

Contract of Purchase
No. 2018/40060

Buyer:

Name: **Vojenský technický ústav, s.p., branch VTÚVM**
Place of Business: **Dlouhá 300, 763 21 Slavičín, Czech Republic**
Authorized to represent the company: **Ján Roman, VTÚVM Branch Director**
Registered in: **Companies Register kept at Municipal Court in Prague, section A,
Enclosure No.: 75859**
Reg. No./ VAT No.: **242 72 523/ CZ24272523**
Bank connection:
Account No.:

Authorized to negotiate
in contractual matters:

in technical matters:

point of contact:

/hereinafter referred to as the "Buyer"/

Seller:

Name: **Fischer Panda GmbH**
Place of Business: **Otto-Hahn-Str. 40, 33104 Paderborn, Germany**
Authorized to represent the company: **Dipl.-Ing. Stephan Backes; Dr.-Ing. Hans-Joachim Herbermann**
Registered in: **Amtsgericht Paderborn HRB 580, Paderborn, Germany**
VAT No.: **DE 126 331 597**
Bank connection:
Account number:

Authorized to negotiate
in contractual matters:

in technical matters:

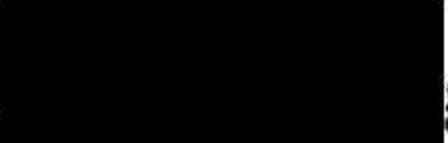
/hereinafter referred to as the "Seller"/

1. PREAMBLE

1.1



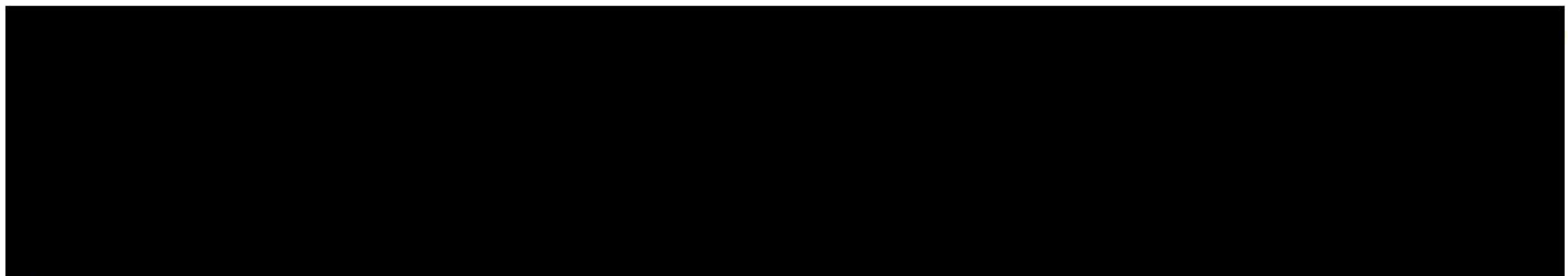
2. SUBJECT-MATTER OF THE CONTRACT

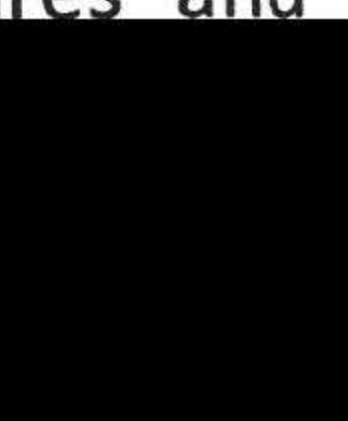
- 2.1 The Seller undertakes to deliver to the Buyer under the conditions set forth herein **1 unit** of the “PANDA  generator”, as specified in Annex 1 of this contract (hereinafter referred to as the “Goods”).
- 2.1 The Buyer undertakes to accept the Goods as per this contract and settle the purchase price pursuant to article 4 herein in due date to Seller’s account.
- 2.2 The Seller further undertakes to deliver to the Buyer the Operation and Maintenance Manual for the Goods in English language in electronic format.
- 2.3 The Seller further undertakes under the conditions agreed herein to allow the Buyer to take title to the Goods and the Buyer undertakes to accept the Goods and settle the purchase price under the conditions agreed herein.

3. STATEMENT OF THE PARTIES

- 3.1 The Seller declares he is an exclusive owner of the Goods and the Goods are not encumbered by any third party right that would obstruct transfer of ownership right to the Buyer or obstruct the Buyer from an exclusive use of the Goods. The Buyer shall not accept any defects of the Goods.
- 3.2 Both Contracting parties undertake to inform the other Party immediately about the facts that preclude or impose significant limitation on the performance of this Contract or contractual liabilities of both Parties. The Party incurring such circumstances undertakes to propose a method of solution acceptable for both parties.

3.3



- 3.4 The Seller acknowledges the fact and grants the Buyer his consent to provide all Goods-related documents to the end user, i.e. Ministry of Defence of the Czech Republic – Czech Army.
- 3.5 In order to avoid any doubts the Contracting parties state that any intellectual property or intangible property rights of the Seller, especially patents, know-how, inventions, constructions, records, reports, information, specifications, formulae, data, documentation, procedures and 

methods necessary for or related to the development, production, use, marketing, distribution or sale of the Goods, or any part thereof shall not be affected in any manner and remain the property of the Seller.

4. PURCHASE PRICE AND PAYMENT CONDITIONS

- 4.1 The Contracting parties have agreed upon the final purchase price in the amount of [REDACTED] [REDACTED] excl. VAT (hereinafter referred to as the "total price").
- 4.2 The purchase price has been agreed EXW Fischer Panda GmbH, Otto-Hahn-Str.40, 33104 Paderborn, Germany according to INCOTERMS 2020. The purchase price is final and effective for the entire term of the contract covering all the costs incurred to the Seller in relation with the performance of his contractual liabilities.
- 4.3 [REDACTED]
- 4.4 The Buyer is obligated to settle the purchase price to the Seller against an Invoice issued by the Seller on the date of signing the Delivery Note by the Buyer at the earliest.
- 4.5 The Invoice shall be delivered to the Buyer in duplicate and must include the contract number and specification of the delivered Goods (name, designation, quantity and unit/total price), a reference to the respective provision of law of the Seller's country, provision of the European Union regulation or other information stating that the fulfilment is VAT free, in case it is VAT free and take into account down payment already paid. The approved undersigned Delivery Note approved by the Buyer shall be enclosed to the Invoice.
- 4.6 In case the Invoice shall not meet the requirements stipulated herein, the Buyer is entitled to return the Invoice to the Seller for correction within the due period of the Invoice, without being in default with the payment. New term of payment shall start on the date of delivery of the corrected Invoice to the Buyer.
- 4.7 The Contracting parties have agreed upon a due date of the invoice within 14 (fourteen) days from the date of delivery of the Invoice to the Buyer.
- 4.8 The purchase price shall be deemed settled on the day the Buyer issues an order to his financial institution to settle the invoice issued by the Seller in favour of an account as set forth in the headings above, or other account provided for this purpose.

5. DELIVERY TERMS – QUANTITY, PLACE OF DELIVERY, DATE OF DELIVERY

- 5.1 The Buyer undertakes to provide to the Seller the original of the End User Certificate approved by the Buyer, requested by the Export Control Authorities in the manufacturer's country, not later than within 45 days from contract signature.
- 5.2 The Seller is responsible for submitting application for the Export Permit for the Goods in a timely manner. The Buyer undertakes to provide all the necessary assistance, if requested.
- 5.3 The Seller undertakes to deliver the Goods not later than by **15.09.2020**, the Seller undertakes to notify the Buyer once the Goods are ready to be delivered as per the delivery term agreed above 14 days prior to the date of delivery. [REDACTED]

- 5.4 The Contracting parties have agreed upon the term of delivery EXW Fischer Panda GmbH, Otto-Hahn-Str.40, 33104 Paderborn, Germany according to INCOTERMS 2020.
- 5.5 The Seller undertakes to provide with the Goods also the accompanying documents essential for the acceptance and use of the Goods, in the quantity corresponding to the delivered units of the Goods, all in English language. The Seller shall specifically provide User and Maintenance Manuals (hard copy and electronically in .pdf format) and Service Book or equivalent.
- 5.6 The Seller shall further provide with the Goods the Certificate of Conformity certifying technical parameters of the Goods and Certificate of Conformity in compliance with the Regulation (EC) No. 765/2008 of the European Parliament and of the Council or similar certificate, in the quantity corresponding to the delivered units of the Goods.
- 5.7 Risk of occurrence of damage, accidental destruction and accidental deterioration of the Goods shall be transferred from the Seller to the Buyer immediately upon delivery of the Goods to place of delivery.
- 5.8 The Buyer has right to use the Goods from the moment of their delivery.
- 5.9 The Seller undertakes to deliver to the Buyer brand new unused Goods, complying with technical standards and regulations of the manufacturer in force, assembled from new and unused components, parts, assemblies and sub-assemblies that are fully functional and not manufactured earlier than 12 months prior to date of delivery. The Seller undertakes to provide a written affidavit certifying this fact upon delivery.
- 5.10 Buyer's representative shall not accept the Goods observed to be faulty at the moment of delivery (e.g. damaged packaging, visible damage to the Goods, etc)/. In such an event a report shall be issued and undersigned by the Buyer's representative. The Seller is obligated to remove all defects. In case the Seller and the Buyer agree the defect is irremovable, the Seller is obligated to deliver new Goods.
- 5.11 The Buyer undertakes to carry out basic functionality verification of the Goods upon their delivery at the agreed place of delivery. In the event basic functionality verification is successful, the Buyer shall issue a Record of receipt of the Goods; Buyer's representative shall undersign two copies of this document and send one copy to the Seller.
- 5.12 In the event basic functionality verification is not successful (complete or partial failure) Buyer's representative shall record this in a report and undersign the report. The Seller is obligated to remedy all defects. In case the Seller and the Buyer agree the defect is irremovable, the Seller is obligated to deliver new Goods. The Seller is liable for damage incurred to the Buyer by delivery of non-functional/partially non-functional Goods.

6. WARRANTY AND DEFECTS OF THE GOODS

- 6.1 The Seller undertakes to grant to the Buyer a guarantee covering functionality, performance and quality of the Goods (hereinafter referred to as the "warranty") for the period of [REDACTED] [REDACTED] whatever is reached first. The warranty period starts on the date of the Record of receipt as per par. 5.11 above signature.
- 6.2 In the event of a justified claim for the defected Goods the warranty period stops for the duration of the defective Goods remedy period. The Seller undertakes to provide repair and service of the Goods mainly at Buyer's site and in the course of the warranty period at his own costs.
- 6.3 The Seller undertakes to provide the out-of-warranty service over the period of 10 years after Goods hand-over depending on the manufacturer, for the price as mutually agreed by the parties.

- 6.4 The Buyer shall notify the Seller of any defect of the Goods immediately upon observation of such a defect. The notification shall be submitted to the Seller by e-mail to info@fischerpanda.de. The Seller shall confirm whether he accepts or rejects the claim within 3 (three) working days from the date of receipt of the notification.
- 6.5 The Seller undertakes to remedy all defects of the Goods within 30 days from the date of Buyer's notification sent by e-mail to the Seller, unless otherwise agreed with the Buyer by reasons worthy of special consideration. Representatives of the Buyer and the Seller shall complete and countersign a "Report on defect remedy and hand over of the Goods".
- 6.6 The Goods shall be considered as faulty especially in the event their design does not meet the specification as set forth herein or they do not qualify for use for their original purpose. Any fault in the documentation essential for use of the Goods shall also be considered a defect.
- 6.7 Buyer's right resulting from faulty performance shall be conferred by defect of the Goods already present at the moment of transferring the risk of damage to the Buyer, even if it occurs later on. Buyer's right shall be conferred also by defect that occurs later on caused by neglect of Seller's duty. Seller's quality guarantee obligations shall remain unaffected.

7. LIABILITY FOR DAMAGE

- 7.1 The Contracting parties shall be liable for any damage incurred. The Contracting parties undertake to make the maximum effort to prevent damages and to minimize incurred damages.

8. SANCTIONS, CONTRACTUAL PENALTIES AND LATE PAYMENT INTEREST

- 8.1 In the event the Seller is in delay with delivery of the Goods the Buyer is entitled to charge the Seller a contractual penalty amounting [REDACTED] of the purchase price of the undelivered Goods for each day of delay.
- 8.2 In the event the Seller is in delay with the claimed in-warranty remedy of the defected Goods, the Contracting parties have agreed the Seller shall settle to the Buyer a contractual penalty of [REDACTED] of the purchase price of the defective Goods, for each day of delay in defect remedy.
- 8.3 The due date of the contractual penalty is [REDACTED] days from the date of receipt of a written demand for payment.
- 8.4 Settlement of the contractual penalty shall not affect any claim for damage nor default interests. Settlement of the contractual penalty shall not cease the liability under the contractual penalty terms.
- 8.5 The contractual penalty shall be settled by the liable Party, regardless of whether and to what extent the damage occurred to the other Party in this respect. Compensation for damage may be claimed separately in full in addition to the contractual penalty.
- 8.6 The Contracting parties have further agreed upon a late interest resulting from the late payment of any monetary obligation under this contract of purchase in the amount of [REDACTED] for each day of delay of the payable amount.
- 8.7 Both Parties are entitled to include all claims, especially costs, damage incurred by the party and/or contractual penalties against any other claim of the other Contracting Party.

9. DISCHARGE OF THE CONTRACT

- 9.1 The Contracting parties have agreed that the contract (or its part) shall discharge in the event of the following:
- 9.1.1 Unilateral withdrawal from the contract by the Buyer due to fundamental breach by the Seller, the fundamental breach means:
- a) delay in delivery by more than 40 days;
 - b) in the event the statement of the Seller as per Clause 3, par. 3.1 above proves to be false or the Goods are subject to any legal defects;
 - c) a failure to observe warranty conditions as stipulated in Clause 6 par. 6.5 hereto, not even within the additionally provided 30 days period of performance ;
- 9.1.2 Unilateral withdrawal from the contract by any Contracting party in the event of starting insolvency proceedings against other Party's assets or if the insolvent proposal was rejected against the other Party due to insufficient assets to settle the insolvency proceedings.
- 9.2 Withdrawal from the contract shall be in writing and becomes effective on the date of notifying the other Party. The withdrawing Party is liable to set grounds for contract withdrawal in the notification.
- 9.3 Withdrawal from the contract by the Buyer shall not affect any other rights under the contract including but not limited to warranty, payment of contractual penalties and damages.

10. SEVERABILITY CLAUSE

- 10.1 If any provision of this contract of purchase or a part thereof becomes to any extent invalid, illegal, or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect any other provisions of this contract of purchase or parts thereof, unless resulting from this contract of purchase that such provision or its part may not be severed from another content.
- 10.2 In the event as stipulated in clause 10, par. 10.1 hereto the Contracting parties undertake to replace the invalid and unenforceable provision without undue delay with a new provision of the purpose and economic meaning coming closest to their intentions.

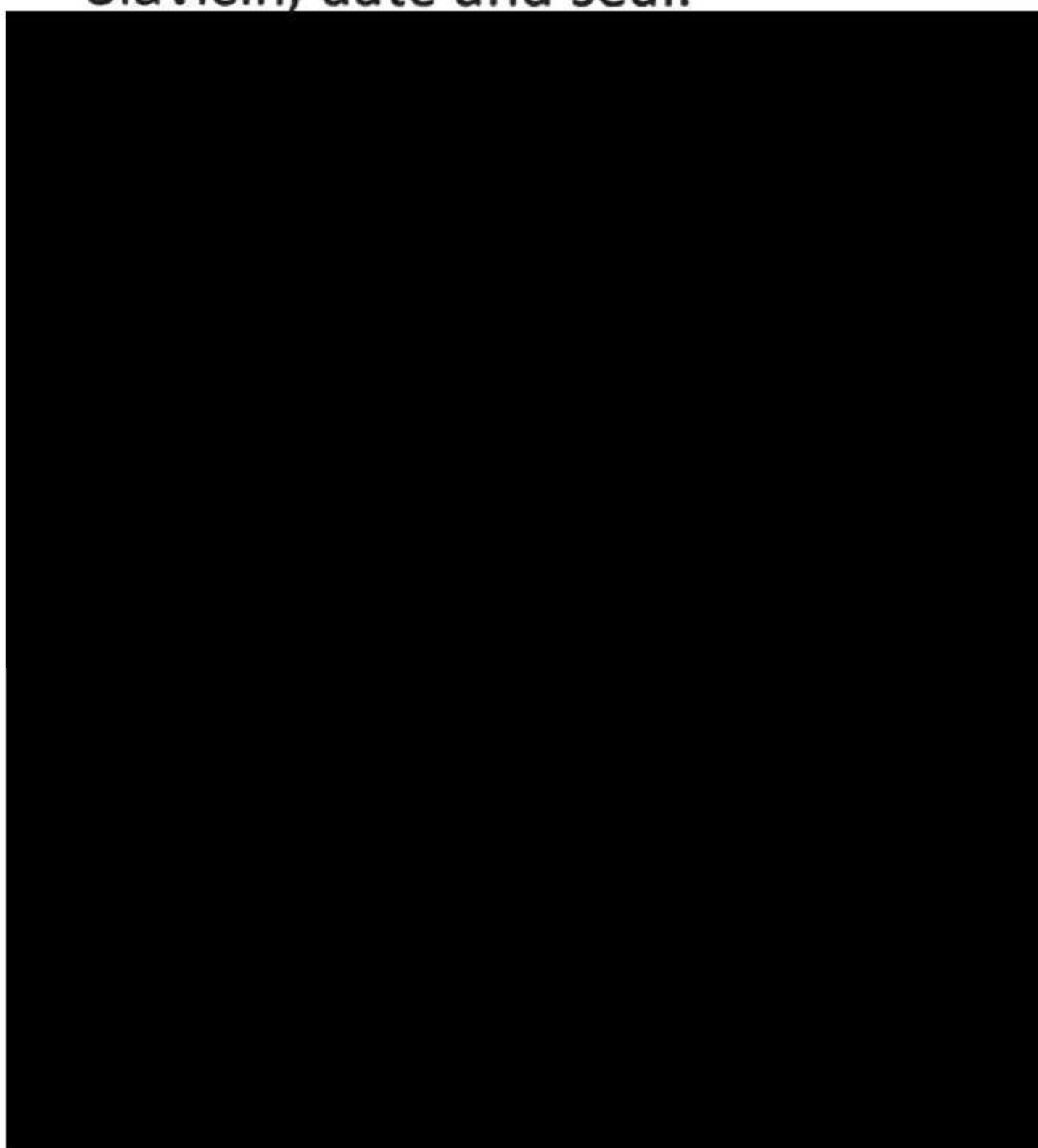
11. FINAL PROVISIONS

- 11.1 Unless otherwise agreed in this contract of purchase, the Contracting parties shall follow the provision of Austrian law, and based on the mutual consensus the Contracting parties explicitly exclude application of the Vienna Convention to their contractual relationship.
- 11.2 The Seller understands Buyer's obligation to make the contract public in accordance with Act no. 340/2015 Coll. on special requirements for the effectiveness of certain contracts, to make these contracts public and on contract register (Act on contracts register) as a legal person stipulated in § 2, par. 1, letter k) of Act on contracts register, whereupon he explicitly specifies his business secret to be technical documentation, price and 3d models, as a consequence of which the Buyer is obligated to exclude this part of the contract from its publication.

- 11.3 The Contract of purchase may be changed or amended only by written, mutually agreed, sequentially numbered amendments agreed by the Contracting parties.
- 11.4 This Contract of purchase becomes effective on the date of its signature by both Contracting parties and.
- 11.5 This Contract of purchase becomes effective on the date of its publication in the Contracts Register.
- 11.6 The Contract of purchase has been executed in two originals, one copy for each Contracting party.
- 11.7 Annex 1 – Technical Specification forms an integral part hereto.
- 11.8 Costs related to this Contract of purchase conclusion shall be borne by the Contracting party incurring such costs.
- 11.9 The Contracting parties undertake to settle any disputes arising from or in connection with the present Contract of purchase through amicable negotiations. Any disputes that cannot be settled through amicable negotiations shall be finally settled in accordance with Austrian law under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules, unless the parties agree on a single arbitrator. Procedural language shall be English, the venue of arbitration shall be Vienna and the governing law shall be Austrian law. Confidentiality shall be agreed on the cause, process and outcome of any arbitration. With respect to taking evidence, the IBA Rules on the Taking of Evidence in International Arbitration 2010 shall apply. The arbitral award shall be substantiated in writing. The arbitral tribunal shall decide on the matter of costs of the arbitration. The arbitral tribunal shall also be entitled to decide on the validity of this arbitration clause.
- 11.10 The Contracting parties hereby declare that the content hereof is clear and comprehensible to them and expresses their free will, in witness whereof they set their hands.

Slavičín, date and seal:

5. 2020



Dipl.-Ing. Stephan Backes
Managing Director

