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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: prof. Jan Řídký, DrSc. – director
("Buyer"); and
- (2) **Freiberg Instruments GmbH,**
with its registered office at: Delfter Str. 6, 09599, Freiberg, Germany
registration no.: HRB 22507
represented by: Dr. Kay Dornich (Chief Executive Officer) and Ing. Thanga Kumar (Marketing & Sales Manger)
("Seller").

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

WHEREAS

- (A) The Buyer is a public contracting authority and the beneficiary of a grant of the Ministry of Education, Youth and Sports of the Czech Republic for a project „ELI: EXTREME LIGHT INFRASTRUCTURE – Phase 2“, reg. number: CZ.02.1.01/0.0/0.0/15_008/0000162 ("Project"), within the Operational Programme Research, Development and Education.
- (B) For the successful realization of the Project it is necessary to purchase the Object of Purchase (as defined below) in accordance with the Rules for the Selection of Suppliers within the Operational Programme Research, Development and Education.
- (C) The Seller wishes to provide the Object of Purchase to the Buyer for consideration.
- (D) The Seller's bid for the public procurement entitled "*Safety TLD/OSLD system: Solid State Dosimetry Reading System*", 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 system 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 Under this Contract the Seller shall also carry out following activities (“**Related Activities**”):
- a) to transport the Object of Purchase to the place of delivery under the conditions stipulated in Annex 1 (Technical Specification);
 - b) to elaborate and hand over to the Buyer operational and maintenance manuals of the Object of Purchase in the extent specified in Annex 1 (Technical Specification) and other documents that are necessary for the proper takeover and use of the Object of Purchase in Czech or English language; and
 - c) to carry out all other activities that are required under Annex 1 (Technical Specification);
 - d) cooperate with the Buyer during the performance of this Contract.
- 1.3 The Seller promises to the Buyer that if for the fulfillment of the requirements of the Buyer under this Contract or the proper operation of the Object of Purchase are necessary other deliveries and activities not mentioned in this Contract, the Seller shall procure such deliveries or shall carry out such activities at its own expense without any effect on the Purchase Price.

2. THE PLACE OF DELIVERY

The place of delivery is at the address: Fyzikální ústav AV ČR v.v.i/ELI beamlines, Průmyslová 836, 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

- 3.1 The Seller shall deliver the Object of Purchase and shall carry out Related Activities within 15 weeks from the effectiveness of this Contract. The Seller is entitled to deliver the Object of Purchase and to carry out Related Activities earlier, if the Buyer agrees to it. The Buyer is entitled to postpone the delivery time by up to another 3 months, if there are serious reasons for it.



4. THE OWNERSHIP RIGHT

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

5. PRICE AND PAYMENT TERMS

- 5.1 The purchase price for the Object of Purchase is **55.500,00 EUR** (“Purchase Price”) without value added tax (“VAT”). VAT will be paid in accordance with the applicable legal regulations. If the Seller pays the VAT (this is applicable to domestic suppliers only), then the Purchase Price with VAT 21 % is *(Not applicable)*, - EUR.
- 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 of the Object of Purchase and execution of Related Activities, 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 in EUR 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 after the signature of the Contract; and
 - b) 80 % of the Purchase Price after the signature of the handover protocol. The copy of the handover protocol must be attached to the invoice.
- 5.4 The Buyer shall realize payments on the basis of duly issued invoices within 21 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,
- k) declaration that the performance of the Contract is for the purposes of a project „ELI: EXTREME LIGHT INFRASTRUCTURE – Phase 2“, reg. number: CZ.02.1.01/0.0/0.0/15_008/0000162,

and must comply with the double tax avoidance agreements, if applicable.

- 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 and Related Activities are 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 All things necessary for the performance of this Contract shall procure the Seller, unless this Contract stipulates otherwise.
- 6.4 The Seller is aware that the Buyer does not have at its disposal premises for the storage of packaging and, therefore, shall not store packaging of the Object of Purchase. The absence of original packaging cannot be an excuse for refusal of elimination of defects of the Object of Purchase.

7. HANDOVER OF THE OBJECT OF PURCHASE

- 7.1 Handover and takeover of the Object of Purchase shall be realized on the basis of a handover protocol. The handover protocol may be signed only after all the Related Activities are carried out.
- 7.2 If the Seller fails to duly carry out all Related Activities or if the Object of Purchase does not meet requirements of this Contract, the Buyer is entitled to refuse the takeover of the Object 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 of Purchase despite the above mentioned deficiencies, in particular if



such deficiencies do not prevent the Buyer in the proper operation of the Object of Purchase. In such a case the Seller and the Buyer shall list the deficiencies in the handover protocol, including the manner and the date of their removal (remedy). If the Parties do not reach agreement in the handover protocol regarding the date of the removal, the Seller shall remove the deficiencies within ten (10) working days.

7.3 Parties exclude the application of the Section 2126 of the Civil Code.

8. WARRANTY

8.1 The Seller shall provide a warranty of quality of the Object of Purchase for the period of 12 months. If on the warranty list or other document is the warranty period of longer duration, then this longer warranty period shall have priority over the period stated in this Contract.

8.2 The warranty period shall begin on the day of the signature of the handover protocol by both Parties. If the handover 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 The Seller shall remove defects that occur during the warranty period free of charge and in the terms stipulated in this Contract.

8.4 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.

8.5 The Buyer notifies defects in writing via e-mail. The Seller shall accept notifications of defects on the following e-mail address: sales@freiberginstruments.com. The Seller shall confirm within 24 hours from the receipt of the notification.

8.6 In the notification the Buyer shall describe the defect and the manner of removal of the defect. The Parties shall agree on the manner of defects removal. If the Parties do not reach the agreement, the Buyer has the right to:

- a) ask for the removal of the defect by the delivery of new Object 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 Buyer. The Buyer is also entitled to withdraw from this Contract, if by delivering the Object of Purchase with defects this Contract is substantially breached.

8.7 The Seller shall remove the defect within 30 days from its notification, unless Parties agree otherwise.



- 8.8 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.
- 8.9 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.
- 8.10 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.
- 8.11 Parties exclude the application of Section 1925 of the Civil Code.

9. PENALTIES

- 9.1 If the Seller is in delay regarding the delivery of the Object of Purchase, i.e. the Seller breaches its duty to perform this Contract in time and such delay lasts for more than 4 weeks, the Seller shall pay to the Buyer a contractual penalty in the amount of 0,1% of the Purchase Price for every (even commenced) day of default.
- 9.2 If the Seller is in default 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 default.
- 9.3 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.
- 9.4 Total amount of contractual penalties that the Buyer is entitled to claim shall not exceed 5 % of the Purchase Price.
- 9.5 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.
- 9.6 Parties exclude the Section 2050 of the Civil Code.

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 expenses or the part of the expenses that will arise on the basis of this Contract will be found by the provider of the grant or other control body as ineligible;



- b) the Seller shall be in delay with the fulfilment of this Contract and such delay lasts more than two (2) weeks;
- c) The Object of Purchase during testing at the Buyer's premises does not fulfil the requirements stipulated in this Contract, in particular in Annex 1 (Technical Specification) and the deficiencies cannot be remedied;
- d) the Buyer shall lose a grant for the realization of the Project;
- e) the insolvency proceeding is initiated against the Seller; or
- f) 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 2026.

12. FINAL PROVISIONS

- 12.1 This Contract is governed by the laws of the Czech Republic, especially by the Civil Code.
- 12.2 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.
- 12.3 The Seller bears the risk of changed circumstances within the meaning of Section 1765 of the Civil Code.
- 12.4 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.



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- 12.5 All modifications and supplements of this Contract must be in writing.
- 12.6 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.
- 12.7 This Contract is executed in four (4) counterparts and every Party shall receive two (2) counterparts.
- 12.8 An integral part of this Contract is Annex 1 (*Technical Specification*). 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.
- 12.9 This Contract shall be valid and effective on the date of the signature of both Parties.

IN WITNESS WHEREOF attach Parties their handwritten signatures:

Buyer

Signature: _____

Name: prof. Jan Řídký, DrSc.

Position: director

Date: 21.7.2016

Seller

Signature: _____

Name: Ing. Thanga Kumar

Position: Marketing & Sales Manager

Date: 04.07.2016

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