANT still fails to perform as guaranteed for reasons attributable to CONTRACTOR, then OWNER shall have the right to request and have made further modifications by CONTRACTOR, followed by a further PERFORMANCE TEST.
- 16.10 In the event a third PERFORMANCE TEST is unsuccessful, or no the third PERFORMANCE TEST has taken place within 180 days following the receipt by the CONTRACTOR of OWNER'S notification under Article 16.4, whichever occurs first, and the PROCESS GUARANTEES have not been met but are within the maximum/minimum ranges defined in the Particular Conditions (where applicable), then the OWNER shall have the right to elect at his option either to
- (a) reduce the CONTRACT PRICE by the amounts specified in Particular Conditions and thereupon CONTRACTOR'S obligations to meet the PROCESS GUARANTEES shall be deemed to have been fully discharged or;
 - (b) to request CONTRACTOR to make further modifications without limitation.

At the end of the DEFECTS LIABILITY PERIOD and subject to Article 18 of this CONTRACT, OWNER shall, within 28 (twenty eight) days of receipt of CONTRACTOR'S notice, issue the FINAL ACCEPTANCE CERTIFICATE in respect of the PLANT. However, if during the indicated period of time the OWNER does not issue the FINAL ACCEPTANCE CERTIFICATE and does not provide a reasoned refusal to do so, it shall be deemed that the FINAL ACCEPTANCE CERTIFICATE was properly issued by the OWNER.

- 16.11 FINAL ACCEPTANCE CERTIFICATE shall be conclusive evidence of CONTRACTOR'S full performance of his obligations under the CONTRACT.

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ARTICLE 17 WARRANTIES AND GUARANTEES

- 17.1 CONTRACTOR warrants that the PLANT shall comply strictly with the provisions of this CONTRACT and all ANNEXES, specifications, drawings, standards, instructions and legal requirements referred to in this CONTRACT or thereafter furnished by OWNER, and that the WORKS shall be fit for the intended purpose and free from any defects in MATERIALS, EQUIPMENT, workmanship, design or engineering provided by CONTRACTOR. CONTRACTOR further warrants that all MATERIAL, EQUIPMENT and supplies furnished by CONTRACTOR for the WORKS shall 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 MANUAL. Without limitation to any other rights or remedies of OWNER, if any defect in the WORKS, in violation of the foregoing warranties, arises within the DEFECTS LIABILITY PERIOD, CONTRACTOR shall, upon receipt of written notice of such defect, promptly commence and furnish, at no cost to OWNER, all design engineering services, labour, EQUIPMENT and MATERIALS necessary to remedy such defect and cause the WORKS to comply fully with the foregoing warranties.
- 17.2 CONTRACTOR further warrants that, in accordance with laws and regulations of the Republic of Lithuania, all civil works for the PLANT shall be free of defects for a period indicated in the applicable legal acts from FINAL ACCEPTANCE CERTIFICATE. This warranty includes, but is not limited to, foundations, walls, and all load bearing structures.
- 17.3 Expiry of the periods set forth in Articles 17.1 and 17.2 above shall not relieve CONTRACTOR from any continuing obligations or liabilities under the provisions of this CONTRACT or at law.
- 17.4 In order that the WORKS, PLANT and the TECHNICAL DOCUMENTATION shall be in the condition required by the CONTRACT (fair wear and tear excepted) by the expiry date of the DEFECTS LIABILITY PERIOD or as soon practicable thereafter, CONTRACTOR shall:
- (a) complete any work which is outstanding on the date stated in the PROVISIONAL ACCEPTANCE CERTIFICATE, within such reasonable time as is instructed by the OWNER, and
 - (b) execute all work required to remedy defects or damage, as may be notified by the OWNER on or before the expiry date of the DEFECTS LIABILITY PERIOD for the WORKS, PLANT or parts thereof (as the case may be).
- If a defect appears or damage occurs, the OWNER shall notify the CONTRACTOR accordingly.
- 17.5 All work necessary for the completion of outstanding WORKS and remedying of defects shall be executed at the risk and cost of the CONTRACTOR, if and to the extent that the work is attributable to:
- (a) CONTRACTOR'S design of the WORKS;
 - (b) EQUIPMENT, MATERIALS or workmanship not being in accordance with the CONTRACT,
 - (c) Improper operation or maintenance which was attributable to matters for which the CONTRACTOR is responsible, or
 - (d) Failure by the CONTRACTOR to comply with any other contractual obligation.

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If to the extent that such work is attributable to any other cause, OWNER shall give notice to the CONTRACTOR accordingly, and Article 13 (*Changes*) shall apply.

- 17.6 If CONTRACTOR fails to remedy any defect or damage within a reasonable time, mutually agreed in writing by both Parties, a date may be fixed by OWNER, on or by which the defect or damage is to be remedied. The CONTRACTOR shall be given reasonable notice of this date.

If CONTRACTOR fails to remedy the defect or damage by this notified date and this remedial work was to be executed at the cost of the CONTRACTOR, the OWNER may (at his option):

- (a) Carry out the work himself or by others, in a reasonable manner and at the CONTRACTOR'S cost. CONTRACTOR shall pay to the OWNER the costs reasonably incurred by the OWNER (Backcharges) in remedying the defect or damage;
- (b) Agree or determine a reasonable reduction in the CONTRACT PRICE in accordance with Article 4.11; or
- (c) if the defect or damage deprives the OWNER of substantially the whole benefit of the WORKS or any major part of the WORKS, terminate the CONTRACT as a whole or in respect of such major part which cannot be put to the intended use. Without prejudice to any other rights, under the CONTRACT or otherwise, OWNER shall then be entitled to recover all sums paid for the WORKS or for such part (as the case may be), plus financing costs and the costs of dismantling the same, clearing the site and returning EQUIPMENT and MATERIALS to the CONTRACTOR.

- 17.7 Where defects or damages are made good by OWNER or by others under paragraph (a) or (b) above, CONTRACTOR'S warranties under Articles 17.1 and 17.2 shall remain valid. If the defect or damage cannot be remedied expeditiously on the SITE and OWNER gives consent, the CONTRACTOR may remove from the SITE for the purposes of repair such items of the WORKS as are defective or damaged.

- 17.8 Any design and/or engineering services, labour, EQUIPMENT and MATERIALS furnished by CONTRACTOR to make good defects by replacement or repair of the defective work in accordance with Article 17.4 above, shall be guaranteed by CONTRACTOR in accordance with the guarantees set forth in Article 17.1 above for a period of twelve (12) months from the date of completion of the correction, or for the remainder of the guarantee period set forth in Article 17.1 above whichever is longer. The maximum guarantee period, including any extra guarantee periods for repaired or replaced equipment and/or design documents shall not exceed twelve (12) months from the termination of DEFECT LIABILITY PERIOD.

- 17.9 Performance of the CONTRACTOR'S obligations shall not be considered to have been completed until the OWNER has issued the FINAL ACCEPTANCE CERTIFICATE to the CONTRACTOR, stating the date on which the CONTRACTOR completed his obligations under the CONTRACT.

The OWNER shall issue the FINAL ACCEPTANCE CERTIFICATE within 28 days of the expiry date of the DEFECTS LIABILITY PERIOD. If the OWNER fails to issue the FINAL ACCEPTANCE CERTIFICATE accordingly, then the FINAL ACCEPTANCE CERTIFICATE shall be deemed to have been issued on the date 28 days after the date on which it should have been issued, as required by this Article.

Only the FINAL ACCEPTANCE CERTIFICATE shall be deemed to constitute acceptance of the WORKS.

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- 17.10 CONTRACTOR warrants that the PLANT shall be ready for START-UP by the date specified in the TIME SCHEDULE.
- 17.11 CONTRACTOR warrants that the TECHNICAL DOCUMENTATION shall be provided to the OWNER by the date specified in the TIME SCHEDULE.
- 17.12 The CONTRACTOR guarantees that the PLANT shall meet or exceed the PROCESS GUARANTEES,
- The CONTRACTOR guarantees that the PLANT shall be designed, manufactured and constructed in strict conformity with DETAILED DESIGN specifications in such a way that the PLANT shall meet the PROCESS GUARANTEES.
- 17.13 With the sole exception of those warranties given under Article 17.2, all other CONTRACTOR'S guarantees, warranties set forth in this Article shall extend for a period of 24 (twenty four) months from the date of issue of the 1st PROVISIONAL ACCEPTANCE CERTIFICATE. Any period wherein the WORKS are not available for use due to defects in EQUIPMENT, MATERIALS, workmanship, engineering or design furnished by CONTRACTOR shall extend the guarantee period by an equal period of time.

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ARTICLE 18 LIABILITY OF THE PARTIES

- 18.1 Except in cases of fraudulent actions, negligence and/or willful misconduct by either PARTY, neither PARTY shall be liable to the other PARTY for loss of profit, loss of any contract, or for any consequential losses or damages which may be suffered by the other PARTY in connection with this CONTRACT.
- 18.2 In all cases, the PARTY claiming a breach of 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.
- 18.3 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.
- 18.4 In the event that the PLANT, due to reasons attributable to CONTRACTOR, fails to meet the PROCESS GUARANTEES during the PERFORMANCE TEST, the CONTRACTOR shall be obliged, at no additional cost to the OWNER, to promptly make such changes, additions, alterations, adjustments, repairs and replacements as may be deemed necessary in order that such criteria can be and is met. The second (and eventual third) PERFORMANCE TEST shall be performed by OWNER within 30 days after CONTRACTOR notifies OWNER in writing that the PLANT is ready. If after the third PERFORMANCE TEST (or if no third PERFORMANCE TEST has taken place within 180 days following receipt by CONTRACTOR of OWNER'S notification under Article 16.4, whichever occurs first), the PROCESS GUARANTEES still cannot be attained, then Article 17.5 shall apply.

In case as per separate PARTIES agreement the second and the third PERFORMANCE TEST shall be performed by third party, all costs shall be covered by CONTRACTOR.

- 18.5 CONTRACTOR guarantees that the date for MECHANICAL COMPLETION of the WORKS, as specified in the Particular Conditions of this CONTRACT, to be a firm and final date for MECHANICAL COMPLETION by CONTRACTOR of all WORKS, including completion of all testing, clean-up and punch list items. Any agreed punch list items may be finalized after the MECHANICAL COMPLETION date (provided that such items are considered non-essential to a safe and orderly start-up of the facility).

CONTRACTOR further guarantees that the date for delivery of TECHNICAL DOCUMENTATION for the WORKS, so determined from the TIME SCHEDULE and as specified in the Particular Conditions of this CONTRACT, to be a firm and final date for the delivery of the TECHNICAL DOCUMENTATION by CONTRACTOR for all WORKS, including all drawings, designs, data, calculations, etc.

- 18.6 The PARTIES agree that the actual damages and loss which OWNER would incur as a result of CONTRACTOR'S failure to achieve MECHANICAL COMPLETION of the WORKS or failure to deliver the TECHNICAL DOCUMENTATION by the dates shown in the TIME SCHEDULE or a failure to complete the whole of the WORKS within the TIME FOR COMPLETION, are unascertainable. Therefore, the PARTIES agree that the amount(s) set forth in the Particular Conditions are a reasonable and fair estimate of the damages and loss which OWNER would suffer for each day/week by which CONTRACTOR is late in completing said WORKS.

It is therefore agreed that, in the event of such failure by CONTRACTOR to complete the WORKS or a part thereof, by the date(s) shown in the Particular Conditions,

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CONTRACTOR shall pay to OWNER the amount(s) stated in the Particular Conditions.

- 18.7 CONTRACTOR agrees that all sums payable by CONTRACTOR to OWNER pursuant to this Article, may be deducted by OWNER from the CONTRACT PRICE to be paid to CONTRACTOR under this CONTRACT, provided that CONTRACTOR has refused to pay such agreed amounts within thirty (30) days from the actual final date of MECHANICAL COMPLETION. The PARTIES agree that the above amounts are a reasonable estimate of actual loss and expense, not a penalty. It is further agreed that this Article shall not constitute a waiver of any right of OWNER to damages or other remedies of OWNER under this CONTRACT, under law or otherwise for CONTRACTOR'S improper performance or default in performance of any other aspect of this CONTRACT.
- 18.8 Once demanded by the OWNER, the CONTRACTOR shall pay the OWNER damages of 300 (three hundred) euros for each case of violation of environmental, waste handling and hygiene regulations identified in ANNEX 2 (*Local general requirements of Public Company ORLEN Lietuva*) as well as gambling by the CONTRACTOR's employee. The PARTIES acknowledge that the damages under this Article are difficult or impossible to determine and that such payment constitutes a reasonable approximation of such damages, and not a penalty.
- 18.9 Once demanded by the OWNER and upon taking into consideration the possible consequences of the violation, the CONTRACTOR shall pay respective damages (as follows) for each violation of occupational safety and health (hereinafter – OSH) requirements identified in ANNEX 2 (*Local general requirements of Public Company ORLENn Lietuva*) by the CONTRACTOR's employee. The PARTIES acknowledge that the damages under this Article are difficult or impossible to determine and that such payment constitutes a reasonable approximation of such damages, and not a penalty:
- 18.8.1. OHS violation by an employee, involving a low risk of injury or any other health damage to the violating employee and zero risk of injury or health damage to other employees (for example, failure to wear safety glasses, work clothes etc. by the employee while staying in the unit) – damages in the amount of 30 (thirty) euros;
- 18.8.2. OHS violation by an employee involving a risk of injury to the violating employee and to other employees (for example, failure to wear fall protection devices (harnesses) while performing altitude WORKS; failure to wear personal respiratory protective equipment during unsealing WORKS; entering areas enclosed with a red warning barrier tape; failure to prevent sparks from dropping down while welding in the altitude) – damages in the amount of 150 (one hundred fifty) euros;
- 18.8.3. OHS violation involving a low risk of injury or other health damage to an employee (e.g. absence of fire extinguisher at the site of hot WORKS; use of non-verified and/or faulty power tools, cables and other electrical equipment, etc.) – damages in the amount of 90 (ninety) euros;
- 18.8.4. OHS violation involving a high risk of injury or any other health damage to the employee (e.g. performing WORKS without appropriate WORK permit; performing lifting, elevated WORKS or WORKS inside process vessels in an unsafe manner; use of equipment or other WORK tools not fit for potentially explosive environment; unauthorized connection of power equipment to the OWNER's power network; violation of procedures applicable to vehicles fueling in process units, etc.) – damages in the amount of 300 (three hundred) euros.

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- 18.9 If, while on the OWNER's territory, the CONTRACTOR's or the SUBCONTRACTOR'S employees are found under the influence of alcohol or smoking in non-designated areas, or committing theft of the OWNER's or other persons' property located in the OWNER's territory, the offenders will be removed from the WORKSITE and banned from entering the OWNER's territory by taking their permits, passes and ID badges. Once demanded by the OWNER, the CONTRACTOR will pay the OWNER damages in the amount of 1.500,00 (one thousand five hundred) euros for each case of such violation. Furthermore, the CONTRACTOR shall be fully liable for the damage caused to the OWNER by the above-described actions. The PARTIES acknowledge that the damages under this Article are difficult or impossible to determine and that such payment constitutes a reasonable approximation of such damages, and not a penalty.
- 18.10 If a 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 CONTRACTOR, when demanded by the OWNER, will pay the OWNER damages in the amount of 600 (six hundred) euros for each case of this violation. The PARTIES acknowledge that the damages under this Article are difficult or impossible to determine and that such payment constitutes a reasonable approximation of such damages, and not a penalty.
- 18.11 At the OWNER's demand, the CONTRACTOR shall pay the OWNER damages in the amount of 600 (six hundred) euros for each violation of the Public Company ORLEN 'Regulations on the Pass System of Public Company ORLEN Lietuva' (ANNEX 13). The PARTIES acknowledge that the damages under this Article are difficult or impossible to determine and that such payment constitutes a reasonable approximation of such damages, and not a penalty.
- 18.12 In the event the CONTRACTOR fails to perform or performs improperly the confidentiality provisions laid down in Article 19 (*Confidentiality*), the OWNER shall have the right to unilaterally terminate the CONTRACT by giving a written notice to the CONTRACTOR as required by the CONTRACT and/or for each case of violation the CONTRACTOR shall pay damages as it specified in Article (*Confidentiality*) Item No.19.9. The PARTIES acknowledge that the damages under this Article are difficult or impossible to determine and that such payment constitutes a reasonable approximation of such damages, and not a penalty.
- 18.13 The OWNER shall have the right to deduct all and any amounts of damages as specified above and payable by the CONTRACTOR from the sums payable to the CONTRACTOR by informing the CONTRACTOR on such deduction made.
- 18.4 Payment of damages under the CONTRACT shall not release the CONTRACTOR from the fulfillment of the respective undertakings hereunder.

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ARTICLE 19 CONFIDENTIALITY

19.1 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 referred to as Information). Information shall include any written and/or verbal information either directly or indirectly related to the OWNER, other ORLEN CG companies and their counter-parties which is either directly or indirectly made available by the OWNER to the CONTRACTOR or otherwise obtained by the CONTRACTOR while performing hereunder. Information shall be intended for and may be used solely in the interests of the OWNER. The CONTRACTOR acknowledges that Information made available to it hereunder is confidential, unless provided for herein otherwise.

19.2 Nondisclosure obligations shall not apply to the CONTRACTOR provided that:

- (i) Information is in the public domain or has entered the public domain by ways other than unauthorized disclosure or breach of this CONTRACT;
- (ii) Information has been disclosed by a third party without any breach of nondisclosure commitments;
- (iii) The OWNER notifies the CONTRACTOR in writing that some specific Information is not confidential. In case of any doubts as to whether some particular Information is confidential or not, the CONTRACTOR shall consider and treat such information as confidential until the OWNER notifies otherwise.

19.3 To the extent concerning Information disclosed hereunder, the CONTRACTOR including all its staff shall:

- (i) keep (store and use) Information undertaking such safety measures that will be reasonably appropriate and sufficient to ensure confidentiality, including compliant with this CONTRACT and the provisions of law, to prevent any unauthorized use, transfer, disclosure or access to such Information. The CONTRACTOR shall not, in particular, copy or fix and store any Information in its systems if it is not justified by its due performance hereunder. The CONTRACTOR shall immediately notify the OWNER of any violation of protection rules or unauthorized disclosure or use of Information;
- (ii) disclose Information or part thereof only to the CONTRACTOR's staff and other persons including, in particular, auditors, consultants and subcontractors, directly related to the purpose for which Information was disclosed to the CONTRACTOR and shall impose on the above mentioned persons an obligation to protect 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 bear full responsibility for acts or omissions of persons who have been provided with access to Information, including financial liability.

19.4 The OWNER may at any time restrict access to the Information by the CONTRACTOR. Information remains the property of the OWNER and whenever requested by it the CONTRACTOR shall return all Information held by it on any material media including electronic information storage medium to the OWNER or destroy all Information if so instructed by the OWNER.

19.5 In case of loss or disclosure of the OWNER's Information by the CONTRACTOR in the manner other than established herein, the CONTRACTOR shall immediately notify the OWNER hereof and make all efforts to regain the lost or wrongfully, unreasonably disclosed Information.

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19.6 After the expiry of the present CONTRACT, the CONTRACTOR shall, to the maximum practicable extent, return to the OWNER or destroy all 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.

19.7 The obligation to maintain the confidentiality of information shall be binding throughout the term of this 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.

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

19.9 In the event of unauthorized disclosure by the CONTRACTOR of Information to any third parties either by malice, carelessness, action or omission or loss of such Information the CONTRACTOR shall be imposed by the OWNER with damages in the amount of EUR 1000 (in words: one thousand euros) and shall be under obligation to compensate any damages resulting from unauthorized disclosure and/or loss of Information.

19.10 Where, for the purpose of due performance under this CONTRACT, it is necessary to disclose a commercial (production) secret or any other highly confidential information of the OWNER or confidential information of any other ORLEN CG company, a separate nondisclosure agreement may be concluded between the PARTIES.

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ARTICLE 20 INDEMNITIES AND INSURANCE

20.1 CONTRACTOR shall defend, indemnify and hold harmless OWNER, the OWNER'S affiliated companies, and all their respective directors, officers, employees, agents, and representatives, from and against all claims, demands, causes of action, losses, expenses (including attorneys fees, and expenses, cost of court and investigation), and liabilities arising from or relating to:

- (a) any claim, demand, cause of action, liability, loss or expense arising from actual or asserted failure to comply with the law, ordinance, regulation, rule or order (including but not limited to SITE rules and regulations), or with this CONTRACT, including but not limited to, fines or penalties by government authorities and claims arising from CONTRACTOR'S actual or asserted failure to pay taxes; and;
- (b) any claim, demand, cause of action, liability, loss or expense arising from 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 CONTRACTOR or its SUBCONTRACTORS and VENDORS in performance of the WORKS;
- (c) injury to or death of persons (including without limitation the employees of OWNER, CONTRACTOR and CONTRACTOR'S VENDORS and SUBCONTRACTORS) or from damage to or loss of property (including without limitation the property of OWNER) arising directly or indirectly out of this CONTRACT or out of any acts or omissions of CONTRACTOR or its SUBCONTRACTORS and VENDORS. CONTRACTOR'S defence and indemnity obligations hereunder include claims and damages arising from non-delegable duties of OWNER or arising from use by CONTRACTOR of construction equipment, tools, scaffolding or facilities furnished to CONTRACTOR by OWNER;
- (d) 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 CONTRACTOR, or its SUBCONTRACTORS and VENDORS.

20.2 CONTRACTOR'S indemnity obligations under this Article shall apply regardless of whether the party to be indemnified was concurrently negligent, whether actively or passively. CONTRACTOR'S liability, defence and indemnity obligations shall include the duty to reimburse any attorneys' fees and expenses incurred by OWNER for legal action to enforce CONTRACTOR'S obligations under this Article.

20.3 With respect to claims by employees of CONTRACTOR and its SUBCONTRACTORS AND VENDORS, the defence and indemnity obligations created under this Article shall not be limited by the fact of, amount, or type of benefits or compensation payable by or for CONTRACTOR, its SUBCONTRACTORS and VENDORS under any worker's compensation, disability benefits, or other employee benefits acts or regulations.

20.4 In the event that any of the provisions of this Article 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.

20.5 CONTRACTOR shall, at its sole cost, obtain and maintain in force for the duration of the CONTRACT (including the DEFECTS LIABILITY PERIOD) all general insurances (such as workers compensation insurance, general liability insurance, automobile liability

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insurance and the like) which are required by applicable law.

20.6 CONTRACTOR shall maintain adequate "All Risk" transit insurance covering voyages from anywhere in the world via any port or airport including trans-shipments if any and intermediate storage up to final destination in the Republic of Lithuania by steamers and/or power vessels and/or aircraft and/or air parcel post and/or courier services and/or land transportation. The insurance shall cover all EQUIPMENT, MATERIALS, goods, merchandise, and the like related to or connected with the CONTRACT.

20.7 CONTRACTOR shall be responsible for his all tools, plant, machinery and construction equipment to be used in the performance of its services under the CONTRACT, covering physical damage to or loss of all his major tools and equipment, vehicles, construction office trailers and their contents for which CONTRACTOR is responsible, throughout the course of the WORKS.

CONTRACTOR assumes sole responsibility and waives all rights and claims against OWNER for all loss of or damage to property owned by or in the custody of CONTRACTOR and any items at the SITE or in transit thereto (including, but not limited to, EQUIPMENT and MATERIALS) however such loss or damage shall occur.

20.8 CONTRACTOR hereby releases OWNER, including their respective parent companies, subsidiaries, affiliates, agents, directors, officers and employees, and shall cause CONTRACTOR'S Insurers to waive rights of subrogation against such released parties, for losses or claims for bodily injury, property damage or other insured claims arising out of CONTRACTOR'S performance of the CONTRACT.

20.9 All Certificates of Insurance satisfactory in form and content to OWNER shall be supplied by CONTRACTOR to OWNER evidencing that the above required insurance is in force not less than 28 (twenty eight) days after the CONTRACT EFFECTIVE DATE. Advance written notice will be given to OWNER prior to any cancellation, termination or material alteration to any of the above policies, and shall include the statement that the waiver of rights of subrogation as stipulated above.

20.10 The foregoing insurance coverage shall be primary and non-contributing with respect to any other insurance or self- insurance which may be maintained by OWNER. The fact that CONTRACTOR has obtained the insurance required in this Article shall in no manner limit or qualify CONTRACTOR'S other obligations or liabilities set forth in this CONTRACT.

20.11 OWNER shall, at its sole cost, obtain and maintain in force for the duration of the CONTRACT (including the DEFECTS LIABILITY PERIOD) provide and maintain, at its expense, the following insurances:

- (a) CAR Insurance the minimum value of which will amount to the estimated full replacement value of the PLANT. The insurance shall cover damage to the permanent and temporary works of the facilities under construction by CONTRACTOR and any SUBCONTRACTORS, including all EQUIPMENT and MATERIALS.
- (b) Third Party Liability Insurance as a part of the insurance mentioned under this Article 20.11a) covering claims by third parties in respect of loss, damage, death or bodily injury incurred by them arising out of or in connection with the performance of the CONTRACT.

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ARTICLE 21 FORCE MAJEURE

21.1 Force Majeure shall mean an event not reasonably anticipated as of the date of this CONTRACT, which is not within the reasonable control of the PARTY affected thereby, could not have been avoided by the exercise of due diligence or operation in accordance with good industry practices, is not the result of the failure to act or the negligence of such PARTY, and which by the exercise of due diligence, the affected PARTY is unable to overcome or obtain or cause to be obtained a commercially reasonable substitute therefor. To the extent that such event satisfies the test set forth in the preceding sentence, Force Majeure includes, but not limited to:

- (a) War, whether declared or not, civil war, riots and revolutions, acts of piracy, acts of sabotage;
- (b) Natural disasters such as violent storms, cyclones, earthquakes, tidal waves, floods, destruction by lightning;
- (c) Explosions, fires, destruction of: plants and process facilities, machinery or any other kind of installations in such plants;
- (d) Any actions (in the form of bans, regulations or any other economic measures which did not exist at the time of conclusion of the Contract) by Governmental Authority (any foreign, national and local authorities, such as state, public administration authorities or other national or international bodies or organizations, having jurisdiction over the CONTRACTOR, the OWNER, this CONTRACT, including any municipality, township and county, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing).

21.2 Neither PARTY shall be considered to be in default or in breach of his obligations under the CONTRACT to the extent that performance of such obligations is prevented by any circumstances of Force Majeure which arise after the CONTRACT EFFECTIVE DATE of the CONTRACT.

21.3 If either PARTY considers that any circumstances of Force Majeure have occurred which may affect performance of his obligations he shall promptly notify the other PARTY thereof.

21.4 Upon the occurrence of any circumstances of Force Majeure the CONTRACTOR shall endeavour to continue to perform his obligations under the CONTRACT so far as reasonably practicable. The CONTRACTOR shall notify the OWNER of the steps he proposes to take, including any reasonable alternative means for performance which is not prevented by Force Majeure.

21.5 If either PARTY is prevented from performing any of its obligations under the CONTRACT by Force Majeure of which notice has been given under Article 21.3, and suffers delay by reason of such Force Majeure, the PARTY shall be entitled to an extension of time for any such delay, if completion is or will be delayed. Extension of time shall be PARTIES sole remedy in event of Force Majeure.

21.6 If circumstances of Force Majeure have occurred and shall continue for a period of 183 days, then either PARTY shall be entitled to serve upon the other PARTY, 28 days notice of their intention to terminate the CONTRACT. If at the expiry of the period of 28 days Force Majeure shall still continue, the CONTRACT shall be terminated.

21.7 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

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CONTRACT, the sum payable by the OWNER to the CONTRACTOR shall be the same as that which would have been payable under Article 24.3 if the CONTRACT had been terminated at OWNER'S option.

21.8 None of the following circumstances constitute Force Majeure:

- (a) strikes or labour disturbances occurring at the SITE or CONTRACTOR'S facilities, except to the extent such strikes or labour disturbances at the SITE or CONTRACTOR'S facilities are directly related to strikes or labor disturbances that are simultaneously disrupting other business operations in the Lithuania;
- (b) shortages (real or perceived) of labour available for on-site Work;
- (c) delay or failure by the CONTRACTOR to obtain any Governmental Approval (legal and/or regulatory approvals, authorisations, licenses, entry or residence permits), all of which should have been anticipated by the CONTRACTOR and are necessary for performance of the CONTRACT, other than the delay or failure to obtain Governmental Approvals occasioned by (x) revocation, stay, or similar action by a Governmental Authority of a Governmental Approval after issuance thereof by a Governmental Authority, (y) the failure of a Governmental Authority to comply with rules, procedures or Requirements of Law applicable to such Governmental Authority or (z) another Force Majeure;
- (d) economic hardship including lack of money or credit and changes in exchanges rates
- (e) utility interruptions;
- (f) shipping accidents or unavailability of preferred shipping methods.

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ARTICLE 22 INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS

- 22.1 CONTRACTOR shall, for the duration of the CONTRACT and after its termination, hold harmless and fully indemnify OWNER from and against any and all claims, losses, damages, cost and/or expense arising from infringement or asserted infringements of a patent, patent application, utility model, design, know-how, trade-secret, trade work, copyright or any other industrial property right arising out of the use of the WORK. Such indemnification shall not apply to any technical information provided by OWNER.
- 22.2 The OWNER shall promptly advise the CONTRACTOR in writing of any notice or claim of infringement. If the use by the OWNER of the process in the PLANT is in accordance with the designs, specifications and procedures furnished by and/or approved in writing by CONTRACTOR for the PLANT, CONTRACTOR will indemnify and hold OWNER harmless from such claims provided that OWNER has called on CONTRACTOR to participate in the court proceedings and informed the court of the need of CONTRACTOR to participate as a co-defendant.
- 22.3 In connection with any such claim, suit, or action in respect to which notice is given as provided in Article 22.1 above, the CONTRACTOR will settle, at his expense, such claim, suit, or action, provided such settlement allows the OWNER'S use of the PLANT in accordance with the terms of this CONTRACT.
- 22.4 Neither the CONTRACTOR nor the OWNER shall settle or compromise any such claim or suit or action without consent of the other PARTY if the settlement or compromise obliges the other to make any payment or part with any property, or to assume any obligation or grant any licenses or other rights, or be subject to any injunction by reason of such settlement or compromise. In the event the CONTRACTOR shall have acceded to the proceedings commenced as a result of any claim or suit or action as provided in Article 22.2, the CONTRACTOR will pay damages or other sums that may be assessed or may become payable under any final decree or final judgement by a competent court for infringement and, if necessary, shall procure for OWNER an appropriate license and/or make such changes in the PLANT as the CONTRACTOR shall deem desirable to avoid such infringement.
- 22.5 The provisions of this Article shall apply mutatis mutandis with respect to information provided by the OWNER to the CONTRACTOR under the CONTRACT, under the provision that such information is protected by a patent, a copyright or a published application.
- 22.6 The CONTRACTOR shall indemnify and hold the OWNER harmless against and from any claim alleging an infringement which is or was an unavoidable result of any third party claims with connection to compliance with the CONTRACT and any contracts made between CONTRACTOR and third parties. CONTRACTOR shall make all necessary steps to avoid abovementioned situation.

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ARTICLE 23 SUSPENSION

- 23.1 OWNER may at any time, by written notice to CONTRACTOR, suspend further performance of all or any portion of the WORKS. Such Notice of Suspension shall specify the date of suspension and the estimated duration of the suspension. Such suspensions shall not exceed ninety (90) consecutive calendar days each nor aggregate more than one hundred eighty (180) calendar days. Upon receiving a Notice of Suspension, 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 CONTRACTOR has on hand for performance of the WORKS. CONTRACTOR shall use its best efforts to utilize its material, labour and construction equipment in such a manner as to mitigate costs associated with suspension.
- 23.2 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 CONTRACTOR specifying the effective date and scope of withdrawal of the suspension, and CONTRACTOR shall resume diligent performance of the WORKS for which the suspension is withdrawn on the specified effective date of withdrawal.
- 23.3 If CONTRACTOR believes that any such suspension or withdrawal of suspension justifies modification of the CONTRACT PRICE or TIME SCHEDULE for completion of the WORKS, CONTRACTOR shall comply with the provisions of the procedure set forth in Article 13 (*Changes*). CONTRACTOR shall not be entitled to any prospective profits or any damages because of such suspension or withdrawal of suspension.

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ARTICLE 24 TERMINATION OF THE CONTRACT

24.1 OWNER may, at OWNER'S convenience, terminate further performance of all or part of the WORKS by giving written notice to CONTRACTOR specifying the date of termination. On the date of termination stated in said notice, CONTRACTOR shall discontinue performance of the WORKS and shall preserve and protect tools, construction equipment and facilities on SITE, EQUIPMENT, MATERIALS plant and other goods purchased for, or committed to the WORKS (whether delivered to the SITE or other locations), WORKS in progress and completed WORKS (whether at SITE or other locations) pending OWNER'S instructions and, when requested, shall turn over the same to OWNER, including title to said EQUIPMENT, MATERIALS, plant and other goods, or dispose of same in accordance with OWNER'S instructions.

24.2 Upon the receipt of said notice, CONTRACTOR shall advise OWNER of all outstanding subcontracts and purchase orders pertaining to performance of the terminated WORKS and, upon request, furnish OWNER with complete copies of these subcontracts and purchase orders. CONTRACTOR shall place no further subcontracts or purchase orders except as may be necessary for completion of such portion of the WORKS as is not terminated. CONTRACTOR shall promptly make every reasonable effort to procure cancellation, of all subcontracts and purchase orders to the extent they relate to the performance of WORKS that have been terminated; or, as directed by OWNER, shall assign these subcontracts and purchase orders to OWNER or shall take such other action relative to such subcontracts and purchase orders as may be directed by OWNER.

24.3 OWNER shall be entitled to terminate the CONTRACT if CONTRACTOR:

- (a) fails to provide the PERFORMANCE BOND under Article 3.6;
- (b) fails to meet the PROCESS GUARANTEES
- (c) fails to carry out any obligation under the CONTRACT and fails to make good the failure and/or to remedy it within a specified reasonable time;
- (d) abandons the WORKS or otherwise plainly demonstrates the intention not to continue performance of his obligations under the CONTRACT;
- (e) without reasonable excuse, fails to proceed with the WORKS in accordance with the TIME SCHEDULE;
- (f) subcontracts the whole of the WORKS or assigns the CONTRACT without the required agreement;
- (g) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors;
- (h) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward to do or forbear any action in relation to the CONTRACT;
- (i) materially breaches the confidentiality undertakings;

or if any of the CONTRACTOR'S personnel, agents, VENDORS or SUBCONTRACTORS gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in sub-paragraph (g) above. However, lawful inducements and rewards to CONTRACTOR'S personnel shall not entitle termination.

24.4 If the CONTRACT is terminated for OWNER'S convenience in accordance with Article 24.1 above and is not attributable to CONTRACTOR, CONTRACTOR shall recover from OWNER as complete and full settlement for such termination for WORKS to be performed under this CONTRACT, the actual cost of all such WORKS satisfactorily executed to the

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date of termination, (but not to exceed a pro rata value of the CONTRACT PRICE for such WORKS based on the percentage of WORKS properly completed at the date of termination), unless such sums as CONTRACTOR has already received on account of the WORKS performed. In no event shall total payment to CONTRACTOR exceed the CONTRACT PRICE.

- 24.5 If the CONTRACT is terminated for CONTRACTOR'S default in accordance with Article 24.3 above, OWNER shall, as soon as practicable after the notice of termination, proceed to determine the value of the WORKS due to CONTRACTOR for WORKS executed in accordance with the CONTRACT. OWNER may withhold further payments to CONTRACTOR until the costs of design, execution completion and remedying of any defects, damages for delay in completion and all other costs incurred by OWNER to complete the WORKS have been established.

OWNER shall be entitled to recover from CONTRACTOR any extra costs, losses or damages incurred in completing the WORKS after allowing for any sum due to CONTRACTOR. After recovering any such extra costs, losses or damages, OWNER shall pay any balance to CONTRACTOR.

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ARTICLE 25 WAIVER

- 25.1 OWNER'S failure to insist on the performance of any term, condition, or instruction, or to exercise any right or privilege included in this CONTRACT, or OWNER'S waiver of any breach, shall not thereafter waive any such term, condition, instruction, and/or any right or privilege. No asserted waiver of any right or benefit by OWNER shall be valid unless such waiver is in writing, signed by OWNER, and, as applicable, supported by consideration specifying the extent and nature of the rights or benefits being waived.
- 25.2 Headings and titles of Articles, sections, paragraphs or other subparts of this CONTRACT are for convenience of reference only and shall not be considered in interpreting the text of this 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.
- 25.3 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.

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ARTICLE 26 GOVERNING LAW AND ARBITRATION

- 26.1 This CONTRACT shall be governed by, construed and interpreted in accordance with the laws of the Republic of Lithuania.
- 26.2 Any dispute arising out of the provisions of this CONTRACT, their construction, or the breach thereof, which cannot be settled amicably, shall be finally settled under the Rules of Arbitration of the Vilnius Court of Commercial Arbitration by 3 (three) arbitrators appointed in accordance with said rules. Unless otherwise agreed, the venue of such arbitration shall be Vilnius, Lithuania, and the applicable procedural laws shall be the laws of the Republic of Lithuania. All documentation and oral proceedings shall be in the English language. The award of the arbitrator(s) shall be in writing and shall state the reasons therefore and all facts and circumstances relied upon. All procedural documents shall be served via PARTIES e-mails: OWNER's e-mail: Algimantas.Razgus@orlenlietuva.lt; CONTRACTOR's e-mail: xxxx.
- 26.3 Any reference to arbitration shall not relieve the CONTRACTOR of his obligations to proceed with the WORKS in accordance with the OWNER'S decision or instruction, or the terms of the CONTRACT.
- 26.4 Performance of the CONTRACT shall continue during arbitration proceedings unless OWNER shall order suspension. No payments due or payable by OWNER shall be withheld on account of pending reference to arbitration.

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