



Purchase Contract

pursuant to Section 2079 et seq. of Act No. 89/2012 Coll., the Civil Code, as amended (hereinafter the “**Civil Code**”)

I. THE PARTIES:

1. Buyer:

Fyzikální ústav AV ČR, v. v. i.

(Institute of Physics of the Czech Academy of Sciences, public research institution)

with its principal office at Praha 8, Na Slovance 2, PSČ 182 00

represented by: RNDr. Michal Prouza, Ph.D., the Director

Registered in the Registry of public research institutions kept by the Ministry of Education, Youth and Sports of the Czech Republic

Id. No.: 68378271

Tax Id. No.: CZ68378271

(hereinafter the “**Buyer**”)

and

2. Seller:

OptiXs, s.r.o.

with its principal office at Křivoklátská 37/3, Letňany, 199 00 Praha 9

represented by: Ing. Aleš Jandík, Ing. Martin Klečka, statutory representative

Id. No. (if any): CZ02016770

Tax Id. No. (if any): CZ02016770

(Hereinafter the “**Seller**”; the Buyer and the Seller are hereinafter jointly referred to as the “**Parties**” and each of them individually as a “**Party**”).

enter, on the present day, month and year, into this Purchase Contract (hereinafter the “**Contract**”)

II. Fundamental Provisions:

- 2.1 The Buyer is a beneficiary of a subsidy granted by the Ministry of Education, Youth and Sports of the Czech Republic within the Operational Programme “Research, Development and Education”.
- 2.2 The Seller has been awarded the public contract entitled “Spare uncoated OAP mirror SP20_006” (hereinafter the “**Public Contract**”).

III. Subject of the Contract

- 3.1 Under this Contract the Seller shall design, manufacture and deliver to the Buyer one OAP mirror (hereinafter the “**Mirror**”) as specified herein and under the conditions stipulated herein including Annexes to this Contract, especially Annex No 1 Requirements Specification Document (hereinafter the “**RSD**”).
- 3.2 The Buyer shall take over the Mirror with all the required documentation and pay the Purchase Price for it to the Seller as specified in Art. V. hereof.



IV. Risk of Loss and Ownership Title

The risk of loss or damage to the Mirror shall pass to the Buyer upon its delivery to the Place of Delivery (upon offloading from the means of transport designated by the Seller).

The ownership title to the Mirror shall pass to the Buyer upon provision of the final instalment of the Purchase Price to the Seller.

V. Purchase Price and Payment Terms

- 5.1 The purchase price for the Mirror is **183 400 USD** excl. VAT (hereinafter the "**Purchase Price**").
- 5.2 All prices stipulated in this Contract are exclusive of VAT payable in the EU that will be paid by the Buyer in the Czech Republic.
- 5.3 The Seller, if applicable, is responsible for clearing the Mirror both for export from the country of origin and for import to the EU (export and import customs formalities and financial duties). The Buyer shall provide all needed assistance and carry out activities needed for completion of import procedures. The Buyer shall formally apply that the Mirror is admitted to the EU free of import financial duties (customs) if the law of the European Union provides for such admission.
- 5.4 The Purchase Price includes all costs related to the performance of the subject-matter of this Contract of which the Seller knew or should have known including all manufacturing costs, costs of transport, packaging, proper level of insurance and any other direct or indirect costs needed to perform this Contract duly and in time (but excluding VAT payable in the EU). The Purchase Price is the maximum permissible price. The Purchase Price is independent of the development of prices and currency exchange rates.
- 5.5 The Purchase Price for the Mirror shall be paid based on tax documents – invoices, to the account of the Seller designated in the invoice.
- The Seller is entitled to invoice the Purchase Price as follows:
- 20 % of the Purchase Price upon documented take over and acceptance of a fused silica blank from a subsupplier;
 - 70% of the Purchase Price upon execution of the acceptance protocol by the Parties (Art. 8.2 hereof);
 - 10 % of the Purchase Price upon the issuance of a delivery note confirming delivery of the Mirror to the Place of Delivery free of damage caused in transport.
- 5.6 Invoices shall be payable within thirty (30) days from their delivery to the Buyer (hereinafter the "**Maturity Period**"). If the Seller indicates any shorter maturity period in an invoice, such other period is deemed irrelevant and the period set out herein applies. Payment of the invoiced amount is considered executed on the date of its remitting to the Seller's account. In conformity with the applicable tax regulations of the Czech Republic, the tax documents – invoices issued by the Seller hereunder shall include particularly the following details:
- a) the business name/designation and registered office of the Buyer
 - b) the tax identification number of the Buyer
 - c) the business name/designation and registered office of the Seller
 - d) the tax identification number of the Seller
 - e) the registration number of the tax document
 - f) the scope and object of the taxable supply
 - g) the date of issue of the tax document
 - h) the date of the supply or the date of acceptance of the consideration, whichever is earlier, if it differs from the date of issue of the tax document
 - i) the price of the supply
- and must also be in conformity with any double taxation treaties applicable to this Contract.
- 5.7 Invoices shall be submitted to the Buyer only in the electronic form to the email address: efaktury@fzu.cz



VI. Manufacturing Deadline

The Seller shall design and manufacture the Mirror so that it is ready (including all documentation needed for verification) for verification and acceptance at the Seller's (or a subsupplier's) site within **1 year from the signature of this Contract**.

VII. Place of Delivery

The place of delivery shall be the ELI Beamlines facility, Za Radnicí 836, ZIP 252 41, Dolní Břežany, district Prague-west, the Czech Republic (hereinafter the "**Place of Delivery**").

VIII. Production Phasing, Acceptance and Transport of the Mirror

8.1 Qualification of Design

The Seller shall submit to the Buyer basic manufacturing drawing and other documentation and information in line with art. 5.4.1 of Annex No 1 hereto (RSD) for approval before manufacture of the Mirror.

The Buyer shall provide a statement (approval or any comments) on the manufacturing drawing and related documentation and information submitted by the Seller within 10 business days from receiving them. Potential necessity of implementation of any comments of the Buyer does not postpone the manufacturing deadline stipulated hereby if the Buyer meets the 10-business-day deadline. Should the deadline for provision of the statement not be met by the Buyer, the manufacturing deadline extends accordingly.

8.2 Manufacture and Acceptance

The Buyer shall accept the Mirror at the Seller's site if the Mirror complies with all requirements stipulated herein and the results of the verification process are documented through documentation requested under this Contract. In such a case, the Buyer shall provide the Seller with an acceptance protocol and the Seller shall without undue delay start the transport of the Mirror to the Place of Delivery.

8.3 Delivery of the Mirror

The inspection of the Mirror in terms of potential damage incurred during transport shall be carried out by the Buyer immediately after delivery of the Mirror to the Place of Delivery. The Buyer shall confirm due delivery of the Mirror to the Place of Delivery to the Seller or to a carrier designated by the Seller, if delivered free of transport damage, by issuing a delivery note.

IX. Defects of the Mirror and Warranty Claims

9.1 The Mirror shall be deemed defective if it does not conform to the requirements stipulated herein. The Seller shall be liable for (i) any defects in the Mirror at the time of its acceptance, (ii) defects in the Mirror caused during transport to the Place of Delivery and (iii) for defects that occur in the Mirror during the entire warranty period (quality guarantee).

Defects Detected during Acceptance Procedure

9.2 The Buyer is not obliged to accept the Mirror if there are any defects in it. However, the Buyer is entitled based on its discretion to accept the Mirror despite there are defects in it if the Buyer presents a defect removal schedule under which the defects are to be removed with all reasonable expedition and promptly. The deadline for removing the defects shall be agreed in the acceptance protocol. If the Seller removes the defects within the agreed deadline, the Mirror is deemed to be manufactured in time in accordance with art. VI hereof. If the Seller fails to remove the defects within the agreed deadline, the acceptance becomes invalid and the Seller is deemed to be in breach of art. VI hereof from the day the manufacturing deadline has expired.

9.3 The Buyer is also entitled based on its discretion to accept the Mirror despite there are defects in it without removing the defects if the Parties agree on an adequate price discount.

9.4 Acceptance of the Mirror does not prevent the Buyer from making a later claim for removal of a hidden defect (that was present in the Mirror at the time of acceptance but could not have been detected during the acceptance procedure due to the nature of the verification methods). In such a case, Art. 9.9 – 9.11. hereof apply.



Radial PSD Curve and surface slope error

9.5 If at the time of verification of the Mirror

- a) further surface processing of the Mirror is needed under REQ-029878/A of the RSD (the radial PSD curve or the RMS wavefront gradient exceeds the limit),
- b) it is the main material defect of the Mirror, and
- c) the Seller promises execution of further processing within reasonable deadline,

the Buyer shall agree with the Seller adequate additional time for the processing. If the Mirror (i) meets after the further processing the respective requirement and the processing is carried out within the agreed deadline or (ii) the Seller after the further processing decides to accept the Mirror defective as is with an adequate discount agreed with the Seller, the Mirror shall be accepted by the Seller as manufactured in time according to the Art. VI. hereof.

Defects Caused during Transport

9.6 If a defect is detected by inspection of the Mirror in the Place of Delivery, the defect shall be documented and immediately reported to the Seller. Articles 9.9 – 9.11. hereof apply on the defect removal. The Buyer is also entitled based on its discretion to accept the defective Mirror as is in line with Art. 9.3 hereof.

9.7 Issuance of a delivery note confirming delivery of the Mirror free of damage caused in transport does not prevent the Buyer from making a later claim for removal of a hidden defect (that was present in the Mirror at the time of the inspection but could not have been detected during the inspection due to the nature of the available inspection methods). In such a case, Art. 9.9 – 9.11. hereof apply.

Warranty (Quality Guarantee)

9.8 The Seller provides the warranty of quality for the Mirror for a period of 1 year from the date of due delivery of the Mirror to the Place of Delivery (the day of issuance of the delivery note is the first day of the warranty period). The Buyer shall raise a warranty claim against the Seller without undue delay after detecting a defect, but not later than on the last day of the warranty period, by means of a written notice sent to the Seller's authorised representative for technical matters set out herein.

9.9 The Seller shall remove the defect for which it is responsible free of charge.

9.10 The Seller undertakes to remove any defect within a deadline agreed with the Buyer. If the Parties do not reach an agreement, the Seller shall remove the defect (i) within six months and (ii) in case the removal requires acquisition of a new Blank, the defect shall be removed within 1 year from raising the warranty claim.

9.11 The Parties shall execute a record on removal of the defect, in which they shall confirm that the defect has been removed.

9.12 The warranty shall not apply to defects caused by non-compliance with written rules of operation and maintenance of the Mirror provided by the Seller, manipulation errors or by normal wear and tear.

X. Penalties, vis major circumstances and liability limitation

Penalties

10.1 If the Seller is in delay with due finalization of manufacturing of the Mirror within the manufacturing deadline stipulated in Art. VI. hereof, the Seller shall pay to the Buyer a contractual penalty for delay in the amount of 0,05% of the Purchase Price (without VAT) for every (even commenced) day of delay.

10.2 The total contractual penalty for delay with due finalization of manufacturing of the Mirror shall not exceed 5% of the Purchase Price (without VAT).

10.3 If the Seller is in delay with the removal of a defect in case of hidden defects (Art. 9.4 or 9.7) or a warranty claim (Art. 9.8), the Seller shall pay to the Buyer a contractual penalty for delay in the amount of 0,005 % of the Purchase Price (without VAT) for every (even commenced) day of delay.



- 10.4 The total contractual penalty for delay with removal of defects under this Contract shall not exceed 2% of the Purchase Price (without VAT).
- 10.5 The Seller shall pay contractual penalties within fifteen (15) days from the day, on which the Buyer enumerated their claim. The payment by the Seller of contractual penalties for delay to which the Buyer is entitled under this Art. X hereof shall be the sole indemnification due by the Seller to the Buyer because of such delay. The Buyer has the right to terminate the Contract for default of the Seller in application of the Art. 11.2 iii) hereof.
- 10.6 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 (or any part of it) after agreement by the Parties on the amount of penalties due by the Seller. The Buyer is not obliged to take into account objections of the Seller raised against the enumeration of the contractual penalties should the Seller fail to document, within 30 days from receipt of the notice of penalties, that the application of penalties is groundless or that it is not liable for the delays.

Vis major circumstances

- 10.7 Circumstances constituting vis major shall be deemed to have been constituted by such circumstances / obstacles which arose independently of the will of the obliged Party, and which prevent fulfilment of that Party's obligation, provided that it could not be reasonably expected that the obliged Party could overcome or avert this obstacle or its consequences, and furthermore that such Party could foresee such obstacle when it entered into the respective covenants. Vis major shall not be constituted by obstacles that arose only after the obliged Party was in default with fulfilment of its obligations, or which arose in connection with its economic situation.

In addition and for the sake of clarity, the Parties agree that any particular effects or impacts on the Seller or his performance under this Contract of the Covid-19 epidemic that meet the conditions set out above in this Art. 10.7 will be considered as vis major cases despite the fact of the existence of the epidemic outbreak on the date of the signature of this Contract.

- 10.8 Should a situation occur, which a Party could reasonably consider to constitute vis major, and which could affect fulfilment of its obligations hereunder, such Party shall as soon as possible notify the other Party and attempt to continue in its performance hereunder in a reasonable degree. Simultaneously, such Party shall inform the other of any and all its proposals, including alternative modes of performance, however, without consent of the other Party, it shall not proceed to effect such alternative performance.
- 10.9 If a situation constituting vis major occurs, the deadlines imposed hereunder shall extend by the period of the documented duration of the said vis major. The obliged Party shall properly document to the other Party the start and the finish of the vis major period.

Liability limitation

- 10.10 Except in case of corporal or property damages, gross negligence, or wilful misconduct shall the Seller's liability be limited to the aggregate amount of this Contract. The Seller shall not be liable for indirect damages such as loss of business and loss of profit.

XI. Termination of the Contract

- 11.1 This Contract may be terminated by withdrawal from the Contract on the grounds stipulated by law or in the Contract.
- 11.2 The Buyer is entitled to withdraw from the Contract without any penalty from Seller in any of the following cases:
- i) material breach of the Contract is committed by the Seller and the Seller has not remedied such breach within 3 months (or another longer period agreed to by the Buyer if to remedy the breach in 3 months is impossible for reasons documented by the Seller) following the sending of a written notice by the Buyer;
 - ii) insolvency proceedings are initiated against the Seller's assets;



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



MINISTRY OF EDUCATION,
YOUTH AND SPORTS

- iii) the Seller is in delay with readiness of the Mirror for the verification process by more than 6 months.
- 11.3 The Seller is entitled to withdraw from the Contract without any penalty from Buyer in the event of material breach of the Contract by the Buyer.
- 11.4 Either Party is entitled to withdraw from the Contract without any penalty in case of a vis major event (Art. 10.7 hereof) that lasts more than six months.

XII. Representatives, Notices

- 12.1 The Seller has appointed the following authorised representative for communication with the Buyer in technical matters:

Ing. Martin Klečka

E-mail: klecka@optixs.cz, tel.: +420 607 014 278
- 12.2 The Buyer has appointed the following authorised representative for communication with the Seller in technical matters:

Dr. Daniel Kramer, e-mail: Daniel.Kramer@eli-beams.eu, tel.: +420 266 051 423.
- 12.3 Unless this Contract stipulates otherwise, any and all notices that are to be or may be made between the Parties under this Contract must be made in writing and delivered to the other Party by an internationally renowned courier service (Federal Express, DHL, etc.), in person (with written confirmation of acceptance) or by registered post.

XIII. Choice of Law and disputes resolution

- 13.1 This Contract and all the legal relationships arising out of it shall be governed by the laws of the Czech Republic.
- 13.2 The Parties acknowledge and note that the provisions of the Czech Civil Code shall apply in matters that are not explicitly regulated by this Contract.
- 13.3 Any and all disputes arising out of this Contract or the legal relationships connected with the Contract shall be resolved by the courts in the Czech Republic.

XIV. Export Control

In the event that the supply of the Mirror is under an applicable law subject to an end-user statement regarding use, an export license or any other similar administrative measure, the Buyer shall provide needed cooperation to meet the legal requirements and to comply with the applicable rules. However, the Buyer must always remain entitled to use the Mirror for the operation of the ELI Beamlines research centre in the Czech Republic. Any resale of Mirror is subject to written approval of the Seller.

XV. Final provisions

- 14.1 The Buyer hereby declares that it is not with respect to the subject hereof an entrepreneur and that the subject of the Contract doesn't fall within the scope of any of its entrepreneurial activities.
- 14.2 The Contract represents the entire and comprehensive agreement between the Buyer and the Seller.
- 14.3 In the event that any of the provisions of this Contract shall later be shown or determined to be invalid, ineffective or unenforceable, then such invalidity, ineffectiveness or unenforceability shall not cause invalidity, ineffectiveness or unenforceability of the Contract as a whole. In such event the Parties undertake without undue delay to replace after mutual agreement such invalid, ineffective or unenforceable provision of the Contract by a new provision, that in the extent permitted by the laws and regulations of the Czech Republic, relates as closely as possible to the intentions of the Parties to the Contract at the time of creation hereof.
- 14.4 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.
- 14.5 This Contract may be changed or supplemented solely by means of numbered supplements in writing, furnished



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



MINISTRY OF EDUCATION,
YOUTH AND SPORTS

with the details of time and place and signed by duly authorised representatives of the Parties.

14.6 The following Annex form an integral part of the Contract:

Annex No. 1: Requirements Specification Document

14.7 The Parties, manifesting their consent with its entire contents, affirm the Contract with their signature.

For: Fyzikální ústav AV ČR, v. v. i.

For: OptiXs, s.r.o.

Name: RNDr. Michal Prouza, Ph.D.
Title: Director

Name: Ing. Aleš Jandík/ Ing. Martin Klečka
Title: Statutory representative



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



MINISTRY OF EDUCATION,
YOUTH AND SPORTS

Annex No. 1 Requirements Specification Document