



EUROPEAN UNION
European Structural and Investing Funds
Operational Programme Research,
Development and Education



PURCHASE CONTRACT

This purchase contract ("**Contract**") was concluded pursuant to section 2079 *et seq.* of the act no. 89/2012 Coll., Civil Code ("**Civil Code**"), on the day, month and year stated below by and between:

- (1) **Institute of Physics of the Academy of Sciences of the Czech Republic, a public research institution,**

with its registered office at: Na Slovance 2, Praha 8, PSČ: 182 21,

registration no.: 68378271,

represented by: RNDr. Michael Prouza, Ph.D. – director

("Buyer"); and

- (2) **Aperture Optical Sciences, Inc.**

with its registered office at: **170 Pondview Drive, Meriden, CT 06450,**

registration no.: **EIN# 27-23329965,**

represented by: **FLEMMING TINKER**

("Seller").

(The Buyer and the Seller are hereinafter jointly referred to as "**Parties**" and individually as "**Party**".)

WHEREAS

- (A) It is needed for the construction of the international laser research center ELI Beamlines to purchase the Object of Purchase as defined below.
- (B) The Seller wishes to provide the Object of Purchase to the Buyer for consideration.
- (C) The Seller's bid for the public procurement entitled "*OAP high quality parabola for ELIMAIA spare part SP19_001*", whose purpose was to procure the Object of Purchase ("**Public Procurement**"), was selected by the Buyer as the most suitable.

IT WAS AGREED AS FOLLOWS:

1. BASIC PROVISIONS

- 1.1 Under this Contract the Seller shall hand over to the Buyer a product that is described in Annex 1 (Technical Specification) to this Contract in the quality and with the properties described therein ("**Object of Purchase**") and shall transfer to the Buyer ownership right to the Object of Purchase, and the Buyer shall take over the Object of Purchase and shall



pay the Seller the Purchase Price (as defined below), all under the terms and conditions stipulated in this Contract.

- 1.2 The Object of Purchase (all of its parts) shall be new (not remanufactured).

2. **THE PLACE OF DELIVERY**

The place of delivery is ELI beamlines facility at the address Průmyslová 836, post code 252 41, Dolní Břežany, Czech Republic or any other address in Dolní Břežany, Czech Republic, which the Buyer communicated to the Seller prior to the delivery of the Object of Purchase.

3. **THE TIME OF DELIVERY**

The Seller shall deliver the Object of Purchase within 5 months from the effectiveness of this Contract. The Object of Purchase are considered delivered once the acceptance protocol is signed. The Seller is entitled to deliver the Object of Purchase earlier, if the Buyer agrees to it. The Buyer is entitled to postpone the delivery time by up to another 3 months without stating any reason.

4. **THE OWNERSHIP RIGHT**

The ownership right to the Object of Purchase shall be transferred to the Buyer upon the signature of the acceptance protocol by both Parties.

5. **PRICE AND PAYMENT TERMS**

- 5.1 The purchase price for the Object of Purchase is stated in Annex 2 (*Price Sheet*) to this Contract (“**Purchase Price**”). VAT will be paid in accordance with the applicable legal regulations.

- 5.2 The Purchase Price cannot be exceeded and includes all costs and expenses of the Seller related to the performance of this Contract. The Purchase Price includes, among others, all expenses related to the handover and acceptance of the Object of Purchase, costs of copyright, insurance, customs, warranty service and any other costs and expenses connected with the performance of this Contract.

- 5.3 The Purchase Price for the Object of Purchase shall be paid on the basis of a tax document – invoice, to the account of the Seller designated in the invoice. The Purchase Price shall be paid in the following manner:

- a) 20% of the Purchase Price shall be paid after the signature of this Contract by both Parties;
- b) 30% of the Purchase Price shall be paid after the Buyer approves Qualified Design (as defined in Annex 1) of the Object of Purchase; and



- c) 50% of the Purchase Price shall be paid after the signature of the acceptance protocol. The copy of the acceptance protocol shall be attached to the invoice.
- 5.4 The Buyer shall realize payments on the basis of duly issued invoices within 30 days from their receipt. The invoice shall be considered to be paid for on the day when the invoiced amount is deducted from the Buyer's account on behalf of the Seller's account.
- 5.5 The invoice issued by the Seller as a tax document must contain all information required by the applicable laws of the Czech Republic. Invoices issued by the Seller in accordance with this Contract shall contain in particular following information:
- a) name and registered office of the Buyer,
 - b) tax identification number of the Buyer,
 - c) name and registered office of the Seller,
 - d) tax identification number of the Seller,
 - e) registration number of the tax document,
 - f) scope of the performance (including the reference to this Contract),
 - g) the date of the issue of the tax document,
 - h) the date of the fulfilment of the Contract,
 - i) Purchase Price,
 - j) registration number of this Contract, which the Buyer shall communicate to the Seller based on Seller's request before the issuance of the invoice.
- 5.6 In case that the invoice shall not contain the above mentioned information, the Buyer is entitled to return it to the Seller during its maturity period and this shall not be considered as a default. The new maturity period shall begin from the receipt of the supplemented or corrected invoice to the Buyer.
6. **SELLER'S DUTIES**
- 6.1 The Seller shall ensure that the Object of Purchase is in compliance with this Contract including all its annexes and applicable legal (e.g. safety), technical and quality norms.
- 6.2 During the performance of this Contract the Seller proceeds independently. If the Seller receives instructions from the Buyer, the Seller shall follow such instructions unless these are against the law or in contradiction to this Contract. If the Seller finds out or should have found out if professional care was exercised that the instructions are for any reason inappropriate or illegal or in contradiction to this Contract, then the Seller must notify the Buyer.



6.3 If this Contract (including Annex 1) states that the Seller and the Buyer shall agree on certain matter or issue and such agreement is not reached, then the Seller must follow Buyer's decision on this matter or issue.

6.4 All things necessary for the performance of this Contract shall procure the Seller, unless this Contract stipulates otherwise.

7. **HANDOVER AND TAKEOVER OF THE OBJECT OF PURCHASE**

7.1 Prior to the handover and takeover of the Object of Purchase the Seller shall test the Object of Purchase in accordance with Annex 1 (*Technical Specification*) to this Contract. The Seller shall inform the Buyer in advance of the date of the testing and shall allow the Buyer to be present during the testing.

7.2 Handover and takeover of the Object of Purchase shall be realized on the basis of an acceptance protocol.

7.3 If the Object of Purchase does not meet requirements stipulated in this Contract, the Buyer is entitled to refuse the takeover of such Object(s) of Purchase. In such a case the Seller shall remedy the deficiencies within ten (10) working days, unless Parties agree otherwise. The Buyer is entitled (but not obliged) to takeover the Object(s) of Purchase despite the above mentioned deficiencies, in particular if such deficiencies do not prevent the Buyer in the proper operation of the Object(s) of Purchase. In such a case the Seller and the Buyer shall list the deficiencies in the acceptance protocol, including the manner and the date of their removal (remedy). If the Parties do not reach agreement in the acceptance protocol regarding the date of the removal, the Seller shall remove the deficiencies within ten (10) working days.

8. **WARRANTY**

8.1 The Seller shall provide a warranty of quality of the Object of Purchase for the period of 1 year. If any document of the Seller states the warranty of longer duration in relation to the Object of Purchase, then such warranty of longer duration shall be applied instead.

8.2 The warranty period shall begin on the day of the signature of the acceptance protocol by both Parties. If the acceptance protocol lists any deficiencies, the warranty period shall begin on the day, which follows the day, in which the last deficiency was removed.

8.3 If the Buyer ascertains a defect of the Object of Purchase during the warranty period, the Buyer shall notify such defect without undue delay to the Seller. Defects may be notified on the last day of warranty period, at the latest.

8.4 The Buyer notifies defects in writing via e-mail. The Seller shall accept notifications of defects on the following e-mail address: **ABODDEN@APERTUREOS.COM**. The Seller shall confirm within 24 hours from the receipt of the notification.

8.5 In the notification the Buyer shall describe the defect. The Buyer has the right to:



- a) ask for the removal of the defect by the delivery of new Object(s) of Purchase or its individual parts, or
- b) ask for the removal of the defect by repair, or
- c) ask for the reasonable reduction of the Purchase Price.

The choice among the above mentioned rights belongs to the Seller. The Buyer is also entitled to withdraw from this Contract, if by delivering the Object of Purchase with such defects this Contract is substantially breached.

- 8.6 The Seller shall remove defects that occur during the warranty period free of charge within 5 months from their notification, unless Parties due to the nature of the defect agree on the shorter or longer period of time.
- 8.7 Parties shall execute a protocol on the removal of the defect, which shall contain the description of the defect and the confirmation that the defect was removed. The warranty period shall be extended by a period of time that elapses between the notification of the defect until its removal.
- 8.8 In case that the Seller does not remove the defect within stipulated time or if the Seller refuses to remove the defect, then the Buyer is entitled to remove the defect at his own costs and the Seller shall reimburse these costs within 10 days after the Buyer's request to do so.
- 8.9 The warranty does not cover defects caused by unprofessional manipulation or by the failure to follow Seller's instructions for the operation and maintenance of the Object of Purchase.

9. **PENALTIES**

- 9.1 If the Seller is in delay with the removal of the defect, the Seller shall pay to the Buyer a contractual penalty in the amount of 0,05 % of the Purchase Price for every (even commenced) day of delay.
- 9.2 The Seller shall pay contractual penalties within fifteen (15) days from the day, on which the Buyer enumerated its claims. The payment of contractual penalties shall not affect the right of the Buyer to damages even to the extent to which such damages exceeds the contractual penalty.
- 9.3 Total amount of contractual penalties that the Buyer is entitled to claim shall not exceed 30 % of the Purchase Price.
- 9.4 The Buyer is entitled to unilaterally set off claims arising from the contractual penalties against the claim of the Seller for the payment of the Purchase Price.



10. **RIGHT OF WITHDRAWAL**

10.1 The Buyer is entitled to withdraw from this Contract without any penalties, if any of the following circumstances occur:

- a) the Seller shall be in delay with the fulfilment of this Contract and such delay lasts more than 4 weeks;
- b) The Object of Purchase during testing does not fulfil the requirements stipulated in this Contract, in particular in Annex 1 (*Technical Specification*) and the deficiencies cannot be remedied;
- c) the insolvency proceeding is initiated against the Seller; or
- d) the Buyer ascertains that the Seller provided in its bid for the Public Procurement information or documents that do not correspond to the reality and that had or could have had impact on the result of the tendering procedure, which preceded the conclusion of this Contract.

11. **SPECIAL PROVISIONS**

By signing this Contract, the Seller becomes a person that must cooperate during the finance control within the meaning of Section 2 letter e) of the act no. 320/2001 Coll., on finance control in the public administration, and shall provide to the Directing Body of the Operational Programme Research, Development and Education or other control bodies access to all parts of the bid, Contract or other documents that are related to the legal relationship formed by this Contract. This duty also covers documents that are subject to the protection in accordance with other acts (business secrets, secret information, etc.) provided that control bodies fulfil requirements stipulated by these acts. The Seller shall secure that all its subcontractors are also obliged to cooperate with control bodies in the above stipulated extent. The possibility of effective control must be preserved until the year 2027.

12. **PUBLICITY**

Parties are aware that this Contract shall be published in the register of contracts in accordance with the Act no. 340/2015 Coll., on the Register of Contracts.

13. **FINAL PROVISIONS**

13.1 This Contract is governed by the laws of the Czech Republic, especially by the Civil Code.

13.2 All disputes arising out of this Contract or out of legal relations connected with this Contract shall be preferably settled by a mutual negotiation. In case that the dispute is not settled within sixty (60) days, such dispute shall be decided by courts of the Czech Republic in the procedure initiated by one of the Parties.



- 13.3 The Seller is not entitled to set off any of its claims or his debtor's claims against the Buyer's claims. The Seller is not entitled to transfer its claims against Buyer that arose on the basis or in connection with this Contract on third parties. The Seller is not entitled to transfer rights and duties from this Contract or its part on third parties.
- 13.4 All modifications and supplements of this Contract must be in writing.
- 13.5 If any of provisions of this Contract are invalid or ineffective, the Parties are bound to change this Contract in such a way that the invalid or ineffective provision is replaced by a new provision that is valid and effective and to the maximum possible extent correspond to the original invalid or ineffective provision.
- 13.6 This Contract is executed in four (4) counterparts and every Party shall receive two (2) counterparts.
- 13.7 An integral part of this Contract is Annex 1 (*Technical Specification*) and Annex 2 (*Price Sheet*). If Annex 1 (*Technical Specification*) uses the term "Contracting Authority" or "contracting authority" it means Buyer. If Annex 1 (*Technical Specification*) uses the term "Supplier" or "supplier" it means Seller.
- 13.8 This Contract shall be valid on the date of the signature of both Parties and effective on the day, on which it was published in the register of contracts within the meaning of the Act no. 340/2015 Coll., on the Register of Contracts.

IN WITNESS WHEREOF attach Parties their handwritten signatures:

Buyer

Signature: _____

Name: RNDr. Michael Prouza, Ph.D.

Position: director

Date:

Seller

Signature: _____

Name:

Position:

Date:



ANNEX 1 TECHNICAL SPECIFICATION



Introduction

Thank you for requesting our proposal for the fabrication of (1) duplicated ELI ELIMAIA OAP Mirror to the optical performance of Precision Grade.

Document Revision History

Revision	Date	Description
C	30 Sept. 2019	1. AOS formal response to new ELI-Beamlines tender No. 00236671 for ELIMAIA_SP90_001

Scope of Work Proposed:

1. Preparation of Drawings
2. Design Review and Customer Approval
3. All Materials, Fabrication and Coating

Customer Specifications as per states in document no.:

00236690-B_5.2_ES_DW_Drawing-OAP_mirror_for_ELIMAIA.pdf
 00236671-B_5.2_ES_RSD_OAP high quality Parabola for ELIMAIA_SP19_001.pdf
 00236671-B_5.2_ES_RSD_OAP high quality Parabola for ELIMAIA_SP19_001.docx

Additional Notes:

1. All optics will be supplied as wrapped in cleanroom grade N2 sealed bags and stored in protective PETG Containers.
2. Focal Length, Off-axis angle, and Off-axis distance are all measured via conformance of the actual sag values relative to mechanical datums.
3. As ELI-Beams request, AOS is offering the requested OAP in our "Precision" Quality grade. See explanations below in pages 7-8.
4. AOS will provide a fully dimensioned design drawing upon contract award.
5. AOS average surface roughness is < 20 Angstroms RMS.
6. Selected material is Mirror Grade Fused Silica.



ANNEX 2 PRICE SHEET

ANNEX 2 PRICE SHEET

Currency: USD

OAP notation number (Name)	Diameter, SFL, off-axis angle	Price without VAT [USD]
OAP high quality Parabola for ELIMAIA_Spare part	310-1 mm, 270-1 mm, 50°	84,500.00
Total bid price [USD]		84,500.00