

Contract of Purchase
No. 2018/10038

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 organizational matters:**

in technical matters:

point of contact:

/hereinafter referred to as the "Buyer"/

Seller:

Name: HENSOLDT Optronics GmbH
Place of Business: Carl-Zeiss-Strasse 22, 73447 Oberkochen, Germany
Authorized to represent the company: Andreas Hülle, Managing Director
Registered in: Commercial Register Ulm
Reg. No./ VAT No.: HRB 500995 / DE811880438
Bank connection:

**Authorized to negotiate
in contractual matters:**

in technical matters:

/hereinafter referred to as the "Seller"/

1. PREAMBLE

1.1

1.2

- 1.3 Achievement of contract purpose is essential for health and life protection and further for fulfilment and protection of substantial interests of the security and alliance obligations of the Czech Republic. Consequently, the performance of contract purpose is subject to an exception from the obligation to award a public procurement contract pursuant to the provision of § 29 letter s) of Act no. 134/2016 Coll. on public procurement, as amended.

2. SUBJECT-MATTER OF THE CONTRACT

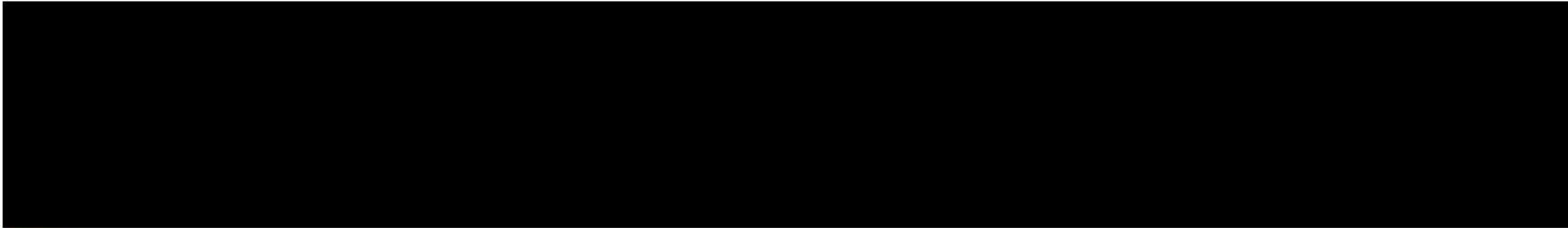
- 2.1 The Seller undertakes to deliver to the Buyer under the conditions set forth herein "7 (seven) each of the LDM 38 [REDACTED] (hereinafter to referred to as "Goods"), as specified in Annex 1 to this contract.
- 2.2 The Buyer undertakes to accept the Goods as per this contract and settle the agreed purchase price in favour of the Seller's bank account in due time as agreed under the conditions of clause 4 herein.
- 2.3 The Seller further undertakes under this contract to provide the Buyer with the Operation and Maintenance Manual in English language in electronic editable format (.doc) – in case of any changes occur in the course of this contract duration, the Seller undertakes to provide the Buyer with the updated version of the Operation and Maintenance Manual for the Goods.
- 2.4 The Seller hereby undertakes to enable the Buyer to acquire ownership rights to the Goods and the Buyer undertakes to accept the Goods and to pay to the Seller the purchase price under the terms 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. 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 endeavours to propose a method of solution acceptable for both parties.



3.3



3.4 The Seller acknowledges this fact and grants the Buyer his consent to provide all agreed 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 CONDITION

4.1 The Contracting parties have agreed upon the purchase price for the Goods in the amount of  per unit excl. VAT (hereinafter referred to as the "purchase price"). The total price for the delivery of 7 units of the Goods  (hereinafter referred to as "total price").

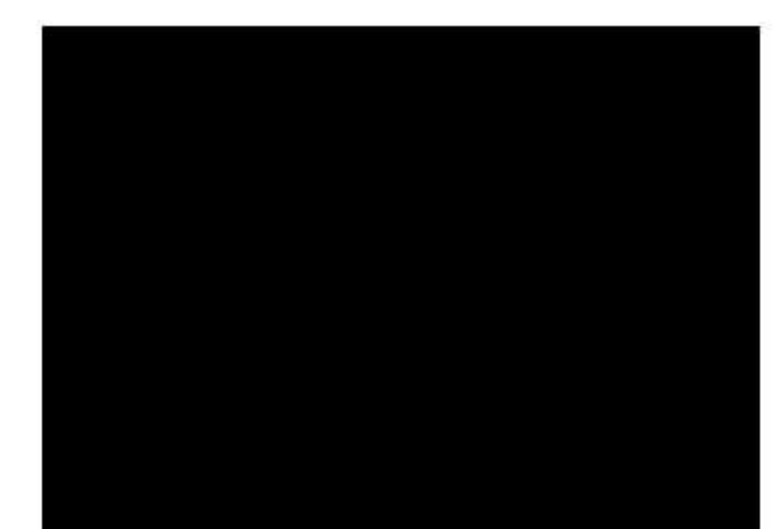
4.2 The purchase price has been agreed DAP Vojensky technicky ustav, s.p., branch VTÚVM Slavcin, Dlouha 300, 763 21 Slavcin, Czech Republic, according to INCOTERMS 2020. The purchase price is final and effective for the entire term of the contract covering all the costs incurred to the Seller in relation with the performance of his contractual liabilities set forth in this Contract of Purchase.

4.3 The Buyer is obliged to settle the purchase price to the Seller against an Invoice issued by the Seller not earlier than on the date of delivery DAP Vojensky technicky ustav, s.p., branch VTÚVM Slavcin, Dlouha 300, 763 21 Slavcin, Czech Republic, according to INCOTERMS 2020.

4.4 The Invoice shall be delivered to the Buyer in duplicate and must include the number of the Contract of Purchase and specification of the delivered Goods (name, designation, quantity and net/total price) and 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. Delivery Note in accordance with clause 5, par. 5.10. of this contract shall be enclosed to the Invoice.

4.5 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 its due period, without being in default with the payment. New term of payment shall be without undue delay after the delivery of the corrected Invoice to the Buyer.

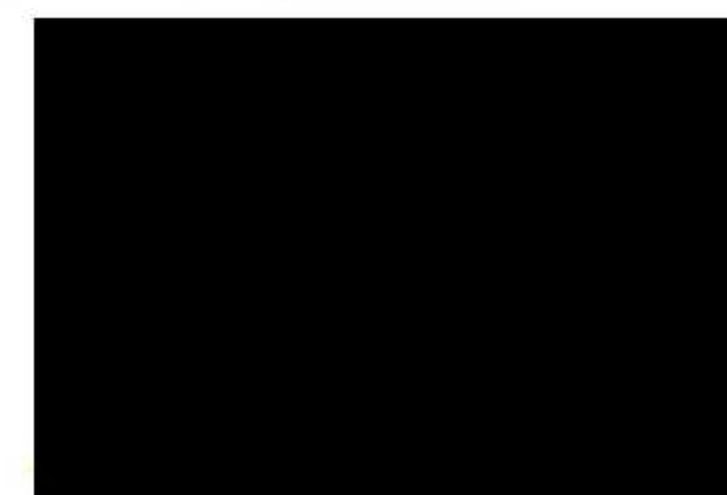
4.6 The Contracting parties have agreed upon a due date of the Invoice within 30 (thirty) days from the date of delivery of the Invoice to the Buyer.



- 4.7 The purchase price shall be deemed settled on the day the Buyer issues an order to his financial institution to settle the invoiced amount in favour of Seller's account, as indicated in this contract headings, or eventually a different account provided by the Seller for this purpose.

5. DELIVERY TERMS

- 5.1 The Seller undertakes to deliver the total of 7 units of the Goods as follows:
- 1st unit until 31.08.2020, however, not earlier than 17.08.2020,
 - 2nd to 7th unit until 28.02.2021, however, not earlier than 14.02.2021
- 5.2 The Buyer undertakes to deliver to the Seller the original IIC/EUC within 45 days from the date of this contract signature. In case of any delay in delivery of the IIC/EUC by the Buyer to the Seller, the delivery date as stipulated in Clause 5, par. 5.1 above shall automatically be extended by this period. In case of delay in granting the export licence, the delivery date as stipulated in Clause 5, par. 5.1 shall also automatically be extended subject to the Seller proving he had applied for the export licence not later than within 10 working days from the date of receipt of IIC/EUC from the Seller.
- 5.3 The Buyer shall not generally allow partially deliveries – the Seller is obligated to deliver the Goods in the above-stipulated delivery dates, always in the requested quantities per each delivery. The Seller may ask for a deviation from this general rule for serious reasons, however, the Buyer may not accord this request.
- 5.4 The Contracting parties have agreed upon the term of delivery DAP Vojensky technicky ustav, s.p., branch VTÚVM Slavcín, Dlouha 300, 763 21 Slavcín, Czech Republic, according to INCOTERMS 2020 (Delivery at Place).
- 5.5 The Seller undertakes to provide with the Goods the documents necessary for the acceptance and use of the Goods:
- Original of the Certificate of Conformity in accordance with the Regulation (EC) No. 765/2008 of the European Parliament and of the Council,
 - certificate of conformance certifying technical parameters of the Goods are complying with requirements of this contract of purchase,
 - communication protocol,
 - Operation and Maintenance Manual as per Clause 2, par. 2.3.
- all in English language.
- 5.6 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 the place of delivery.
- 5.7 The Buyer has right to use the Goods from the moment of its delivery.
- 5.8 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 [REDACTED] prior to the date of delivery. The Seller undertakes to provide declaration on word of honour certifying these facts upon delivery.

- 5.9 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, non-functionality, etc.). In such an event a report shall be immediately issued and undersigned by the Buyer's representative – under such circumstance the Buyer is entitled to reject the delivery and return it back to the Seller; the Seller is obligated to issue a Credit Note against the already issued invoice without delay. The Seller is obligated to remove any defects of the Goods without undue delay. In case the Seller and the Buyer agree the defect is irremovable, the Seller is obligated to deliver new Goods.

6. GOVERNMENT QUALITY ASSURANCE

- 6.1 All requirements in this contract may be subject to the Government Quality Assurance ("GQA"). Both parties will be notified of any GQA activities to be performed. If relevant End User's Authority requires the German Quality Assurance Authority to perform inspection than we agree that in performance of this contract, the Government Quality Assurance will be applied to the extent of the AQAP2131 NATO Quality Assurance Requirements for Final Inspection. The Seller quality assurance system ensures that all products and services meet the Seller quality standards and the quality requirements stipulated in the specifications. Inspection tests will be done by personnel of seller according to the specified test and acceptance conditions for LDM 38.

7. WARRANTY AND DEFECTS OF THE GOODS

- 7.1 The Seller undertakes to grant to the Buyer a guarantee covering functionality, performance and quality of the Goods purchased under this Contract (hereinafter referred to as the "warranty"). The warranty period provided by the Seller shall be [REDACTED] from the delivery DAP Vojensky technicky ustav, s.p., branch VTÚVM Slavcin, Dlouha 300, 763 21 Slavcin, Czech Republic, according to INCOTERMS 2020 hereto except for the laser assy for which the warranty is limited [REDACTED] whatever occurs first.
- 7.2 The Buyer shall notify the Seller of the observed defect of the Goods (hereinafter referred to as the "claim") immediately upon observation of such a defect by e-mail, in the form of CLAIM REPORT in accordance with Annex 2 hereto. The Seller shall confirm receipt of the CLAIM REPORT within 5 (five) working days from the date of receipt of the notification by e-mail.
- 7.3 The Seller undertakes to remedy all defects of the Goods within a period of time reasonable (corresponding) to defect nature, however, this period shall not exceed [REDACTED] from receipt of goods at HENSOLDT Optronics in Oberkochen (Germany), except in cases new spare parts are required with extended delivery periods or which are subject to import/export permit issue, or unless the Contracting parties agree otherwise. The Seller is obligated upon receipt of the Goods at HENSOLDT Optronics in Oberkochen (Germany) to notify the Buyer via e-mail about the anticipated period to repair the Goods, including justification. Any shipping costs shall be borne by the Seller. The Seller is obligated to have available all import/export permits covering repairs of these items for the entire period of their warranty period.

- 7.4 Representatives of the Seller shall complete and countersign a "Report on defect remedy and hand over of the Goods". In the event the defect is irremovable the Seller shall provide new Goods. Claim-related costs shall be borne by the Seller.
- 7.5 The warranty period of the claimed Goods shall be extended by the period starting from the date it was deemed as accepted (i.e. date of delivery of the Claim Report to the Seller) by the Seller until defect remedy by the Seller.
- 7.6 The Seller shall provide service and supply of spare parts, or in case their production terminates of alternative spare parts until at least [REDACTED]. This long timeframe may require FFF replacements due to obsolescence events and technology changes. In the event of terminating the production of the Goods, spare parts, SW support provision, etc. the Seller undertakes to notify the Buyer at least [REDACTED] in advance.
- 7.7 The Goods shall be considered as faulty especially in the event their design does not meet the specification as set forth in this contract 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.
- 7.8 Buyer's right resulting from faulty performance constitutes a defect of the Goods already present at the moment of transferring the risk of damage to the Buyer, even if it occurs later on. Any defect subsequently occurring and caused by gross neglect of Seller's duty also constitutes Buyer's right. Seller's guarantee obligations resulting from the quality shall remain unaffected.

8. LIABILITY FOR DAMAGE

- 8.1 The Contracting parties shall be liable for any damage incurred amounting up to a maximum of EUR [REDACTED]. The Contracting parties undertake to make the maximum effort to prevent damages and to minimize incurred damages.

9. SANCTIONS, CONTRACTUAL PENALTIES AND LATE PAYMENT INTEREST

- 9.1 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 price of the Goods not delivered in the agreed due date, for each day of delay, up to a maximum of [REDACTED] of the undelivered goods. Settlement of the contractual penalty shall be without prejudice to a prime obligation of the Seller, i.e. delivery of the Goods.
- 9.2 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 [REDACTED] of the amount of the repair of the defective Goods, for each day of delay in defect remedy up to a maximum of [REDACTED] of the amount of the repair of the defective Goods. Settlement of the contractual penalty shall not affect any claim for damage or any lawful default interests. Settlement of the contractual penalty shall not cease the liability under the contractual penalty terms.
- 9.3 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 addition to the contractual penalty, in full amount.

- 9.4 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.
- 9.5 The contracting parties are entitled to offset all claims, especially costs, damages by the other Party and/or contractual penalties against any other claim of the other Party.

10. DISCHARGE OF THE CONTRACT, WITHDRAWAL FROM THE CONTRACT

- 10.1 The Contracting parties have agreed that the contract (or its part) shall discharge in the event of the following:
- 10.1.1 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 30 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;
- 10.1.2 Unilateral withdrawal from the contract by any of the 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;
- 10.1.3 Notice of termination of the contract (or its part – i.e. partial termination) by the Buyer, nevertheless, the only reason to terminate (partially terminate) this contract by the Buyer is that legal effects of the contract this contract directly relates to, i.e. contract identified in Clause 1, par. 1.1 hereto, discharge or partially discharge for whatever reason. Grounds for the notice of termination (notice of partial termination) must be set in the notice (partial termination) otherwise the notice of termination (notice of partial termination) shall be disregarded.
- 10.2 Withdrawal from the contract shall be in writing and becomes effective from the moment of notifying the other Party. The withdrawing Party is liable to set reasons for contract withdrawal in the notification.
- 10.3 Withdrawal from the contract by the Buyer shall not affect any Buyer's rights that pursuant to the expressed will of the Parties or with regard to their nature may survive withdrawal of this contract, including but not limited to payment of contractual penalties, liquidated damages and others.
- 10.4 Notice of termination of the contract (notice of partial termination) shall be in writing and becomes effective on the date of its delivery to the Seller. The Buyer is liable to set grounds for the notice of termination (notice of partial termination) otherwise the notice of termination (notice of partial termination) shall be disregarded.
- 10.5 In the event of notice of termination (notice of partial termination) of this contract the contracting parties undertake to conclude a Settlement Agreement concerning reasonably and purposefully incurred and duly evidenced costs in relation to this contract of purchase (especially costs incurred in relation to the finished material ready for delivery) and reciprocal settlement of the already

provided performance, including interests and adequate profit amounting to [REDACTED] the costs of sales and monetary obligations.

11. SEVERABILITY CLAUSE

- 11.1 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.
- 11.2 In the event as stipulated in clause 11, par. 11.1 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.

12. FINAL PROVISIONS

- 12.1 Unless otherwise agreed in this Contract of purchase, the Contracting parties shall follow the provision of the Swiss law, and both the Contracting parties based on their mutual consensus agree to exclude application of Vienna Convention to their contractual relationship.
- 12.2 The Seller understands Buyer's obligation to make the contract public. Seller does not know the requirements set out in Act No. 340/2015 Coll. However, Seller is prepared that Buyer will announce publically the name of seller, the subject of the contract and the volume of the contract 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 specification, the prices and the warranty periods, as a consequence of which the Buyer is obligated to exclude this part of the contract from its publication.
- 12.3 This contract of purchase may only be changed or amended by written, mutually agreed, sequentially numbered amendments agreed by the Contracting parties.
- 12.4 This contract of purchase shall come into force on the date of its signature by both Contracting parties.
- 12.5 This contract of purchase becomes effective on the date of its publication in the Contracts Register. Buyer shall inform the Seller of the effectiveness date of the contract and send the Seller a link to the register website.
- 12.6 The Contract of purchase has been executed in two originals, one copy for each Contracting party.
- 12.7 The following annexes form an integral part hereto:
- Annex 1 – Technical Specification of the Goods
 - Annex 2 – Claim Report
- 12.8 Costs related to this Contract of purchase conclusion shall be borne by the Contracting party incurring such costs.
- 12.9 Both Contracting parties undertake to settle any disputes arising in connection with the present Contract of purchase through amicable negotiations. Any disputes that cannot be settled through [REDACTED]

amicable negotiations shall be finally settled in accordance with the Swiss law and will be decided by the local court of Zurich, Switzerland.

12.10 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.

