

Employer
SAKO Brno a.s.

Project
Modernization of WtE Plant SAKO Brno

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PART II.b

CONTRACT TERMINATION AND COST DETERMINATION



PART II.b CONTRACT TERMINATION AND COST DETERMINATION

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1. CONTRACT TERMINATION AND COST DETERMINATION

I. CONTRACT TERMINATION

1. If the Contract is terminated in accordance with Article 32 herein, the Contractor shall immediately perform the following at its own expense:
 - 1.1 secure the Line, if the Construction of the Line started as of the date of the Contract termination, in such a manner so that the Employer's property is not damaged and no other damage is incurred as a result of non-completion of the Line in accordance with the Contract;
 - 1.2 secure the Site so that the Site cannot be damaged;
 - 1.3 hand over to the Employer and the Owner's Engineer the list of all work performed in accordance with the Contract with a current detailed description of the status of the Contract Object in progress; this description shall be provided in greater detail at the request of the Employer;
 - 1.4 hand over to the Employer all documentation which is or has been drawn up on the basis of the Contract, in its current stage of preparation, unless such documentation has been handed over to the Employer and/or the Owner's Engineer in accordance with the Contract;
 - 1.5 settlement of work performed in accordance with the Contract, unless such settlement has already been made in accordance with the Contract. The provisions concerning payments and payment terms specified under Article 26 herein shall apply mutatis mutandis to this settlement.
2. Without undue delay after the termination of the Contract, the Employer shall inform the Contractor of the date of commencing the handover and acceptance procedure. The provisions specified under Article 16 herein shall apply mutatis mutandis to this handover and acceptance procedures.
3. As part of the handover and acceptance procedure in accordance with the previous paragraph, the Parties shall agree on the date of Site clearance, which shall be carried out by the Contractor at its own expense. If the clearance is not carried out no later than 14 days from the date of termination of the Contract, unless the Employer specifies a longer period of time, the Employer shall perform or have the Site clearance performed at the Contractor's expense.
4. Without undue delay after the termination of the Contract pursuant to Article 32 herein, the Employer shall value the price of work (hereinafter referred to as the "**Valuation**") which the Contractor commenced and did not complete in accordance with the Contract (this mainly concerns work commenced by the Contractor but completed in accordance with the Contract as of the Contract termination date). The Employer shall submit the Valuation to the Contractor, who is entitled to comment on it within 28 days from the date of receipt. This Valuation may be modified by agreement between the Parties. If the Contractor does not comment on the Valuation within the specified period, it shall be considered as its agreement with the Valuation. The Employer undertakes to pay the amount specified in the Valuation, which will be confirmed by the signatures of both Parties without any reservations or

confirmed by the assumed lack of comments by the Contractor according to the previous sentence in the manner specified herein (in particular, Article 26).

5. The Employer shall pay reasonable costs to the Contractor for work which the Contractor has commenced and failed to complete in accordance with the Contract pursuant to the previous paragraph, if the Employer may benefit from such work while taking into account the purpose of the Contract as defined under Article 5 herein and the Contract Amount arrangement, which is governed, in particular, by Article 26 herein.
6. If the Parties fail to agree on the amount specified in the Valuation no later than 3 months from the date on which the Valuation was handed over by the Employer to the Contractor, the Employer shall seek opinion of an independent court-certified expert who will perform valuation of the work according to the previous paragraph. The costs of the court-certified expert shall be borne equally by the Parties and his/her opinion shall be binding on both Parties.
7. Upon withdrawal in the event of a material breach of the Contract by the Contractor, the Employer shall determine which part of the completed Contract Object shall remain or become its property. The Contractor shall be notified accordingly in writing without undue delay after the termination of the Contract. The provisions herein shall be applied mutatis mutandis to the Valuation.
8. After the termination of the Contract, the Contractor undertakes to provide the Employer with all necessary cooperation that will be necessary for the Employer in order for the incomplete Contract Object to be handed over to the Employer and to have the work on the incomplete Contract Object completed by another contractor. The Contractor undertakes to provide the same cooperation through the Persons on the Contractor's side.

II DETERMINATION OF COSTS UPON THE CONTRACT TERMINATION

If the Contract is terminated by the Employer, the Contractor shall pay the amount determined as follows:

$$\text{Costs to be paid} = (A + B + C) - (D - E)$$

Where:

A costs and/or expenses incurred by the Employer in completing the Contract, commissioning the Line and testing the Line, achieving completion and correction of unfinished work, the amounts of which shall also include (in particular):

(i) costs incurred by the Employer in re-tendering any element of the Contract Object (including any re-engineered element of the Contract Object) and by concluding a new contract with a substitute contractor (or several contracts with substitute contractors) that contains terms and conditions that are stricter than the terms and conditions of this Contract in an extent that is reasonably practicably feasible in relation to obligations to be met in order to comply with the Employer's Requirements (such costs shall include amounts payable by the Employer under such contract (s) to the substitute contractor(s));

(ii) costs incurred by the Employer in remedying defects, repairs or replacements of any part of the Contract Object performed by the Contractor before the date of termination of the Contract in the extent in which the relevant work was not performed in accordance with the

Contract (or if the relevant work was performed in accordance with the terms and conditions of this Contract; however, such work will require defect remedy, repair or replacement due to incompatibility with other work required to comply with the Employer's Requirements)

(iii) extended overhead costs on or off the Site and any other administrative and/or management costs related to the completion of the Contract Object; and

(iv) professional fees, including in particular legal fees and financial advisers' fees related to the completion of the Contract Object;

B the total amount of contractual penalties calculated as of the date of the Contract termination, being contractual penalties specified under Article 31 of the Contract and/or under Appendix No. II.c Contractual penalties for non-compliance with values;

C other direct losses, liabilities, claims, damages, costs and expenses (other than any amounts arising from delays in completion) incurred by the Employer or arising as a result of the Contract by the Contractor;

D the Contract Amount that would be payable to the Contractor if the Contract Object was completed in accordance with this Contract (including any funds retained or claimed by the Employer under Article 26 of the Contract); and

E the total amount of any payments made or otherwise settled in favour of the Contractor under Article 26 of the Contract or in connection with this Contract in respect to the performed Contract Object;

(in any case without double posting).

(a) Within 42 days of the date of the Contract termination, the Employer shall provide the Contractor with the Contract termination costs statement ("**Completion costs statement**") with a reasonable estimate of completion costs and contractual penalties and separate numerical indicators of the Initial Statement of Costs for each loss item as described in points A, B, C, D and E above.

(b) If the sum given in the Completion costs statement is a positive figure, such amount shall be due and payable by the Contractor in favour of the Employer when the Contractor receives the Initial Statement of Costs, and the deadline for such payment shall be 21 days thereafter. If the sum given in the Initial Statement is a negative figure, no Party shall pay any amount in accordance with this letter b).

(c) The Contractor is entitled to comment on the Completion costs statement within 14 days from the date of its receipt. This Completion costs statement may be modified by agreement between the Parties. If the Contractor fails to comment on the Completion costs statement within the specified time-limit, it shall be considered as its agreement with the Completion costs statement. The Employer undertakes to pay the amount specified in the Completion costs statement, which will be confirmed by the signatures of both Parties without any reservations or confirmed by the assumed lack of comments by the Contractor according to the previous sentence in the manner specified therein (in particular, Article 26).

(d) If the Parties fail to agree on the amount specified in the Completion costs statement no later than 2 months from the date on which the Completion costs statement was handed over by the Employer to the Contractor, the Employer shall seek opinion of an independent

court-certified expert who will perform valuation of the work according to point II herein. The costs of the court-certified expert shall be borne equally by the Parties and his/her opinion shall be binding on both Parties.